ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 70, and 71

[EPA–HQ–OAR–2013–0685; FRL–9946–55–OAR]

RIN 2060–AS06

Source Determination for Certain Emission Units in the Oil and Natural Gas Sector

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is finalizing a revision to regulations applicable to permitting of stationary sources of air pollution under the New Source Review (NSR) and title V programs in the Clean Air Act (CAA or Act). For sources in the oil and natural gas sector, this rule clarifies the meaning of the term ''adjacent'' that is used to determine the scope of a ''stationary source'' for purposes of the Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NNSR) preconstruction permitting programs and the scope of a ''major source'' in the title V operating permit program in the onshore oil and natural gas sector. The revised definitions are based on the proximity of emitting activities and consideration of whether the activities share equipment. We believe that this clarification will provide greater certainty for the regulated community and for permitting authorities, and will result in more consistent determinations of the scope of a source in this sector. The EPA is adopting this revised definition in the regulations that apply to permits issued by the EPA and states to which the EPA has delegated federal authority to administer these programs. Other state and local permitting authorities with EPA-approved programs may also revise their permit programs to adopt this definition, but are not required to do so.

DATES: This final rule is effective on August 2, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–2060–2013–0685. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For further general information on this rulemaking, contact Ms. Cheryl Vetter, Office of Air Quality Planning and Standards (C504–03), U.S. Environmental Protection Agency, by phone at (919) 541–4391, or by email at *vetter.cheryl@epa.gov;* or Mr. Greg Nizich, Office of Air Quality Planning and Standards (C504–03), U.S. Environmental Protection Agency, by phone at (919) 54l–3078, or by email at *nizich.greg@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected directly by this final action include owners or operators of sources of new and modified operations within the oil and natural gas production and processing segments of the oil and gas sector (herein after referred to as ''oil and natural gas operations''). Such entities are expected to be in the groups indicated in the following table. In addition, state, local and tribal governments may be affected by the rule if they update state rules to adopt the changes being made to federal permit program rules.

Industry group	NAICS code [1]
Oil and Gas Extraction	21111.
Crude Petroleum and Natural Gas Extraction.	211111.
Natural Gas Liquid Extraction.	211112.
Drilling Oil and Gas Wells	213111.
Support Activities for Oil and Gas.	213112.
Federal Government	May Be Affected.
State/Local/Tribal Government.	May Be Affected.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this document will be posted at: *http://www3.epa.gov/airquality/oilandgas/actions.html.* Upon its publication in the **Federal Register**, only the published version may be considered the final official version of the notice, and will govern in the case of any discrepancies between the **Federal Register** published version and any other version.

C. How is this document organized?

The information presented in this document is organized as follows:

II. Background for Final Rulemaking

This action affects the determination of what constitutes a ''stationary source'' for the PSD and NNSR preconstruction permit programs under title I of the CAA, and the determination what constitutes a ''major source'' for the title V operating permit program. Under the PSD and NNSR programs, a ''stationary source'' is defined as a ''building, structure, facility, or installation'' that emits or may emit a ''regulated NSR pollutant.'' [2] 40 CFR 51.165(a)(1)(i), 51.166(b)(5). In turn, a

[1] North American Industry Classification System (NAICS). The table refers to the more commonly used NAICS code. However, the four-digit SIC codes was the only code system in use at the time our rules were developed. This classification system has since been replaced by the six-digit NAICS, which was developed with Canada and Mexico, and is used for classifying North American businesses. While the SIC codes are no longer updated, the United States Department of Labor's Occupational Safety and Health Administration still mains the list of SIC codes for references. We have retained the SIC codes in the regulation.

[2] The term ''regulated NSR pollutant'' is defined differently for the two programs, consistent with their separate purposes. 40 CFR 51.165(a)(1); 51.166(b)(49).

''building, structure, facility, or installation'' is defined as ''all of the pollutant-emitting activities'' that satisfy three prongs: they ''belong to the same industrial grouping''; ''are located on one or more contiguous or adjacent properties''; and ''are under the control of the same person (or persons under common control).'' 40 CFR 51.165(a)(1)(ii); 51.166(b)(6). Under the title V program, ''stationary source'' is defined similarly, but with reference to a different set of pollutants; however, the term ''building, structure, facility, or installation'' is not defined. Instead, the same three-prong test is incorporated into the definition of ''major source.'' 40 CFR 70.2; 71.2. We [3] use the term ''source determination'' to describe a case-specific examination of particular pollutant-emitting activities to see whether, under the definitions just discussed, they are collectively a ''stationary source'' for purposes of the PSD or NNSR programs or are potentially (depending on their level of emissions) a ''major source'' for the purposes of the title V program.

On September 18, 2015, the EPA proposed two options for clarifying the meaning of the term ''adjacent'' in the second prong discussed in the previous paragraph as applied to oil and gas sources, under both the preconstruction and operating permits programs. Source Determination for Certain Emission Units in the Oil and Natural Gas Sector. *See* 80 FR 56579, September 18. 2015. The preamble to the proposal provided a discussion of the history of making source determinations generally, and for these segments specifically, the previous guidance we have issued and the litigation that resulted. We explained our rationale for the two options we proposed for clarifying the term ''adjacent'' as it is used in determining the scope of a source for purposes of air permitting for these segments. The EPA's preferred option, referred to as Option 1, would have required permitting authorities to aggregate, for permitting purposes, all onshore oil and natural gas emitting equipment [4] that are within the two-digit Standard Industrial Classification (SIC) code 13 [5] (hereafter referred to as ''oil and natural gas operations''), are under common control of a single person (or persons under common control), and that are located within ¼ mile of each other. We believed that establishing a ''bright line'' based on the proximity of the equipment (in this case, ¼ mile), as several oil and gas-producing states seemed to have done, would simplify permitting because it would avoid a more detailed case-by-case evaluation based on the relationship of the emitting equipment. We also proposed a second option, Option 2, which would have aggregated all emitting equipment within ¼ mile but would also have allowed permitting authorities to aggregate emitting equipment located beyond ¼ mile based on the relationship between the operations. The EPA described this relationship as ''exclusive functional interrelatedness,'' but requested comment on more specific ways to describe a relationship that meets the common sense notion of a plant. Finally, we requested comment on whether some combination of these two options might be preferable. This final rulemaking notice does not repeat all of the discussion, but refers interested readers to the preamble of the proposed rule for additional background.

III. Summary of the Final Rule Requirements

This section provides a brief summary of the requirements of the final rule. Further discussion of the basis for these requirements and summaries of our responses to significant comments are provided in the next section.

Based on the range and substance of the comments received, the EPA has made two revisions to the proposed definition of ''adjacent'' that are reflected in the final rule. As discussed in the proposal, we proposed that pollutant-emitting activities from onshore oil and natural gas operations that are located on the same ''surface site,'' as defined in 40 CFR 63.761,[6] or on surface sites located within ¼ mile of each other, would be considered ''adjacent'' for purposes of determining the source. We selected ¼ mile as a ''bright line'' distance for clarifying the meaning of ''adjacent'' based on proximity to be consistent with those states that also use a ''bright line'' approach as a way of delineating sources in this category. This also was, in our view, a reasonable distance within which sources in oil and natural gas operations are likely to be interconnected. However, we received comments from several entities that said that we misunderstood the states' approach. According to them, several states that use the ¼ mile boundary do not aggregate everything within it, as we proposed. Rather they use the ¼ mile boundary to define an area beyond which they would not consider pollutant emitting equipment to be adjacent and part of a single source. Within ¼ mile, these states determine on a case-by-case basis which equipment should be considered a single source because it meets the ''common sense notion of a plant.''

