



EPA's Proposed NSR Reform Rule Is A Good Start, But...

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In addition to addressing CO₂ emissions from existing coal-fired utility boilers, the proposed Affordable Clean Energy (ACE) rule includes a proposal to reform the New Source Review (NSR) emissions increase test. Whether certain physical changes or changes in the method of operation made to existing boilers trigger permitting as a new source is one of the most controversial aspects of the Clean Air Act (CAA). A key element of the existing NSR test is whether a proposed change will result in a significant change in emissions. Traditionally, this potential emissions increase is evaluated based on annual emissions from a unit. EPA is now proposing to add an evaluation of possible changes in hourly emissions after a project is completed to the annual emissions analysis. If a project will not increase the hourly emissions rate of the unit, NSR is not triggered.

The ACE rule NSR reform proposal captures the clear 40-year old Congressional intent for the NSR emissions increase test. The 1977 CAA Amendments required construction, as defined by the New Source Performance Standards (NSPS) program, to occur before NSR is triggered. Importantly, the proposed NSR reform applies to all traditional CAA pollutants and not just CO₂ emissions.

Under the NSPS program, whether construction will occur on an existing unit is determined by comparing the maximum potential hourly emissions rate before and after the project. ACE does not adopt the NSPS hourly emissions rate test. Instead, the proposed rule sought comment on three alternatives. The first two alternatives incorporate two hourly emissions rate tests that compare the hourly emissions rate achieved by a unit in the five years before the project to hourly emissions rates achieved in the five years after the project. The third alternative compares the achievable hourly emissions rate before and after the project. The third option is the test that is closest to the NSPS test. EPA needs to closely examine these proposed tests and refine them to be consistent with the CAA and needed NSR reform.

The utility industry contends that units evaluating hourly emissions rate increases should have the option to perform both the hourly and annual emissions rate tests and document the results. If, in the future, there is a deviation from a post-project hourly emissions rate data point, then the annual emissions analysis can demonstrate that there is no resulting NSR violation.

The utility industry supports the NSR reform proposal, but many prefer that NSR reform not be included in the ACE rule. Instead, they believe EPA should open a separate docket for NSR reform. This separate docket would include industry and natural gas units rather than just coal-fired utility units. To date, EPA has not proposed a comparable NSR test for other industries outside of the utility sector.

Emissions Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emissions Guidelines Implementing Regulations; Revisions to New Source Review Program, 83 Fed. Reg. 44,746 (August 31, 2018) (Docket Id. No. EPA-HQ-OAR-2017-0355).

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