

additional, more detailed supporting information in our final RIA and our response to comments document, both of which can be found in the docket for today's action.

K. Consideration of Other Options

In addition to the cost-based approaches that we proposed, we also asked for comment on age-based and capacity-based approaches, and any other viable option for addressing RMRR.

1. Annual Maintenance, Repair and Replacement Allowance

We are not taking action on the proposed Annual Maintenance, Repair and Replacement Allowance option for the RMRR exclusion, and therefore public comments on this option are not addressed at this time. We will address comments on our proposed Annual Maintenance, Repair and Replacement Allowance if and when we take final action on that proposal.

2. Capacity-Based Option

As mentioned above, we considered the alternative option of developing an RMRR provision based on the capacity of a process unit. Under such an approach, an owner or operator could undertake any activity that does not increase the capacity of the process unit. Basing RMRR on capacity has appeal for several reasons. For starters, an objective of RMRR is to keep a unit operating at capacity and/or availability. In addition, the linkage between capacity and environmental impact is more apparent than that between cost and environmental impact. Finally, this type of approach might, in principle, be easier to use before beginning actual construction than some of the cost-based approaches.

Several commenters were concerned with defining the capacity of a process unit. Capacity may be defined based on input or output. Nameplate capacity of a process unit may vary greatly from the capacity at which the process unit may be able to operate. It may be more appropriate in some industries to measure capacity based on input while in others on output. Commenters felt that a capacity-based approach would not be workable at complex manufacturing sources, because "capacity" as a useful shorthand term for the processing capability correlates exactly only with a historical feed or product slate no longer available or made. A number of commenters supported a capacity-based option, generally indicating that a capacity-based option would be simpler and less

burdensome to use than the other proposed approaches.

Another large concern of commenters was that a capacity-based approach could prevent facilities from performing activities that make the facilities more efficient. RMRR provisions need to include some form of the other approaches to account for energy efficiency projects at utilities, which could increase output capacity (*i.e.*, production) without necessarily increasing heat input or fuel consumption. Some commenters noted that maximum hourly emissions is a more appropriate surrogate for a change in capacity, because it is consistent with existing NSPS procedures and with averaging periods for ambient air quality monitoring and standards.

We agree that an appropriate capacity-based approach would have to be tailored to various types of sources, with capacity based on input for some and on output for others. As an example, in a review of promulgated and proposed Maximum Achievable Control Technology standards, six of eleven standards measured capacity based on process unit output while five standards based capacity on input. In fact, the NSPS exclusion for increases in production rate at 40 CFR 60.14(e) originally was dependent upon the "operating design capacity" of an affected facility. In proposed revisions to the NSPS program published on October 15, 1974, we state (39 *FR* 36948):

"The exemption of increases in production rate is no longer dependent upon the "operating design capacity." This term is not easily defined, and for certain industries the "design capacity" bears little relationship to the actual operating capacity of the facility."

We also agree that a capacity-based approach has its limitations, as described by the commenters. We have concluded that the ERP eliminates the need to implement the capacity based approach. We have decided not to finalize a capacity-based approach.

3. Age-Based Option

Under our proposed age-based approach, any process unit under a specified age could undergo any activity that does not increase the capacity of a process unit on a maximum hourly basis without triggering the requirements of the major NSR program. However, the activities could not constitute reconstruction of the process unit; that is, their cost could not exceed 50 percent of the cost of a replacement process unit. The age of the process unit would likely be in the range of 25–50 years. We also proposed that the owner or operator would have to become a

Clean Unit as defined at 40 CFR 51.165(c)(3), 51.166(t)(3), and 52.21(x)(3), once the age of a process unit exceeds the age threshold.

Such an approach would provide an owner or operator a clear understanding of RMRR for an extended period of time. It also may provide the owner or operator greater flexibility than under the current system for a limited period of time. Like the capacity-based approach, this approach would, in principle, allow for a fairly simple preconstruction determination of applicability.

Very few commenters expressed any interest in developing this type of approach. Their concerns centered around defining capacity and establishing the age cut-off (because the useful life of equipment is difficult to establish and may vary greatly). Other concerns raised by commenters were that some of the activities that would be allowed at newer sources do not fit within any ordinary meaning of RMRR and some of the activities that would be forbidden at older facilities would come within that meaning, and also that some sources may consciously, and appropriately, engage in aggressive RMRR as a method of maximizing the life span of its process units, and an age-based approach would discriminate against them.

One commenter stated that EPA should establish a normal lifetime, tailored to each industry, beyond which industry would need to install BACT or shut down. This type of approach would obviously require a substantial amount of time and analytical effort.

The age of a source alone is not a legitimate reason to require the addition of pollution control equipment. Age has no direct bearing on a unit's environmental impact; some facilities maintain equipment better than others. We have decided not to promulgate an age-based approach. We have several basic concerns with this approach that we have not been able to reconcile. We also believe that the equipment replacement approach largely addresses the commenters' concerns regarding the age-based approach.

Thus, we have decided not to finalize a rule using this approach.

L. Specific List of Excluded Activities

Several commenters supported the development of lists of activities that are considered RMRR; some of these commenters also supported developing lists of activities that do not qualify as RMRR. Commenters suggested various ways in which such lists could fit into the overall RMRR program. We are concerned, however, that such a list