For the reasons discussed more fully later in this notice, we have decided to modify the proposed definition in response to the recommendations made by commenters. As we proposed under both Option 1 and Option 2, emitting equipment in the oil and natural gas production and processing segments located at a single onshore surface site will be considered ''adjacent'' under the final rule and, thus, part of a single stationary source, assuming the equipment is also under the control of one person (or persons under common control) and belongs to the two-digit SIC code 13. Also, as we proposed in Option 1, we are finalizing a definition that equipment on separate surface sites located more than ¼ mile apart is not ''adjacent'' and, therefore, is not part of the same stationary source. However, in this final rule, we are modifying Option 1 by incorporating an element from Option 2 and the state policies on which we modeled Option 1. Specifically, we would not require that *all* emitting equipment located on separate surface sites within ¼ mile of each other be considered ''adjacent.'' Instead, emitting equipment located on separate surface sites within ¼ mile of each other would only be aggregated as a single stationary source if the emitting equipment also have a relationship that meets the ''common sense notion of a plant.''

This expression, the ''common sense notion of a plant,'' has been a criterion by which we have made source determinations for sources in all industries since our PSD rules were

[3] In this preamble, the term ''we'' and ''our'' refers to the EPA.

[4] Within this document the terms ''emitting equipment'' and ''emitting activities'' are used interchangeably.

[5] The description for Major Group 13: Oil and Gas Extraction can be found at *https://www.osha.gov/pls/imis/sic_manual.display?id=8&tab=group*. This major group includes establishments primarily engaged in: (1) Producing crude petroleum and natural gas; (21 extracting oil from oil sands and oil shale; (3) producing natural gasoline and cycle condensate; and (4) producing gas and hydrocarbon liquids from coal at the mine site. Types of activities included are exploration, drilling, oil and gas well operation and maintenance, the operation of natural gasoline and cycle plants, and the gasification, liquefaction, and pyrolysis of coal at the mine site. This major group also includes such basic activities as emulsion breaking and desilting of crude petroleum in the preparation of oil and gas customarily done at the field site. Pipeline transportation of petroleum, gasoline, and other petroleum products (except crude petroleum field gathering lines) is classified in Transportation and Public Utilities, Major Group 46, and of natural gas in Major Group 49.

[6] 40 CFR 63.761 defines surface sites as any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed.

revised in 1980 (45 FR 52676, August 7, 1980) in response to the D.C. Circuit Court of Appeals *Alabama Power* decision. *Alabama Power Co.* v. *Costle,* 636 F. 2d 323, 397 (D.C. Cir. 1979). In the onshore oil and natural gas production and processing segments, the ''plant'' is not as easy to discern as it is for other industrial operations, such as an electric utility generating plant or an oil refinery. Unlike these industrial operations, onshore oil and natural gas operations may not have an obvious boundary and may be located on property owned and controlled by others.

As explained in our proposal, one way in which we historically have evaluated whether activities meet the common sense notion of a plant was through the use of ''functional interrelatedness'' or ''operational dependence.'' *See* 80 FR 56581, September 18. 2015. Our proposed Option 2 would have looked for ''exclusive functional interrelatedness'' of emitting equipment outside the ¼ mile radius. *See* 80 FR 56587, September 18. 2015. We asked for comment on whether we should further define ''exclusive functional interrelatedness'' to give additional clarity to regulators and the regulated community.

Rather than looking for ''functional interrelatedness'' in oil and natural gas operations and giving this term more specific definition, we have decided in this final rule that it is preferable to look for ''shared equipment'' to determine when emitting activities in oil and natural gas operations have a relationship that meets the ''common sense notion of a plant.'' The EPA has applied the generalized notion of ''functional interrelatedness'' in other ways in other source categories, in some cases, at the request of the source. However, for oil and natural gas operations, we find it preferable to use a term that will give a more precise and clear criterion for defining when emitting activities within a ¼ mile proximity are sufficiently related to be considered adjacent, in line with the objectives of the proposal.

For onshore oil and natural gas production, this final rule establishes that, where separate surface sites located within ¼ mile of each other include shared equipment necessary to process or store oil or natural gas, these surface sites will be aggregated. The EPA has concluded that equipment satisfying these criteria will meet the common sense notion of a plant. Under this final rule, separate surface sites that do not include shared emitting equipment, even if within ¼ mile, will not be aggregated.

For example, an owner or operator proposing to construct a new well site should draw a ¼ mile circle from the center of the proposed new well site. If there is commonly-controlled emitting equipment located within that ¼ mile circle and within major SIC code 13, and that equipment is used to process or store the oil, natural gas or the byproducts of production that will come from the new well site, then the emissions from that equipment should be included in determining whether the new well site is a major source. Examples of shared equipment include, but are not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. In this example, the shared equipment is necessary for the operation of the new well site, and should be considered part of the same source because together all of the equipment operates as a ''plant.'' However, under the terms of this rule, we would not consider two well sites that feed to a common pipeline to be part of the same stationary source if they do not share any processing or storage equipment between them.

We believe this change from the proposed rule is responsive to both the comments that we received from several states about the burden of aggregating individual surface sites, and from the industry about the independent nature of many, if not most, surface sites.

We proposed to clarify the meaning of ''adjacent'' in all of the permitting rules, both the rules that apply to the EPA and delegated states as the permitting authority, as well as the rules that apply to state, local or tribal permitting authorities. However, we requested comment on whether we should require state, local and tribal permitting authorities to make this proposed change to their regulations. Several states, including both those with oil and natural gas operations and those without, expressed a desire to retain their existing approach to source determinations in permitting. These states, particularly those with oil and natural gas operations, expressed concern about the increased burden of the EPA's proposed Option 1. After reviewing the comments, the EPA has decided to adopt this change in its permitting rules, but to not require state, local and tribal permitting authorities to adopt this change. However, if they choose to do so, state, local and tribal permitting authorities may adopt the EPA's revised definition and submit their revised program to the EPA for approval.

IV. Responses to Significant Comments on the Proposed Rule

The EPA received more than 19,000 comments on the proposed rule. In this section we summarize the major comments and our responses. For details of all the significant comments and our responses, please refer to the Response to Comments document in the docket for this rulemaking.

A. General Comments

1. Need for Clear Guidance

a. Summary of Proposal

In the proposed rule, the EPA described the history and the current status of making source determinations for onshore oil and natural gas operations. We described the guidance that had been issued, the source determinations that have been made and the lack of clarity that has often resulted. We proposed two options for clarifying the term ''adjacent'' when making source determinations for onshore oil and natural gas operations.

b. Brief Summary of Comments

Several commenters stated that providing clear and reasonable definitions in rulemaking would benefit the regulated community, regulators and other stakeholders by providing needed certainty. The current lack of clarity, according to commenters, has resulted in increased costs due to permitting delays and litigation following the issuance of a permit. Several commenters also supported our decision to provide this clarification through rulemaking, rather than by additional guidance.

