

FACT SHEET
FINAL FLEXIBLE AIR PERMITTING RULE

ACTION

- On September 25, 2009, the U.S. Environmental Protection Agency (EPA) finalized a rule that will promote the use of “flexible air permits.” A flexible air permit (FAP) is designed to facilitate flexible, market-responsive operations at an industrial facility while ensuring equal or greater environmental protection than conventional air permits.
- This action was originally signed on January 13, 2009 by the previous Administrator. Administrator Lisa Jackson reviewed and approved the final flexible air permitting rule as part of a regulatory review initiated by the White House. This rule as published is identical in substance to the rule signed January 13, 2009.
- This action revises the operating permits program under title V of the Clean Air Act and reaffirms opportunities for flexibility under both the operating permit and the new source review (NSR) regulations. States pilot tested the FAP approaches in today’s final rule over a timeframe that spanned multiple Administrations.

Operating Permits Program

- FAP approaches allow a permitted major source to obtain approval for changes up front without subsequent review of the changes when they occur. Major sources generally are industrial plant sites that emit or have the potential to emit a major amount of one or more regulated air pollutants. In order to be effective, the FAP approaches in the title V permit must address and authorize the anticipated changes relevant to all applicable requirements.
- Under the operating permits program, a source must first request a FAP to be considered by the permitting authority. Any approved FAP would authorize a source to make certain changes described in the permit without further review from the state, local or tribal permitting authority. The source must continue to meet all Clean Air Act requirements that apply. These requirements include national emissions standards for hazardous air pollutants and/or new source performance standards. The permitting authority may reject a request for a FAP, as appropriate, depending on the specific facts of the situation.
- Available FAP approaches include the use of alternative operating scenarios (AOSs) and approved replicable methodologies (ARMs)
 1. Alternative Operating Scenarios – An AOS authorizes a source to make changes to existing emissions units without requiring a title V permit revision. The AOSs identifies the applicable requirements associated with the alternative scenario and assures ongoing compliance. An AOS is generally useful where the recordkeeping requirements are insufficient to determine the requirements applicable to each new operating scenario.

2. Approved Replicable Methodologies –an ARM is a replicable protocol placed in a title V permit to facilitate compliance with an applicable requirement in situations that otherwise could require a permit revision. For example, an ARM could specify a replicable testing procedure for updating an emissions factor, rather than requiring a permit revision to accomplish its update. To be approvable, an ARM must be based on sound scientific/mathematical principles and deliver replicable results (usually numerical) when operating on the same input data.
- EPA does not expect that these clarifications to the existing title V regulations will necessitate revisions to many approved state operating permit programs. Revisions, if needed, would consist of adding definitions for AOS and ARM and codifying certain aspects of current policy.

New Source Review

- This rule does not revise minor or major NSR regulations. EPA determined that many states already have sufficient authority to issue FAPs under minor NSR programs, as appropriate.
- The principal FAP approach used in minor and major NSR programs is advance approvals. In one permitting action, advance approvals authorize sources to undertake multiple planned individual changes or categories of changes within a specified time period. In the absence of advance approvals, such planned changes would have to be individually reviewed and approved by the permitting authority. Advance approvals contained in NSR permits can then be incorporated into the source's operating permit as applicable requirements.
- In this final rule, EPA describes successful approaches used in state pilot projects to authorize "advance approved" changes in minor NSR programs are typically used in conjunction with plantwide emissions caps, such as Plantwide Applicability Limits (PAL) and Potential-to-Emit (PTE) limits, to prevent major NSR from being triggered by physical or operational changes made under the advance approval for minor NSR.
- Very limited experience exists with respect to the advance approval of major NSR. However, current major NSR regulations, while quite detailed in prescribing what changes are subject to review, afford considerable flexibility to permitting authorities to determine how to define a major NSR project.
- Although no states would need to revise their minor or major NSR programs in order to implement the flexibility approaches described in the final flexible air permitting rule. EPA intends to support states where they choose to revise their minor or major NSR regulations to provide more explicit authority for FAPs.

