

H. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

- I. General Information
 - A. What are the regulated entities?
 - B. How can I get copies of this document and other related information?
 1. Docket
 2. Electronic Access
 - C. How and to whom do I submit comments?
 1. Electronically
 2. By Mail
 3. By Hand Delivery or Courier
 4. By Facsimile
 5. By Phone
 - D. How should I submit CBI to the Agency?
 - E. What should I consider as I prepare my comments for EPA?
 - F. What information should I know about the public hearing?
 - G. Where can I obtain additional information?
 - H. How is this preamble organized?
- II. Background
- III. Today's Action
 - A. Grant of Reconsideration
 - B. Request for Stay of Final Rules
- IV. Discussion of Issues
 - A. Analysis of Environmental Impact of Final Rule
 - B. Plantwide Applicability Limitations (PALs)
 1. Background
 2. Emission Units for Which you Begin Actual Construction After Baseline Period
 3. Elimination of Synthetic Minor Limits [(r)(4) Limits]
 - C. Actual-to-Projected-Actual Test
 1. Background
 2. Reasonable Possibility
 3. Replacement Units
 - D. Clean Unit
 1. Background
 2. Effect of Redesignation on Clean Unit Status
- V. Statutory and Executive Order Reviews
 - A. Executive Order 12866—Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132—Federalism
 - F. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
 - G. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
 - H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
- VI. Statutory Authority

II. Background

In the early 1990's, the Environmental Protection Agency ("we" or "the Agency") began an effort to revise the

major NSR regulations to respond to concerns expressed by regulated industry and State and local permitting authorities that the major NSR regulations were too complex and burdensome. This effort involved the solicitation of ideas and recommendations from the Clean Air Act Advisory Committee and the public. The goal of this effort, known as NSR Reform (or NSR Improvement), was to eliminate as much of the program complexity, administrative burden and resultant project delays as possible without sacrificing the current level of environmental protection and benefits derived from the program.

On July 23, 1996 (61 FR 38250), we proposed changes to various aspects of the NSR program based primarily on consideration of recommendations provided through the NSR Reform effort, but also based on our own independent initiatives to further clarify the major NSR program. The proposed changes addressed baseline emission determinations, actual-to-future-actual emissions measurement methodology, Plantwide Applicability Limitations (PALs), Clean Units, and Pollution Control Projects (PCPs), as well as other changes.

Following the 1996 proposal, we held two public hearings and more than 50 stakeholder meetings. Environmental groups, industry, and State, local, and Federal agency representatives participated in these many discussions. We received several hundred public comments on the 1996 proposal rule. As a result of comments received and further review of the issues by the Agency, we sought further comment on some issues in the proposed rule. On July 24, 1998, we published a **Federal Register** Notice of Availability (NOA) that requested additional comment on three of the proposed changes—baseline emissions determination, the actual-to-future-actual-methodology, and PALs. We received several hundred public comments on the NOA. Following the NOA, we convened various stakeholder meetings concerning NSR Reform over a number of years. Information on these meetings can be found in Docket ID No. A-90-37.

On December 31, 2002, we issued a final rule (67 FR 80186) that revised regulations governing the major NSR programs (final rules).¹ The revisions included five major changes to the major NSR program that will reduce burden, maximize operating flexibility,

improve environmental quality, provide additional certainty, and promote administrative efficiency. These elements include baseline actual emissions, actual-to-projected-actual emissions methodology, PALs, Clean Units, and PCPs. The final rules also codified our longstanding policy regarding the calculation of baseline emissions for electric utility steam generating units (EUSGUs). In addition, the final action: (1) Responded to comments we received on a proposal to adopt a methodology, developed by the American Chemistry Council (formerly known as the Chemical Manufacturers Association (CMA)) and other industry petitioners, to determine whether a major stationary source has undertaken a major modification based on its potential emissions; and (2) included a new section that spells out in one place how a major modification is determined under the various major NSR applicability options. This topic had previously been addressed primarily in the definition section of the major NSR regulations. We also clarified where to find the provisions in the revised rules and codified a definition of "regulated NSR pollutant" that clarifies which pollutants are regulated under the Act for purposes of major NSR.

On February 28, 2003, we sent notice to affected States that, consistent with our proposal in 1996, we were revising the references to 40 CFR 52.21 in delegated States' plans to reflect the December 31, 2002 changes to the Prevention of Significant Deterioration (PSD) Federal Implementation Plan (FIP) (40 CFR 52.21(a)(2) and (b) through (bb)). This FIP applies in any area that does not have an approved PSD program in the State Implementation Plan (SIP), and in all Indian country. The notice was subsequently published in the **Federal Register** on March 10, 2003 (68 FR 11316).

Following publication of the December 31, 2002 and March 10, 2003 **Federal Register** notices, the Administrator received numerous petitions, filed pursuant to section 307(d)(7)(B) of the CAA, requesting reconsideration of many aspects of the final rules.² The purpose of today's

¹ The December 31, 2002 first rules did not act on several issues proposed in 1996. We intend to act on some or all issues from the 1996 proposal in a subsequent **Federal Register** notice.

² Petitions for reconsideration of the December 31, 2002 final rule were filed by: Northeastern States (CT, ME, MD, MA, NH, NJ, NY, PA, RI, VT); South Coast Air Quality Management District (CA); and Environmental Groups (led by NRDC, Earthjustice, Clean Air Task Force, and Environmental Defense). Additional petitions joined existing petitions: The People of California and California Air Resources Board (joined South Coast and Northeastern States petitions); Yolo-Solano Air Quality Management District (CA)