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AUTHORITY: 42 U.S.C. 7401 *et seq.*

### Subpart A—General Provisions

SOURCE: 37 FR 10846, May 31, 1972, unless otherwise noted.

#### § 52.01 Definitions.

All terms used in this part but not defined herein shall have the meaning given them in the Clean Air Act and in parts 51 and 60 of this chapter.

(a) The term *stationary source* means any building, structure, facility, or installation which emits or may emit an air pollutant for which a national standard is in effect.

(b) The term *commenced* means that an owner or operator has undertaken a continuous program of construction or modification.

(c) The term *construction* means fabrication, erection, or installation.

(d) The phrases *modification* or *modified source* mean any physical change in, or change in the method of operation of, a stationary source which increases the emission rate of any pollutant for which a national standard has been promulgated under part 50 of this chapter or which results in the emission of any such pollutant not previously emitted, except that:

(1) Routine maintenance, repair, and replacement shall not be considered a physical change, and

(2) The following shall not be considered a change in the method of operation:

(i) An increase in the production rate, if such increase does not exceed

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the operating design capacity of the source;

(ii) An increase in the hours of operation;

(iii) Use of an alternative fuel or raw material, if prior to the effective date of a paragraph in this part which imposes conditions on or limits modifications, the source is designed to accommodate such alternative use.

(e) The term *startup* means the setting in operation of a source for any purpose.

(f) [Reserved]

(g) The term *heat input* means the total gross calorific value (where gross calorific value is measured by ASTM Method D2015-66, D240-64, or D1826-64) of all fuels burned.

(h) The term *total rated capacity* means the sum of the rated capacities of all fuel-burning equipment connected to a common stack. The rated capacity shall be the maximum guaranteed by the equipment manufacturer or the maximum normally achieved during use, whichever is greater.

[37 FR 19807, Sept. 22, 1972, as amended at 38 FR 12698, May 14, 1973; 39 FR 42514, Dec. 5, 1974; 43 FR 26410, June 19, 1978]

### § 52.02 Introduction.

(a) This part sets forth the Administrator's approval and disapproval of State plans and the Administrator's promulgation of such plans or portions thereof. Approval of a plan or any portion thereof is based upon a determination by the Administrator that such plan or portion meets the requirements of section 110 of the Act and the provisions of part 51 of this chapter.

(b) Any plan or portion thereof promulgated by the Administrator substitutes for a State plan or portion thereof disapproved by the Administrator or not submitted by a State, or supplements a State plan or portion thereof. The promulgated provisions, together with any portions of a State plan approved by the Administrator, constitute the applicable plan for purposes of the Act.

(c) Where nonregulatory provisions of a plan are disapproved, the disapproval is noted in this part and a detailed evaluation is provided to the State, but no substitute provisions are promulgated by the Administrator.

(d) All approved plans and plan revisions listed in subparts B through DDD of this part and on file at the Office of the Federal Register are approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Notice of amendments to the plans will be published in the FEDERAL REGISTER. The plans and plan revisions are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). In addition the plans and plan revisions are available at the following locations:

(1) Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M St., SW., Room M1500, Washington, DC 20460.

(2) The appropriate EPA Regional Office as listed below:

(i) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Environmental Protection Agency, Region 1, John F. Kennedy Federal Building, One Congress Street, Boston, MA 02203.

(ii) New York, New Jersey, Puerto Rico, and Virgin Islands. Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007-1866.

(iii) Delaware, District of Columbia, Pennsylvania, Maryland, Virginia, and West Virginia. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, PA 19103-2029.

(iv) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303.

(v) Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604-3507.

(vi) Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Environmental Protection Agency, Region 6, Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas TX 75202-2733.

(vii) Iowa, Kansas, Missouri, and Nebraska. Environmental Protection

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Agency, Region 7, 901 North 5th Street, Kansas City, KS 66101.

(viii) Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129.

(ix) Arizona, California, Hawaii, Nevada, American Samoa, and Guam. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

(x) Alaska, Idaho, Oregon, and Washington. Environmental Protection Agency, Region 10, 1200 6th Avenue Seattle, WA 98101.

