

**CHANGE IN DEFINITION OF MAJOR SOURCE
FOR PART 70 OPERATING PERMITS
Published 11-27-01 (66 FR 59161)**

SUMMARY OF FINAL RULE

- Final action changes the definition of "major source" in the existing part 70 regulation for state operating permits programs.
- Specifically, the change deletes the requirement that owners/operators of sources must count certain fugitive emissions of air pollutants (ex: sulfur dioxide, oxides of nitrogen) [except hazardous air pollutants, HAPs] when determining whether their facility is a major source subject to the operating permits program. Fugitive emissions are emissions that can not easily pass through a stack, chimney or vent. Examples might include pumps, valves, storage piles and other sources of pollution in a facility.
- This final amendment affects only sources in categories covered by NSPS or NESHAP regulations published after August 7, 1980. Sources in these categories will no longer be required to count fugitive emissions when determining major source status under the 100 ton/yr threshold for "any pollutant" and the 10/25/50 ton/yr thresholds for nonattainment areas in part 70. These are definitions (2) and (3) of "major source" in part 70.
- The rule does not exempt any source from counting its fugitive emissions if it is included under any of the 26 listed source categories (i) through (xxvi) under definition (2) or (3) of "major source" in part 70, even if it is also included in a source category subject to a NSPS or NESHAP issued after August 7, 1980.
- Sources must still count all fugitive emissions of HAPs for "major source" definition (1) in part 70, the 10/25 ton/yr threshold for HAPs.
- The rule also requires owners/operators of sources to consider all pollutants when counting fugitive emissions from facilities subject to standards promulgated as of August 7, 1980. For example, a source would have to count fugitive emissions of volatile organic compounds, sulfur dioxide, nitrogen dioxides and other regulated pollutants, even though the standard to which the source is subject regulates only particulate matter. This is a change from the 1992 rule, where only the fugitive emissions for pollutants specifically regulated for the source category were required to be counted. This change makes the operating permits rule consistent with PSD and nonattainment NSR rules.

BACKGROUND

- Congress specified in section 302(j) that EPA could require sources to take fugitive emissions into account when determining major source status, but only after rulemaking. The last time EPA performed this rulemaking was August 7, 1980 [the PSD rule].
- Nevertheless, the 1992 part 70 rule required sources to count fugitive emissions covered by NSPS or NESHAP regulations regardless of when the rules were issued. The National Mining Assoc. petitioned for review, pointing out that EPA did not follow the procedural steps required by the Clean Air Act when it expanded the universe of sources for which fugitive emissions must be counted in major source determinations.
- EPA acknowledged the error and proposed in August 1994 to correct the definition. Today's action finalizes the 1994 proposal. It also finalizes the change proposed in 1995 to remove the phrase limiting pollutants of fugitives to those regulated by the NSPS or NESHAP.

EFFECT ON STATES

- Today's rule allows states to no longer require owners/operators of industrial facilities to count fugitive emissions of air pollutants in major source determinations under definitions (2) and (3), if the sources are in categories subject to section 111 or 112 standards promulgated after August 7, 1980. States that currently have this requirement can at their option either keep it or remove it from the definition of major source in their operating permit program.
- States must delete from their rules the phrase "but only with respect to pollutants that have been regulated for that category" from definitions (2) and (3) of "major source." This change to state rules must be submitted to EPA by November 27, 2002 (12 months after publication of the final rule), unless the state needs additional legal authority. If additional legal authority is needed, the deadline is November 27, 2003.