

MERCATUS CENTER
GEORGE MASON UNIVERSITY

REGULATORY STUDIES PROGRAM

Public Interest Comment on

**The Environmental Protection Agency's Proposed Rule on
Prevention of Significant Deterioration (PSD) and
Non-attainment New Source Review (NSR):
Routine Maintenance, Repair, and Replacement¹**

Docket ID: OAR-2002-0068

The Regulatory Studies Program (RSP) of the Mercatus Center at George Mason University is dedicated to advancing knowledge of regulations and their impacts on society. As part of its mission, RSP produces careful and independent analyses of agency rulemaking proposals from the perspective of the public interest. The Environmental Protection Agency's proposed rule, "Prevention of Significant Deterioration and Non-attainment New Source Review: Routine Maintenance, Repair and Replacement" seeks to improve the "routine maintenance, repair and replacement" exclusion of the agency's New Source Review program. RSP's comments on this proposed rule do not represent the views of any particular affected party or special interest group, but are designed to protect the interests of American citizens.

I. Background

The New Source Review (NSR) program was created under the 1977 Clean Air Act Amendments to regulate air emissions produced by newly constructed stationary sources (electric utilities, refineries, chemical plants, paper mills, automobile manufacturers, pharmaceuticals, and others) or by existing sources (built before 1977) undergoing "major modifications."² Under NSR, companies intending to build new or alter existing plants must apply to EPA for a permit and install state-of-the art technology to control emissions. The permit process is an extensive, exhaustive procedure that typically takes eighteen months to two years just to process the pre-construction permit, a long period of time to put industries with time-sensitive products on hold.

The Clean Air Act states that "routine maintenance, repair and replacement" (RMRR) of existing sources are not considered "major modifications" and therefore are exempt from

¹ This comment was prepared by consulting scholar Dana Joel Gattuso. This comment is one in a series of Public Interest Comments from Mercatus Center's Regulatory Studies Program and does not represent an official position of George Mason University.

² CAA, 42 USC 7470-7492. "Major modification" is defined as "any physical change or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under CAA." 40 CFR 51.166(b)(2)(i).

the NSR permit process. The intent was to ensure that companies were not discouraged from making necessary and routine improvements to their plants as needed to ensure their safe, reliable, and efficient operation.

The RMRR exclusion is currently one of the greatest sources of confusion—and litigation—within the NSR permit program, stemming largely from the fact that “routine maintenance, repair and replacement” is not specifically defined in the Clean Air Act. Instead, EPA makes most determinations for which activities fall within the exclusion on a case-by-case basis. This approach, however, is costly and time-consuming and fails to provide a clear and reliable test. Furthermore, since the late 1990s, EPA has adopted an increasingly narrow interpretation of the RMRR exclusion, and has sometimes applied it retroactively.

This confusion, uncertainty, and stringent application—in some cases, so stringent as to render the exclusion meaningless—discourage needed maintenance and upkeep, dissuade the adoption of improved technology, and prevent improvements to plants that would enable them to reduce air pollution and run more efficiently.

II. Proposed Rule

EPA’s proposed rule would reform the RMRR exclusion by creating two new determinations for RMRR activities that would not trigger NSR requirements. The two determinations include the following:

- 1. An Annual Maintenance, Repair & Replacement Allowance.** The allowance would represent the sum a given industry typically spends in a year on routine-like projects and activities. Stationary sources would be allowed to spend up to that sum on RMRR activities. The allowance would be calculated to equal an industry-specific maintenance percentage of the replacement cost of the source.
- 2. An Equipment Replacement Provision.** This provision would allow a facility to replace existing equipment with equipment that serves the same function or purpose as long as the replacement does not change the basic design parameters of the unit and as long as the cost of the replacement equipment does not exceed 50 percent of the replacement cost of the entire unit.

Activities that do not fall within these two approaches would be determined on a case-by-case basis under the proposed rule.³

Through these new determinations, EPA intends to 1) clarify what activities fall under the definition of RMRR, and 2) broaden the definition of RMRR to avoid unnecessarily discouraging companies from maintaining existing plants. The new determinations are based on cost-thresholds. EPA’s changes are designed to provide regulated sources with greater certainty over which activities will trigger NSR and which will be permissible to maintain the facility’s daily performance. EPA holds that these improvements, therefore,

³ 67 Fed. Reg. (referred to from here as “Proposed Rule”) 80,294.

will ensure that the operation of the nation's stationary sources are safer, more reliable, and cleaner than they would be under the existing program.