BACKGROUND

- In 1990, Congress amended the Clean Air Act to add title V which requires all states to develop operating permit programs. These programs require an operating permit for each industrial facility that is a “major source” of air pollution. These permits clarify which underlying federal air pollution control requirements (applicable requirements) apply to the source and requires the source to track its compliance with meeting these requirements.
- Under this operating permits program, a source is considered major when it emits a certain level or more of a specific air pollutant. Depending on the pollutant, this can be a little as 10 tons per year or less.
- The applicable requirements that go into operating permits come from EPA’s and the states’ Clean Air Act regulations. These regulations typically:
 - limit the amount of air pollution the source can emit,
 - require the source to construct and operate specific pollution control equipment,
 - require specific work practices to be performed to reduce emissions, and
 - require monitoring and recordkeeping for the source to determine its compliance with the limits, pollution controls, and work practices mentioned above.
- 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 for major construction projects that serves two important purposes.
 - First, it ensures the maintenance of air quality standards when sources such as factories, industrial boilers and power plants are modified or added. In areas that do not meet the national air quality standards, NSR assures that emissions from major construction projects do not slow progress toward cleaner air. In areas that meet the standards, especially pristine areas like national parks, NSR assures that new emissions fall within air quality standards.
 - Second, the NSR program assures that state of the art control technology is installed at new major plants or at existing major plants that are undergoing a major modification.
- For more than a decade, EPA has worked closely with state environmental agencies in a cooperative effort to develop FAP approaches. Several state pilot permits were launched to address the delay and uncertainty that companies reported in the early 1990s associated with making operational changes that required approval and authorization through air permitting actions under the title V and NSR programs. The goal of the pilot permit activity was to provide sources operational flexibility so that they could more effectively compete in the global market, and, at the same time, assure environmental protection and promote pollution prevention.

- In 2001-2002, EPA conducted a detailed evaluation of the implementation experience of six flexible air permitting pilots. Information on EPA's evaluation can be accessed in the docket for today's rulemaking or at http://www.epa.gov/ttn/oarpg/t5/memoranda/iap_eier.pdf.
- The evaluation demonstrated that the described FAP approaches would produce enforceable permits which achieved environmental benefits by encouraging emissions reductions and facilitating pollution prevention activities. Of the five pilot permits evaluated by EPA that had operated under flexible permits for three or more years, all five achieved 30 to 80 percent reductions in actual plantwide emissions and/or emissions per unit of production.
- The FAP approaches in pilot permits often included enhanced opportunities for public involvement and comment in the permitting process. The inclusion of advance approvals and AOSs in a permit presents a comprehensive picture of a source's operations over the permit term, while emissions caps limit plantwide emissions during the permit term. Permitting authorities who participated in pilots also noted benefits associated with improved information flows and reporting on plantwide emissions.
- Advance approvals, ARMs, and AOSs typically improve operational efficiency at sources by allowing more efficient resource allocation and accommodate process improvements and pollution prevention activities. Facilities in the pilot permit activity reported that FAP approaches significantly reduce the uncertainty and transaction costs associated with the permitting process. Several companies linked their increased operational flexibility under the permits to their ability to capture new market opportunities, to retain and attract jobs, and to compete more effectively in global markets. Permitting authorities also noted longer term administrative benefits from the pilot permits, enabling them to free staff time and resources to focus on reducing permitting backlogs or other priority environmental needs.

FOR MORE INFORMATION

- Interested parties can download the notice from EPA's website under recently signed rules at the following address: <http://www.epa.gov/nsr/actions.html>.
- Today's final 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 3334, 1301 Constitution Avenue, NW, Washington, D.C. (Docket ID No. EPA-HQ-OAR-2004-0087). 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.

- For further information about the final rulemaking, contact Michael Trutna at EPA's Office of Air Quality Planning and Standards at 919-541-5345 or Anna Marie Wood at EPA's Office of Policy Analysis and Review at 202-564-1664.