

are adopting today. This rule specifies that the replacement of components of a process unit with identical components or their functional equivalents will come within the scope of the exclusion, provided the cost of replacing the component falls below 20 percent of the replacement value of the process unit of which the component is a part, the replacement does not change the unit's basic design parameters, and the unit continues to meet enforceable emission and operational limitations.

Our new equipment replacement approach will allow owners or operators to replace components under a wider variety of circumstances than they have been able to do under our prior RMRR approach. It also provides more certainty both to source owners or operators who will be able better to plan activities at their facilities, and to reviewing authorities who will be able better to focus resources on other areas of their environmental programs rather than on time-consuming RMRR determinations. The effect should be to remove disincentives to undertaking RMRR activities falling within the rule, thereby enhancing key operational elements such as efficiency, safety, reliability, and environmental performance. For example, we anticipate that improved safety and reliability will result in more stable process operations and reduce periods of startup, shutdown, and malfunction and the increased emissions usually associated with them. Accordingly, we believe the rule will promote the central purpose of Title I of the CAA, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." CAA section 101.

We note that we continue to believe that our prior narrower and entirely case-by-case approach to the RMRR exclusion was consistent with the relevant language of the CAA and a reasonable effort to effectuate its policies. At the same time, we also believe that the final rule's categorical exclusion of certain replacement activities and the broader definition of RMRR on which that exclusion is premised are likewise consistent with the statute's language and represent a better accommodation of the statute's twofold ends. We therefore have decided to adopt the final rule.

C. Process Used To Develop This Rule

In the 1992 "WEPCO Rule" preamble, we declared our intent to issue guidance on the subject of RMRR. In 1994, as an outgrowth of meetings with the Clean Air Act Advisory Committee, we

developed, for discussion purposes only, a preliminary draft that presented possible ways of how RMRR could be defined. We received a substantial volume of comments on this document. We subsequently decided not to include this preliminary draft approach in our 1996 NSR proposed rulemaking.

In 2001, the President's National Energy Policy directed EPA in consultation with the Department of Energy (DOE) and other Federal agencies to review the impact of NSR on investment in new utility and refinery generation capacity, energy efficiency and environmental protection. Our Report to the President illustrated the problems associated with our prior case-by-case approach to identifying RMRR activities and underscored the advantages of establishing an objective bright-line approach for administering the RMRR provision.

We held conference calls with various stakeholders during October 2001 (including representatives from industry, State and local governments, and environmental groups) to discuss new ideas that were raised as to how the RMRR provision might be improved. The proposed RMRR rule reflected many of the ideas discussed in those meetings. Today's final rule on the equipment replacement provision is based on careful consideration of comments received on the proposed RMRR rule (67 FR 80920, December 31, 2002), where we sought comment on all aspects of our proposed approaches. Today's rule represents final action on only one part of what we proposed in December 2002—the equipment replacement provision. We have decided, for now, not to take final action on the proposed annual maintenance, repair and replacement allowance approach.

D. What We Proposed

The RMRR proposal offered for comment two cost-based approaches for determining what constitutes routine maintenance, repair, and replacement. Under the proposal, facilities could have relied on a facility-wide annual maintenance, repair and replacement allowance and/or an equipment replacement cost threshold to determine whether major NSR requirements were triggered by performing plant maintenance, repair and replacement activities. The proposal additionally outlined two options based on the capacity and age of a facility. We solicited comment on all aspects of the proposed approaches as well as any other viable option for clarifying the term "routine maintenance, repair, and replacement." We took public comment

on the proposed rule until May 2, 2003—120 days following publication in the **Federal Register**.

Under the "annual maintenance, repair and replacement allowance," an annual maintenance cost allowance would be established for each industrial facility based on an industry-specific percentage. For the percentage, we considered using the Internal Revenue Service "Annual Asset Guideline Repair Allowance Percentages" (AAGRAP), which for years has been used as an integral part of an exclusion under the New Source Performance Standard (NSPS) program. A multi-year allowance approach, in addition to the annual approach, was also offered for consideration in the proposal.

Safeguards were proposed to ensure that the types of activities undertaken under the annual allowance are not activities that should be subject to greater scrutiny. These safeguards include: (1) No new unit may be installed; (2) no unit may be replaced in its entirety; and (3) changes may not cause an increase in the short-term emission rate of any regulated NSR pollutant.

Under the "equipment replacement provision," or ERP, we proposed to streamline the process for determining if major NSR permitting requirements apply to replacement of existing equipment with identical new equipment or with functionally equivalent equipment. Per-replacement-of-component(s) thresholds, potentially up to 50 percent of the cost of replacing the process unit, were suggested by the proposal. As long as the threshold was not exceeded and the basic design parameters remained unchanged, the activity would be considered RMRR under this approach.

Under the proposal, all activities that fell within the annual maintenance, repair and replacement allowance or the equipment replacement threshold and that met all the other criteria for these provisions would be considered RMRR without further review. Activities that were unable to be accommodated under the annual maintenance, repair and replacement allowance or the equipment replacement threshold could still qualify for the RMRR exclusion after a case-by-case review in accordance with current rules.

We solicited comments on all aspects of our RMRR proposal.

III. Equipment Replacement Provision

A. Overview and Justification for Today's Final Action

Today, we are revising certain provisions of the major NSR program by