(e) Each State's plan is dealt with in a separate subpart, which includes an introductory section identifying the plan by name and the date of its submittal, a section classifying regions, and a section setting forth dates for attainment of the national standards. Additional sections are included as necessary to specifically identify disapproved provisions, to set forth reasons for disapproval, and to set forth provisions of the plan promulgated by the Administrator. Except as otherwise specified, all supplemental information submitted to the Administrator with respect to any plan has been submitted by the Governor of the State.

(f) Revisions to applicable plans will be included in this part when approved or promulgated by the Administrator.

[37 FR 10846, May 31, 1972, as amended at 37 FR 15080, July 27, 1972; 47 FR 38886, Sept. 3, 1982; 61 FR 16060, Apr. 11, 1996; 72 FR 38793, July 16, 2007]

### § 52.04 Classification of regions.

Each subpart sets forth the priority classification, by pollutant, for each region in the State. Each plan for each region was evaluated according to the requirements of part 51 of this chapter applicable to regions of that priority.

### § 52.05 Public availability of emission data.

Each subpart sets forth the Administrator's disapproval of plan procedures for making emission data available to the public after correlation with applicable emission limitations, and includes the promulgation of requirements that sources report emission

data to the Administrator for correlation and public disclosure.

### § 52.06 Legal authority.

(a) The Administrator's determination of the absence or inadequacy of legal authority required to be included in the plan is set forth in each subpart. This includes the legal authority of local agencies and State governmental agencies other than an air pollution control agency if such other agencies are assigned responsibility for carrying out a plan or portion thereof.

(b) No legal authority as such is promulgated by the Administrator. Where required regulatory provisions are not included in the plan by the State because of inadequate legal authority, substitute provisions are promulgated by the Administrator.

[37 FR 10846, May 31, 1972, as amended at 60 FR 33922, June 29, 1995]

### § 52.07 Control strategies.

(a) Each subpart specifies in what respects the control strategies are approved or disapproved. Where emission limitations with a future effective date are employed to carry out a control strategy, approval of the control strategy and the implementing regulations does not supersede the requirements of subpart N of this chapter relating to compliance schedules for individual sources or categories of sources. Compliance schedules for individual sources or categories of sources must require such sources to comply with applicable requirements of the plan as expeditiously as practicable, where the requirement is part of a control strategy designed to attain a primary standard, or within a reasonable time, where the requirement is part of a control strategy designed to attain a secondary standard. All sources must be required to comply with applicable requirements of the plan no later than the date specified in this part for attainment of the national standard which the requirement is intended to implement.

(b) A control strategy may be disapproved as inadequate because it is not sufficiently comprehensive, although all regulations provided to carry out the strategy may themselves be approved. In this case, regulations

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for carrying out necessary additional measures are promulgated in the subpart.

(c) Where a control strategy is adequate to attain and maintain a national standard but one or more of the regulations to carry it out is not adopted or not enforceable by the State, the control strategy is approved and the necessary regulations are promulgated by the Administrator.

(d) Where a control strategy is adequate to attain and maintain air quality better than that provided for by a national standard but one or more of the regulations to carry it out is not adopted or not enforceable by the State, the control strategy is approved and substitute regulations necessary to attain and maintain the national standard are promulgated.

[37 FR 10846, May 31, 1972, as amended at 37 FR 19807, Sept. 22, 1972; 51 FR 40676, Nov. 7, 1986]

## § 52.08 Rules and regulations.

Each subpart identifies the regulations, including emission limitations, which are disapproved by the Administrator, and includes the regulations which the Administrator promulgates.

## § 52.09 Compliance schedules.

(a) In each subpart, compliance schedules disapproved by the Administrator are identified, and compliance schedules promulgated by the Administrator are set forth.

(b) Individual source compliance schedules submitted with certain plans have not yet been evaluated, and are not approved or disapproved.

(c) The Administrator's approval or promulgation of any compliance schedule shall not affect the responsibility of the owner or operator to comply with any applicable emission limitation on and after the date for final compliance specified in the applicable schedule.

[37 FR 10846, May 31, 1972, as amended at 38 FR 30877, Nov. 8, 1973]

## § 52.10 Review of new sources and modifications.

In any plan where the review procedure for new sources and source modifications does not meet the require-

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ments of subpart I of this chapter, provisions are promulgated which enable the Administrator to obtain the necessary information and to prevent construction or modification.

