

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We believe these rule changes will actually reduce the regulatory burden associated with the major NSR program by improving the operational flexibility of owners or operators and clarifying the requirements. Because the program changes provided in the rule are not expected to result in a significant increase in the expenditure by State, local, and tribal governments, or the private sector, we have not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, we are not required to develop a plan with regard to small governments. Therefore, this rule is not subject to the requirements of section 203 of the UMRA.

#### *H. National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards (VCS) in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

Although this rule does involve the use of technical standards, it does not preclude the State, local, and tribal reviewing agencies from using VCS. Today's rule is an improvement of the existing NSR permitting program. As such, it only ensures that promulgated technical standards are considered and appropriate controls are installed, prior to the construction of major sources of

air emissions. Therefore, we are not considering the use of any VCS in today's rule.

#### *I. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

Today's rule improves the ability of sources to maintain the reliability of production facilities, and effectively utilize and improve existing capacity.

#### *J. Executive Order 12988—Civil Justice Reform*

This final rule does not have any preemptive or retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **V. Effective Date for Today's Requirements**

All of these changes will take effect in the Federal PSD program (codified at § 52.21) on December 26, 2003. This means that these rules will apply on December 26, 2003, in any area without an approved PSD program, for which we are the reviewing authority, or for which we have delegated our authority to issue permits to a State or local reviewing authority.

To be approvable under the SIP, State and local agency programs implementing part C (PSD permit program in § 51.166) or part D (nonattainment NSR permit program in § 51.165) must include today's changes as minimum program elements. State and local agencies should assure that any program changes under §§ 51.165 and 51.166 are consistently accounted for in other SIP planning measures. State and local agencies must adopt and submit revisions to their part 51 permitting programs implementing these minimum program elements no later than October 27, 2006. That is, for both nonattainment and attainment areas, the SIP revisions must be adopted and submitted within 3 years from today. The CAA does not specify a date for submission of SIPs when we revise the PSD and NSR rules. We believe it is appropriate to establish a date analogous to the date for submission of new SIPs when a NAAQS is promulgated or revised. Under section

110(a)(1) of the CAA, as amended in 1990, that date is 3 years from promulgation or revision of the NAAQS. Accordingly, we have established 3 years from today's revisions as the required date for submission of conforming SIP revisions.

Today's rule revises the Federal PSD program located at 40 CFR 52.21 to include the new equipment replacement provision of the RMRR exclusion. 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 applies part 52.21 as a Federal Implementation Plan because such jurisdictions lack an approved SIP to implement the PSD program. Because today's final rule adds additional paragraphs to the part 52.21 rules, we will be revising the references in subparts C through DDD to appropriately reflect the program that applies. This final action will be taken in a separate **Federal Register** notice and will not change the effective date of today's final changes.

#### **VI. Statutory Authority**

The statutory authority for this action is provided by sections 101, 111, 114, 116, and 301 of the CAA as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601). This rulemaking is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

#### **List of Subjects in 40 CFR Parts 51 and 52**

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations.

Dated: August 27, 2003.

**Marianne Lamont Horinko,**  
*Acting Administrator.*

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

#### **PART 51—[AMENDED]**

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

#### **Subpart I—[Amended]**

■ 2. Section 51.165 is amended:

- a. By revising paragraph (a)(1)(v)(C)(1).
- b. By adding paragraphs (a)(1)(xlvi) through (xlvii) and paragraph (h).

The revision and additions read as follows: