

**FACT SHEET**  
**Prevention of Significant Deterioration: Final Rule to Address**  
**Emissions of Nitrogen Oxides**

**Action**

- On September 29, 2005, the Environmental Protection Agency (EPA) issued a final rule retaining the existing system for minimizing the impact of nitrogen oxides (NO<sub>x</sub>) emissions in areas with air quality that meets EPA's National Ambient Air Quality Standards (NAAQS).
- In addition to improving air quality in areas throughout the country, the Clean Air Act addresses the need to allow growth while maintaining clean air in areas that are already clean. This Clean Air Act program, known as the Prevention of Significant Deterioration (PSD) program, accomplishes this by limiting emissions of air pollutants so that significant deterioration of air quality will not occur.
- "Significant deterioration" is defined as the maximum allowable pollutant concentration increase - also known as an "increment" - above an existing baseline concentration for an area. An increment is established for areas (e.g., counties) that states designate as attaining the NAAQS. Emissions increases that cause the increment to be exceeded for a given pollutant are not permitted. The increments for emissions of the various oxides of nitrogen are expressed as concentrations of nitrogen dioxide (NO<sub>2</sub>).
- While the final rule does not modify the existing increment system for NO<sub>2</sub> it does recognize that states may choose to utilize an alternative approach. The state must demonstrate that an alternative program satisfies Clean Air Act requirements and prevents significant deterioration from emissions of nitrogen oxides (NO<sub>x</sub>).
- By adopting and implementing an alternative program, participating states would no longer require new and modified sources to undergo certain case-by-case emissions impact analyses under the PSD program when applying for construction permits.
- In February 2005, EPA proposed to allow states that choose to implement a federally administered cap and trade program for sources of NO<sub>x</sub> - such as the Clean Air Interstate Rule - to rely on those emissions reductions to prevent significant deterioration of NO<sub>x</sub> air quality. EPA is not taking final action on that proposal in this rule.
- This rule does not finalize the emissions inventory-based planning program proposed in February of this year.

**Background:**

- The Clean Air Act provides for the protection of air quality in clean air areas of the country. One approach for protecting air quality in these areas is the use of "increments." Increments are measured in terms of an air quality concentration of the pollutant (micrograms of

pollutant per cubic meter), and they limit the amount of degradation of air quality in clean air areas.

- The 1977 Act established specific numerical increments for particulate matter and sulfur dioxide. For the other principal pollutants, the Act provided EPA the authority to establish increments or other measures "at least as effective" as the increments to prevent significant deterioration of air quality.
- EPA promulgated PSD regulations for NO<sub>x</sub>, including increments for NO<sub>2</sub>, in 1988.
- As part of the permitting process, new and modified industrial facilities must evaluate the impact of their emissions in a clean air (PSD) area to demonstrate that they will not cause or contribute to a violation of any national ambient air quality standard or degrade the air beyond the level allowed by PSD increments.
- Environmental Defense (ED) challenged EPA's 1988 regulations, claiming that the NO<sub>2</sub> increments were inadequate for protecting against adverse effects and that EPA failed to provide a comprehensive assessment of the statutory criteria governing the establishment of new increments. ED claimed, for example, that the statute does not limit development of increments to only the form of pollutant and averaging periods used for the national air quality standards.
- In 1990, the U.S. Court of Appeals remanded the matter back to EPA to develop an interpretation of the section of the Clean Air Act that considers the criteria previously overlooked by the Agency, and if necessary take new evidence and modify the 1988 regulations.
- In 2003, ED petitioned the Court asking that EPA be ordered to take the actions mandated in 1990 by the Court.
- On November 11, 2003, the Court executed a settlement between EPA and ED. EPA agreed to propose new rules by September 30, 2004 and final rules by September 30, 2005 to comply with the original Court remand order.
- EPA entered into a joint stipulation with ED to extend the Administrator's signature date for our proposal to February 14, 2005. EPA used the additional time to respond to concerns raised by ED, by considering alternatives to increments (as described above) for meeting the objectives of the statutory PSD program for NO<sub>x</sub>.
- EPA issued its proposed decision for public comment in the Federal Register on February 23, 2005 at 70 FR 8880. We received comments from the general public as well as from industry, State and local air pollution control agencies, Tribal groups, and environmental organizations. The Agency carefully considered and responded to these comments before issuing this final rule.

### **FOR ADDITIONAL INFORMATION**

- Interested parties can download today's final rule from EPA's web site at: [www.epa.gov/nsr](http://www.epa.gov/nsr).
- The notice and technical support document are also available through the EPA's Air and Radiation Docket and Information Center (EDOCKET ID Number OAR-2004-0013 and Legacy Docket No. A-87-16) by calling (202) 260-7548 or fax (202) 260-4000. (A reasonable fee may be charged for copying.)