

easily administered line between equipment replacements that categorically do not require a permit and major plant refurbishing which will result in increased emissions. For pieces of equipment used at industrial facilities, most manufacturers have well-established procedures for the inspection and replacement that are part of the regular maintenance necessary to provide for the equipment's safe, efficient and reliable operation. Some of these replacements are large in terms of cost and infrequent, but all are necessary to maintain the safe, efficient and reliable use of the process unit. We believe it is important to allow for these replacements provided that certain safeguards are in place, as discussed below.

We disagree with suggestions from commenters that the time period between activities, standing alone, provides an appropriate or clear distinction between activities that should be permissible under the RMRR exclusion and those that should not. In fact, some components wear out every year, while others wear out every 20 years. Nevertheless, both types of changes should fall within the ERP of the RMRR exclusion because both allow the facility to operate as designed. By not imposing a time limitation, the ERP allows replacement activities to be driven by consideration of economic efficiency rather than artificial regulatory constraints.

We disagree with commenters who expressed particular concern about functionally equivalent replacements. We continue to believe such activities should be encouraged and should qualify as RMRR. Even though a functionally equivalent component varies in some respects from the replaced component, we feel the most important factor to consider is whether the replacement will serve the same purpose as the replaced component. We acknowledge that a functionally equivalent replacement can result in an increase in efficiency and, consequently, productivity. In fact, one of our goals is to promote such outcomes. However, we believe that the basic design parameter safeguard is appropriate to assure that the ERP only automatically excludes from major NSR functionally equivalent replacements that do not result in a significant change to the fundamental characteristics of the process unit.

We note that the two local programs in California that exclude the replacement of equipment with identical equipment also allow the replacement of equipment with functionally equivalent equipment

without considering such action to be a modification. Due to local air quality considerations, the local programs establish minimum pollution control requirements that are imposed in some circumstances when functionally equivalent equipment replacements occur. Nothing in today's rule would prevent a State or local program from imposing additional requirements necessary to meet Federal, State or local air quality goals.

After reviewing the comments on our proposal, we have decided to promulgate what we proposed in December 2002 for the RMRR equipment replacement provision with relatively minor changes. We decided to include another safeguard in addition to those we proposed in order to appropriately constrain the meaning of the term "functionally equivalent." The additional safeguard is that an excluded replacement activity cannot cause the process unit to exceed any emission limitation or operational limitation (that has the effect of constraining emissions) that applies to the process unit and that is legally enforceable.

Thus, today's final rule allows you to categorize identical and functionally equivalent equipment replacements as RMRR if the fixed capital cost of such replacement plus the cost of repair and maintenance activities that are part of the replacement activity does not exceed 20 percent of the replacement value of the process unit, and if the replacement does not alter a basic design parameter 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 the process unit.

C. What Cost Limit Has Been Placed on the Equipment Replacement Approach?

The next concept presented in the proposal is the cost-based limitation on the scope of the ERP. The purpose of this threshold is to distinguish between those equipment replacement activities that should automatically qualify as RMRR without further consideration and those activities that should undergo case-specific consideration. This concept is akin to the long-established reconstruction provision under the NSPS program. For the reasons explained below, we have decided to establish a 20-percent cost threshold under the ERP.

We believe a similar bright-line rule that would obviate the need for case-by-case review under our multi-factor test of appropriate categories of equipment replacements would be extremely useful in addressing many of the problems that

we have identified with the current operation of the NSR program. Such a rule would be particularly useful in avoiding the uncertainty and delay, and consequent postponed or foregone equipment replacements, that our multi-factor case-by-case review induces. For example, our RIA indicates that it takes a year, on average, to obtain a determination whether a proposed replacement is routine. That kind of delay obviously creates perverse disincentives to refrain from equipment replacements and instead repair existing equipment or find some other solution.

This is the kind of problem that classically leads agencies to fashion bright-line tests to provide greater regulatory certainty and efficiency. Moreover, because the kind of disincentives that give rise to this concern operate largely by economic means, prompting sources to take one course of action (cut back on productive equipment replacement) rather than another (replace the equipment and incur the costs of delay, as well as potentially the costs of installing state-of-the-art controls), we think a cost-based threshold is a reasonable basis on which to create such a bright-line rule.

In the proposal, we observed that it may sometimes be difficult to determine where to draw the line between an activity that should be treated as an excluded replacement activity and one that should be viewed as a physical change that might constitute a major modification, when the replacement of equipment with identical or functionally equivalent equipment involves a large portion of an existing process unit. We solicited comment on a range of equipment replacement cost thresholds such as one based on the NSPS program. Under the NSPS program, when the cost of a project at an existing affected facility exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new unit (that is, the current capital replacement value of the existing affected source), then the source must notify and provide information to the permitting authority. After considering a range of factors, including the cost of the activity, the estimated life of the facility after the replacements, the extent to which the replaced equipment causes or contributes to the emissions from the source, and any economic or technical limitations on compliance with the NSPS, the reviewing authority