

May 2, 2003



**ExxonMobil Comments on Proposed Pre-
vention of Significant Deterioration (PSD)
and Non-attainment New Source Review
(NSR): Routine Maintenance, Repair and
Replacement**
67 FR 80290 (December 31, 2002)

EPA Docket Center (Air Docket)
U.S. Environmental Protection Agency
1301 Constitution Avenue, NW
Room: B108, Mail Code: 6102T
Washington, DC 20004

Attn: Docket ID No. A-2002-04

ExxonMobil appreciates the opportunity to submit comments on the Environmental Protection Agency's (EPA) December 31, 2002 proposed rule entitled "Prevention of Significant Deterioration (PSD) and Non-attainment New Source Review (NSR): Routine Maintenance, Repair and Replacement." ExxonMobil supports reform of the Routine Maintenance, Repair and Replacement (RMRR) regulations to provide the clarity and flexibility necessary to continue to promote safe and reliable operations and energy efficiency, and to meet market demands both domestically and internationally.

ExxonMobil Corporation (together with its wholly-owned affiliates, referred to as ExxonMobil) is a major integrated energy company with exploration, production, refining, transportation, marketing, and chemical operations. We have the industry's largest portfolio of proven reserves and production in North America and produce more than 1 million barrels of hydrocarbon liquids and 3.4 billion cubic feet of gas each day. ExxonMobil owns and operates six refineries in the U.S. and has a fifty percent joint interest in a seventh. These seven refineries have a combined crude oil processing capacity of almost 2.0 million barrels per day (approximately 12% of domestic refining capacity). In addition, we have more than 60 marketing terminals that distribute gasoline, diesel fuel, and other petroleum products, and almost 16,000 branded retail outlets in 48 states and the District of Columbia. ExxonMobil is also a major chemical producer in the U.S. with 17 manufacturing facilities.

Our major comments on the RMRR proposal are summarized as follows:

- A practical and well-understood definition of RMRR is critical for ensuring the safe, reliable, and efficient operation of our facilities. Each of our facilities must undertake thousands of maintenance, repair, and replacement activities every year that can not be delayed by a detailed and time-consuming NSR review. No definition of RMRR should ever prevent a company from acting expeditiously to repair or replace equipment that may cause a hazard in the workplace while waiting on a permit or applicability determination. RMRR reform is needed now to correct the conflicting, confusing, and narrowing interpretations that have occurred in recent years.
- ExxonMobil supports the concept of including in the definition of RMRR the replacement of existing equipment with equipment that serves the same basic function. However, EPA's proposal that basic design parameters of the affected process unit not be changed is vague and subject to the same type of interpretive abuses by regulatory agencies that occur now. We recommend that EPA adopt an Equipment Replacement provision under which the exclusive design criterion is whether a component is "identical or functionally equivalent" to the replaced component.
- EPA should establish an Equipment Replacement cost threshold that is the same as under the NSPS reconstruction provisions. Under NSPS provisions a project is deemed not to be reconstruction if its cost does not exceed 50 percent of the fixed capital cost that would be required to construct a comparable new unit. As with the NSPS test, this test should apply only to individual projects or maintenance activities.
- ExxonMobil supports an Annual Maintenance Repair and Replacement Allowance (AMRRA) option. We recommend that EPA use the IRS Annual Asset Guideline Repair Allowance as the basis for the AMRRA and support the proposal to exclude from the AMRRA option: (1) construction of a new process unit and (2) replacement of a process unit. ExxonMobil does not support excluding any change that results in an increase in the maximum achievable hourly emissions rate of a pollutant due to the complexity and uncertainty in applying this test.
- ExxonMobil strongly recommends that EPA adopt regulations providing RMRR status to all activities properly claimed as expenses on the income tax return of the company that owns the source in question. This provision can be exercised as an additional (third) option, and could be progressed as a logical outgrowth of either the Equipment Replacement or the AMRRA provisions.
- ExxonMobil recommends that replacement costs be determined using cost estimating techniques currently employed by companies. In addition, the

Agency should allow the use of either a replacement cost estimate or inflation-adjusted original investment to determine facility cost for purposes of any reconstruction test.