Other commenters did not believe that a rulemaking is necessary. These commenters stated that the rulemaking is not necessary because the term ''adjacent'' is unambiguous, that it is synonymous with ''contiguous,'' *i.e.,* that ''adjacent' means touching, sharing a border, or abutting. These commenters pointed to the dictionary definition of the word ''adjacent'' as being ''contiguous.'' Some of these commenters went on to say that the meaning of the term ''adjacent'' has been clearly established in relevant case law, citing *Summit Petroleum Corp.* v. *EPA,* 690 F.3d 733, 742 (6th Cir. 2012). And some commenters questioned our authority to adopt the two meanings of the term that we proposed, claiming that the proposed definitions violated the D.C. Circuit Court of Appeals' holdings in *Alabama Power* or that the EPA simply lacked authority to define the term ''adjacent'' in a way that, according to commenters, conflicted with the dictionary definition and/or the

decision of the Sixth Circuit Court of Appeals in *Summit Petroleum.*

c. EPA Response

We agree with the commenters who stated that a rulemaking is the best way to provide clarity in permitting. However, we recognize that most permits are issued by states, and that some states have substantial experience in making source determinations for oil and natural gas operations. Accordingly, in recognition of this state expertise, and in response to many comments, we are making the meaning of ''adjacent'' adopted in this rule mandatory only for the permit programs administered by the EPA or delegated states, while leaving to other states the decision of whether to make a similar change to their approved permitting.

We disagree with commenters who claim that the EPA lacks authority to define adjacent by regulation or that state the rulemaking is unnecessary because of the dictionary meaning of ''adjacent'' and the *Summit Petroleum* decision. These commenters are mistaken that the EPA cannot define ''adjacent'' by rule to mean all emitting equipment within a specified radius.[7] Commenters gave two reasons for this: first, that to do so would not comport with *Alabama Power,* and second, that the EPA's authority to give a meaning to ''adjacent'' that varies from its dictionary definition is foreclosed by the *Summit Petroleum* decision.

Regarding the first point, the CAA affords the EPA discretion in the permitting context to provide a more specific meaning to the term ''stationary source'' that is used in the Act. *See, Chevron USA, Inc.* v. *NRDC,* 467 U.S. 837 (1984) (discussing the meaning of the term stationary source under the CAA). Through a rulemaking process, we are defining the statutory term ''stationary source'' for a particular context: the PSD, NNSR and title V programs as applied to oil and natural gas operations. The definition of the term ''stationary source'' in section 302(z) of the Act, the related definition in section 111(a)(3), the structure of the Act, and its legislative history do not supply a clear meaning of ''stationary source'' in this context. Thus, it is permissible for the agency, in a rulemaking process, to apply a reasonable interpretation of the statute that resolves an ambiguity.[8] It is also permissible for the EPA to create a rule using a ''bright line,'' as we are doing here, for purposes of better administering the Act, see *Emily's List* v. *Fed. Election Comm'n,* 581 F.3d 1, 22 n.20 (D.C. Cir. 2002).

As to the second point, while the *Summit Petroleum* decision is a motivating factor for this action, the decision, and the Court's reference to the dictionary meaning of ''adjacent'' in that decision, are not preclusive of our authority to take the action. The *Summit Petroleum* Court addressed the issue of whether, in the absence of a rule defining the term ''adjacent,'' the EPA had permissibly interpreted the term in a particular source determination. The Court looked to the dictionary definition of ''adjacent'' to determine whether the EPA's interpretation of this term would ''permit the agency, under the guise of interpreting a regulation, to create *de facto* a new regulation.'' *Summit Petroleum,* 690 F.3d at 740 (quoting *Christensen* v. *Harris Cnty.,* 529 U.S. 576, 588 (2000)). In this rulemaking action, the EPA is not interpreting the term ''adjacent'' in the existing regulation; instead we are assigning a meaning to the term by going through a rulemaking process. When an agency is defining a word by rule, the agency is free to give specialized meaning to the word without being bound to hew precisely to a particular dictionary definition. *See Stenberg* v. *Carhart,* 530 U.S. 914, 942 (2000) (noting that an ''explicit definition'' can permissibly ''vary from the term's ordinary meaning''). And in fact, the PSD regulations in 40 CFR 51.166 are replete with such specialized meanings, for example in the definitions of ''significant'' and ''process unit.''[9]

Even if commenters were correct—and they are not—that the EPA is bound by a particular dictionary definition of ''adjacent'' when defining the term for specialized use, commenters are mistaken about the meaning of the term. While many dictionary definitions of ''adjacent'' include ''contiguous'' as one definition, this is not the only definition of the word ''adjacent.'' For example, one online dictionary defines ''adjacent'' to mean ''lying near, close, or contiguous; adjoining; neighboring.''[10] Another dictionary provides the following ''Synonym Discussion of Adjacent'': ''Adjacent may or may not imply contact but always implies absence of anything of the same kind in between . . .''[11] This dictionary makes a further distinction in its ''Synonym Discussion'', stating that the word ''adjoining'' definitely implies meeting and touching at some point or line.''[12] So, while we agree that ''adjacent'' *can* mean contiguous, we do not agree that it unambiguously must. We are finalizing this rule to provide a bright line distance beyond which pollutant-emitting operations in the onshore oil and natural gas production and processing segments are not considered ''adjacent.'' The decision to use both words ''contiguous'' and ''adjacent'' in our PSD rules was a deliberate choice, designed to include emitting equipment that is on property that is touching (contiguous) with equipment that may not be contiguous, but still meets the common sense notion of a plant. Had we intended ''adjacent'' to mean exactly the same as ''contiguous,'' we would not have included the word ''adjacent.''

Finally, we disagree with commenters who argue the *Summit Petroleum* Court provided sufficient guidance on the meaning of ''adjacent'' to obviate the need for this rulemaking. The Court's decision is binding only in the Sixth Circuit, which leaves the issue unresolved elsewhere.[13] The Court also did not provide guidance on how ''nearby'' sources must be to consider them ''adjacent'' for purposes of permitting. This is the question that we have taken up in this rulemaking, specific to onshore oil and natural gas operations. We have clarified that ''adjacent'' for these segments means within ¼ mile and having shared equipment.

[7] Although we are not finalizing an option (such as our proposed Option 2) that would potentially include emitting activities outside a ¼ mile radius, commenters are also mistaken (for similar reasons) in asserting that we could not have finalized such an option.

[8] In fact, the Supreme Court in *Chevron* reversed the D.C. Circuit Court of Appeals' judgment that the EPA had impermissibly interpreted ''stationary source,'' stating that the Circuit Court erred by ''read[ing] the statute inflexibly'' and not deferring to the EPA's reasonable interpretation.

[9] For similar reasons, comments that cite case law about agency interpretations of statutes and that refer to the dictionary definition of ''adjacent'' are off target: the statutory term we are interpreting is ''stationary source'' (and the related definition in section 111(a)(3)), not ''adjacent.'' We are defining the term ''adjacent'' in order to give meaning to our reasonable interpretation of the statutory term ''stationary source.''

[10] Dictionary.com *http://dictionary.reference.com/browse/adjacent?s=t* accessed February 22, 2016.

[11] Thus, two surface sites separated by ¼ mile may be ''adjacent,'' if there is no surface site in between them.

[12] Merriam-Webster Dictionary, *http://www.merriam-webster.com/dictionary/adjacent* accessed February 22, 2016.

