

- B. Executive Order 13132—Federalism
- C. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
- D. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
- E. Paperwork Reduction Act
- F. Regulatory Flexibility Analysis
- G. Unfunded Mandates Reform Act of 1995
- H. National Technology Transfer and Advancement Act of 1995
- I. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- J. Executive Order 12988—Civil Justice Reform

V. Effective Date for Today's Requirements

VI. Statutory Authority

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* The EPA has established an official public docket for this action under Docket ID No. A-2002-04. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC, 20004. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1742. A reasonable fee may be charged for copying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket.

Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.A.1. of this preamble. The EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. Where Can I Obtain Additional Information?

In addition to being available in the docket, an electronic copy of today's final rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of this rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

II. Background

A. What Is the RMRR Exclusion?

Title I of the Clean Air Act (CAA) established the New Source Review program¹ to help control airborne emissions from major new stationary sources of pollution. Under the program, anyone who seeks to construct a new stationary source that will be a major source of regulated pollutants must obtain a permit from State authorities (or, where a State has not

established its own program, from EPA directly) before beginning construction of the source. In order to obtain the permit, the owner or operator must, among other things, demonstrate that the new source will have state-of-the-art pollution control devices.

The NSR program does not generally affect existing sources, but it does apply if they undergo a "modification." The NSR provisions of the CAA do not create their own definition of "modification," instead borrowing the definition of the term established by section 111 of the CAA, which defined the term for purposes of the New Source Performance Standards (NSPS) program. That definition states that "[t]he term 'modification' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." Under 40 CFR parts 51 and 52, the rules we have promulgated to carry out the NSR program, "major modification" is similarly defined as any physical change in or change in the method of operation of a major stationary source that would result in: (1) A significant emissions increase of a regulated NSR pollutant; and (2) a significant net emissions increase of that pollutant from the major stationary source.² The regulations further provide that certain activities do not constitute a "physical change or change in the method of operation" under the definition of "major modification." One category of such activities is routine maintenance, repair and replacement (RMRR). The regulatory provisions excluding RMRR from the definition of change constitute the RMRR exclusion.

B. Issues Surrounding the RMRR Exclusion

Until today, the NSR regulations have not further specified what types of activities are encompassed by the term RMRR. Heretofore, we have applied the RMRR exclusion exclusively on a case-by-case basis using a multi-factor test for determining whether a particular activity falls within or outside the exclusion. We have made these case-by-case determinations both in the context of applicability determinations, where a source or permitting authority has requested EPA's guidance concerning whether a particular activity falls within the exclusion or requires a permit, and

¹ We broadly use the term "New Source Review," or NSR, to encompass both the PSD and the Non-attainment New Source Review program.

² Once a modification is determined to be major, NSR requirements apply only to those specific pollutants for which there would be a significant net emissions increase.