

FACT SHEET

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Reconsideration of Fugitive Emissions Rule

PROPOSED ACTION

- On October 7, 2022, the U.S. Environmental Protection Agency (EPA) proposed revisions to the New Source Review (NSR) regulations related to how “fugitive emissions” are treated when determining whether a physical or operational change at an industrial facility is a “major modification.” A major modification would require the facility to obtain a major NSR permit before moving forward with construction. That permit would include required emission control measures to ensure that changes at the facility would not degrade air quality.
- A 2008 rule required owners/operators of facilities only in specific industrial source categories listed in the regulations to include fugitive emissions when determining whether a change was a major modification. These types of source categories include petroleum refineries, large fossil fuel-fired steam electric plants, and Portland cement plants, among others. Facilities in all other industrial source categories were not required to count fugitive emissions towards the major modification thresholds. EPA is proposing to reconsider, and to repeal, the 2008 rule.
- The proposed rule would require *all* existing major stationary sources to count fugitive emissions toward the emissions total used to determine whether a change at the source constitutes a “major modification” and would be subject to major NSR permitting requirements.
- EPA is also proposing to remove a provision established in 1980 that exempts certain stationary sources from substantive major NSR requirements if the only reason a change is considered a “major modification” is due to the inclusion of fugitive emissions.
- EPA will accept comment on this proposal for 60 days after the notice is published in the *Federal Register*.

BACKGROUND

- Congress established the NSR preconstruction permitting program as part of the 1977 Clean Air Act Amendments. The major NSR program features two sets of rules:
 1. In areas that meet the National Ambient Air Quality Standards, the Prevention of Significant Deterioration (PSD) program ensures that new emissions will not cause air quality to deteriorate significantly and will continue to attain air quality standards.
 2. In areas that do not meet the national air quality standards, nonattainment NSR (NNSR) ensures that new emissions do not slow progress toward cleaner air.

Both portions of the major NSR program require the installation of state-of-the-art pollution control technology for certain new and modified stationary sources.

- The major NSR program applies to both new major stationary sources of air pollution as well as major modifications to existing major stationary sources of air pollution. Determining whether a new stationary source is a “major source” or whether a modification is a “major modification” depends on whether a source’s emissions exceed certain thresholds. In certain circumstances, some emissions (for example, fugitive emissions) may not count towards those thresholds.
- “Fugitive emissions” are emissions that could not reasonably pass through a stack, chimney, vent, or similar opening.
- When determining whether a new stationary source is a “major source,” only certain types of sources belonging to specifically listed source categories must count fugitive emissions towards major source thresholds.
- When determining whether a change to an existing major stationary source is a “major modification,” EPA’s rules historically required all sources to include both fugitive and non-fugitive (stack) emissions towards the major modification thresholds.
- However, in 2008, the EPA finalized a rule that required only certain types of major stationary sources belonging to specifically listed source categories to include fugitive emissions towards major modification thresholds. Other types of sources were not required to include fugitive emissions towards these thresholds. In 2009, EPA agreed to reconsider the 2008 rule. EPA also stayed the 2008 rule, so that it has had no legal effect.

ADDITIONAL INFORMATION

- Interested parties can download the proposed rule from EPA’s web site at: <https://www.epa.gov/nsr/nsr-regulatory-actions>.
- EPA will accept comments for 60 days beginning when this proposal is published in the Federal Register. All comments should be identified by Docket ID No. EPA-HQ-OAR-2004-0014 and submitted to the Federal e-rulemaking portal (www.regulations.gov). Follow the online instructions for submitting comments.
- For additional information about other ways to submit comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.
- For general information about this proposed rule, contact Matt Spangler of EPA’s Office of Air Quality Planning and Standards at (919) 541-0327 and spangler.matthew@epa.gov.