[13] While the D.C. Circuit Court of Appeals has held that the EPA is bound by our regional consistency regulations, the Court also suggested that we could revise them in order ''to account for regional variances created by a judicial decision or circuit splits.'' *Nat'l Envt'l Dev. Ass'n's Clean Air Proj.* v. *EPA,* 752 F.3d 999, 1010 (D.C. Cir. 2014). We have proposed to do so. 80 FR 63935 (October 22, 2015).

B. Comments on Option 1

1. Support for Option 1

a. Summary of Proposal

In Option 1, the EPA proposed that the meaning of ''adjacent,'' for purposes of determining the scope of a source in the oil and natural gas production and processing segments, should be based solely on the distance between pollutant emitting activities. Under this option, emitting equipment at a single surface site would be considered to be adjacent, and emitting equipment at two or more surface sites would be considered ''adjacent'' if they are located within ¼ mile of each other. We stated in the proposal that we believed this option to be the most consistent with the ''common sense notion of a plant.'' We chose the distance, ¼ mile, because it is the distance we found in permitting guidance issued by a number of oil and natural gas producing states. The EPA also considered this distance reasonable to use for the types of equipment used in this industry.

b. Brief Summary of Comments

Several commenters supported Option 1 as written. These commenters preferred Option 1 over Option 2 because they believed it is the least ambiguous and reflects the plain meaning of the word ''adjacent.'' One commenter stated that this approach would streamline the determination of the scope of a ''stationary source'' and would reduce the time it takes to get a permit.

Other commenters, while supporting Option 1 over Option 2, recommended revisions to Option 1. Many of these commenters offered different distances within which emitting equipment or operations should be considered one source. The suggested distances ranged from a requirement that operations be physically touching or abutting to be considered ''adjacent'' to distances of up to one mile.

Finally, many state and industry commenters recommended a particular revision to Option 1. These commenters recommended that the EPA consider emitting activities located on separate surface sites within ¼ mile to be adjacent only if they *also* meet the ''common sense notion of a plant'' that the EPA has used since 1980 when determining the scope of a source for permitting purposes. Two state commenters told us that while their state has guidance that includes ¼ mile as the distance for determining the source, they do not use the distance as a bright line. Rather, they use it as an outer boundary, within which they assess whether emitting equipment should be considered a single source for purposes of permitting, but beyond which they do not consider emitting equipment to be adjacent.

c. EPA Response

We are adopting the approach recommended by several commenters: to require that pollutant-emitting equipment on separate surface sites be considered one source only if the sites are within ¼ mile of each other *and* the equipment is considered by the permitting authority to meet the common sense notion of a plant. More specifically, the language in the final rule treats certain oil and gas-related pollutant-emitting activities as a plant based on ''shared equipment.'' Operations located on the same surface site would continue to be considered part of the same source provided that they are also within the same two-digit SIC code and are under common control of the same person (or persons under common control). While we do not agree with comments that argue that a particular dictionary definition of ''adjacent'' and/or the *Summit Petroleum* and *Alabama Power* decisions compel this outcome, we agree with the comments that this approach better achieves the purpose of the rule: to reduce permitting burdens, as explained later in this notice.

2. Do Not Support Option 1

a. Brief Summary of Comments

Some commenters did not support Option 1. One concern raised was that, while the Option 1 approach would streamline permitting, it would not provide sufficient flexibility to consider and address local air quality concerns. Other commenters were concerned that the Option 1 approach would result in the aggregation of sources that should not be treated as one source. Another commenter was concerned that the Option 1 approach would allow the oil and gas industry to avoid major source regulation under the CAA. This commenter went on to say that Option 1 would not approximate a ''common sense notion of a plant'' or fit within the ordinary meaning of facility or installation as used in the definition of source.

b. EPA Response

In response to concerns raised by commenters about the need for permitting authorities to be able to address local air quality concerns, we are not requiring that EPA-approved state and local programs adopt the approach that the EPA is finalizing for permits issued by the EPA and delegated states. This will allow state and local permitting authorities with EPA-approved programs to continue to use their discretion to make source determinations for this industry in the manner that they believe best addresses their local air quality concerns. For example, those local programs in California that have a long history of permitting oil and natural gas operations on contiguous leases as single sources under their approved programs will be able to continue to do so, without having to submit an equivalency demonstration showing that their programs are at least as stringent as the program adopted by the EPA. Because the EPA is not requiring states with approved programs to apply our meaning of the term ''adjacent,'' and our rule changes make clear that for approved programs this change is optional, these approved programs already comply with our PSD, NNSR and title V rules, without these changes. States also remain free to adopt more stringent requirements in order to address local air quality concerns.

Those states that administer PSD permitting programs under a delegation of federal authority by the EPA will have to follow the approach that we are finalizing, or develop their own permitting programs and have them approved by the EPA as a revision to a state implementation plan (SIP). We did not receive adverse comments regarding delegated PSD programs having to use this approach. Those state and local programs that are approved, not delegated, that incorporate the EPA's program by reference, may incorporate the definition of ''adjacent'' for onshore oil and natural gas operations in 40 CFR 52.21(b)(6)(ii), and/or 40 CFR appendix S to part 51; or they may specifically exclude this paragraph from their incorporation when they next update it.

There may be state and local governments with approved programs that wish to clarify the meaning of adjacent for oil and natural gas operations, as the EPA has done in its own permitting rules. Those state and local governments would be able to do so, but would not be required to do so on any particular schedule. We believe, after careful review of the comments received, that this approach offers the best resolution for the lack of clarity that has existed for this industry, particularly when we have been the permitting authority, but does not increase the burden on approved states by requiring them to revise their permitting programs (or to develop an equivalency demonstration) and submit the changes to us as SIP revisions.

3. Response to the EPA's Question on the Appropriate Distance

a. Summary of Proposal

We requested comments on whether some distance other than the proposed ¼ mile would be a more appropriate distance within which emitting equipment should be considered ''adjacent.'' *See* 80 FR 56579, September 18, 2015.

b. Brief Summary of Comments

Commenters provided a range of responses to this question, ranging from 44 feet, which the commenter said was consistent with guidance from the Bureau of Land Management, to one mile, which the commenter suggested is consistent with the largest manufacturing plant that is considered one source. Other commenters recommended that a ''city block'' be used as the basis for determining the sources. However, these commenters did not agree on the dimensions of a city block. Other suggestions included distances based on the size of the lease, or some combination of leases, and a distance based on the well spacing in a particular field or state.

c. EPA Response

The EPA is retaining the proposed ¼ mile distance in the final rule. This distance was originally selected to be consistent with those states that also use a specific distance. In addition, as commenters mention, it is a commonly-used distance in oil and gas development for well spacing. Well spacing is typically set by a state agency such as an oil and gas conservation commission, and is intended to develop the oil and gas resource fairly and efficiently. One-quarter of a mile corresponds to a 40-acre lease. We think that a variable distance, such as one based on an individual lease or combination of leases held by an entity would complicate permitting, contrary to the purpose of this rule. And, while a city block might have some meaning in an urban area, we were not persuaded that it has any more meaning than ¼ mile in the areas where the majority of oil and natural gas development is taking place.