III. Reforms Needed to “Routine Maintenance, Repair and Replacement” Exclusion

A. Clarification needed

Under the NSR rule, “routine maintenance, repair and replacement” is not clearly defined.⁴ As a result, activities EPA considers to be RMRR have become a major source of confusion for stationary sources. Congress did not intend to subject every existing source's activity to the exhaustive NSR permit process.⁵ But how to determine what activities do qualify for the exemption under the rule has been one of the most problematic aspects of the NSR program.

In 1975, EPA characterized exempted maintenance activities as those that were “routine for a source category,” meaning typically or frequently performed by units within the same industry.⁶ EPA makes this determination for existing sources on a case-by-case basis, applying what it refers to as a “four-factor test” that considers the “nature, extent, purpose, frequency, and cost of the work.”⁷ EPA has also indicated in the preamble to a 1992 rulemaking that it applies a “common-sense” understanding of the activity to determine whether or not it is a “major modification.”⁸ But none of these subjective approaches have provided sufficient regulatory certainty over what activities EPA considers RMRR and what are non-routine.

Confusion and uncertainty have driven facilities to delay or forgo standard and routine activities that are essential to the plant's upkeep and to their safe, reliable, clean and efficient operation.⁹ Moreover, EPA's recent departure from its initial interpretation of the RMRR exclusion for a narrower interpretation [see next section], followed by numerous lawsuits filed against stationary sources for purported modification violations, has added to the confusion, and has further discouraged and delayed companies from properly maintaining plant operations.¹⁰

Facility operators need to know with certainty what activities will trigger NSR. Avoiding or even delaying maintenance can have dangerous, even life-threatening, consequences. At issue are aging units under enormous forces and temperature variations. Failure to replace

⁴ Proposed Rule, December 31, 2002, p. 80292. Also, 40 CFR 51.165(a)(v)(C)(1), 51.166(b)(2)(iii)(a), 52.21(b)(2)(iii)(a), and 52.24(f)(5)(iii)(a).

⁵ Proposed Rule, p. 80296. Also, see 57 Fed. Reg. 32,314; 32,316; 32,327 (1992).

⁶ 40 Fed. Reg. 58,416 (1975).

⁷ *Wisconsin Electric Power Company v. Reilly*, 893 F. 3d 901 at 906.

⁸ 57 Fed. Reg. 32,314; 32,316 (1992).

⁹ Proposed Rule, December 31, 2002, p. 80293.

¹⁰ U.S. EPA, *New Source Review: Report to the President*, June 2002, p. 9.

aging components that are exposed to extreme pressure and temperature subjects workers to unnecessary work hazards and risks.¹¹

Delays and cancellations in maintenance activities due to uncertainty also impede the efficient and clean-burning operation of the facility, with adverse effects on the environment and clean air. As the Pew Center on Global Climate Change noted in a recent study on energy policy and climate change: “Uncertainty as to whether efficiency upgrades trigger expensive Clean Air Act requirements may have discouraged some generators from undertaking efficiency improvements that could have GHG [greenhouse gas] reduction benefits.”¹²

B. “Routine maintenance” should not be applied too narrowly.

In addition to clarification, it is also important that RMRR is not too narrowly defined as this defeats the purpose of the Clean Air Act to exclude customary activities from NSR requirements. Congress never intended to subject existing facilities to the exhaustive NSR process unless they made “major modifications” that resulted in “a significant net emission increase.”¹³ Congress understood that including routine activities would discourage companies from making needed improvements and repairs. Furthermore, emissions from existing facilities are heavily regulated under other provisions of the Clean Air Act.¹⁴

Because RMRR lacks a clear definition, the exclusionary rule has been subject to varying interpretations over the past years. Up until the late 1990s, EPA had always adopted a fairly broad understanding of RMRR, basing its decision on the intent of the law not to “make every activity at a source subject to new source requirements,” nor to “discourage physical or operational changes that increase efficiency or reliability or lower operating costs, or improve other operational characteristics.”¹⁵ Prior to 1996, there were few enforcement actions filed against existing facilities for NSR violations; within the electric utility industry, there weren’t any.¹⁶

¹¹ See U.S. EPA, *New Source Review: Report to the President*, June 2002, p. 22. Also, see Statement of Ande Abbott, International Brotherhood of Boilermakers, Joint Hearing before the Senate Committee on Environment and Public Works and the Senate Committee on the Judiciary, July, 16, 2002.

