

We are proposing to retain our approach for removing and superseding (r)(4) limits with a PAL. We request comment on this approach.

C. Actual-to-Projected-Actual Test

1. Background

In 1996, we proposed to allow use of the “future-actual methodology” to compute whether a physical change in or change in the method of operation of the major stationary source would result in a significant emissions increase. Previously, this methodology was only available to EUSGUs under the WEPCO rule.¹⁰ Our 1996 notice proposed to extend a version of the WEPCO rule to all source categories. In that proposal, we sought comment on several issues including whether the 5-year reporting provision is working as intended and whether it should be changed in any way. We adopted a modified WEPCO approach in the final rules. We call this approach the “actual-to-projected-actual” applicability test. This test is similar to the WEPCO rule in that it allows you to consider “demand growth” in determining post-change emissions, but it contains recordkeeping and reporting requirements that differ from those in the WEPCO rule.¹¹ (There are other differences between the two approaches, but these differences are not relevant to the following discussions.)

Today, we are soliciting comments on an issue related to the recordkeeping and reporting requirements under the actual-to-projected-actual applicability test and on allowing replacement units to use the actual-to-projected-actual applicability test. These issues are discussed below.

2. Reasonable Possibility

As noted above, the recordkeeping and reporting requirements in the final rules differ from those in the WEPCO rule. The WEPCO rules required EUSGUs that relied on the actual-to-representative-future-actual-annual emissions test to submit annual emission reports. In contrast, the final rules require non-EUSGUs (that project future emissions rather than relying on potential emissions as a measure of

future emissions) to: maintain certain records related to the emissions projection and records of the post-change emissions (for either 5 years or 10 years depending on the nature of the change); and report if there is a significant emission increase in post-change emissions which is inconsistent with the source’s preconstruction projection.¹² For EUSGUs (that project future emissions rather than relying on potential emissions as a measure of future emissions), the final rules require you to send a copy of the information to the reviewing authority that you are required to keep relating to your projection. However, all of these reporting and recordkeeping requirements apply to non-EUSGUs and EUSGUs only if there is a “reasonable possibility” that the project will result in a significant emissions increase.

We included these changes to respond to comments we received in response to our request for comments on whether the 5-year reporting provisions of the WEPCO rule were working as intended and whether these requirements should be changed. Some commenters indicated that the 5-year recordkeeping and reporting requirements were onerous. Commenters also noted that the requirements were unnecessary because similar information is available through the title V permitting program and State emission inventories. Other commenters requested that we retain an option to use the actual-to-potential approach, which does not require recordkeeping or reporting. We retained that option within the actual-to-projected-actual applicability test.

In 1998, we solicited additional comment on an approach that would have required you to obtain a federally enforceable permit to limit your post-change emissions to your projected levels (the actual-to-future-enforceable-actual test), and again solicited comment on the appropriate recordkeeping and reporting requirements. In general, commenters were supportive of a 5-year recordkeeping requirement. Responses were mixed as to whether we should extend the requirement to 10 years if the permitting authority believed it appropriate. Again, we received comments that reporting and recordkeeping requirements were duplicative of those required by other programs. Also, we received comments from State agencies concerned with the resource burden that would be imposed

by requirements of the actual-to-future-actual test.

In an effort to balance the need for information to determine compliance and the associated burden of recordkeeping and reporting, we finalized the changes to the proposed recordkeeping and reporting requirements. We included the “reasonable possibility” provision because we were concerned that without some qualifier on when you need to retain records and report, our rules would encompass any physical or operational change you undertake no matter how inconsequential and unlikely that an emissions increase would result.

We believe that, in some circumstances, the requirements to record and report emissions following completion of certain types of projects is a substantial strengthening over the former regulatory requirements that applied to non-EUSGUs. The former rules contained no reporting or recordkeeping requirements when you determined that major NSR did not apply. For example, the former rules allowed you to make your own determination as to whether major NSR applied to a project. If you determined that an emissions increase from a project was less than significant, you could proceed with the project, and there were no subsequent recordkeeping or reporting requirements under the major NSR program. The same result occurred if you determined your project would result in a significant emissions increase but you were able to “net” the project out of review. Under the revised rules, if you project future emissions rather than relying on potential emissions as a measure of future emissions, you (whether an EUSGU or non-EUSGU) are required to record and report any project for which you avoid the major NSR requirements through “netting,” because you will have already determined that such projects will result in a significant emissions increase.

We are proposing to retain the “reasonable possibility” requirement for triggering the applicability of the recordkeeping and reporting provisions discussed above. We believe these provisions are appropriate based on our proposal and the comments received thereon; nevertheless, we are requesting comment on this approach.

3. Replacement Unit

The WEPCO rule precluded use of the actual-to-representative-future-actual-annual emissions test for replacement units. *See* 40 CFR 52.21(b)(921)(v)(2002). Although the

¹⁰ *See* 57 FR 32314, July 21, 1992. This rule is called the “WEPCO rule” because a court case involving the Wisconsin Power and Electric Company (WEPCO) was the reason behind the rulemaking.

¹¹ We use the term “demand growth” to refer broadly to independent factors that may cause remissions increases from an emission unit, but which the emissions unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions, and that are also unrelated to the particular project.

¹² If you rely on potential emissions as a measure of future emissions, you have no recordkeeping requirements related to your applicability determination under the final rules.