

FINAL RULE TO REFLECT THE COURT STAY OF EPA'S NEW SOURCE REVIEW EQUIPMENT REPLACEMENT PROVISION

FACT SHEET

ACTION

- Today, EPA submitted a final rule to the Federal Register which would revise the Code of Federal Regulations to reflect a judicial stay issued for recent amendments to EPA's New Source Review (NSR) program.
- On October 27, 2003, EPA finalized a rule under its New Source Review (NSR) permitting program to clarify what types of "equipment replacements" are exempt from major NSR requirements under the Routine Maintenance, Repair and Replacement (RMRR) exclusion. This rule is called the "Equipment Replacement Provision," or "ERP", and would have become effective on December 26, 2003.
- On November 14, parties challenging the final rule asked the U.S. Court of Appeals for the District of Columbia Circuit to stay the final ERP (i.e., prevent the rules from taking effect) until the challenges are resolved by the Court. Environmental Petitioners filed a similar request on November 17. On December 24, 2003, the Court granted those requests and issued an order to stay the effective date of the ERP.
- The purpose of this action is to make clear the effect of the stay issued by the Court on the portions Code of Federal Regulations (CFR) relating to EPA's New Source Review permitting program.
- Today's final rule adds a note to the Routine Maintenance, Repair and Replacement (RMRR) provision in the Code of Federal Regulations to indicate that the new Equipment Replacement provisions (ERP) have been stayed. We have inserted a note into each affected paragraph of the CFR explaining which portions of the rules are affected by the Court's order.
- Upon the Court completing its review or otherwise terminating the stay order, EPA will publish an additional notice in the Federal Register reflecting the termination of the stay and the status of the ERP.
- The effect of the Court's stay order keeps the RMRR provision in effect as they existed prior to the ERP amendments.

FOR ADDITIONAL INFORMATION

- Interested parties can download information on the NSR program from EPA's Web site at: www.epa.gov/nsr. EPA's Office of Air and Radiation's homepage on the Internet contains a wide range of information on air pollution programs and issues. The address is: www.epa.gov/oar/.