Due to the current regulatory uncertainty with NSR, ExxonMobil encourages the Agency to move ahead expeditiously to finalize a rule by year-end 2003. The Equipment Replacement provision and the exclusion of activities properly claimed as expenses (a logical outgrowth of the Equipment Replacement provision since the items expensed are treated as repairs under the IRS regulations) are the options that could be most easily finalized by year-end. Due to the number of issues EPA has raised concerning the AMRRA proposal, EPA may be unable to finalize the complete AMRRA provision until next year. However, if this occurs, it should not prevent EPA from expeditiously finalizing the expense exemption as a logical outgrowth of either the AMRRA or Equipment Replacement proposals. Additional information on the recommendations summarized above, and other comments on the RMRR proposal, are attached.

If you would like to discuss any of the comments in more detail, please contact me at (281) 870-6524.

Very truly yours,

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RJM/pfw
Attachment

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**ExxonMobil Comments On Proposed Prevention of Significant
Deterioration (PSD) and Non-attainment New Source Review (NSR):
Routine Maintenance, Repair and Replacement**

67 FR 80290 (December 31, 2002)

1. A practical and well-understood definition of RMRR is critical for ensuring the safe, reliable, and efficient operation of our facilities.

In order to meet the nation's energy needs, maintain safe operations, promote energy efficiency, and meet domestic and international market needs, each of our facilities must undertake thousands of maintenance, repair, and replacement activities every year that can not be delayed by a detailed and time-consuming NSR review. One large chemical complex alone issues 40,000 mechanical work orders each year. RMRR reform is needed now to correct the conflicting, confusing, and narrowing interpretations that EPA's enforcement arm and other regulatory authorities have made in recent years. To make matters worse, our experience suggests that State and Local regulatory authorities have more recently become further emboldened to provide guidance that will further narrow the definition of RMRR and this trend is likely to continue until EPA issues more practical and clear regulations on RMRR.

In the preamble to the proposed rule EPA identifies many of the same concerns we have associated with the current case-by-case approach for determining RMRR. [67 FR 80293]

"Unless an owner or operator seeks an applicability determination from his or her reviewing authority or from EPA, it can be difficult for the owner or operator to know with certainty whether a particular activity constitutes RMRR. Applicability determinations can be costly and time consuming for reviewing authorities and industry alike.... If a source foregoes or defers activities that are important to maintaining its plant when the activities in question are in fact within scope of the exclusion, that can have adverse consequences for the sources reliability, efficiency, and safety. Finally, the source may install less efficient or less modern equipment in order to be more certain that it is within the regulatory bounds, or it may agree to limit its hours of operation or capacity. Any of these approaches will make the source less productive than it would be otherwise....Such discouragement results in lost capacity and lost opportunities to improve energy efficiency and reduce air pollution."

The difficulty our facilities and others face in making NSR applicability decisions is that in recent years conflicting EPA (and State/Local regulatory agency) interpretations have created uncertainty about the standards for determining RMRR. Many of these interpretations have denied RMRR status to changes that fell well within a practical definition of RMRR, including changes

common within industry, further compounding the uncertainty. In particular, EPA interpretations have increasingly tended to deny RMRR status to changes that increase efficiency or reduce production down time.

These developments have had entirely perverse results. Companies simply must make changes that are in fact RMRR in order to keep their facilities operating safely and economically. Moreover, economically beneficial changes that make capital that is already installed more productive are environmentally beneficial as well. They increase the ability of existing facilities to meet growing demand and thus reduce pressure for "greenfield" development. Such productivity increases also reduce emissions per unit of product, and thus make the overall economy more "environmentally efficient."

We are pleased that EPA has recognized these problems and encouraged that EPA has proposed two approaches to address them. We believe both approaches have merit and, as described in the comments to follow, offer a number of suggestions that we believe help improve the practicality of each approach. The decision-making process must be simple, clear, transparent, and not subject to retroactive re-evaluations or reinterpretations. Additionally, and as discussed in more detail below, we recommend that EPA also define RMRR to include activities that are considered to be operating and maintenance expense under Internal Revenue Service (IRS) and Securities & Exchange Commission (SEC) accounting practices and rules.