¹² Pew Center on Global Climate Change, *Designing a Climate-Friendly Energy Policy: Options for the Near Term*, July 2002, p. 30.

¹³ 40 C.F.R. §§ 51.166(b)(2)(i).

¹⁴ Among these are the Acid Rain Program under Title IV of the Clean Air Act, the Maximum Achievable Control Technology (MACT) Standard, New Source Performance Standards, the 22-state NO_x “SIP Call,” the Regional Haze Program, many mobile source programs, as well as others. U.S. EPA, *New Source Review: Report to the President*, June 2002, p. 1. In fact, some of these regulations, including the Acid Rain Program, were created to address the very fact that utilities and other plants typically operate for at least 65 years without major alterations. See Electric Reliability Coordinating Council, “White Paper on New Source Review,” (<http://www.electricreliability.org/Statements/NSR-wp.htm>).

¹⁵ 57 Fed. Reg. 32,314; 32,316; 32,327 (1992).

¹⁶ United States Department of Justice, Office of Legal Policy, *New Source Review: An Analysis of the Consistency of Enforcement Actions with the Clean Air Act and Implementing Regulations*, January 2002, pp. ii-iii.

In the late 1990s, however, EPA shifted gears and, through the litigation process, applied a much more stringent interpretation of the modification rule. On November 3, 1999, in an unprecedented move, EPA issued legal proceedings against seven publicly owned utility companies and the government-owned Tennessee Valley Authority (TVA) for alleged violations of NSR's modification rule. For some of the companies, according to EPA, violations went back as far as 15 to 20 years. EPA also issued hundreds of CAA Section 114 information requests to other utility companies, refiners, and paper manufacturers, in what Attorney General Janet Reno then referred to as "one of the most significant enforcement actions in our nation's history."¹⁷

Under this revised interpretation, seemingly routine and frequently performed alterations—even when they do not increase emissions—can trigger NSR requirements. Similarly, equipment replacements have been rejected under the revised interpretation if there is any difference in the equipment being replaced, even if the difference is that the new equipment utilizes improved methods or technology and reduces emissions. As officials from EPA's enforcement office have confirmed in letters to industry representatives, this understanding of the modification rule applies to "like-kind replacements of component parts...that do not increase maximum capacity or emission rates."¹⁸ This is a stark contrast to the modification rule stipulated in the Clean Air Act that holds that even a nonroutine activity is not subject to the NSR permit process unless it yields a "significant emissions increase." Similarly, enforcement actions against plants whose activities have improved efficiency and actually *reduced* net air emissions is baffling.

Even more significant, the narrow interpretation would have a harmful effect on air quality. Because a narrow definition of RMRR would not typically motivate companies to replace old equipment with more efficient equipment, historic emission levels are likely to increase. As EPA has observed, the interpretation "might even lead to area wide emissions increases."¹⁹ Given the rapid changes in technology, the RMRR exclusion must be broad enough to allow for replacing old equipment with new equipment that—while performing the same function—utilizes new technology, encourages efficient operation, and promotes a safe work environment.

IV. Comment on Recommendations in Proposed Rule

A. Annual Maintenance, Repair & Replacement Allowance

1. Overview of Provision

This proposed provision allows firms to make changes exempted from the NSR permit process provided that the total costs of the changes do not exceed a designated annual RMRR allowance. The purpose is to provide a clear and precise exclusion for RMRR

¹⁷ Michael K. Stagg, "The EPA's New Source Review Enforcement Actions: Will They Proceed?" American Bar Association, *Trends*, November/December 2001, pp. 2-3.

¹⁸ Letter from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, EPA, to Senator James M. Inhofe, Chairman, Subcommittee for Clean Air, Wetlands, Private Property and Nuclear Safety, March 26, 1999.

¹⁹ Proposed Rule, p. 80302.

activities by tying them to a specific cost threshold. In so doing, this avoids the current subjective practice of trying to determine what precise activities are considered RMRR and what are not.

The allowance is intended to approximate the cost a plant from a specific industry typically spends on RMRR in a given year. Specifically, the annual allowance equals a determined industry-specific RMRR percentage²⁰ of the replacement cost of the facility. The percentage would estimate the portion of costs that a given industry typically spends to “maintain, facilitate, restore, or improve the efficiency, reliability, availability, or safety”²¹ of the plant. The replacement cost of the facility would estimate the total capital investment needed to replace the stationary source.

If a firm’s determined RMRR activities exceed the annual allowance, the firm removes the costliest item or items from the allowance and determines on a case-by-case basis, “in accordance with EPA’s case-by-case test,”²² if it meets the RMRR exclusion.

