

finalizing the equipment replacement provision (ERP) to specify activities that will automatically qualify for the RMRR exclusion. This rule is effective on December 26, 2003. At this time, we are not taking action on our proposed annual maintenance, repair and replacement allowance approach.

Although many commenters requested that we further clarify the case-by-case approach for determining whether an activity is RMRR, we are not taking action on this suggestion at this time. We are still considering what, if any, changes should be made to that policy. In the meantime, the case-by-case approach will remain available for the owner or operator of a source to use as an alternative and/or supplement to today's ERP.

Under today's rule, an activity (or aggregations of activities) can qualify for the ERP if: (1) It involves replacement of any existing component(s) ³ of a process unit with component(s) that are identical or that serve the same purpose as the replaced component(s); (2) the fixed capital cost of the replaced component(s), plus costs of any activities that are part of the replacement activity (e.g., labor, contract services, major equipment rental, and associated repair and maintenance activities), ⁴ does not exceed 20 percent of the current replacement value of the process unit; and (3) the replacement(s) does not alter the basic design parameters of the process unit or cause the process unit to exceed any emission limitation or operational limitation (that has the effect of constraining emissions) that applies to any component of the process unit and that is legally enforceable.

Today's final rule specifies the procedures by which the owner or operator of a source selects the basic design parameters for steam electric generating facilities and for other types of process units. Specifically, for steam electric generating facilities, we have clarified our proposed approach by specifying maximum hourly heat input and fuel consumption rate ⁵ as basic design parameters. We are also allowing owners or operators of steam electric generating facilities the option to select

a pair of parameters based on the process unit's output—more specifically, maximum hourly electric output rate or maximum steam flow rate—as an alternative to the previously proposed input-based parameters. Likewise, we are retaining our proposed approach of specifying maximum rate of fuel or material input for other types of process units, but we also allow you to use maximum rate of heat input, or maximum rate of product output if you prefer an output-based basic design parameter. In addition, we allow you to propose an alternative basic design parameter(s), if the above options are inappropriate for your process unit.

We are not specifically defining the basis for determining the replacement value of a new process unit. Instead, the final rule provides you with the flexibility of using any of the following: (1) Replacement cost; ⁶ (2) invested cost, adjusted for inflation; (3) the insurance value, where the insurance value covers complete replacement of the process unit (rather than, for example, lost revenue replacement); or (4) another accounting procedure to establish a replacement value of the process unit if such accounting procedure is based on Generally Accepted Accounting Principles (GAAP). The GAAP are the conventions, rules and procedures that define accepted accounting practice for recording and reporting financial information, including broad guidelines as well as detailed procedures. The basic doctrine was set forth by the Accounting Principles Board of the American Institute of Certified Public Accountants, which was superseded in 1973 by the Financial Accounting Standards Board.

If you choose to use options 3 or 4 to determine the replacement value for a particular process unit, you must send a notice reflecting your decision to your reviewing authority. The first time that an owner or operator submits such a notice for a particular process unit, the notice may be submitted at any time, but any subsequent notice for that process unit may be submitted only at the beginning of the process unit's fiscal year. You must continue to use the same basis to evaluate any additional activities that you undertake on that process unit within that same fiscal year. If you have provided notice of using either option 3 or 4, then the reviewing authority will assume that the same method will be used for subsequent fiscal years unless you send

a notice to them declaring your intent to use another method. In the absence of providing any notification to your reviewing authority, you must use option 1 or 2.

The final rules also set forth a definition of process unit, specifically delineate the boundary of the process unit for certain specified industries, and define a functionally equivalent replacement. A more detailed discussion of these requirements and our rationale for this action is contained in other parts of this preamble section.

Today's final rules are designed to allow you to engage in activities that facilitate the safe, reliable and efficient operation of your source. We believe that today's final action broadens the major NSR program exclusion for equipment replacements and provides you with additional certainty as to what equipment replacement activities qualify for the RMRR exclusion. By adding certainty to the process, we are removing the disincentives to undertaking routine equipment replacements and promoting proper operational planning to facilitate safe, reliable and efficient operations. When an activity qualifies for the ERP, it will be considered RMRR and excluded from major NSR without regard to other considerations. In many cases, we believe that maintaining safe, reliable and efficient operations will have the corresponding environmental benefit of reducing the amount of pollution generated per product produced. The final rules also will reduce the resource burden on reviewing authorities resulting from implementation of the existing, case-by-case process for determining RMRR. In these respects, the final rules are consistent with the central purpose 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.

B. What Is an Identical or Functionally Equivalent Replacement and Why Should Such an Activity Be Considered RMRR?

We proposed to exclude the replacement of existing equipment with identical or functionally equivalent components. As we observed at the time of our RMRR proposal, we believe that most identical and functionally equivalent replacements are necessary for the safe, efficient and reliable operations of virtually all industrial operations; are not of regulatory concern; will improve air quality (e.g., by decreasing startup, shutdown, and malfunctions); and thus should qualify

³ For the sake of clarity, we want to be clear that the term "component" is meant to be applied broadly and read broadly to include replacements of both large components, such as economizers, reheaters, etc. at a boiler, as well as small items, such as screws, washers, gaskets, etc.

⁴ We note that certain ancillary costs incurred during a given replacement activity should not be part of the replacement activity, such as replacement power that must be purchased during the maintenance shutdown of an electric utility.

⁵ Actually proposed as "fuel consumption specifications."

⁶ Replacement cost can be either an estimate of the fixed capital cost of constructing a new process unit or the current appraised value of the process unit.