[37 FR 10846, May 31, 1972, as amended at 51 FR 40677, Nov. 7, 1986]

## § 52.11 Prevention of air pollution emergency episodes.

(a) Each subpart identifies portions of the air pollution emergency episode contingency plan which are disapproved, and sets forth the Administrator's promulgation of substitute provisions.

(b) No provisions are promulgated to replace any disapproved air quality monitoring or communications portions of a contingency plan, but detailed critiques of such portions are provided to the State.

(c) Where a State plan does not provide for public announcement regarding air pollution emergency episodes or where the State fails to give any such public announcement, the Administrator will issue a public announcement that an episode stage has been reached. When making such an announcement, the Administrator will be guided by the suggested episode criteria and emission control actions suggested in Appendix L of part 51 of this chapter or those in the approved plan.

[37 FR 10846, May 31, 1972, as amended at 37 FR 19807, Sept. 22, 1972]

## § 52.12 Source surveillance.

(a) Each subpart identifies the plan provisions for source surveillance which are disapproved, and sets forth the Administrator's promulgation of necessary provisions for requiring sources to maintain records, make reports, and submit information.

(b) No provisions are promulgated for any disapproved State or local agency procedures for testing, inspection, investigation, or detection, but detailed critiques of such portions are provided to the State.

(c) For purposes of Federal enforcement, the following test procedures and methods shall be used, provided that for the purpose of establishing whether or not a person has violated or is in violation of any provision of the

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plan, nothing in this part shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test procedures or methods had been performed:

(1) Sources subject to plan provisions which do not specify a test procedure and sources subject to provisions promulgated by the Administrator will be tested by means of the appropriate procedures and methods prescribed in part 60 of this chapter unless otherwise specified in this part.

(2) Sources subject to approved provisions of a plan wherein a test procedure is specified will be tested by the specified procedure.

[37 FR 10846, May 31, 1972, as amended at 40 FR 26032, June 20, 1975; 62 FR 8328, Feb. 24, 1997]

### § 52.13 Air quality surveillance; resources; intergovernmental cooperation.

Disapproved portions of the plan related to the air quality surveillance system, resources, and intergovernmental cooperation are identified in each subpart, and detailed critiques of such portions are provided to the State. No provisions are promulgated by the Administrator.

### § 52.14 State ambient air quality standards.

Any ambient air quality standard submitted with a plan which is less stringent than a national standard is not considered part of the plan.

### § 52.15 Public availability of plans.

Each State shall make available for public inspection at least one copy of the plan in at least one city in each region to which such plan is applicable. All such copies shall be kept current.

### § 52.16 Submission to Administrator.

(a) All requests, reports, applications, submittals, and other communications to the Administrator pursuant to this part shall be submitted in duplicate and addressed to the appropriate Regional Office of the Environmental Protection Agency.

(b) The Regional Offices are as follows:

(1) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. EPA Region 1, John F. Kennedy Federal Building, One Congress Street, Boston, MA 02203.

(2) New York, New Jersey, Puerto Rico, and Virgin Islands. EPA Region 2, 290 Broadway, New York, NY 10007-1866.

(3) Delaware, District of Columbia, Pennsylvania, Maryland, Virginia, and West Virginia. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103-2029.

(4) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303.

(5) Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604-3507.

(6) Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. EPA Region 6, Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202-2733.

(7) Iowa, Kansas, Missouri, and Nebraska. EPA Region 7, 901 North 5th Street, Kansas City, KS 66101.

(8) Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. EPA, Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129.

(9) Arizona, California, Hawaii, Nevada, American Samoa, and Guam. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

(10) Alaska, Idaho, Oregon, and Washington. EPA, Region 10, 1200 6th Avenue, Seattle, WA 98101.

[61 FR 16061, Apr. 11, 1996, as amended at 72 FR 38793, July 16, 2007]

### § 52.17 Severability of provisions.

The provisions promulgated in this part and the various applications thereof are distinct and severable. If any provision of this part or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of such provision to other persons or circumstances which can be given effect without the invalid provision or application.

[37 FR 19808, Sept. 22, 1972]

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### § 52.18 Abbreviations.

