

program—and the RMRR provision in particular—has in fact resulted in delay or cancellation of activities that would have maintained and improved the reliability, efficiency, and safety of existing energy capacity. The primary purpose of today's rule is to rectify this problem. Thus, to the extent the activities addressed by ALA qualify for the ERP, we now believe that such activities, if conducted in the future, should be excluded from major NSR.

A final factor that we believe supports our selection of a 20 percent threshold is the cost of installing state-of-the-art controls on existing units. There is obviously no single answer to the question of at what point that cost becomes the deciding factor in an owner's decision whether to replace a piece of equipment and incur that cost, since much will depend on the rate of return on the investment. Nevertheless, we think it is reasonable to assume that if the cost of the controls is greater than the cost of the replaced equipment, it is likely to operate as a substantial deterrent to replacing the equipment at issue. That is likely to be the case with respect to electric utilities if we set the threshold below 20 percent, which represents the approximate cost of retrofitting existing plants with state-of-the-art controls. The equation is similar for industrial boilers. Notably, those sectors represent a substantial fraction of the emissions potentially subject to the NSR program. While the relative costs of air pollution controls in other industries vary more widely than the costs for utility and industrial boilers, we nevertheless believe that the costs and technical issues associated with retrofitting air pollution controls factor significantly into equipment replacement decisions.

D. What Will Be the Basis of Applying the 20-Percent Threshold?

In the proposal, we solicited comment on whether implementing the ERP on a per-activity basis or on some other reasoned basis, such as applying the percentage to components that are replaced collectively over a fixed period of time, may be more workable.

Many commenters stated that the ERP should be implemented on a per-activity (or aggregation of activities) basis. Two of the commenters cited longstanding NSR precedent as the basis of their comments, while two other commenters relied on NSPS precedent. Another commenter thought the per-activity approach would be less confusing than summing activities over a fixed period of time. Other commenters believed the equipment replacement threshold

should in fact be applied on a 5-year rolling average.

We have decided to apply the percentage threshold on a per-activity (or aggregation of activities) basis. This is consistent with how major NSR has been applied in the past and will continue to apply in the future, with the exception of those sources which establish a PAL. The major NSR program is a preconstruction program that requires applicability to be determined for a given activity at a facility and, as necessary, permitting to occur prior to the time activities are commenced. The major NSR program also requires applicability to be determined, in the first instance, based on an assessment only of the parts of a facility involved in the activity. A per-activity basis works well with this approach. We are not going final with a "component-by-component" approach that we solicited comment on through our RMRR proposal.

There would be obvious problems if we chose any of the other approaches suggested in the proposal or suggested by commenters (for example, annual basis or 5-year rolling average). One of the primary concerns with applying the percentage to activities performed over a span of time is that we would be restructuring the major NSR program to operate based on after-the-fact determinations. This raises the difficult question of what happens under this type of approach if you learn after commencement of an activity that it does not qualify under the ERP. This situation is largely avoided by the per-activity approach that we are establishing in today's rule.

It should be noted that activities that are related must be aggregated under the ERP, in the same way as they would have to be aggregated for other NSR applicability purposes. Under our current policy of aggregation, two or more replacement activities that occur at the same time are not automatically considered a single activity solely because they happen at the same time. For example, a steam turbine rotor replacement project and a boiler tube replacement project would not be aggregated simply because they occur during the same maintenance outage and on the same process unit. Further inquiry into the nature of the activities and their relationship to each other is needed before deciding whether the activities must be aggregated under NSR. Also, non-replacement activities that are part of a larger replacement activity should be included when calculating costs for a replacement activity against the capital cost threshold.

E. What Basic Design Parameters Are Being Established To Qualify for the Equipment Replacement Provision?

In the proposal, equipment replacements were only eligible for the ERP if they did not change the basic design parameters of the process unit. We proposed that maximum heat input and fuel consumption specifications for EUSGUs and maximum material/fuel input specifications for other types of process units are basic design parameters. We solicited comments on limiting the eligibility of the ERP this way and on the basic design parameters we proposed.

Several commenters expressed concerns with either the use of these specific parameters, or the restriction of the regulated community to only this set of design parameters. Other comments centered around an inconsistency in how EPA has accounted for efficiency in the basic design parameter safeguard. The commenters stated that, while EPA stated in the proposed preamble that efficiency is not a basic design parameter, the basic design parameter safeguard, as proposed, has the potential to bar equipment replacements that achieve significant gains in efficiency.

Commenters from all sides supported EPA's approach to handling activities intended to improve an affected process unit's performance beyond its basic design parameters. Commenters asserted that these actions would not fall within the RMRR exclusion. Commenters from the gas transmission industry concurred and amplified this concept, stating that an engine that is "uprated" at the time of overhaul should not be excluded from major NSR under the RMRR exclusion.

We recognize that the proposed basic design parameters are inconsistent with some industry conventions, and that we should allow for industry-specific flexibility or specify additional source category-specific parameters. For example, for natural gas transmission compressor stations, commenters explained that brake horsepower is the conventional design capacity parameter. We received similar comments from other industries, including cement and surface coaters, who objected to limiting their facilities to the proposed basic design parameters. Accordingly, we have decided to provide flexibility by providing a menu of choices from which the owners or operators may select and also by allowing for owners or operators to propose alternative basic design parameters to their reviewing authority which would then be made legally enforceable.