

notice is to initiate a process for responding to several issues raised in these petitions.

### III. Today's Action

#### A. Grant of Reconsideration

At this time, we have decided to grant reconsideration on six issues raised by petitioners.<sup>3</sup> The first involves a document we released in November 2002, entitled, "Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules."<sup>4</sup> This analysis provides the Agency and other interested parties with additional information on the environmental effects of the final rules. The analysis shows that the final rules will result in greater emissions reductions than the former program. Petitioners assert that the final rules are flawed because we did not rely on this document in promulgating the rule and hence that we promulgated the final rule without having adequately evaluated its environmental impacts. In the alternative, they assert that, to the extent we relied on the analysis for that assessment, we did so improperly because we did not make the analysis available for public comment. Petitioners further assert that our analysis does not properly analyze the environmental effects of the rule and did not take into account recent information about the health impacts of air pollution and the effects of the final rule on air pollutant emissions.<sup>5</sup>

We disagree with Petitioners' assertions. During the rulemaking process, we strived to take into consideration relevant and reliable information on environmental effects. We did in fact take account of environmental considerations in formulating the final rules, and believe the final rules are properly supported and justified in this regard. However, we want Petitioners and others to have every opportunity to comment on the work that we have done to date and to provide additional information that they

believe to be relevant to the inquiry. For these reasons, we have chosen to grant the petitions as they relate to these issues. In short, we have no reason to believe our analysis of environmental effectiveness is incorrect or flawed. Nevertheless, we do think the supplemental analysis provides additional support for the final rules, so we are making it available for public comment, and we will reevaluate our conclusions in light of the comments and information submitted.

The remaining issues for which we grant reconsideration involve five narrow aspects of the final rule. For each of the five, Petitioners claim that the final provision did not sufficiently reflect the ideas set forth in the proposed rule and, therefore, that they did not have an adequate opportunity to provide input during the designated public comment period. Without prejudging the information that will be provided in response to this notice, we note that to date Petitioners have not provided information which persuades us that our final decisions are erroneous or inappropriate. While we do not agree with Petitioners' claim, we have decided to grant reconsideration on these issues in an interest of ensuring a full opportunity for comment. Each of these issues is described in detail below.

Our final decision on reconsideration for all the remaining issues in the petitions for reconsideration will be issued no later than the date by which we take final action on the issues for which we have decided to grant reconsideration. We plan to take final action on all issues no later than 90 days after publication of today's notice.

#### B. Request for Stay of Final Rules

We are not granting a stay of the final rules pending our reconsideration of these issues. Under sections 307(b)(1) and 307(d)(7)(B) of the Act, the effectiveness of the final rules is not automatically postponed by our granting the petitions for reconsideration on certain issues. The Administrator (or the court), however, may stay the rules pending our reconsideration for a period not to exceed three months. 42 U.S.C. 7607(d)(7)(B). Petitioning States and Environmental Groups requested that we exercise our discretion under this section and grant a stay of the final rules during reconsideration.<sup>6</sup>

We do not believe that a stay is warranted. We believe that the final rules are a reasonable exercise of our discretion under the CAA, and will result in greater emission reductions

compared to the former program.<sup>7</sup> Moreover, although we have decided to reconsider certain aspects of the final rules, at this time we do not have reason to believe that the substantive decisions reflected in the final rule are erroneous. We are also concerned about the impact of a stay on facilities located in delegated States. The new requirements are currently in effect in these areas. We believe that it would be inappropriate to revert to the former program when it is likely that the current program would be reinstated 60 to 90 days later. Further, we do not believe our decision to deny a stay will have any significant effect on facilities subject to a SIP-approved major NSR program. We have provided these States up to three years to make appropriate changes to their SIP-approved programs. We intend to complete our reconsideration of the final rules regarding the issues discussed in this **Federal Register** notice quickly (*i.e.*, in approximately 90 days), thus, any uncertainty regarding the final rules caused by our partial granting of the petitions for reconsideration will be for a short period. States will still have ample time after our final decision on reconsideration to revise their SIPs to implement the rule (and any changes resulting from our reconsideration). As a result, we do not think it would be appropriate to stay the effectiveness of the rule while we address a few issues raised in the petitions.<sup>8</sup>

### IV. Discussion of Issues

#### A. Analysis of Environmental Impact of Final Rule

In November 2002, we released a document entitled, "Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules." As we noted at that time, the analysis was intended to provide the interested public with supplemental information on the potential environmental effects of the NSR Improvement rules that we were finalizing.

In the supplemental environmental analysis, we found that the overall effect of the final rule would be a net benefit to the environment compared to the

(joined South Coast petition); Santa Barbara, Ventura, and Monterey Air Pollution Control Districts (CA); and Sacramento Air Quality Management District (CA) (joined South Coast petition). Petitions for reconsideration of the FIP rule were filed by: Delegated States (CA, CT, IL, MA, NJ, NY, DC, South Coast Air Quality Management District (CA), and Santa Barbara Air Pollution Control District (CA)); and Environmental Groups (essentially the same groups that filed petitions to reconsider the December 31, 2002 rule).

<sup>3</sup> In this notice, the term "petitioners" refers only to those entities that filed petitions for reconsideration with EPA.

<sup>4</sup> Available through our NSR website at <http://www.epa.gov/nsr> and in docket ID No. A-90-37, Document IV-A-7.

<sup>5</sup> See, e.g., Environmental Groups petition at 25; Northeastern States petition at 5, 6.

<sup>6</sup> See Environmental Groups petition at 1, 145; Northeastern States petition at 47.

<sup>7</sup> See EPA's Response to Emergency Motion For Stay of the New Source Review Rule (Feb. 21, 2003) (D.C. Cir. Docket No. 02-1387); see also Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules (EPA Docket ID No. A-90-37; Document IV-A-7).

<sup>8</sup> If during the course of reconsideration we determine that significant aspects of the final NSR rules should be revised, we could reevaluate whether to stay the effectiveness of the rules, or portions thereof, pending issuance of our final decision on reconsideration.