

EPA R/S/L Modelers Workshop

May 16, 2005
New Orleans, LA

NOx Increment Rule (Proposed)



NOx Increment Rule

- EPA proposal at 70 FR 8880, February 23, 2005. (*Must promulgate by 9/30/05*)
- Three options proposed (not mutually exclusive)
 - Retain Existing Increment System
 - Allow States to Use Regional Cap and Trade Program In Lieu of Current Increment System
 - Allow States to Use a State Planning Approach In Lieu of Current Increment System

NOx Increment Rule

- No program changes under option 1
- EPA approval under Options 2 and 3 would enable States to forego individual air quality (NAAQS + increment) analyses for NO₂.
 - Safeguards may be needed to protect against localized adverse impacts.
 - BACT requirements continue to apply.

NOx Increment Rule

- Rulemaking responds to Environmental Defense Petition against 1988 NO₂ Increments.
- ED challenged form of pollutant regulated, averaging periods covered, and inadequate Class I area protection.
- Court ordered EPA to “*develop an interpretation of S 166 that considers both subsections (c) and (d) , and if necessary to take new evidence and modify the regulations.*”
 - S166(c)—“such regulations shall provide...protection of air quality values and fulfill the goals and purposes set forth in Section 101 and Section 160...”

NOx Increment Rule

Retain Existing Increments

- Court affirmed that increments are to offer protection beyond health and welfare considerations for NAAQS; “goals and purposes” of PSD program place special value on protecting Class I areas.
- EPA does not interpret the PSD program to require it to set increments at levels of no adverse impacts.

NOx Increment Rule

Retain Existing Increments

- Statutory increment system includes special protection for Class I areas via “AQRVs”
- Permits may be denied for adverse impact on AQRV, even when increment is being met.
- Current scientific database affirms contribution of nitrogen deposition to adverse effects in some areas. Need to distinguish different origins of nitrogen.

NO_x Increment Rule Cap & Trade (C/T) Option

- EPA model C/T program associated with CAIR (Eastern/Midwestern States).
- State participation in model C/T is voluntary.
- States participating in this program should anticipate no significant air quality deterioration for NO₂.

NOx Increment Rule State Planning (SIP) Option

- States may impose NOx emission control requirements in their SIPs.
- Critical that SIP requirements address accountability and emissions tracking (monitoring, recordkeeping, and reporting requirements), as well as effects tracking.

NOx Increment Rule

- 40 commenters: Federal, S/L, Tribal, Industry, Enviro, and Citizens.
- Preliminary findings:
 - Majority support option 1
 - Most not convinced that cap & trade is adequate for PSD protection
 - Enviro + S/Ls support building Critical Loads into increment approach; Industry opposes
 - Enviro oppose all options as drafted (want different increments)

National Park Service Comments on NOx Increment Rule

- Despite current program, NPS has concerns regarding AQ in some Class I areas.
- C/T and SIP options should include provisions that:
 - demonstrate how emission caps would protect AQRVs
 - require a periodic assessment of how well AQRVs are being protected (at least every 5 years?)
 - Maintain FLM review in certain situations (i.e., within 150 km and nitrogen levels not improving)

National Park Service Comments on NOx Increment Rule

- “Critical Load (CL)” = deposition level above which there is an adverse effect on ecosystem
- Sufficient CL information exists for some areas for EPA to consider a “pilot project” to develop administrative and technical approaches to incorporating CL research into AQ planning and permitting processes