



***New Source Review (NSR) Program
Basics and Highlights of the Proposed
Tribal Minor NSR and Major
Nonattainment NSR Rules***

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NSR Basics

What is the purpose of this discussion about NSR?

- To gain a *better understanding* of the New Source Review (NSR) program and the Tribal minor/major NSR proposed rules including:
 - ✓ Purpose
 - ✓ Components and requirements
 - ✓ Key terms, definitions, and concepts
 - ✓ Permitting considerations
 - ✓ Delegation, public participation, and administrative and judicial review requirements
 - ✓ Timeline for final rulemaking
 - ✓ Commenting on the proposed rules

What is the purpose of the NSR program?

**To ensure environmental
protection while
allowing economic
growth!**

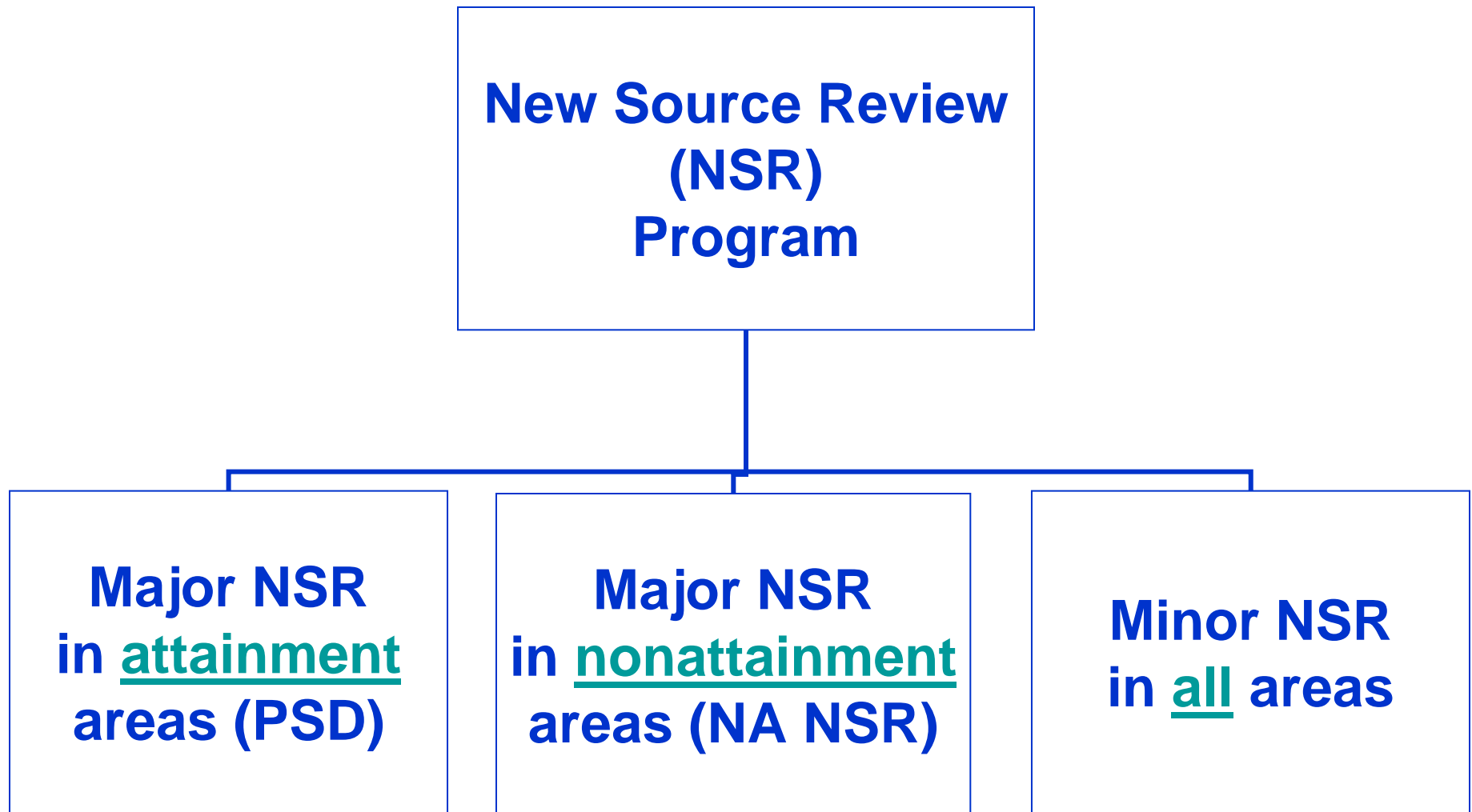
How does NSR ensure environmental protection?

