

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



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The United States Environmental Protection Agency (“EPA”) announced on October 22nd it had finalized certain New Source Review (“NSR”) regulations associated with the Clean Air Act Prevention of Significant Deterioration (“PSD”) and Nonattainment (“NA”) programs.

EPA had published a proposed rule in the August 9, 2019, Federal Register. See 84 Fed. Reg. 39244.

EPA states the final rule will clarify the requirements applicable to sources that are undertaking a physical operational change (described as a “project”) under the NSR preconstruction permitting program. It has been denominated the “Project Emissions Accounting Rule.”

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 final 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 final rule will 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.

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

The phrase “emissions accounting” derives from the fact that decreases can now be considered in the first step of the analysis.

The final rule will certainly be challenged by environmental organizations.

A copy of the final rule can be downloaded [here](#).