

Fact Sheet - Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of the Inclusion of Fugitive Emissions

ACTION

- On December 10, 2008 the US Environmental Protection Agency (EPA) finalized revisions to the December 31, 2002 New Source Review (NSR) Improvement rules to change the requirements of the major NSR programs regarding the treatment of fugitive emissions.
- The final rule requires that fugitive emissions be included in determining whether a physical or operational change results in a major modification *only* for sources in industries that have been designated through rulemaking under section 302(j) of the Clean Air Act. (see table below)
- In this rule, EPA is providing a more uniform approach for the treatment of fugitive emissions for major source and modification threshold determinations. The revision makes the treatment of fugitive emissions for major modification determinations consistent with the treatment of fugitive emissions for major source determinations under the NSR program
- The final action also elaborates on guiding principles for determining fugitive emissions for purposes of NSR and Title V permitting.
- This rule amends all portions of the major NSR program regulations: permit requirements, the prevention of significant deterioration of air quality (PSD) program, and the emission offset interpretative ruling.
- States with EPA approved PSD areas that will need to revise their State Implementation Plans (SIPs) to reflect the revisions of this final rule, have up to three years from rule publication to submit revised SIPs incorporating these NSR requirements.
- In any areas without a SIP-approved PSD Program for which EPA is the reviewing authority, or for which EPA delegated its authority to issue permits to a State, local or tribal reviewing authority (delegated states), these rules will take effect within [30 days \(PDF\)](#) (2pp, 72k) from publication of this final rule.

BACKGROUND

- Fugitive emissions are emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

- EPA's 1980 NSR rules required that sources count fugitives emissions when determining whether an emissions increase qualifies as a major modification *only* if the source belonged to a 302(j) listed category.
- EPA finalized an interpretive ruling in 1989 requiring that fugitive emissions be counted from *all* source categories when determining whether an emissions increase qualifies as a major modification regardless of whether the category is on the 302(j) list. EPA did not specifically codify regulatory language to implement the interpretative rule.
- The 2002 NSR Improvement rules specifically codified inclusion of fugitive emissions in determining whether a physical or operational change results in a major modification for listed *and* non-listed sources. The 2002 NSR Improvement rules required that all sources, regardless of source category, include fugitive emissions in calculating 'potential actual emissions' and 'baseline actual emissions' for purposes of determining whether a change at the facility constitutes a major modification. A major modification would require the facility to obtain a NSR permit before moving forward with construction. That permit would include required emission control measures to insure that changes at the facility would not degrade air quality.
- On July 11, 2003, EPA received a petition for reconsideration arguing that the final 2002 NSR Improvement rules failed to comply with section 302(j) of the Clean Air Act in its treatment of fugitive emissions for determining what constitutes a major modification. The EPA granted the petition for reconsideration in January 2004 and stated in its response to the petition that it planned to conduct rulemaking on the question of the inclusion of fugitive emissions in determining what constitutes a major modification under the NSR program.
- On November 13, 2007 EPA issued a proposed rule on the reconsideration of inclusion of fugitive emissions in determining whether a major modification has occurred under NSR. The Agency proposed to include fugitive emissions in determining whether a physical or operational change results in a major modification only for sources in the industries defined by section 302(j) .

FOR MORE INFORMATION

- For more information, call Joseph Mangino at 919-541-9778 or email at mangino.joseph@epa.gov.
- For more information, go to www.epa.gov/nsr.

Industry Sectors Required to Count Fugitive Emissions for Determining if a Modification is Major	
Coal cleaning plants (with thermal dryers)	Carbon black plants (furnace process)
Kraft pulp mills	Primary lead smelters
Portland cement plants	Fuel conversion plants
Primary zinc smelters	Sintering plants
Iron and steel mills	Secondary metal production plants
Primary aluminum ore reduction plants	Chemical process plants
Primary copper smelters	Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input
Municipal incinerators capable of charging more than 250 tons of refuse per day	Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels
Hydrofluoric, sulfuric, or nitric acid plants	Taconite ore processing plants
Petroleum refineries	Glass fiber processing plants
Lime plants	Charcoal production plants
Phosphate rock processing plants	Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input
Coke oven batteries	Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act
Sulfur recovery plants	