

**COMMENTS on a PROPOSED RULE TO CLARIFY THE
“REASONABLE POSSIBILITY” RECORD-KEEPING AND
REPORTING STANDARD OF THE CLEAN AIR ACT’S NEW
SOURCE REVIEW PROGRAM**

(Docket Number OAR-2001-0004)

By the National Association of Manufacturers

**Submitted to the Environmental Protection Agency on
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**COMMENTS OF THE
NATIONAL ASSOCIATION OF MANUFACTURERS
to the
ENVIRONMENTAL PROTECTION AGENCY
regarding
DOCKET NUMBER OAR-2001-0004**

**PROPOSED RULE ON PREVENTION OF SIGNIFICANT DETERIORATION
(PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR):
REASONABLE POSSIBILITY IN RECORD-KEEPING**

The National Association of Manufacturers (NAM) submits these comments in response to the Environmental Protection Agency's (EPA) Proposed Rule to clarify regulations governing the "reasonable possibility" record-keeping and reporting standard of the 2002 NSR reform rules, as published in the March 8, 2007 issue of the Federal Register, 72 Fed. Reg. 10445. By way of introduction, the NAM is the nation's largest industrial trade association representing small and large manufacturers in every industrial sector and in all 50 states. Any changes to the NSR program will directly impact the operation of our members' power plants and manufacturing facilities (72 Fed. Reg 10445, March 8, 2007).

The NAM's mission is to enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth. As a general matter, the NAM is supportive of EPA regulations that are designed to provide real net benefits to environmental quality and the public health, including the health of manufacturing workers and their families. Conversely, the NAM opposes regulations that would impose overly burdensome compliance costs on the manufacturing sector, especially with no clear goal for achieving improved environmental quality. The NAM supports the EPA's latest proposal to clarify the "reasonable possibility" record-keeping and reporting standard of the 2002 NSR reform rules. Simplifying compliance requirements helps create an environment of business certainty, enhances economic growth, and allows the EPA to fulfill its statutory mandate to protect environmental quality and public health.

I. Background – the EPA's Latest NSR Proposal

The NAM supports the Administration's efforts to reform the NSR program. The majority of NAM members are impacted by the NSR permitting process either directly or

indirectly. NSR permits involve a great deal of input from environmental engineers, lawyers, and other specialists, which add significantly to the manufacturing sector's overhead costs. Even those manufacturers who do not apply for NSR permits buy their electricity from power providers that must comply with the program.

In this particular rulemaking, the “reasonable possibility” standard identifies for sources and regulators the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records. The standard also specifies the record-keeping and reporting requirements on such sources. In New York v. EPA, 413 F.3d 3 (DC Cir. 2005) (New York), the U.S. Court of Appeals for the DC Circuit remanded for the EPA either to provide an acceptable explanation for its “reasonable possibility” standard or to devise an appropriately supported alternative. To satisfy the Court's remand, the EPA is proposing two alternative options to clarify what constitutes “reasonable possibility” and when the “reasonable possibility” record-keeping requirements apply. The two options are the “percentage increase trigger” and the “potential emissions trigger.”

II. Record-keeping – “Reasonable Possibility” Standard

As a general matter, the NAM believes that its members do not have to collect additional records to fulfill compliance requirements for NSR. Many NAM members keep records pertaining to yearly emission inventories given to local, state and federal regulators, various construction permits, operating information, and monitoring data, to cite just a few examples.

The NAM supports the EPA's preferred option for clarifying the reasonable possibility standard and the circumstances under which records must be kept for modification projects that do not trigger major NSR requirements. If a project's projected actual emission increase, adjusted for the demand growth exclusion, is less than 75 percent of the major source modification significant emission threshold for affected pollutants, there is no need for reasonable possibility record-keeping and reporting. The NAM believes that a source owner should maintain the original documentation showing the basis for the emission increase calculations and the determination that no “reasonable possibility” record-keeping and reporting requirements apply. We believe this proposed approach satisfies the requirements imposed on the Agency by the D.C. Circuit Court of Appeals' remand on this issue.

III. Conclusion

The NAM urges the EPA to use the current rulemaking to further clarify NSR requirements in a meaningful manner. The frequency with which federal regulators attempt to revise NSR and then have their proposals litigated in court, however, underscores the need to reform the program through legislative means. This does not diminish the importance of the EPA's efforts to streamline rules to reduce the number of

compliance hurdles, increase economic expansion, and thereby expedite development of technologies that will lead to a cleaner and healthier environment for all Americans. The manufacturing sector and its workers urge the EPA to clarify the record-keeping and reporting standard under the NSR program. For more information, contact Bryan Brendle at bbrendle@nam.org or (202) 637-3176.