

Project Emissions Accounting/New Source Review: U.S. Environmental Protection Agency Proposed Clean Air Act Rule



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The United States Environmental Protection Agency (“EPA”) published an August 9th Federal Register Notice proposing to revise certain New Source Review (“NSR”) regulations associated with the Clean Air Act Prevention of Significant Deterioration (“PSD”) and Nonattainment (“NA”) programs. See 84 Fed. Reg. 39244.

EPA states the proposal will clarify the requirements applicable to sources that are undertaking a physical operational change (described as a “project”) under the NSR preconstruction permitting program.

The original NSR regulations became effective in 1980.

The Clean Air Act NSR constitutes a preconstruction permitting program that establishes and documents air pollution emission limits from “major” sources of air pollution. The NSR program includes two permitting programs:

- Nonattainment
- Prevention of Significant Deterioration

Nonattainment NSR applies in nonattainment areas where the air quality is classified as failing to meet the National Ambient Air Quality Standard (“NAAQS”) for one or more criteria pollutants regulated under the Clean Air Act. This program is intended to allow construction of new or modified sources of air pollution in areas while still making progress toward NAAQS.

PSD applies in attainment areas. Such areas are classified as meeting the NAAQS. PSD review and permitting is intended to allow construction of new or modified sources of air pollution in these areas while protecting (i.e., not significantly degrading) air quality.

The NSR program is triggered by new major sources of air pollution and existing major sources that are making a significant modification.

The August 9th proposed rule addresses what constitutes a major modification. An existing major source proposing to undertake a project is required to determine whether it will constitute a major modification following a two-step applicability test. The two step process is described as follow:

1. Determine if the proposed project will cause a significant emission increase of a regulated NSR pollutant

2. If the proposed project is projected to cause an increase then there is a determination if there is a significant net emissions increase of that pollutant

The proposed rule would revise NSR applicability provisions to clarify that:

. . . both emissions increases and emissions decreases that result from a given proposed project are to be considered at Step 1 of the NSR major modification applicability test. (emphasis added)

Consequently, all emission changes associated with a project would be able to be taken into account for PSD purposes.

Stated differently, EPA states it is fully clarifying that the regulatory language of 40 C.F.U. 52.21(a)(2)(iv)(f) allows the approach set forth in a March 2018 EPA memorandum that addressed this issue.

A copy of the Federal Register Notice can be downloaded [here](#).