

Fact Sheet - Final Rule to Revise the Regulations Governing the Nonattainment New Source Review (NSR) Programs

ACTION

- On February 28, 2007, the Environmental Protection Agency (EPA) made revisions to its nonattainment New Source Review (NSR) permitting program. These revisions apply to the process for permitting new or modified industrial facilities in areas that do not meet EPA's health based national air quality standards for ground-level ozone and fine particle pollution. These areas are known as nonattainment areas.
- Nonattainment designations for the 8-hour ozone standard became effective June 15, 2004. On that day, NSR requirements became effective in 8-hour ozone nonattainment areas. NSR applies to facilities that emit oxides of nitrogen (NO_x) and volatile organic compounds (VOCs) in newly designated 8-hour ozone nonattainment areas. Some of the new 8-hour ozone nonattainment areas are in state or local jurisdictions that do not have an approved state plan implementing nonattainment NSR that applies for 8-hour ozone nonattainment areas.
- Nonattainment designations for the PM_{2.5} NAAQS became effective April 5, 2005. These revisions also apply to sources of particulate matter in areas that are designated nonattainment for the PM_{2.5} National Ambient Air Quality Standards (NAAQS). Some of the new PM_{2.5} nonattainment areas are located in state or local jurisdictions that do not have an approved State Implementation Plan (SIP) implementing nonattainment NSR that applies for PM_{2.5} nonattainment areas.
- State or local air quality management agencies in the areas newly designated nonattainment for 8-hour ozone or PM_{2.5} may need to rely on a section of EPA's NSR regulations known as "appendix S" (Appendix S of 40 CFR part 51). Appendix S implements the Clean Air Act provision requiring that plans for all new and modified "major" industrial facilities must be reviewed to ensure that the NAAQS, including those for 8-hour ozone and PM_{2.5}, will be achieved.
- This final rule provides that the national regulatory program for permitting new construction or major modifications to industrial facilities in areas where appendix S applies will be consistent with that for areas with approved SIPs. These changes are in effect through appendix S in interim periods between designation of new nonattainment areas and adoption of a revised SIP.
- EPA has revised Sections II and IV of appendix S to be consistent with the NSR reforms finalized in December 2002. (See 67 FR 80186.) These

changes relate to determining when NSR would apply to a new facility or a planned change at an existing facility including:

- baseline emission determinations,
 - actual-to-projected-actual methodology for determining emissions increases, and
 - plantwide applicability limits.
- Also, to address a remand by the D.C. Circuit Court, EPA included an interim interpretation of the NSR reform provision for a "reasonable possibility" standard for recordkeeping and reporting requirements. This interim interpretation applies for purposes of appendix S until we complete the "reasonable possibility" rulemaking (which we plan to propose in conjunction with this rule).

BACKGROUND

- In July 1996, EPA proposed to make changes to the existing NSR program that would significantly streamline and simplify the program.
- In December 2002, EPA issued a final rule reforming the NSR program to allow the following:
 - plantwide caps (known as plantwide applicability limits or PALs) on air emissions;
 - source owners who have units that have state-of-the-art control (known as Clean Units) to make changes to their unit without revising their permits as long as the permitted emissions are not exceeded and permitting conditions are maintained;
 - source owners to install certain environmentally beneficial pollution control projects (known as PCPs) without a prior permit revision;
 - two changes that affect the way in which a source owner calculates the emissions increase that occurs at their facility when they make a physical change or change in the method of operations. Our rule included a "reasonable possibility" standard for recordkeeping, for projects that do not trigger NSR.
- A Court opinion was issued in June 2006 by the D.C. Circuit Court of Appeals in *New York v. EPA*, 413 F.3d 3 (D.C. Cir. 2005). In this opinion, the Court largely upheld EPA's final rule of December 2002. However, the Court vacated the method of calculating emissions for Clean Units, vacated the exemption for Pollution Control Projects, and remanded the "reasonable possibility" recordkeeping requirement.

FOR ADDITIONAL INFORMATION

- Interested parties can download information on this final action from EPA's Web site at: www.epa.gov/nsr.

- Today's final rule and other background information are also available either electronically at <http://www.regulations.gov>, EPA's electronic public docket and comment system, or in hardcopy at the EPA Docket Center's Public Reading Room.
- The Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW, Washington, DC. Hours of operation are 8:30 a.m. to 4:30 p.m. eastern standard time, Monday through Friday, excluding Federal holidays.
- Visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.
- Materials for this action can be accessed using Docket ID No. EPA-HQ-OAR-2001-0004.