4. Response to the EPA's Question on ''Daisy Chaining''

a. Summary of Proposal

We requested comments on whether sources within ¼ mile of each other should be ''daisy chained.'' We described a series of emissions units as being ''daisy chained'' when each individual emitting unit is located within ¼ mile of the next unit, but where the last unit is separated from the first unit by a much larger distance. *See* 80 FR 56587, September 18, 2015.

b. Brief Summary of Comments

Most commenters expressed opposition to ''daisy chaining.'' Commenters were concerned that by ''daisy chaining'' emitting equipment, sources could extend for dozens of miles, or could even bring in equipment connected by a pipeline which would be inconsistent with the EPA's previous statements on source in the 1980 PSD rule preamble. In that rule, we stated that we did not intend ''stationary source'' to encompass activities that would be many miles apart along a long line operation (45 FR 52676, August 7, 1980).

c. EPA Response

After reviewing the comments we received, the EPA has determined that ''daisy chaining'' of emitting equipment would not provide the additional clarity that we seek through this rulemaking. We agree with commenters who said it could extend sources over many miles, perhaps even into the jurisdiction of multiple permitting authorities and in some instances beyond any common sense notion of a plant. This would increase the permitting burden for federal, state, local and tribal permitting authorities but we do not believe that it would provide additional air quality benefits beyond those that will occur as a result of the emission controls provided under the various New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and state and federal minor source programs, as explained later in this notice. We are, therefore, not adopting a requirement to include ''daisy chained'' equipment as part of a single source.

To illustrate how we intend this process to work in order to avoid ''daisy chaining'', we provide the following example. On surface site ''A'', there is an existing collection of equipment consisting of several tanks, a pump jack, a heater-treater and a flare. The owner/operator of site A decides to drill a new well within ¼ mile of site A, called site ''B.'' Site B feeds its produced water to the tanks on site A. Site B must consider the emissions from site A in determining whether site B is a major source because sites A and B are part of the same stationary source. At a later date, the same owner/operator decides to drill a third well, ''C,'' within ¼ mile of site B but more than ¼ mile from site A. Sites C and B do not share any equipment. Therefore, site C is a single stationary source. Site C is not included with sites A and B (just because of proximity to B), and, therefore, there is no daisy chain created. If site C feeds material to the storage tanks at site A, then it would still not be considered part of the stationary source that includes site A, because it is located more than ¼ mile away from site A.

Now, assume that the same owner/operator drills a fourth well, ''D,'' within ¼ mile of site A, but more than ¼ mile from sites B and C. Site D will also feed its produced water to site A. Site D must be treated as a modification to the source that is made up of sites A and B. In this case, site A may be viewed as a ''hub'' and sites B and D are the spokes. The new source consists of sites A, B and D because sites B and D are within ¼ mile of the site at which the shared equipment exists. However, site C is not part of this source because site C is more than ¼ from the surface site with which it shares equipment. New sites would not be included within the source that includes sites A, B and D if they were beyond ¼ mile, so there would be no daisy chain.

We believe that the permitting authority can make these source determinations, on a case-by-case basis, based on the clarifications that the EPA has provided. We do not believe that it is possible to eliminate all case-by-case source determinations. However, we believe we have provided sufficient guidance to ensure that such determinations are made consistently, and with more certainty for both permitting authorities and sources.

5. Response to the EPA's Question on What To Use as the Starting Point for Measuring the Radius of the Source

a. Summary of Proposal

We requested comment on whether to use the edge or some other feature of the oil or natural gas operation as the starting point of the ¼ mile measurement radius when determining the source.

b. Brief Summary of Comments

Commenters generally supported defining the point from which the distance between pollutant-emitting equipment is measured. However, there was disagreement on whether the center of the emitting equipment or the property boundary should be used. Several state commenters recommended that the property boundary be the starting point for determining the distance between operations because this distance is most relevant for purposes of air quality. However several commenters in the oil and gas industry

recommended that the geographic center of the site for purposes of establishing the ¼ mile distance, because property boundaries may be difficult to determine. Unlike sites in other industries, oil and natural gas operations frequently do not have fences, so the property boundaries are not always easily distinguished. Emitting equipment, such as may be found at a well site, can be and often is easily identified by Global Positioning System coordinates.

c. EPA Response

The EPA has decided to establish the ¼ mile boundary from the center of the equipment at the new or modified source for construction permits. At an oil or natural gas well, that may be the wellhead; on a surface site, it should be established from the center of the emitting activities. We believe the center of the emitting activities is the easiest to establish for purposes of permitting, and the easiest to observe for purposes of enforcement. This best achieves our goal of providing greater clarity for permitting authorities and permittees, improving permitting, compliance and enforcement. For title V permits, the center of the equipment on each surface site(s) being permitted should be used.

6. Permitting Burden Under Option 1

a. Summary of Proposal

We requested comment on whether the potentially smaller scope of each source could result in an unacceptable permitting burden by creating a larger number of smaller sources.

b. Brief Summary of Comments

Several state commenters expressed concern that Option 1, as proposed, would increase the administrative burden of issuing permits. This is primarily because they believe that the proposed requirement to aggregate emitting equipment within ¼ mile would require them to reassess prior source determinations. This is particularly a concern when wells change ownership. The commenters stated that each transaction would require permitting authorities to reanalyze one or more previously-permitted sources to determine which equipment should be included in the source after the purchase or sale. Another commenter stated that while they expect an increase in minor source permitting under the EPA's proposed Option 1, they already have in place a number of streamlining options, such as general permits, which expedite regulatory timelines.

c. EPA Response

As discussed in Section IV.D.3 in this document, this rule will apply prospectively and will not require a reassessment of permits that have been completed. Furthermore, the EPA has revised the approach to source determination in the final rule to address concerns about burden raised by commenters. Instead of requiring that all activities within a ¼ mile radius be aggregated, the EPA would instead only aggregate those activities within a ¼ mile radius that share equipment. In many cases, this would result in the wells being permitted separately, reducing the administrative burden of transferring or modifying permits when wells change ownership. In addition, the EPA is not requiring that state, local, and tribal permitting authorities adopt the approach being finalized by us, so those permitting authorities that are concerned there would be an increased burden from our approach (which we do not expect) would not have to follow it.

We believe that the overall effect of this rule will be to reduce the permitting burden for permits issued by the EPA. The permitting burden for state, local and tribal permitting will differ depending on whether those permitting authorities choose to adopt these changes, and will depend on how any revised procedures differ from their current permitting practices. In some jurisdictions, the burden may be unchanged, either because the permitting authority chooses not to adopt the changes, or because the changes the EPA is finalizing do not substantially differ from the permitting authority's current practices.

