

WHERE ARE WE ON NEW SOURCE REVIEW?

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AGENDA

1. WHAT COULD A NEW ADMIN CHANGE? AND HOW?
2. WHAT HAS HAPPENED WITH DURING CURRENT ADMIN?
 - POLICY/GUIDANCE
 - PUBLISHED RULES
 - ONGOING ACTIONS
3. FOCUS ON RECENT DEVELOPMENTS
 - PROJECT EMISSIONS ACCOUNTING
 - RECLASSIFICATION OF MAJOR SOURCES AS AREA SOURCES
 - COURT SPLIT ON REVIEW OF PRECONSTRUCTION PERMIT DECISIONS IN TITLE V PROCESS
 - UPDATE TO USEPA GUIDANCE DATABASES

WHAT COULD A NEW ADMIN CHANGE? AND HOW?

- Once rule is finalized, new admin would need to go through rulemaking process to change or repeal
 - Agency must follow the Administrative Procedures Act (APA)
- Congress can also take action to overturn rules
 - Congressional Review Act establishes expedited procedures for overturning regulations
 - House and Senate must pass joint resolution of disapproval and President signs
- If rule is not published “final” – new President can prevent rule from being issued
- Policy and guidance can be revoked/revised

To learn more about the regulatory process, check out—

[The Federal Rulemaking Process: An Overview](#) from the Congressional Research Service

[The Congressional Review Act](#) from Congressional Research Service

WHAT HAPPENED DURING THE CURRENT ADMIN?

Policy/Guidance

- [Actual-to-Projected Actual Emissions Applicability](#) – Pruitt Memo 12/7/2017
- [Project Emissions Accounting Under NSR](#) – Pruitt Memo 3/13/2018, then 83 FR 13745
- [Guidance on SILs for Ozone and PM2.5 in the PSD Permitting Program](#) – Memo 4/17/2018
- “Common Control” Interpretations
 - [Letter to Pennsylvania DEP re. Meadowbrook](#) 4/30/2018
 - [Letter to Wisconsin DNR re. Ameresco](#) 10/16/2018
- [Interpreting "Adjacent" for NSR and Title V Source Determinations in All Industries Other Than Oil and Gas](#) – Memo 11/26/2019
- [Revised Policy on Exclusions from “Ambient Air”](#) – Wheeler Memo 12/10/2019
- [Guidance on Plantwide Applicability Limit \(PAL\) Provisions Under NSR](#) – Memo 8/4/2020
- 10th and 5th Circuit Split Decision on Reviewing NSR Lookback During Title V
 - [PacifiCorp Hunter Power in 10th Circuit](#) & [ExxonMobil Baytown in 5th Circuit](#)

WHAT HAS HAPPENED DURING THE CURRENT ADMIN?

Final Rules

- [PSD & NNSR Project Aggregation Reconsideration](#) (83 FR 57324; 11/15/2018)
- [Final Rule on Procedures for Guidance Documents](#) (85 FR 66230; 10/19/2019)
- [Tribal NSR Oil & Gas FIP Streamlining Amendment](#) (85 FR 15279; 3/19/2020)
- [Reasonable Possibility Rule Reconsideration – Letter to NJ](#) (11/5/2019)
- [PSD & NNSR: Project Emissions Accounting Clarification](#) (85 FR 74890; 11/24/2020)
 - Effective 12/24/2020
- [Reclassification of Major Sources as Area Sources under CAA Section 112](#) (85 FR 73854; 11/19/2020)
 - Effective 1/29/2021

WHAT HAS HAPPENED DURING THE CURRENT ADMIN?

Ongoing Actions

- [Treatment of Certain Ethanol Production Facilities Under Major Emitting Facility Definition Reconsideration](#) – Reconsideration 11/6/2019
- [NSR Error Corrections](#) – Proposed Rule 12/20/2019
- [Interpretation of “Begin Actual Construction”](#) – Draft Guidance 3/25/2020
- [DRAFT Guidance for Ozone and Fine PM Permit Modeling](#) – Draft Guidance 2/10/2020
- [Treatment of Biogenic CO2 in PSD](#) – Proposed Rule to OMB 2/24/2020

RECENT RULE CHANGES

PROJECT EMISSIONS ACCOUNTING

- [PSD & NNSR: Project Emissions Accounting Clarification](#) (85 FR 74890; 11/24/2020)
 - Effective 12/24/2020
- Brief primer – Federal New Source Review
 - Preconstruction permit required prior to beginning construction of new major source or major modification of an existing major source
 - Two-step applicability procedure
 - Step 1: Determine if project results in “significant emissions increase” of regulated pollutant
 - If yes, then Step 2: Determine if there is a “significant net emissions increase” of that pollutant
 - If yes to steps 1 and 2, project triggers PSD and/or NNSR requirements
- Project Emissions Accounting rule clarifies that both emissions increases **and decreases** from a major modification can be considered in Step 1

NOTE: Check local/state regulations & definitions when looking at triggers for state-level permitting, often use PTE and do not include decreases