2. ExxonMobil supports an Equipment Replacement provision.

(a) ExxonMobil supports the concept of including in the definition of RMRR the replacement of existing equipment with equipment that serves the same basic function. However, EPA's proposal that basic design parameters of the affected process unit not be changed is vague and subject to the same type of interpretive abuses by regulatory agencies that occur now. Of particular concern is EPA's suggestion that changes in fuel or raw material input specifications be prohibited. We recommend that EPA adopt an equipment replacement provision under which the exclusive design criterion is whether a component is "identical or functionally equivalent" to the replaced component.

ExxonMobil supports EPA's position that replacement of existing equipment with equipment that serves the same function while incorporating current metallurgy and design innovations should be considered RMRR. ExxonMobil also supports EPA's intention to encourage efficiency improvements by granting them RMRR status under the Equipment Replacement provision. Such efficiency improvements, rather than additional add-on controls, are now the key to improved environmental

performance at many industrial operations, and should be encouraged by our environmental regulatory system. [67 FR 80301]

EPA has proposed to bound the Equipment Replacement option by stating that the new component must be identical or functionally equivalent to the replaced component, and that it must not alter the basic design parameters of the process unit, e.g., maximum fuel or material input. Under a variety of circumstances we believe that this latter condition will be impracticable, subject to interpretive abuse, and certain to lead to confusion within our facilities.

For example, capacity is often not a static value that is easy to define. A crude oil distillation tower may have several capacities that are a function of the type of crude that is to be processed. While manufacturers or engineering design specifications exist for many units, they serve to define the units guaranteed minimum capacity rather than its actual maximum capacity. Many units routinely and properly operate above their design specifications. As EPA's proposal itself states: "[n]ameplate capacity of a process unit may vary greatly from the capacity at which the process unit may be able to operate." [67 FR 80304] Additionally, stated capacities are nearly always based upon a variety of assumptions, e.g., temperature, pressure, API gravity of feed. These assumed conditions, of course, vary widely during actual operations and capacities are therefore increased or decreased.

The design parameter limitation is also counterproductive because it could be read to forbid some of the efficiency improvements that EPA wants to encourage. Efficiency improvements at a unit often increase its ability to process an input – for example, by reducing down time, or by reducing the time or energy needed to process a certain amount of raw material into a more finished product. Examples of this include reducing the cycle time in a batch chemical operation and capturing additional waste heat energy in a recovery system. EPA should encourage these types of energy efficiency improvements, not disqualify them based on a potential determination that these changes caused an inappropriate increase in "input specifications."

Consequently, we recommend that the criterion in the final rule should only be whether a replacement component is identical or functionally equivalent to the component that is being replaced. The proposed "basic design parameters" criterion has the potential to exclude component replacements that would properly be deemed functionally equivalent. In particular, in some cases the replacement of components that achieve significant gains in efficiency might be excluded under a provision that requires that basic design parameters be unchanged. The "functionally equivalent" criterion will, by itself, provide an adequate basis for EPA to

assure that replacement components that are exempt from review cannot be designed to materially change the operation of the source. Accordingly, EPA should delete the “basic design parameters” criterion when it issues the final rule.

(b) EPA should establish an Equipment Replacement cost threshold that is the same as under the NSPS reconstruction provision.

EPA has raised the question of whether there should be a cost threshold for determining whether a project would be authorized under the Equipment Replacement provision. EPA’s proposal suggests that the NSPS cost threshold for reconstruction under 40 CFR 60.15 might be an appropriate test for the Equipment Replacement provision. EPA also proposes that the cost threshold be applied on a process unit basis.

As proposed, EPA should adopt the NSPS cost threshold for reconstruction as the test for whether component replacement will come within the scope of the RMRR Equipment Replacement provision. Under section 40 CFR 60.15, a project is deemed not to be a reconstruction if its cost does not exceed 50 percent of the fixed capital cost that would be required to construct a comparable new unit.

As with the NSPS test, it is important that this test should apply only to individual projects or maintenance activities, or to more than one project arising out of the same planning decision, if the permitting authority concludes that the source split them apart to avoid the 50% trigger. The NSPS program has operated on that basis for over 20 years and this approach has functioned well.