7. Environmental Impact of Option 1

a. Summary of Proposal

We requested comment on whether there would be adverse air quality impacts, including effects on National Ambient Air Quality Standard (NAAQS) compliance, as a result of Option 1.

b. Brief Summary of Comments

One commenter expressed concern that the EPA's proposal would adversely affect the environment because it would encourage development of oil and gas resources over a larger area in order to avoid being within ¼ mile. This would increase the footprint of operations, and have an adverse impact on landowners and communities. Other commenters stated that the aggregation of oil and gas operations would not result in environmental benefits because the emissions are already controlled by multiple NSPS and NESHAP standards as well as state minor source permitting programs. Finally, one commenter stated that oil and gas development is the largest industrial source of volatile organic compounds and a significant source of sulfur dioxide and nitrogen oxide pollution in many areas, and that failure to subject these sources to PSD and NNSR would frustrate attempts to ensure NAAQS compliance.

c. EPA Response

The EPA is finalizing several rules applicable to oil and natural gas operations, including an NSPS that will require pollution controls for oil well completions, equipment leaks and pneumatic controllers, among others, and a control techniques guideline (CTG) that will similarly define presumptive controls for the CAA's reasonably available control technology (RACT) requirements for certain areas. The additional emissions control requirements of the NSPS (and the CTG when adopted in RACT SIPs) make it less likely that these sources will be major sources, with or without the meaning of ''adjacent'' that we are adopting in this rule. This is because the threshold for permitting is based on the potential-to-emit of the source and the potential-to-emit may be reduced by enforceable limitations, such as those imposed by the NSPS. These restrictions, along with enforceable restrictions imposed by the states, reduce both the actual and potential emissions of the sources, reducing the likelihood that they will trigger major NSR or title V permitting. These control requirements will also ensure that new and modified operations emit substantially less air pollution which would contribute to local air quality. To the extent that NSPS requirements for these sources are insufficient to protect the NAAQS in attainment or unclassifiable areas—which we do not expect—the federal or state minor NSR program is intended to address that issue. For nonattainment areas, if the CTG presumptive controls are not sufficient to attain the NAAQS, then other emission reductions will be required in order to attain the standards.

We do not believe that this final rule is likely to result in decisions by companies to locate farther apart to avoid major source permitting. We believe that the location of the underground mineral assets, advances in drilling technology that allow multiple wells to be drilled from one surface site, restrictions on well spacing imposed by a state agency such as an oil and gas conservation commission, and the restrictions imposed by the owner of the surface land are more likely to affect siting decisions than a desire to avoid

major source permitting. As discussed earlier in this document, we believe the combined effect of the emission control standards already in place and the additional controls now being finalized is that fewer oil and natural gas operations will be major.

C. Comments on Option 2

1. Support for Option 2

a. Summary of Proposal

In Option 2, the EPA proposed that all equipment within ¼ mile would be considered a single source and would allow equipment beyond ¼ mile to be included in the source if it was ''exclusively functionally interrelated.'' *See* 80 FR 56579, September 18, 2015.

b. Brief Summary of Comments

Several commenters representing permitting authorities supported Option 2 because they believed that it is the option most similar to the way they make source determinations for this industry and others under their existing, SIP-approved programs.

c. EPA Response

The EPA is not adopting the ''functional interrelatedness'' criterion in the final rule, but we are incorporating one aspect of Option 2 into the final rule. In addition, the EPA is including its final approach only in the regulations that apply to the EPA and delegated states. This means that the states that prefer to use an approach like Option 2 will be able to continue to do so.

2. Do Not Support Option 2

a. Brief Summary of Comments

Oil and gas industry commenters were uniformly opposed to Option 2. These commenters stated that the use of ''functionality'' has no support in the CAA, is inconsistent with the plain meaning of the term ''adjacent,'' and results in sources that do not resemble in any way a ''plant.'' In addition, they stated that the use of such a test resulted in significant uncertainty because of the subjective nature of the analysis involved in determining which emissions units are part of the source. Several state permitting authority commenters echoed these sentiments and added that the interrelatedness test adds layers of analysis that is not productive. Several commenters expressed concern about the permitting burden of adopting Option 2. Commenters noted that in two cases where the EPA attempted to assess ''functional interrelatedness,'' the source determinations took several years, were litigated, and ultimately ended in decisions not to aggregate the various surface sites.

b. EPA Response

Because of the difficulty of applying a ''functional interrelatedness'' criterion to oil and natural gas operations, the EPA is not adopting this criterion as part of the final rule. We do not agree with all of the comments opposed to Option 2, in particular those that stated Option 2 was beyond the EPA's authority, for similar reasons that we disagree with comments that Option 1 was beyond our authority. We do agree with those that stated applying a ''functional interrelatedness'' criterion by itself would not reduce permitting burdens for oil and natural gas operations to the same degree as a proximity test alone under Option 1. However, because of concerns discussed above with applying a proximity criterion alone, we are combining the proximity criterion in Option 1 with the element of Option 2 that involves considering whether equipment is related in a manner that meets the common sense notion of a plant. Our selected approach combines these elements by limiting aggregation to pollutant emitting equipment within ¼ mile of each other, but requires that these sources also have shared equipment. We believe that this approach, unlike applying ''functional interrelatedness'' outside of a specific perimeter, will limit the amount of analysis required for permitting in the oil and natural gas production and processing segments. By providing a clear limit on the distance within which we would require analysis of the relationship of the equipment, we believe permitting will proceed more quickly, and with more certainty for permitting authorities and the regulated community.

3. Environmental Impact Under Option 2

a. Summary of Proposal

We specifically requested comments on whether there might be any environmental harm or benefit resulting from adopting Option 2.

b. Brief Summary of Comments

One state commenter expressed concern that a strict application of the plain meaning of the term ''adjacent'' could allow oil and gas companies to manipulate their operations to avoid being considered a major source. Another commenter stated that without aggregation, oil and gas operations are subject to widely varying and less stringent standards under state minor source programs. This commenter believes that subjecting these operations to major source permitting would provide substantial public health and environmental benefits. This commenter believes that the emission control provided by the NSPS is not sufficient because it only addresses new or modified equipment and does not cover all equipment or activities encompassed by the industry and does not address local or regional air quality issues.

Other commenters stated that the proposal would have little to no impact on air emissions because the control technology required if equipment is aggregated into major sources will likely be identical to what is required of minor sources. One commenter listed the numerous federal and state standards that already apply to oil and gas sources, regardless of whether the sources are determined to be major or minor, as evidence that the industry is already subject to stringent emissions control requirements.

c. EPA Response

It is important to understand that even if equipment beyond a ¼ mile distance is aggregated under something like Option 2, only new or modified equipment would be subject to the control requirements of Best Available Control Technology under PSD or Lowest Achievable Emission Rate under the NNSR permitting program. Most new equipment would also be subject to limitations under the NSPS, whether the source is considered major or minor. Emission control requirements under state and federal minor source programs apply in addition to any requirements of the NSPS. These requirements may be more stringent than the NSPS, and in some states apply to new as well as to existing sources. Title V permitting generally does not result in new control requirements, it only compiles the requirements that exist in the underlying standards, such as the NSPS or NESHAP into one permit.

For these reasons, we believe that aggregating equipment into major sources for title V, PSD or NNSR permitting under Option 2 would result in little environmental benefit over the approach adopted today. In our judgement, Option 2 would be more likely to result in delays in permitting and greater uncertainty for the permitting authorities and regulated community alike.

