

## **Fact Sheet - Proposed Rule for Improvements to EPA's New Source Review Program: Reasonable Possibility in Recordkeeping**

### **ACTION**

- On February 28, 2007, the U.S. Environmental Protection Agency (EPA) proposed to clarify the “reasonable possibility” recordkeeping and reporting standard of the 2002 New Source Review (NSR) reform rules.
- The “reasonable possibility” standard identifies the circumstances under which a source undergoing a modification that does not trigger major NSR must keep records. The standard also specifies the recordkeeping and reporting requirements on such sources.
- This rule responds to the 2005 remand from the U.S. Court of Appeals for the D.C. Circuit that EPA either provide an acceptable explanation for its “reasonable possibility” standard or devise an appropriately supported alternative.
- EPA seeks comment on two options for clarifying what constitutes “reasonable possibility” and when the “reasonable possibility” recordkeeping and reporting requirements apply.
  1. The first and preferred option is that a source would use projected actual emission increases as the basis for determining whether recordkeeping and reporting are required.
  2. An alternative option is that a source would use potential emissions as the basis for determining whether recordkeeping and reporting are required.
- EPA will accept comment on this rule for 60 days after publication in the *Federal Register*

### **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.
- In a separate, but related action, EPA has 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. For more information on this action, visit: [www.epa.gov/nsr](http://www.epa.gov/nsr)

## **FOR ADDITIONAL INFORMATION**

- Interested parties can download information on the proposal from EPA's Web site at: [www.epa.gov/nsr](http://www.epa.gov/nsr).
- Today's proposed action and other background information are also available either electronically in [www.regulations.gov](http://www.regulations.gov), EPA's electronic public docket and comment system, or in hard copy at EPA's Air and Radiation Docket and Information Center, Environmental Protection Agency, Room 3334, 1301 Constitution Avenue, NW, Washington, DC (Docket ID No. EPA-HQ-OAR-2001-0004). 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, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566-1742.
- **HOW TO COMMENT:** Comments will be accepted 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-2001-0004 and submitted by one of the following methods:
  - [www.regulations.gov](http://www.regulations.gov); E-mail ([a-and-r-docket@epa.gov](mailto: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 3334, 1301 Constitution Avenue, NW, Washington, DC).