(c) For establishing costs under the Equipment Replacement Provision, ExxonMobil recommends the same approach as outlined in the comments on the AMRRA option.

Under the Equipment Replacement provision the Agency proposed that the provision be applicable only if the cost of the replacement does not exceed a certain percentage of the replacement cost of the process unit to which the equipment belongs.

Based on the detailed points included in the replacement cost and cost estimating comments on the AMRRA option (3(c)&(d)), ExxonMobil recommends:

- Replacement costs should be determined using cost estimating techniques currently employed by companies.

- For the facility cost basis the Agency should allow the use of either a replacement cost estimate or an inflation-adjusted original investment.

3. ExxonMobil supports an Annual Maintenance Repair and Replacement Allowance.

Establishing an Annual Maintenance Repair and Replacement Allowance (AMRRA) can be an effective option to provide clarity on RMRR. However, the AMRRA option must be a streamlined approach. A process requiring significant accounting and with too low a threshold will be burdensome and have no practical application.

(a) The facility should have the option of either a one-year allowance, or an allowance applied on a five-year basis.

Many refineries and chemical plants conduct turnarounds every three to five years (and sometimes longer). During these turnarounds, maintenance and project activities that normally necessitate a unit shutdown (e.g., replacing reactor or distillation column internals) are conducted. It is generally desirable to lengthen the time between turnarounds to allow a facility to make the best use of invested capital. Since maintenance during turnaround years is more extensive, it would be appropriate to establish an allowance on a 5-year basis. For chemical operations with minimal turnaround activity (typically batch-type operations) an annual allowance may be sufficient. For the 5-year allowance, at the end of each calendar year costs for the prior 5 years would be compared to the 5-year allowance basis.

(b) EPA should use the IRS Annual Asset Guideline Repair Allowance as the basis for the AMRRA percentage.

In the preamble the Agency explains that there are several options or sources to consider in establishing the AMRRA percentage, on an industry specific basis, including:

- Using the Internal Revenue Service "Annual Asset Guideline Repair Allowance Percentages" (AAGRAP).
- Standard engineering reference manuals.
- Actual industry data available to EPA.

The Agency indicates it wants to set the threshold to cover the RMRR capital and non-capital costs than an owner or operator incurs to maintain, facilitate, restore, or improve the safety, reliability, availability, or efficiency of the source.

ExxonMobil recommends that EPA use the AAGRAP. The IRS values provide repair allowance percentages for industries with the intent to reflect differing maintenance needs. As the Agency notes, the AAGRAP is well established in the NSPS program. Also, unlike standard reference manuals like Perry's Chemical Engineers' Handbook that focuses on the chemical process industry, the AAGRAP provides information for multiple industrial sectors.

(c) ExxonMobil recommends that replacement costs be determined using cost estimating techniques currently employed by companies.

Companies and individual facilities currently use cost estimating techniques for projects that generally have been developed over time and that reflect the process equipment unique to the industry, site-specific factors, company design standards, and company safety and risk management practices. These are all incorporated into the cost estimating techniques to establish the most accurate estimates available for cost and project management purposes.

In the preamble EPA indicates that they seek to establish standard practices for estimating replacement cost investment along the lines described in the EPA Air Pollution Control Cost Manual. However, the Agency also notes "we acknowledge that this manual is geared toward cost calculations for add-on control equipment but believe the basic concepts can be applied to process equipment as well." [67 FR 80294]

It would be inappropriate to require that replacement cost estimates be prepared using the EPA Air Pollution Control Cost Manual for the following reasons:

- The EPA manual does not address the wide-ranging types of equipment and industrial processes subject to NSR. This would require the Agency to use significant resources to expand the manual to cover all equipment types/components for all industries.
- Companies already have well-established cost estimating techniques.
- Subjecting companies to establishing another cost estimating approach, to be used only for NSR purposes, is burdensome and a waste of resources. In addition, any EPA-required approach would be viewed as establishing a less accurate replacement cost basis.
- Companies already, in many cases, establish replacement cost for purposes of determining NESHAP reconstruction and NSPS applicability. To establish a different basis for a different Clean Air Act rule is, again, a waste of resources and would establish inconsistencies even within the air regulations.