D. Implementation Issues

1. Requirements for States To Adopt

a. Summary of Proposal

We proposed changes to the permitting rules that would have

applied both to the EPA, as the permitting authority, to delegated states, and to state, local and tribal permitting authorities. We invited comment on whether states should be required to adopt the proposed changes.

b. Brief Summary of Comments

We received comments from several state and local permitting authorities, including those with and without oil and gas operations, requesting that their programs be allowed to continue to make determinations of ''adjacent'' on a case-by-case basis without being required to adopt the approach finalized by the EPA. This was particularly true for local programs in California, which have a long history of regulating oil and gas operations. A commenter representing the oil and gas industry operating in California echoed the comment that the existing program should not be disrupted.

c. EPA Response

We agree with commenters who expressed the view that state and local permitting authorities should have the ability to make source determinations under their existing permitting programs. Once their programs are approved by the EPA, state and local governments are given the responsibility to make permitting decisions, and we do not intend any changes in this balance of responsibilities. We, therefore, are adopting these changes in our rules, but not requiring that state and local permitting authorities with approved programs also adopt the new definitions. These permitting authorities may, but are not required to, adopt these definitions, as discussed earlier in this document. This approach has a number of advantages. First, it is responsive to states' concerns that they have much experience making source determinations and they do not see the need to make changes to their existing approach. Second, it would not trigger an obligation for approved states, particularly those states without oil and gas development, to revise their state rules and submit a SIP revision, or to provide a demonstration that their existing rules are of equivalent stringency.

With regard to title V permitting, we are also only adopting these changes in the rules that apply to the EPA and delegated programs. States and local agencies with approved programs may adopt a similar provision in their title V rules at their discretion.

2. Applicability to Other Industries

a. Summary of Proposal

In the proposed rule, we stated that we intended to define ''adjacent'' only for onshore oil and natural gas operations covered by two-digit SIC Major Group 13, for reasons that are discussed more fully in the preamble to the proposed rule. *See* 80 FR 56586, September 18, 2015.

b. Brief Summary of Comments

We received comments both asking us to and asking us not to apply the definition developed for oil and natural gas operations to all industries. One state commenter stated that permitting authorities and regulated sources in all categories should be subject to the same definition developed for the oil and natural gas industry. A commenter from an industry outside the oil and natural gas industry asked that the EPA confirm that proximity is the only basis on which the EPA will make determinations of adjacency. We also received comments from the transmission and distribution segments of the oil and natural gas sector requesting that the EPA clarify how this rule applies to these segments of the industry.

c. EPA Response

The EPA did not propose this approach for other industries, and, therefore, we are not finalizing this approach for any industry other than onshore oil and natural gas extraction and production within two-digit SIC Major Group 13. It does not apply to the transmission or distribution of oil or natural gas, which is covered under two-digit SIC Major Group 49. We continue to believe, as we stated in our proposal, that the nature of this industry poses unique challenges for making these source determinations, so this approach is warranted for this industry category. Source determinations for other industries will continue to be made on a case-by-case basis.

3. Applicability to Previously Issued Permits

a. Summary of Proposal

The EPA did not discuss the application of the proposed options to previously issued permits in the preamble to the proposed rule.

b. Brief Summary of Comments

Several commenters stated that any new rule that the EPA adopts should not be applied retroactively. One commenter urged the EPA to both make it clear that new federal language will be implemented only on a prospective basis, but at the same time asked that any previous decisions made to aggregate sources should be subject to new source determinations under the language finally adopted. Another commenter said that with a new definition of an existing term, some previous determinations will be consistent with the new definition, but others will not. This commenter specifically requested that the EPA include anti-backsliding language in the final rule to minimize the impact on previous determinations. In particular, under this rule surface sites that do not share equipment with other surface sites will not be aggregated, which will simplify permit actions when an independent surface site changes ownership.

c. EPA Response

Historically, the EPA's rules are generally adopted on a prospective basis. That is, a new rule applies only after that rule is effective, and is not be applied retroactively to previous actions. This rule is no different. The EPA intends that this rule will be applied from August 2, 2016 forward. Previous source determinations and issued permits, whether sources were aggregated or not, should not be affected by this new definition of ''adjacent''.

V. Environmental Justice Considerations

This document is intended to clarify the definition of ''adjacent'' used to determine the source to be permitted within the existing PSD, NNSR and title V programs as it applies to oil and natural gas operations. This clarification will assist permitting authorities and permit applicants in making source determinations for the oil and natural gas industry, and is not intended to result in less environmental protection for human health and the environment. It is being finalized as a part of a comprehensive strategy to addresses emissions from the oil and natural gas sector which includes new (or lower) emission standards or requirements for a number of types of emitting equipment. As explained earlier in this document and in detail in our response to comments, the EPA does not anticipate that this rule will create a significant issue for attainment and maintenance of the NAAQS. Therefore, the EPA believes this action will not have a disproportionately high and adverse human health or environmental effects on minority populations or low-income populations.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it raises novel policy issues regarding one of the President's priorities. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden. The OMB has previously approved the information collection requirements contained in the existing regulations for PSD (40 CFR 52.21) and title V (40 CFR parts 70 and 71) under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060–0003, 2060–0336 and 2060–0243. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. Instead of new information collection burdens, this action finalizes a definition that clarifies the permitting requirements applicable to new and modified oil and natural gas sources. This final action is not likely to increase the burden associated with permitting. It is likely to decrease the burden of permitting for the EPA, when it is the permitting authority. The extent to which it will change the permitting burden for other permitting authorities will depend on whether state or local permitting authorities adopt the changes, and the extent to which these changes are different from the current practice.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if a rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This final rule will not impose any additional requirements on small entities. This action clarifies existing requirements, and, by limiting the area in which an oil and gas source's operations must be analyzed for consideration as a single source, limits the burden on the sources and permitting authorities. Entities potentially affected directly by this final rule include state, local and tribal governments and none of these governments are small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The requirement to obtain permits for new major sources is imposed by the CAA. This rule would interpret those requirements as they apply to oil and natural gas operations. Thus, Executive Order 13132 does not apply to these regulation revisions. Finally, the EPA is not requiring that states adopt these changes.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. It would not have a substantial direct effect on one or more Indian tribes, since no tribe has developed a Tribal Implementation Plan that allows it to issue NSR permits and, in any case, we are not requiring any permitting authority other than the EPA and delegated states to adopt these changes. Furthermore, this regulation does not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the federal government and tribes in characterizing air quality and developing plans to attain the NAAQS, and this regulation does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

Consistent with the EPA Policy on Consultation and Coordination with Indian tribes, the EPA held several meetings with tribal environmental professionals to discuss issues associated with this rule, including a presentation on a National Tribal Air Association policy call on September 10, 2015, and an outreach call to state, local and tribal permitting authorities on September 15, 2015. These meetings discussed several related oil and gas rules, including this Source Determination rule. Summaries of these meetings are included in the docket for this rule.

The EPA also offered consultation during the rulemaking process, but received no requests. The EPA provided an opportunity for tribes and stakeholders to provide written comments on the proposed rule. One tribe did submit comments and these comments are included in the docket for this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not directly involve an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The EPA is finalizing this clarification to its permitting rules and we believe this action is not likely to have any adverse energy effects because it will not increase, and may decrease, the permitting burden on owners and operators of oil and natural gas sources.

I. National Technology Transfer and Advancement Act

This action does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on any population, including any minority, low-income or indigenous populations, because it does not affect the level of protection provided to human health or the environment. The results of the evaluation of

environmental justice considerations is contained in Section V of this preamble titled, ''Environmental Justice Considerations.''

