

at 63 FR 39857 to solicit further comment on three specific aspects of the proposed revisions: Determining baseline emissions, actual-to-future-actual methodology (later renamed as the actual-to-projected-actual test), and PAL's. More than 400 letters from the public were received concerning the proposal and the NOA and can be found in Docket A-90-37. On December 31, 2002 (67 FR 80186), we published notice of final action on several of the changes that were proposed in 1996 and noticed in 1998: Baseline emissions determinations, the actual-to-projected-actual methodology, actual PAL's, clean Units, and PCP's.

Today, we are taking final action on one of the aspects of the 1996 proposal that was not included in our December 31 final regulations and which is necessary to ensure implementation of those final rules. Specifically, we are finalizing our proposal that PSD applicability changes would also be included in the part 52 regulations governing Federal permitting programs in those jurisdictions that lack a SIP-approved PSD program. In our 1996 proposal (61 FR 38252), we listed five proposed changes to NSR applicability: (1) Clean units, (2) baseline emissions, (3) PCP's, (4) PAL's, and (5) the actual-to-future-actual test (renamed as the actual-to-projected-actual test). In that proposal, we specifically noted that we were proposing these changes for the part 52 Federal PSD program as well.

The EPA also proposes to include these applicability approaches in the part 52 regulations governing Federal permitting programs (61 FR 38253).

The part 52 regulations governing Federal permitting programs include the Federal PSD rule at 40 CFR 52.21, as well as the various sections of subparts C through DDD of part 52 that incorporate the Federal permitting program by reference for those jurisdictions where EPA has promulgated a federal implementation plan (FIP) because there is no SIP-approved PSD program in those jurisdictions. (See, for example, § 52.632, which incorporates § 52.21 by reference into the State plan for the State of Hawaii.) Although we received a limited number of comments regarding whether States with approved PSD programs in their SIPs should be required to adopt the five applicability provisions, we received no comments on whether the five applicability provisions should be adopted in those jurisdictions where EPA has promulgated a FIP because there is no SIP-approved PSD program in those jurisdictions. This lack of comment is

not surprising since we did not propose to change our longstanding procedures concerning incorporation by reference of § 52.21 as a FIP for those jurisdictions where there is no SIP-approved PSD permitting program. Public comments concerning specific changes to the provisions in § 52.21 subpart A were addressed in our December 31, 2002 **Federal Register** notice and accompanying Technical Support Document. The opportunity for judicial review of specific changes to subpart A has also been provided as part of that rulemaking. (See 67 FR 80244.)

As of December 31, 2002, a number of State and local agencies did not have approved PSD programs in their SIPs. Instead, as described above, EPA promulgated the Federal PSD program in those jurisdictions through regulatory provisions in 40 CFR part 52, subparts C through DDD. In most of those jurisdictions, the State or local agency administers the federal PSD program pursuant to a delegation of authority under § 52.21 (u). When finalizing the new applicability provisions that we proposed in 1996, however, the relevant parts of § 52.21 were extended from § 52.21(b) through (w) to § 52.21(a)(2) and (b) through (bb). Therefore, today's final regulations incorporate by reference the new § 52.21(a)(2) and (b) through (bb) into the applicable implementation plan for those jurisdictions that currently do not have approved PSD programs. With this final action, we are not approving or disapproving the PSD programs for any State, local, or Tribal agencies. Instead, we are updating the FIP's, using the same language that we have used at each major revision to the PSD rules, to reflect the fact that all of the relevant provisions of the new § 52.21 now apply.

No tribal government currently has an approved tribal implementation plan (TIP) under the CAA to implement the PSD program. The Federal Government is currently the PSD reviewing authority in Indian Country. Pursuant to § 52.21(a)(1), the provisions of § 52.21 are applicable to all lands owned by the Federal Government and Indian Reservations located in each State. Therefore, we are incorporating the Federal PSD Program contained in § 52.21 by reference into implementation plans where the requirements of CAA 160-165 are not met for federally designated Indian lands. By this final action, we are not changing the authority for implementing and enforcing the Federal PSD permitting program for any sources located in Indian Country. This incorporation by reference only applies

to those sections of subparts B through DDD of part 52 that currently incorporate the Federal PSD program for Indian lands.

C. Effective Date for Today's Final Action

Today's final regulations are effective on March 3, 2003. This is consistent with the March 3, 2003 effective date for the changes to the Federal PSD program in § 52.21 that were promulgated on December 31, 2002. (See 67 FR 80240.)

II. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a significant regulatory action and therefore it was not submitted to OMB for review.

B. Paperwork Reduction Act

The information collection requirements for the revisions to the major NSR rules at §§ 51.165, 51.166, and 52.21 (67 FR 80243) will be contained in two different information collection requests (ICR's).

The OMB has approved the information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0003 (ICR 1230.10). The EPA prepared an ICR document (ICR No. 1230.10) extending the approval of the