- Establishing the EPA Cost Manual as the standard establishes a whole series of new regulatory requirements -- and alleged potential violations -- and will require inspectors to become cost estimating experts.
- Requiring the use of the EPA Cost Manual should make it subject to peer review, notice, and comment.

At most, the Agency should reference the Air Pollution Control Cost Manual as a resource to be used as guidance in cases where companies do not have established cost estimating techniques.

To summarize, ExxonMobil recommends that replacement costs be determined using cost estimating techniques currently employed by companies.

(d) The Agency should allow the use of either a replacement cost estimate or inflation-adjusted original investment to determine facility cost.

In the proposal the AMRRA is established by multiplying the maintenance percentage established by the rule times a facility cost basis. In the proposal the Agency requests comments on the appropriate facility cost basis.

It is appropriate to use as the facility cost basis an investment number that reflects the current versus original cost basis of a facility. Since maintenance costs increase each year due to inflation, this would make the facility cost basis consistent; i.e., on a current dollar basis.

There are two main approaches to establishing a facility cost basis on a current dollar basis:

- **Replacement Cost:** In this approach a facility develops an estimate of the cost to replace the existing facility by identifying the major equipment items and using company cost estimating procedures and site and equipment-specific factors. Typically this approach, prepared by an engineering organization, provides the most accurate estimate of the cost to replace a facility.
- **Inflation-adjusted Original Investment:** With this approach a facility uses an investment ledger, which typically identifies major equipment items, cost, and year invested, and adjusts the investment cost to current dollars using a standard construction index. The investment ledger is typically used to calculate depreciation for annual income and cash flow statements. The advantage of this approach is that, if the data is available, it is simpler (less effort than calculating replacement cost). The construction index used may not factor in site and equip-

ment-specific factors but the estimate should still establish a reasonable cost basis. However, at some facilities the investment ledger may not be available (e.g., acquired facilities); therefore the replacement cost option described above must always be available for use.

In summary, ExxonMobil recommends that for the AMRRA facility cost basis the Agency should allow the use of either a replacement cost estimate or an inflation-adjusted original investment.

(e) EPA should exclude only two types of projects from being exempt under the AMRRA: (1) construction of a new process unit and (2) replacement of an entire process unit.

In the proposal EPA identifies three types of projects that could not be exempted under the AMRRA. EPA's proposal to exclude (1) construction of a new process unit and (2) replacement of a process unit is appropriate to assure that major plant changes could not be exempted from NSR under the AMRRA provision.

However, EPA also proposes that any change that results in an increase in the maximum achievable hourly emissions rate of a pollutant, or emission of a pollutant not previously emitted, would be excluded from the AMRRA provision. While this limitation on use of the AMRRA is clearly well-intentioned, it would complicate use of the AMRRA and should not be adopted. From an implementation standpoint, requiring that there be a review of whether every maintenance, repair and replacement project could result in an increase in the maximum achievable hourly emissions rate, however small it may be, would create a major burden problem for sources. As noted earlier, one ExxonMobil site has 40,000 mechanical work orders per year. This administrative concern is heightened greatly by the fact that there is no uniform understanding of how the determination of whether such an increase occurs is to be made.

In addition, for some pollutants, there may not be a maximum hourly design rate of emissions already established. Also, the limitation on not increasing the maximum achievable hourly emissions rate will result in excluding from the AMRRA maintenance activities that clearly should be excluded as RMRR. For example, when a pump is replaced it is quite possible that a facility will add an additional valve or flange while the pump is out of service. One interpretation of the test to not increase maximum achievable hourly emissions would suggest that the addition of fugitive components would disqualify the straightforward pump replacement from the AMRRA.

(f) Other comments on the AMRRA.

