

# memorandum

DATE: January 8, 2003

REPLY TO  
ATTN OF: Office of Environmental Policy and Guidance:Koss:6-7964

SUBJECT: Proposed Clean Air Act Rule on Revisions to the New Source Review Program Concerning Routine Maintenance, Repair and Replacement Activities, for Review and Comment

TO: Distribution

On December 31, 2002, the Environmental Protection Agency (EPA) issued a final rule in the *Federal Register* (at 67 FR 80185) that revised the New Source Review (NSR) program, and the Agency also proposed revised regulations (at 67 FR 80290) that address the routine maintenance, repair and replacement (RMRR) provisions of NSR. NSR is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the Clean Air Act. The NSR regulations exempt certain activities, such as RMRR activities (which are not defined in the regulations). The revised NSR final rule (available at the Office of Environmental Policy and Guidance (EH-41) Web Site at <<http://www.eh.doe.gov/oepa/rules/67/67fr80185.pdf>>) streamlines the NSR program. EH-41 is currently preparing an analysis of the final rule.

The NSR proposed regulations have also been posted at <<http://www.eh.doe.gov/oepa/rules/67/67fr80290.pdf>>. This is a nationally important, controversial rulemaking that will affect Department of Energy (DOE) operations. In 67 FR 80290, the proposed revisions provide two categories of activities that would automatically be considered to be RMRR under the NSR program (and thus be exempt from NSR requirements). EPA indicates that these revisions are intended to provide “greater regulatory certainty” to the source owner or operator concerning the application of these provisions. When an activity does not fall within one of these proposed categories, it could still qualify as a RMRR exception to the rule by means of a case-by-case determination by the reviewing regulatory authority (which is EPA’s current approach in the NSR program). This proposed rule potentially applies to physical changes that are undertaken at DOE fossil-fueled-fired steam plants and DOE incinerators, as well as any other existing Departmental sources that are major stationary sources subject to the NSR program because of possible major modifications.

The proposed rule sets out a range of options for particular features of the two proposed categories of RMRR activities, and seeks comment on these options:

- The “Annual Maintenance, Repair and Replacement Allowance” would provide an annual allowance for maintenance activities for each affected source. Activities undertaken to promote the safe, reliable and efficient operation of a source, whose costs fall within the allowance, would constitute RMRR. The allowance would be set on an industry-specific basis so as to cover the capital and non-capital costs that an owner or operator of a stationary source in a particular industry would typically incur in maintaining, replacing and repairing equipment at the source in order to promote the safe, reliable and efficient operation of the source.

The proposed annual maintenance, repair and replacement allowance for each source would be determined by multiplying the replacement cost of the source by an annual maintenance, repair and replacement allowance percentage specified by the rule. EPA intends to set different percentages for specific industry categories. To develop these percentages, EPA has requested information relating to types of maintenance, repair and replacement activities undertaken, and costs associated with these activities (67 FR 80298).

- The “Equipment Replacement Provision” would provide that most projects involving the replacement of existing equipment with functionally equivalent new equipment would constitute RMRR. This would be determined by comparing the cost of components being replaced with the cost of replacing a production unit at the site. If the cost of the replaced components is below a specified threshold, then the replacements would qualify as RMRR. EPA has indicated that the threshold would be set so as to allow replacement of components that are typically replaced at sources in the relevant industrial category in order to promote the safe, efficient and reliable operation of such sources, but not to include major renovations or rehabilitations (which should fall under the purview of NSR requirements).

Please review the proposed regulations amendments and submit any comments you may have to Ted Koss of my staff (e-mail: <[theodore.koss@eh.doe.gov](mailto:theodore.koss@eh.doe.gov)>; telephone: 202-586-7964) by February 18, 2003. In developing comments, please indicate the specific page and section of the preamble or the proposed regulatory language in the *Federal Register* to which each comment pertains. Questions concerning this rulemaking should be directed to Mr. Koss.



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Office of Environmental Policy and Guidance

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