By controlling increases in air emissions that could affect attainment or maintenance of the National Ambient Air Quality Standards (NAAQS), or could have other adverse effects that can occur below the levels of the standards (e.g., visibility impairment)

What are the NAAQS?

- EPA sets NAAQS for:
 - ✓ *Ozone (smog)*
 - ✓ *Carbon Monoxide (CO)*
 - ✓ *Particulate Matter (dust/soot)*
 - ✓ *Nitrogen dioxide (NO₂)*
 - ✓ *Sulfur dioxide (SO₂)*
 - ✓ *Lead (Pb)*
- For each of the NAAQS pollutants, every area of the U.S. is designated into one of the following categories:
 - ✓ *Attainment* - air quality concentrations equal to or lower than NAAQS
 - ✓ *Nonattainment* - air quality concentrations higher than NAAQS
 - ✓ *Unclassifiable* – not enough data on air quality; generally treated as attainment

What are the components of the NSR program?



What defines a major source in an attainment area?

- A source with a potential to emit (PTE) any one air pollutant greater than or equal to a threshold of:
 - ✓ 100 tons per year (tpy), if part of the 28 listed source categories
 - ✓ 250 tpy, for all other sources not part of the 28 listed source categories

PSD permits

- Main requirements:
 - ✓ Require installation of Best Available Control Technology (BACT)
 - ✓ Perform Air Quality Analysis to preserve existing clean air
 - ✓ Perform Additional Impacts Analysis
 - ✓ Special protections for national parks and wilderness areas
 - ✓ Opportunity for Public Involvement

What defines a major source in a nonattainment area?

- A source with potential to emit any one air pollutant greater than or equal to a threshold of:
 - 100 tons per year (tpy) or lower depending on the severity of nonattainment
 - No listed source categories exist for the nonattainment program as in PSD.

NA Major NSR permits

- Main requirements:
 - ✓ Require installation of Lowest Achievable Emission Rate (LAER)
 - ✓ Emission Offsets
 - ✓ Opportunity for Public Involvement

Minor NSR - NSR program for minor sources in attainment AND nonattainment areas

- A minor source is one whose emissions are less than the major source threshold of a pollutant:
 - ✓ <100/250 tpy in attainment areas or
 - ✓ <100 tpy in non-attainment areas



NSR Rules in Indian Country

Why do we need Federal NSR rules in Indian country?

- **Fill** existing regulatory NSR program gaps in Indian country; currently no programs are in place for:
 - ✓ Minor NSR
 - ✓ Nonattainment major NSR
 - EPA currently implements the PSD program in Indian country
- **Provide** a cost-effective and timely permitting mechanism
- **Promote** economic development in Indian Country

How will Tribes benefit from the proposed Federal NSR rules?

- **Protect** Tribal sovereignty by clarifying jurisdiction in air permitting
- **Provide** equal opportunity for economic development
 - ✓ Establish clarity of requirements for sources
 - ✓ Create a timely mechanism for obtaining permits
 - ✓ Ensure that resources are protected through controlled growth
- **Build** Tribal capacity
 - ✓ Supply potential model for Tribal Implementation Plan (TIP) development
 - ✓ Allows tribes to administer the program through delegation



Specifics of the Proposed Tribal Minor NSR rule

What would the proposed minor NSR rule apply to?