- ExxonMobil supports applying the AMRRA on a stationary source basis versus process unit basis. This will reduce the burden/cost associated with subdividing large manufacturing complexes into numerous process units.
- We agree with EPA that a facility should subtract the most expensive project first if costs exceed the allowance. This project would then be evaluated to determine RMRR eligibility using either the Equipment Replacement provision or the existing RMRR requirements. This is a practical approach to focus the analysis on major facility changes. We are, however, concerned with the potential for retroactive NSR liability with the AMRRA approach and recommend that EPA address this issue.
- Users of the AMRRA should only have to submit an annual report that identifies activities that exceed the allowance. Since the allowance is intended to cover what could be thousands of small repairs, requiring the annual report to include these activities is extremely burdensome. If this is of interest to the Agency then records (e.g., cost summaries and maintenance work orders) could be made available to the Agency for an on-site inspection.
- Inclusion of costs (both maintenance and investment) associated with the installation and maintenance of pollution control equipment should be optional for the facility. The fact that these costs are typically well-integrated into a facility, and difficult to differentiate (e.g., how much of the process computer cost should be allocated to the control device?), makes it difficult to separately identify. Therefore, facilities should have the option to exclude them. Generally, since the costs effect both the numerator and denominator of the AMRRA approach, this will not make a significant difference at a large facility.
- Costs associated with repairs due to "Acts of God" (e.g., hurricanes, tornadoes, and lightning strikes) and catastrophic events such as fires and explosions, must not be charged against the AMRRA. This is essential, or otherwise a facility could be retroactively subjected to NSR based upon factors completely beyond its control.
- The allowance should be based on an end-of-year reconciliation based on final costs.

4. ExxonMobil supports an approach that facilities should have an option as to whether or not non-emitting components and units should be excluded from the cost calculations for the AMRRA and Equipment Replacement options.

In the preamble the Agency indicates that it may not be appropriate to include non-emitting components, for the Equipment Replacement Provision, and non-emitting units, for the AMRRA approach, in determining costs and the investment basis for these two options. [67 FR 80303] While conceptually this appears to be a reasonable approach, in practice this will become a very burdensome activity. With the goal of establishing clear and straightforward options, having to identify and separate out non-emitting components/units can quickly become complex. For the AMRRA the maintenance and investment associated with these items would have to be identified and removed from the analysis. In addition, non-emitting components would need to be defined. Is pipe a non-emitting component? Clearly pipe connectors can be a source of emissions but the pipe itself (unless it leaks) is normally not. What about structural supports to process units? They clearly do not have emissions but trying to remove the cost of structural supports from an investment basis throughout a facility will become an accounting nightmare. Furthermore, non-emitting components can lead to emissions if not maintained (e.g., instrumentation).

It may be possible to more readily identify some major investments that are non-emitting, such as office buildings, at a complex. In this case a facility may want to remove the maintenance cost and investment from the analysis.

In order to establish clear and less burdensome options, ExxonMobil supports an approach that provides a facility the option as to whether or not non-emitting components and units should be excluded from the cost calculations for the AMRRA and Equipment Replacement options.

- 5. ExxonMobil strongly recommends that EPA adopt regulations providing RMRR status to all activities properly claimed as expenses on the income tax return of the company that owns the source in question. This provision would be in addition to the Equipment Replacement and the Allowance provisions.**

ExxonMobil strongly recommends that EPA adopt regulations providing RMRR status to all activities properly claimed as expenses on the income tax return of the company that owns the source in question. Such regulations could be promulgated at the same time as the Equipment Replacement provision discussed earlier. They would reflect a defensible view of RMRR, be easy to administer, and could be promulgated based on the current proposal.

The IRS regulations allow businesses to deduct as expenses any expenditures "which neither materially add to the value of the property nor appreciably prolong its life, but keep it in an ordinarily efficient operating condition." [26 CFR 1.162-4]

As our discussion of Equipment Replacement makes clear, not all projects (whether capital or maintenance activities) that qualify as RMRR would fit within this definition. Therefore, we do not propose the "expense exclusion" as the exclusive test for RMRR eligibility. However, any project that fits within the expense definition should qualify without question as RMRR. If a project does not materially increase the value of an asset or substantially prolong its life it can only be intended to keep it in good operating condition, or restore it to good operating condition. Such projects are the essence of RMRR.

Companies are already familiar with the legal standards and judgments needed to determine whether an item can be claimed as an expense. Moreover, these judgments are reviewed by independent auditors and by the IRS. Accordingly, a "tax expense" test for RMRR status would be readily enforceable. In addition, it would be completely free from the accounting complexities and need for retrospective compliance determinations that characterize the AMRRA approach in its proposed form.