Activities specifically prohibited from the allowance are: 1) construction of a new “process unit;”²³ 2) replacement of a new “process unit;” and 3) any change that results in the increase in the facility’s maximum achievable hourly emissions rate of a regulated pollutant, or an emission of any regulated pollutant not previously emitted by the facility.²⁴

2. Analysis

Overall, the annual allowance approach provides much needed regulatory certainty by defining through a less subjective approach which activities fall under the RMRR exclusion. Determining RMRR activities exempted from NSR by devising a cost threshold rather than a list of acceptable or unacceptable activities avoids future legal challenges on the meaning or intent of words and minimizes the chance of future reinterpretations.

How stringent or relaxed this provision plays out naturally depends on the actual threshold that is applied. Assuming EPA adopts the threshold used by the IRS Annual Asset Guideline Repair Allowance Percentages and employed under the New Source Performance Standards (NSPS) rules, that would yield a RMRR percentage of five percent for the electric utility industry. Assuming a plant’s capital replacement cost is \$500 million, that would allow a RMRR annual allowance of \$25 million, not an outrageously excessive sum for annual plant upkeep needs.

²⁰ This would range anywhere from 0.5 percent to 20 percent, depending on the method used and the specific industry. Proposed Rule, p. 80298.

²¹ Proposed Rule, p. 80300.

²² Proposed Rule, p. 80294.

²³ Defined as “any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store a completed product.” Proposed Rule, p. 80302,

²⁴ Proposed Rule, p. 80294.

Also, by stipulating that specific activities cannot be included in the allowance,²⁵ the rule makes it quite clear what activities will not be considered for the RMRR exclusion. The provision specifically states that alterations that increase the maximum hourly emissions rate will not be considered routine. Nor will the construction or replacement of a process unit. This avoids any confusion as to what EPA considers a “major modification” and is consistent with the intent of the NSR program under the Clean Air Act.

Also commendable is the fact that this revision to the RMRR exclusion recognizes that activities considered routine should be determined on an industry by industry basis, that is that the RMRR percentage will differ from industry to industry. This makes sense since the types of activities and their costs will differ from one industry to another. It is also consistent with the Clean Air Act’s original intent to exempt maintenance activities that were “routine for a source category,” i.e. routinely performed by sources within the same industry.

However, there may be potential for regulatory uncertainty for those activities that would fall out of the annual allowance, those subject to determination on a “case-by-case” basis. How would the determination of these activities avoid the very pitfalls of the current approach? Particularly because these would be the costliest of the activities applied toward the allowance,²⁶ there might be a great degree of uncertainty as to whether they are RMRR activities or not; the less costly activities that fall within the allowance are not likely to be a “gray area” from the start. The Proposed Rule states that if the operator or owner is uncertain, he could seek an applicability determination. But, as even EPA points out in this same document, there are numerous potential problems with this approach, namely that 1) the applicability determination process is “costly and time consuming for reviewing authorities and industry alike;”²⁷ 2) owners’ or operators’ “errors” in assessing whether or not the activity is RMRR—a largely subjective approach (subject to varying interpretations, as we have seen)—can have costly and disabling enforcement repercussions; and 3) the process demands scarce resources from state and local authorities.²⁸ EPA should, therefore, revise the method for determining whether or not activities falling out of the allowance are subject to the RMRR exclusion.

Concerning the method for calculating the cost of the facility, it appears the replacement cost would be preferable to the invested cost since it may be difficult to get hold of invested cost figures for older plants. However, because there can be differing opinions in the assumptions used in figuring the replacement cost, i.e. the appropriate interest rate, installation costs, etc., the method for defining these assumptions should be carefully defined in the rule.

²⁵ That is, construction or replacement of a new “process unit,” and activities that result in the increase in maximum achievable hourly emissions rate of a regulated pollutant.

²⁶ They would be the costliest because the proposed allowance procedure would require stationary sources to exclude the costliest activities from the allowance and determine whether or not they are RMRR activities on a case-by-case basis. See Proposed Rule, p. 80295.

²⁷ Proposed Rule, p. 80293.

²⁸ *Ibid.*

B. Equipment Replacement Provision

1. Overview of Provision

This provision seeks to clarify which activities undertaken to replace components can be exempted from the NSR permit process under the RMRR exclusion. As with routine maintenance and repair, determining which replacement activities are permissible has been historically confusing and unclear for stationary sources. Replacing old worn-out parts is essential to the safety, efficiency, and reliability of the plant's operation. In many cases, these improvements—often involving technological advances—reduce air emissions. How to differentiate between these kinds of improvements and replacements that are major alterations “significantly” increasing air emissions is critical.