- **New minor sources**
 - ✓ Sources with PTE equal to or above the minor NSR thresholds, but less than the corresponding major NSR threshold
- **Modifications at existing minor/major sources**
 - ✓ When there is a physical or operational change at an existing source that is **not** subject to major NSR and has an emissions increase greater than minor NSR threshold.
- **Synthetic minor sources**, including Hazardous Air Pollutants (HAP) sources
 - ✓ Major sources seeking to limit potential to emit below the major source threshold

Proposed rule includes flowcharts to help!

Proposed Minor NSR thresholds

- **Thresholds:** cutoffs below which minor NSR does not apply to a new minor source or modification
- Thresholds are lower in nonattainment areas. For example:
 - ✓ Ozone attainment areas – 10 tpy NO_x
 - ✓ Ozone nonattainment areas – 5 tpy NO_x
- An analysis of stationary sources across the country, which evaluated the percentage of sources that would be exempt from these proposed rules if the thresholds applied nationally, showed that:
 - ✓ **42%** of Volatile Organic Compounds (VOC) sources will be below thresholds
 - ✓ **76%** of SO₂ sources will be below thresholds

What are the proposed Minor NSR rule requirements?

- Main proposed requirements are:
 - ✓ Case-by-case control technology review
 - ✓ Air Quality Impact Analysis (AQIA) in rare cases
 - ✓ Monitoring, recordkeeping, and reporting as needed to assure compliance
 - ✓ Public participation, administrative and judicial review
- Tribes may implement their own minor NSR program when EPA approves their Tribal Implementation Plan (TIP).
- Tribes may request delegation of EPA's minor NSR program.

Minor NSR permits

- **Typical/common type of permit** – individual emissions units are issued enforceable allowable emissions limits
- **Source-wide permit** – a Plantwide Applicability Limitation (PAL) is issued for the entire source, regardless of the number of emissions units
- **General permit** - a standard permit created by the permitting agency for common source categories, i.e. gas stations, dry cleaners, etc.
- **Synthetic minor source permits** – major sources seeking to limit potential to emit to become synthetic minor sources

How would a source obtain a minor source permit?

- Source submits a complete application
- The reviewing authority:
 - ✓ Will determine within 45 days of receipt of application if it is complete enough to commence a technical review or if additional information is needed
 - ✓ Will perform a control technology review on a case-by-case basis
 - ✓ May require an AQIA if they believe the source will have a significant impact on the NAAQS
- Then, the reviewing authority:
 - ✓ Will develop a draft permit and provide public notice seeking comments on the draft permit for a 30-day period
 - ✓ Will issue a final permit if application meets all applicable requirements. Otherwise, will send letter denying the permit and reasons for the denial.



**Specifics of the
Proposed Tribal
Nonattainment (NA)
Major NSR rule**

What would the proposed NA major NSR rule apply to?

- Would apply to:
 - ✓ **New major sources** with PTE equal to or above the major NSR thresholds
 - ✓ **Major modifications** - any physical or operational change at a source that would result in a significant net emission increase of any regulated NSR pollutant
- Major sources would be subject to the existing nonattainment major NSR rules for areas lacking an approved Part D plan – 40 CFR part 51, Appendix S

Proposed rule includes flowcharts to help!

What would the proposed NA major NSR rule apply to? (continued)

- In addition, the concept of significant net emissions increase applies
 - First evaluate emissions increase from proposed modification and check if it exceeds significant emissions rate (SER) (For example, SER = 40 tpy for VOC, NO_x, SO₂)
 - Second, add contemporaneous emissions increases and decreases to the proposed modification increase to determine net emissions increase (NEI)

$$\begin{array}{ccccccc} \text{Net} & & \text{Emission} & & \text{Source-wide} & & \text{Source-wide} \\ \text{emission} & = & \text{increase} & - & \text{creditable} & + & \text{creditable} \\ \text{increase} & & \text{associated with} & & \text{contemporaneous} & & \text{contemporaneous} \\ & & \text{the proposed} & & \text{emissions} & & \text{emissions} \\ & & \text{modification} & & \text{decreases} & & \text{increases} \end{array}$$

- **Check if this NEI is greater than SER**

What would the proposed NA major NSR rule require?