Finally, a "tax expense" approach would be a logical outgrowth of the AMRRA proposal itself. That proposal suggests granting RMRR status to any projects that would fall within the "repair guidelines" of IRS publication 534 and therefore could be deducted as expenses from an income tax return. Our suggestion merely points out that it would be simpler and more defensible simply to grant RMRR status to expensed items directly. This approach can also be viewed as a logical outgrowth of the Equipment Replacement provision. Repairs in the nature of replacements that do not appreciably prolong the life of the process unit are treated as expenses under the IRS regulations.

Additional detail in support of this expense test option is provided below.

- How do the IRS regulations define operating and maintenance (i.e., expense) activities?

The IRS regulations address capital vs expense as follows:

"The cost of incidental repairs which neither materially add to the value of the property nor appreciably prolong its life, but keep it in an ordinarily efficient operating condition, may be deducted as an expense, provided the cost of acquisition or production or the gain or loss basis of the taxpayer's plant, equipment, or other property, as the case may be, is not increased by the amount of such expenditures. Repairs in the nature of replacements, to the extent that they arrest deterioration and appreciably prolong the life of the property, shall either be capitalized and depreciated in accordance with section 167 or charged against the depreciation reserve if such an account is kept." [26 CFR 1.162-4]

"Treatment of Repairs - expenditures which substantially prolong the life of an asset, or are made to increase its value or adapt it to a different use are capital expenditures... Expenditures which do not substantially prolong the life of an asset or materially increase its value or adapt it for a substantially different use may be deducted as an expense." [26 CFR 1.167(a)-11(d)(2)(i)(a)]

- The expense approach recommended herein is a logical subset and outgrowth of both the AMRRA and Equipment Replacement provisions.

We believe the expense approach represents a subset of the types of activities that would be included as RMRR under EPA's proposed AMRRA option. Under that option, a facility could exclude expense activities related to maintenance, repair, and replacement, as well as some capital projects, up to a certain allowance based upon a percentage of the facility's total replacement cost. As maintenance, repair, and replacement activities are vital for ensuring safe and reliable operations, these activities by their nature are of highest priority to the facility. Consequently, as contemplated by EPA under the AMRRA approach, these would be the first activities to be excluded.

We believe our approach is a logical outgrowth of EPA's AMRRA option in that it establishes a threshold to approximate the minimal amount that an owner or operator would typically be expected to spend on RMRR activities. Rather than calculating industry-specific allowances based upon a percentage of the facility's replacement cost, however, a facility's operating and maintenance expenditures will clearly be eligible for inclusion in its AMRRA.

In its discussion of the AMRRA at 67 FR 80294, EPA indicates it is considering using the Internal Revenue Service Annual Asset Guideline Repair Allowance Percentages (AAGRAP), which EPA states it "now use(s) for an exclusion under the New Source Performance Standard (NSPS) program for increases in production." On page 80298, EPA solicited comment on the extent to which the AAGRAP, or some derivative of the AAGRAP, may appropriately be employed. The approach suggested herein regarding an expense approach is a response to EPA's request for comments regarding the AAGRAP or some variant thereof.

In addition, the exclusion of activities properly claimed as expenses is a subset and logical outgrowth of the Equipment Replacement Provision. Repairs in the nature of replacements that do not appreciably prolong the life of the process unit are treated as expenses under the IRS regulations.

We strongly believe that the expense approach is a narrow safe harbor that uses a more straightforward, simple method to establish activities that fall within the RMRR exclusion.

- What benefits result from this expense test option?

The most important benefit of this approach versus EPA's AMRRA option is that it provides the owner or operator with certainty with regard to an activity's status under NSR. EPA's AMRRA option carries with it the risk that if the facility exceeds the allowance due to some unanticipated or unplanned activity or other cause, then NSR may need to be applied retroactively to projects already under construction. This situation could stall the construction of a project by a year or more, and could require the entire project to be reengineered should the permitting require changes to the design and required equipment. In order to avoid this situation, facilities might decide to refrain from using to any significant degree the "allowance" option as proposed.

The expense approach also has the benefit of eliminating the very burdensome recordkeeping and reporting associated with the AMRRA option. For example, there would be no need for the facility to submit an annual listing, description, and cost of all maintenance, repair, and replacement activities as required under EPA's current proposal. In addition, it eliminates the need to calculate the replacement cost of the entire facility.