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of any nationally applicable regulation, or any action the Administrator ''finds and publishes'' as based on a determination of nationwide scope or effect must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days of the date the promulgation, approval, or action appears in the **Federal Register**. This action is nationally applicable, as it revises the rules governing all PSD, NNSR and title V programs, in 40 CFR 51.166, 40 CFR 51.165, 40 CFR 52.21, 40 CFR part 70 and 40 CFR part 71. The Administrator also finds that this action is based on a determination of nationwide scope and effect, as it revises the EPA's direct implementation of the PSD and title V programs, which is in effect in multiple Circuits. As a result, petitions for review of this regulation must be filed in the United States Court of Appeals for the District of Columbia Circuit within August 2, 2016. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of this action.

Statutory Authority

The statutory authority for this action is provided by sections 101; 111; 114; 116, 160–165, 169, 173, 301, 302, 501 and 502 of the CAA, as amended (42 U.S.C. 7401; 42 U.S.C. 7411; 42 U.S.C. 7414; 42 U.S.C. 7416; 7470–7475, 7479, 7503, 7601, 7602, 7661, and 7662.

List of Subjects

40 CFR Part 51

Environmental protection, Air pollution control, Construction permit, Intergovernmental relations, Major source, Oil and gas.

40 CFR Part 52

Environmental protection, Air pollution control, Construction permit, Incorporation by reference, Intergovernmental relations, Major source, Oil and gas.

40 CFR Part 70

Environmental protection, Air pollution control, Intergovernmental relations, Major source, Oil and gas, Operating permit.

40 CFR Part 71

Environmental protection, Air pollution control, Intergovernmental relations, Major source, Oil and gas, Operating permit.

Dated: May 12, 2016.

Gina McCarthy,

Administrator.

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

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

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

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

■ 2. In § 51.165, revise paragraph (a)(1)(ii) to read as follows:

§ 51.165 Permit requirements.

(a) * * *

(1) * * *

(ii)(A) *Building, structure, facility, or installation* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same *Major Group* (*i.e.,* which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972,* as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0065 and 003–005–00176–0, respectively).

(B) The plan may include the following provision: Notwithstanding the provisions of paragraph (a)(1)(ii)(A) of this section, *building, structure, facility, or installation* means, for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within ¼ mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in this paragraph (a)(1)(ii)(B), has the same meaning as in 40 CFR 63.761.

* * * * *

■ 3. In § 51.166, revise paragraph (b)(6) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(6)(i) *Building, structure, facility, or installation* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same *Major Group* (*i.e.,* which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972,* as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0, respectively).

(ii) The plan may include the following provision: Notwithstanding the provisions of paragraph (b)(6)(i) of this section, *building, structure, facility, or installation* means, for onshore activities under SIC Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within ¼ mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in this paragraph (b)(6)(ii), has the same meaning as in 40 CFR 63.761.

* * * * *

■ 4. In appendix S to part 51, revise section II.A.2. to read as follows:

Appendix S to Part 51—Emission Offset Interpretative Ruling

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II. Initial Screening Analyses and Determination of Applicable Requirements

A. * * *

2. (i) *Building, structure, facility or installation* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same ''Major Group'' (*i.e.,* which have the same two digit code) as described in the *Standard Industrial Classification Manual,* 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0, respectively).

(ii) Notwithstanding the provisions of paragraph II.A.2(i) of this section, *building, structure, facility or installation* means, for onshore activities under SIC Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within ¼ mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in this paragraph II.A.2(ii), has the same meaning as in 40 CFR 63.761.

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PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 5. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 6. In § 52.21, revise paragraph (b)(6) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(6)(i) *Building, structure, facility, or installation* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same ''Major Group'' (*i.e.,* which have the same first two digit code) as described in the *Standard Industrial Classification Manual, 1972,* as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 003–005–00716–0, respectively).

(ii) Notwithstanding the provisions of paragraph (b)(6)(i) of this section, *building, structure, facility, or installation* means, for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within ¼ mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in this paragraph (b)(6)(ii), has the same meaning as in 40 CFR 63.761.

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PART 70—STATE OPERATING PERMIT PROGRAMS

■ 7. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 8. In § 70.2, revise the introductory text of the definition for ''Major source'' to read as follows:

§ 70.2 Definitions.

* * * * *

Major source means any stationary source (or any group of stationary sources that are located on one or more continuous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining ''major source,'' a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (*i.e.,* all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. State programs may adopt the following provision: For onshore activities belonging to Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within ¼ mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in the introductory text of this definition, has the same meaning as in 40 CFR 63.761.

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PART 71—FEDERAL OPERATING PERMIT PROGRAMS

■ 9. The authority citation for part 71 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—Operating Permits

■ 10. In § 71.2, revise the introductory text of the definition for ''Major sources'' to read as follows:

§ 71.2 Definitions.

* * * * *

Major source means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)), belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining ''major source,'' a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (*i.e.,* all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. For onshore activities belonging to Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within ¼ mile of one another (measured from the center of the equipment on the surface site) and they share equipment.

Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in the introductory text of this definition, has the same meaning as in 40 CFR 63.761.

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[FR Doc. 2016–11968 Filed 6–2–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0072; FRL–9947–22–Region 4]

Air Plan Approval; North Carolina; Prong 4—2008 Ozone, 2010 NO_2, SO_2, and 2012 $PM_{2.5}$

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of revisions to the North Carolina State Implementation Plan (SIP), submitted by the North Carolina Department of Environment and Natural Resources (NC DENR), addressing the Clean Air Act (CAA or Act) visibility transport (prong 4) infrastructure SIP requirements for the 2008 8-hour Ozone, 2010 1-hour Nitrogen Dioxide (NO_2), 2010 1-hour Sulfur Dioxide (SO_2), and 2012 annual Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an ''infrastructure SIP.'' Specifically, EPA is approving the prong 4 portions of North Carolina's November 2, 2012, 2008 8-hour Ozone infrastructure SIP submission; August 23, 2013, 2010 1-hour NO_2 infrastructure SIP submission; March 18, 2014, 2010 1-hour SO_2 infrastructure SIP submission; and December 4, 2015, 2012 Annual $PM_{2.5}$ infrastructure SIP submission. All other applicable infrastructure requirements for these SIP submissions have been or will be addressed in separate rulemakings.

DATES: This rule is effective July 5, 2016.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2016–0072. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Lakeman can be reached by telephone at (404) 562–9043 or via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as the requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

North Carolina's November 2, 2012, 2008 8-hour Ozone submission; August 23, 2013, 2010 1-hour NO_2 submission; March 18, 2014, 2010 1-hour SO_2 submission; and December 4, 2015, 2012 Annual $PM_{2.5}$ submission cite to the State's regional haze SIP as satisfying prong 4 requirements. However, at those dates, EPA had not yet fully approved North Carolina's regional haze SIP because the SIP relied on the Clean Air Interstate Rule (CAIR) to satisfy the nitrogen oxides (NO_X) and SO_2 Best Available Retrofit Technology (BART) requirements for the CAIR-subject electric generating units (EGUs) in the State and the requirement for a long-term strategy (LTS) sufficient to achieve the state-adopted reasonable progress goals.[1]

EPA demonstrated that CAIR achieved greater reasonable progress toward the national visibility goal than

[1] CAIR, promulgated in 2005, required 27 states and the District of Columbia to reduce emissions of NO_X and SO_2 that significantly contribute to, or interfere with maintenance of, the 1997 NAAQS for fine particulates and/or ozone in any downwind state. CAIR imposed specified emissions reduction requirements on each affected State, and established an EPA-administered cap and trade program for EGUs in which States could join as a means to meet these requirements.