The proposed rule would redefine “replacement” in terms of a cost threshold representing typical replacement costs incurred within a specific industry. Specifically, a company could replace existing equipment with new equipment that is “functionally equivalent”²⁹ and does not “alter the basic design parameters of a unit”³⁰ as long as the cost of the replacement equipment does not exceed a specified threshold. That threshold would represent the amount a given industry typically spends to replace components within a unit “to promote the safe, efficient, and reliable operation,”³¹ excluding major renovations. It would equal a specified percentage of the replacement value of the process unit. If the activity failed to fall within the guidelines, it would be applied on a case-by-case test, as with the annual maintenance, repair & replacement allowance.

2. Analysis

Overall, this new definition provides clarity and regulatory certainty. Furthermore, the stipulations that replacements must serve the same purpose and cannot change the “basic design parameter” is strict enough to prevent major alterations that increase emissions but broad enough to allow for replacements of equipment failures and—importantly—replacements that utilize improvements in technology. One of the key aspects of this new definition is that improving efficiency will *not* be considered a change in the basic design parameter.³² The proposed rule makes the correct assumption that rather than increase emissions, replacements that adopt improved technology are likely to reduce emissions.

The proposed rule would compare the price of the components being replaced with the cost of replacing the production unit. While this clarification would be new to the RMRR exclusion rule, it is not new to the Clean Air Act's New Source Performance Standards (NSPS) program. The Clean Air Act specifically defines reconstruction, subject to NSPS

²⁹ Defined in the proposal as that which “serves the same purpose as the replaced component.” Proposed Rule, p. 80309.

³⁰ “Basic design parameters” are defined in the proposal as “maximum heat input and fuel consumption specifications for electric utility steam generating units, and maximum material/fuel input specifications for other types of units.” Proposed Rule, p. 80303.

³¹ U.S. EPA, “EPA Announces Improvements to New Source Review Program,” November 22, 2002, http://www.epa.gov/nsr/press_release.html.

³² Proposed Rule, p. 80312.

regulations, as “the replacement of components of an existing facility to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility.”³³ Where the capital cost of new components is lower or equal to 50 percent, replacement activities are not subject to NSPS regulations. It, therefore, makes sense to use this same threshold for the RMRR exclusion. Also, according to the NSPS definition, not allowing activity costs to exceed 50 percent of the replacement costs ensures that replacing a full production unit would not qualify for the RMRR exclusion.

V. Conclusions and Recommendations

Together, these reforms take much needed steps to improve one of the most contentious and problematic aspects of the New Source Review program—determining what activities qualify as a “routine maintenance, repair & replacement,” exempted from the daunting NSR permit process. The “safe harbor” tests outlined in the Proposed Rule would provide a greater degree of regulatory certainty so that companies would know far in advance of starting the activities what alterations would be considered RMRR and what would not. The proposed reforms, consistent with the original intent of the New Source Review program in the Clean Air Act, also would ensure that the RMRR exclusion would not be interpreted too narrowly so as to deter stationary sources from making needed repairs and routine changes and replacements that maintain the safe, efficient, and reliable operation of the plant.

Unfortunately, the proposed reforms will still deter businesses from making desirable improvements to existing plants. Almost anytime a business performs repair or replacement of its equipment, it also considers whether upgrades should be made to take advantage of new technology. In some cases these upgrades will be acceptable within the RMRR exemption that EPA has proposed; in some cases there may be upgrades of sufficient importance that a business is willing to undergo NSR. In many cases, however, upgrades that are otherwise desirable—from the perspective of business, energy efficiency, and environmental quality—will not be undertaken because they fall outside the RMRR exemption. It is not possible to accommodate every such improvement and still achieve the clarity that is needed to make the program viable.

Giving clarity to RMRR is a crucial step in reforming NSR. The proposed rule makes substantive improvements to the current regulations by defining most RMRR activity using an easily measured cost-based threshold, and removes some of the most perverse aspects of the NSR rule. In this manner, the proposed rule makes changes as best as can be expected without overhauling the New Source Review program.

However, the proposed rule—along with a final rule also introduced December 31, 2003³⁴—does not alter the overriding and inherent problems of New Source Review: that is, the program’s regulatory bias against new facilities that discourages the construction of new plants. As Brian Mannix wrote in a Public Interest Comment on EPA’s “New Source

³³ 40 CFR 60.15 (b).