Another important benefit is the fact that since the IRS code and its regulations covering this issue are already in place and widely used by industry this approach would allow EPA to define RMRR with little additional burden on facilities or regulatory agencies. One of the primary concerns that we have heard from the states regarding EPA's AMRRA option is the fact that they do not have the resources or ability to decipher the complicated and burdensome new accounting practices and recordkeeping that would be required.

- What would prevent a facility from making capital vs. expense determinations based upon a desire to avoid NSR?

In our view, a clear distinction between capital and expense is important primarily because of the effect that the decision has on net income and cash flow of the current and future years. We believe the existing rules satisfactorily articulate how this determination should be made, and we believe most companies have established guidelines for making these determinations in a consistent manner. While it is true that the existing rules are not intended to establish an absolute, inflexible condition by which every repair and replacement can be foreseen and its accounting treatment determined, we believe that the existing rules provide more than

adequate definition to allow the development of uniform and consistent practices within a company.

As a core business practice, these accounting determinations are routinely audited both internally and via independent third-party auditors. These auditors are provided unrestricted access to company facilities, personnel, financial records, information about transactions involving assets, liabilities and operations, and to all levels of management. Consequently, we believe that adequate business and regulatory drivers exist within industry that would preclude any wide spread abuse of this approach.

6. The Equipment Replacement, AMRRA, and (as we recommend) "Expense" provisions should be finalized and work as separate and independent options.

As described and modified above, ExxonMobil supports both the Equipment Replacement and AMRRA provisions. We also strongly urge EPA to adopt our recommendation to include a third provision, the Expense option. These options should be finalized and the regulated facility should have the choice to use any of the options.

EPA asked for comment on various ways to implement and reconcile the Equipment Replacement and AMRRA approaches. We suggest reconciling the various options and associated accounting systems as follows:

- All expenses that were properly deducted from Federal income taxes would qualify automatically as RMRR.
- Remaining projects would be evaluated to determine whether they meet the requirements of either the Equipment Replacement provision or existing RMRR regulation and would thereby be excluded from NSR as RMRR.
- If EPA promulgates an AMRRA all the costs related to facility changes (maintenance and capital), whether or not they can be excluded from RMRR under another provision, would be applied against the allowance. Activities that exceed the allowance could still be eligible for exclusion as RMRR based on an analysis versus the Expense, Equipment Replacement, and existing RMRR regulation options.
- The Agency should clarify that the AMRRA approach is an option, and that an individual facility can decide not to implement this option and all the associated recordkeeping and reporting.

7. ExxonMobil does not support a capacity-based approach.

Under comment 2(a) we explained why a capacity or input-based approach to determine the projects eligible for the Equipment Replacement provision would create problems at our facilities. We believe that EPA's capacity-based approach would be unworkable at our facilities for the same reasons.

Another drawback to this approach is that it would not recognize efficiency projects as RMRR. Encouraging efficiency improvements is a primary objective of EPA's NSR and RMRR reform efforts, and this approach would not address this objective.

8. ExxonMobil does not support the age-based approach.

EPA proposes an "age-based" approach to RMRR under which repairs would only be allowed to a unit during its "useful life," and it would need to become a "clean unit" thereafter. ExxonMobil does not support this approach.

This approach assumes that units have a set "useful life" after which maintenance, repair and replacement stops being "routine." That assumption conflicts with the very nature of RMRR. RMRR is designed to make sure that the unit will be technically and functionally available as long as possible, not that it will become unavailable after some set period. In many industries, RMRR has succeeded so well that units are typically replaced when they become economically obsolete, not because they have physically ceased to function.

Moreover, NSR was designed to make sure that industries went through review and installed controls whenever they actually built or modified equipment, not when an arbitrary age limit is met. Even if "useful life" were an acceptable regulatory concept, EPA could not base a regulations on it without defining, based on facts, the actual "useful life" of the equipment for which it proposed a "useful life" regulation, and allowing the public to comment on that analysis. EPA has not included any such analysis in this proposal. Accordingly, EPA cannot promulgate any "useful life" regulations without another proposal.