

FACT SHEET

Proposed Changes to New Source Review for Electric Generating Units

Action:

- On October 13, 2005, the Environmental Protection Agency (EPA) proposed changes to its New Source Review (NSR) permitting program to make the program more compatible with programs that improve public health and the environment by permanently capping power plant emissions. The proposal is posted at <http://www.epa.gov/nsr/actions.html#oct05>.
- The proposed changes would provide nationwide consistency in how states implement the program by standardizing the emissions tests used to determine if a physical or operational change at a power plant would cause emission increases that would require the plant to install additional pollution controls. As the result of a recent decision from the Fourth Circuit Court of Appeals, the emissions tests in five states and the District of Columbia now differ from that used in the rest of the country.
- The proposed rule would make uniform the emissions tests used under two Clean Air Act programs: NSR and New Source Performance Standards (NSPS). Emissions tests currently are different under the two programs. The changes would affect only the application of the NSR program to existing electric generating units at power plants. These units generally are fossil fuel-fired and produce electricity for sale.
- New electric generating units are not affected by this proposal and will continue to be subject to current NSR preconstruction review requirements.
- The proposed rule would establish a new emissions test for NSR, based on the current NSPS test.
- In both the NSPS and NSR programs, the first step in determining whether emissions controls are needed is determining whether there is a physical change or change in the method of operation at a facility. The second step is the “emissions test” to determine whether there is an emissions increase.
- While the existing NSR emissions test is based on annual emissions, the NSPS test is based on maximum hourly emissions. EPA is proposing three options for the new emissions test to determine if changes to an existing power plant should be subject to NSR:
 - Option 1 Maximum *achievable* hourly emissions test. This test is the same as that currently used in the New Source Performance Standards (NSPS) program governed by Section 111 of the Clean Air Act.

To determine whether a modification at an existing unit would increase emissions significantly and trigger NSR requirements, we would compare the maximum hourly emissions achievable at that unit during the past five years (considering installed controls) to the maximum hourly emissions achievable at that unit after the change. This test would be based on emissions at actual operating capacity.

Option 2 Maximum achieved hourly emissions test. This adjusted version of the existing NSPS test differs from Option 1 in that the comparison would use actual, historical data. This test would compare the maximum hourly emissions *achieved* at a unit after the change to the highest hourly rate at which the unit *actually emitted* a pollutant at any time during the five-year period immediately prior to the change

Option 3 Output-based emissions test. This option would establish an NSR emissions increase test based on mass of emissions per unit of energy output rather than an hourly emissions rate. An output-based emissions test would recognize energy efficiency as a form of pollution prevention.

EPA also is requesting comment on using Options 2 and 3 as the emissions increase test in the NSPS program.

- EPA is proposing to require state and local air agencies to submit revisions to their state plans implementing the NSR revisions within 12 months after the Agency issues a final rule.
- EPA will accept comment on this proposal for 60 days following publication in the *Federal Register*.

Background:

- Congress established the NSR program as part of the 1977 Clean Air Act Amendments and modified it in the 1990 Amendments. NSR is a preconstruction permitting program that assures the dual goals of maintaining and attaining air quality and providing for economic growth. These goals are achieved through installation of state-of-the-art control technology at new plants and at existing plants that undergo a major modification.
- For existing major stationary sources, there is a two-step test to determine whether the modification is subject to preconstruction permit review. The first step is whether there is a physical change or change in the method of operation. The second step is whether there is an emissions increase. The current NSR program measures an emissions increase by comparing actual emissions to projected emissions.
- On June 15, 2005, the Fourth Circuit Court of Appeals ruled that EPA must use a consistent definition of the term “modification” when applying an emissions test for both the NSPS and NSR programs. As a result of this decision, the NSPS emissions test currently applies for the

NSR program in all Fourth Circuit States – Maryland, North Carolina, South Carolina, Virginia, West Virginia, and the District of Columbia -- unless those states already rely on a more stringent emissions test for determining NSR applicability. This decision created a potential disparity in the NSR program.

- Both the Clean Air Interstate Rule (CAIR) and the Clean Air Visibility Rule (requiring Best Available Retrofit Technology - BART) will lead to significant further reductions in SO₂ and NO_x emissions from the power sector. These proposed modifications to the NSR program would complement the CAIR and BART requirements by allowing efficient implementation of these programs and eliminating administrative barriers.

FOR ADDITIONAL INFORMATION

- Interested parties can download today's proposed rule from EPA's web site at: <http://www.epa.gov/nsr>.
- This proposed rule and other background information are also available either electronically in EDOCKET, EPA's electronic public docket and comment system, or in hardcopy at EPA's Air and Radiation Docket and Information Center, Environmental Protection Agency, Room B102, 1301 Constitution Avenue, NW, Washington, DC. The docket ID No. is OAR-2005-0163. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744. The number for the Air and Radiation Docket and Information Center is (202) 566-1742.
- Comments should be identified by Docket ID No. OAR-2005-0163 and submitted by one of the following methods:
 - online through the Federal eRulemaking Portal (<http://www.regulations.gov>);
 - EDOCKET (<http://www.epa.gov/edocket>);
 - by e-mail (a-and-r-docket@epa.gov);
 - Facsimile ((202) 566-1741);
 - Mail (Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460); or
 - Hand delivery (Air and Radiation Docket and Information Center, Environmental Protection Agency, Room B102, 1301 Constitution Avenue, NW, Washington, DC).
- For general information about this proposed rule, contact Janet McDonald of EPA's Office of Air Quality Planning and Standards at (919) 541-1450, mcdonald.janet@epamail.epa.gov, or Lynn Hutchinson at (919) 541-5795.