- Main proposed requirements include:
 - ✓ LAER – the lowest emissions rate and/or practically achievable for that type of source
 - ✓ Offsets at prescribed ratios – proposed emissions increases are balanced by reductions from existing sources to stabilize total emissions
 - ✓ Monitoring, recordkeeping, and reporting as needed
 - ✓ Public participation, administrative and judicial review
- Tribes may implement their own major NSR program when EPA approves their TIP.
- Tribes may request delegation of EPA's NA major NSR program.

Why Tribes do not have offsets?

- **1990 CAA requirement** – Major sources in nonattainment areas –must obtain offsets.
- **Offsets** are reductions in actual emissions.
- **States** have large inventory of sources and have been implementing offset program since 1992; hence have offset banks.
- **Tribes** do not have large inventory of sources; no NA NSR program and therefore will need offset waiver.

Proposed NA Major NSR options for offset waiver

Economic Development Zone (EDZ) option

Major stationary sources and major modifications subject to this program may be exempted from the offset requirement if they are located in a zone targeted for economic development by the EPA Administrator, in consultation with the Department of Housing and Urban Development (HUD).

- **Criteria for this waiver:**
 - ✓ Tribe demonstrates that the new permitted emissions will not interfere with attainment of the applicable NAAQS by the applicable attainment date.

Proposed NA Major NSR options for offset waiver (Continued)

Appendix S, Paragraph VI option

Source exempt from offset requirement until attainment date for NAAQS passes

- **Criteria for this waiver:**
 - ✓ Source will comply with implementation plan limits and will not interfere with the attainment date
 - ✓ EPA determines that these criteria are satisfied and publishes this finding in the Federal Register



Delegation,
Public Participation, and
Administrative and Judicial Review
for **both of the proposed rules**

Delegation

- We encourage tribes to consider delegation of authority to assist EPA with administration of both rules
- To apply for delegation, the tribe:
 - ✓ Must be recognized by the Secretary of Interior
 - ✓ Laws must provide adequate authority
 - ✓ Must demonstrate technical capacity and resources
- EPA retains all enforcement authority
- If the Tribe develops a TIP, it may use the final Tribal Minor and Major NA NSR rules as models

Public participation

- Draft permit, application, and justification for permit issuance/denial available for inspection at:
 - ✓ EPA Regional Office
 - ✓ At least one location in the area, for example at the Tribal environmental office
- Public notice with 30-day public comment period
- Public notice may be posted at locations such as trading posts, libraries, post offices, etc., as appropriate
- Opportunity for a public hearing, if sufficient interest

Administrative and judicial review

- Any person may appeal the final permit if:
 - ✓ The person commented on the draft permit; or
 - ✓ The grounds for appeal occurred after the public comment period ended
- First, the person must appeal to EPA's Environmental Appeals Board (EAB)
- If denied by EAB, the person may appeal to Federal Court



**What you can and
should do next**

What is the NSR Tribal rules timeline?

1. Proposal published in the Federal Register and public comment period commenced on August 21, 2006.
2. Public comment period, as originally proposed, ended on November 20, 2006 (90 day comment period).
 - ✓ Public comment period has been extended for 60 more days. The official comment period now ends on January 19, 2007.
 - ✓ **This is where you can make a difference.**
 - ✓ **WE ENCOURAGE YOU TO COMMENT!**
3. Final rule will be published around:
 - ✓ Fall 2007

How can you submit comments on the proposed NSR rules?

Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2003-0076, using one of the following methods:

- ✓ Federal eRulemaking Portal: <http://www.regulations.gov> Follow the on-line instructions for submitting comments
- ✓ E-mail: a-and-r-docket@epamail.epa.gov
- ✓ Fax: 202-566-1741
- ✓ Mail: Attention Docket ID No. EPA-HQ-OAR-2003-0076, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, Northwest, Mailcode: 6102T, Washington, DC 20460

Conclusion

The purpose of the NSR program is to ensure environmental protection while allowing economic growth.

The two new proposed rules for Indian country attempt to fill existing regulatory gaps.

EPA values your feedback regarding these rules.

Please take the time to submit your comments!

If you have any questions contact Jessica Montanez at 919-541-3407 or montanez.jessica@epa.gov.