³⁴ 67 Fed. Reg. 80,185.

Review 90-Day Review Background Paper,” NSR’s provisions severely regulate new constructions and “grandfather” old ones, effectively creating an economic barrier to entry. Specifically, they discourage both the construction of new facilities, and investment and modernization of existing facilities, thereby preserving the old plants and their emissions.³⁵

Reforms that would level the playing field for old and new plants (e.g., by overhauling the New Source Review program and instituting an emissions trading scheme for existing plants) are beyond the scope and intent of these comments.³⁶ But until Congress and the Administration implement widespread reforms to end the regulatory bias between new and existing plants, EPA should change the RMRR rules that apply to existing plants to enable them to operate more efficiently, safely, and reliably.

It is especially important to accommodate routine maintenance, repair, and equipment replacement in those industries where new plants simply aren’t being built. The refining industry is one such example: there have not been any refineries built since the 1970s, and since then, 75 have closed down.³⁷

The need for overhauling the New Source Review program aside, EPA should move ahead to codify these improvements to the RMRR exclusion to address one of the most problematic provisions of NSR. Both determinations presented in the proposed rule should be implemented to provide regulatory certainty, clarity, and a fair, flexible means to defining RMRR activities. The only potential problem which should be reworked is for those activities whose costs would fall out of the allowance and are to be determined on a “case by case” basis. It is not clear how this method would avoid the pitfalls of the current subjective method, and EPA should look for further opportunities to clarify and codify what activities are permissible under the RMRR exemption.

³⁵ Brian F. Mannix, *Public Interest Comment on The Environmental Protection Agency’s “New Source Review 90-Day Review Background Paper*, Mercatus Center, July 27, 2001, p. 4. <http://www.mercatus.org/article.php/71.html>

³⁶ For recommendations of broad reforms to NSR through an emissions trading scheme, see Mannix, p. 7.

³⁷ U.S. Senate Committee on Environment and Public Works, Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety, “Environmental Regulations and Energy Policy,” April 5, 2001.

APPENDIX I

RSP CHECKLIST

NEW SOURCE REVIEW CLARIFICATIONS

Element	Agency Approach	RSP Comments
1. Has the agency identified a significant market failure?	<p>EPA recognizes the perverse effects uncertainty over what activities qualify for RMRR exclusion is having on the safety, reliability, and efficiency of regulated plants’ operations.</p> <p>Grade: A</p>	<p>While not a market failure, EPA has properly identified a failure in its regulatory and enforcement process which it seeks to address with this rule.</p>
2. Has the agency identified an appropriate federal role?	<p>EPA proposes replacing the current method of determining RMRR activities with a RMRR cost threshold.</p> <p>Grade: A</p>	<p>Since the underlying problem is at the federal regulatory level, a federal role is necessary.</p>
3. Has the agency examined alternative approaches?	<p>EPA examines numerous alternative approaches.</p> <p>Grade: B</p>	<p>EPA appropriately includes numerous alternative approaches within the proposed rule, relying on the expertise of commenters, while preserving the overall goal – to provide regulatory certainty and ensure RMRR is not too narrowly defined. However, EPA should consider alternatives to the “case-by-case” approach for activities falling out of the allowance.</p>
4. Does the agency attempt to maximize net benefits?	<p>The proposed rule seeks to minimize costs and maximize benefits concerning workers’ safety, product reliability (i.e. meeting energy demand, etc.), and air quality.</p> <p>Grade: B</p>	<p>EPA correctly recognizes the economic, social, and environmental costs of the current NSR program with respect to the application of the RMRR exclusion. It is crucial that the benefits from applying the RMRR exclusion as intended by the creators of the NSR program—more safe, reliable, and efficient operations—are recognized and maximized.</p>

Element	Agency Approach	RSP Comments
5. Does the proposal have a strong scientific or technical basis?	<p>The proposed rule relies on the findings of recent reports and studies.</p> <p>Grade: A</p>	<p>Where EPA lacks expertise on detailed technical aspects, it seeks comment from experts and practitioners.</p>
6. Are distributional effects clearly understood?	<p>EPA does not directly discuss any distributional effects.</p> <p>Grade: C</p>	<p>Without needed reforms to RMRR, rising energy costs and continued risks of outages would have a particularly debilitating impact on the nation's poor.</p>
7. Are individual choices and property impacts understood?	<p>NA</p>	