

We have decided to continue to allow the owner or operator of a major stationary source (you) to use the actual-to-projected-actual applicability test to determine whether installing a replacement unit results in a significant emissions increase. However, as we reconsidered this issue and reviewed comments, we found one commenter that recommended that EPA include a definition of "replacement unit" in the regulations. The commenter asked that this definition describe how the replacement unit may differ from the replaced unit. The commenter also recommended that we indicate that the replaced unit must be removed from the site or rendered permanently inoperable.

We believe that the current rules, as supplemented by the discussion in the December 2002 preamble, are self-implementing for replacement units. Nevertheless, we agree with the commenter that a definition of "replacement unit" would render implementation easier. Thus, today we are adding regulatory language to further clarify our intentions regarding replacement units. Today's action revises the definition of "emissions unit" to clarify that a replacement unit is considered an existing emissions unit (e.g., § 51.166(b)(7)(ii)) and therefore is eligible for the actual-to-projected-actual test for major NSR applicability determinations.

In addition, today's rule revisions add a definition of "replacement unit" that codifies longstanding policy and practice. In the preamble to the 1992 WEPCO rule, we first stated that we would "consider a unit to be replaced if it would constitute a reconstructed unit within the meaning of 40 CFR 60.15," which is the section of the New Source Performance Standards (NSPS) General Provisions that governs reconstruction. See 57 FR 32323, column 1. We have adopted this threshold in today's rule, by defining "replacement unit" to include reconstructed units, as well as emissions units that completely take the place of an existing emissions unit. See, e.g., § 51.166(b)(32)(i).

We note that we have never considered "replacement units" to include replacements that significantly change the nature of the replaced unit; it is this inherent limitation that makes the application of the actual-to-projected-actual applicability test appropriate. It is reasonable to compare the baseline actual emissions from the replaced unit to the projected actual emissions of the replacement unit because the units are effectively the same existing emissions unit. Thus,

consistent with the recently finalized equipment replacement exclusion provisions, the limiting principle here is that the replacement unit must be identical or functionally equivalent and must not change the basic design parameters of the affected process unit (e.g., for EUSGUs this might mean heat input and fuel consumption specifications). See, e.g., §§ 51.166(b)(32)(ii) and (iii). We also believe, however, that we need not and should not treat efficiency as a basic design parameter, as we do not believe major NSR was intended to impede industry in making energy and process efficiency improvements. We believe such improvements, on balance, will be beneficial both economically and environmentally.

We also believe that it has always been implicit in the concept of a replacement unit that the replaced unit must cease operation. Today's rule makes this principle explicit by requiring you to remove or permanently disable the replaced unit, or take a permit condition to permanently prohibit its operation. In general, if you bring the replaced unit back into operation, it must be treated as a new emissions unit, to which the actual-to-potential emissions test applies. See, e.g., § 51.166(b)(32)(iv).

Finally, today's rule spells out that you cannot generate an emissions reduction credit from emissions reductions that are attributable to the shutdown of the replaced emissions unit. See, e.g., § 51.166(b)(32). This provision addresses concerns about the possible double-counting of emissions reductions that could otherwise occur. Thus, if you use the baseline actual emissions of the replaced unit when applying the actual-to-projected-actual emissions test to measure the emissions increase resulting from the replacement unit, you cannot subsequently take credit for the emissions reductions that occur when you shut down the replaced unit. However, this provision is not intended to prevent you from generating creditable emissions reductions through other activities at the replacement unit. For example, you may be able to generate an emissions reduction credit if you reduce emissions by installing an inherently less-polluting replacement unit and accept an enforceable emission limitation that is lower than the baseline actual emissions of the replaced unit. Such an emissions reduction would be creditable if all other criteria for generating such credit are met.

2. Emission Units for Which You Began Actual Construction After the PAL Baseline Period

We have decided to retain the calculation method that uses potential-to-emit (PTE) to determine the baseline actual emissions for an emissions unit for which you began actual construction after the 24-month PAL baseline period when establishing a PAL. As we reconsidered this issue and reviewed comments, however, we decided it was appropriate to clarify that this method of calculation applies only to emissions units initially constructed after the PAL baseline period.

As reflected in the July 30, 2003 **Federal Register** notice, our intent was to limit the use of PTE to emissions units that were not in existence during the baseline period. We explained in the July notice that we included this provision, and the provision requiring the emissions of shut down units to be subtracted from the PAL level, "in recognition that the set of emissions units at your source at the time of PAL permit issuance may be different from the set of emissions units that existed during the baseline period. You may have constructed additional emissions units, permanently shut down previously existing emissions units, or both." See 68 FR 44625, column 3.

However, in providing for the inclusion of PTE for some units, the language of the rule referred only to "units on which actual construction began" after the PAL baseline period. See, e.g., 40 CFR 52.21(aa)(6). "Construction" is defined as "any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions." See, e.g., 40 CFR 52.21(b)(8). Because the definition of "construction" encompasses modifications, we are concerned that, in the future, there might be confusion regarding the intended scope of this provision. It was not our intention to extend this provision to units that merely undergo a modification following the baseline period. Therefore, we are changing the rule language to explicitly exclude such units.

B. Remaining Issues in Petitions for Reconsideration

We deny the petitioners' requests for reconsideration on the remaining issues raised in the petitions, because they have failed to meet the standard for reconsideration under section 307(d)(7)(B) of the CAA. Specifically,