Abbreviations used in this part shall be those set forth in part 60 of this chapter.

[38 FR 12698, May 14, 1973]

### § 52.20 Attainment dates for national standards.

Each subpart contains a section which specifies the latest dates by which national standards are to be attained in each region in the State. An attainment date which only refers to a month and a year (such as July 1975) shall be construed to mean the last day of the month in question. However, the specification of attainment dates for national standards does not relieve any State from the provisions of subpart N of this chapter which require all sources and categories of sources to comply with applicable requirements of the plan—

(a) As expeditiously as practicable where the requirement is part of a control strategy designed to attain a primary standard, and

(b) Within a reasonable time where the requirement is part of a control strategy designed to attain a secondary standard.

[37 FR 19808, Sept. 22, 1972, as amended at 39 FR 34535, Sept. 26, 1974; 51 FR 40676, Nov. 7, 1986]

### § 52.21 Prevention of significant deterioration of air quality.

(a)(1) *Plan disapproval.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to prevention of significant deterioration of air quality in any portion of any State where the existing air quality is better than the national ambient air quality standards. Specific disapprovals are listed where applicable, in subparts B through DDD of this part. The provisions of this section have been incorporated by reference into the applicable implementation plans for various States, as provided in subparts B through DDD of this part. Where this section is so incorporated, the provisions shall also be applicable to all lands owned by the Federal Government and Indian Reservations located in such State. No disapproval with re-

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spect to a State's failure to prevent significant deterioration of air quality shall invalidate or otherwise affect the obligations of States, emission sources, or other persons with respect to all portions of plans approved or promulgated under this part.

(2) *Applicability procedures.* (i) The requirements of this section apply to the construction of any new major stationary source (as defined in paragraph (b)(1) of this section) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Act.

(ii) The requirements of paragraphs (j) through (r) of this section apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this section otherwise provides.

(iii) No new major stationary source or major modification to which the requirements of paragraphs (j) through (r)(5) of this section apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Administrator has authority to issue any such permit.

(iv) The requirements of the program will be applied in accordance with the principles set out in paragraphs (a)(2)(iv)(a) through (f) of this section.

(a) Except as otherwise provided in paragraphs (a)(2)(v) and (vi) of this section, and consistent with the definition of major modification contained in paragraph (b)(2) of this section, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (b)(40) of this section), and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(b) The procedure for calculating (before beginning actual construction)

whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (a)(2)(iv)(c) through (f) of this section. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in paragraph (b)(3) of this section. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(c) *Actual-to-projected-actual applicability test for projects that only involve existing emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph (b)(41) of this section) and the baseline actual emissions (as defined in paragraphs (b)(48)(i) and (ii) of this section), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(d) *Actual-to-potential test for projects that only involve construction of a new emissions unit(s).* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph (b)(4) of this section) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (b)(48)(iii) of this section) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(e) [Reserved]

(f) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (a)(2)(iv)(c) through (d) of this section as applicable with respect to each

emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(v) For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under paragraph (aa) of this section.

(b) *Definitions.* For the purposes of this section:

(1)(i) *Major stationary source* means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants (with thermal dryers), primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140), fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(b) Notwithstanding the stationary source size specified in paragraph (b)(1)(i) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(1) of this section, as a major stationary

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source, if the changes would constitute a major stationary source by itself.

(ii) A major source that is major for volatile organic compounds or NO<sub>x</sub> shall be considered major for ozone.

(iii) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (a) Coal cleaning plants (with thermal dryers);
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum ore reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, and
- (aa) Any other stationary source category which, as of August 7, 1980, is

being regulated under section 111 or 112 of the Act.

(2)(i) *Major modification* means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph (b)(40) of this section) of a regulated NSR pollutant (as defined in paragraph (b)(50) of this section); and a significant net emissions increase of that pollutant from the major stationary source.

(ii) Any significant emissions increase (as defined at paragraph (b)(40) of this section) from any emissions units or net emissions increase (as defined in paragraph (b)(3) of this section) at a major stationary source that is significant for volatile organic compounds or NO<sub>x</sub> shall be considered significant for ozone.

(iii) A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement. Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc) of this section;

NOTE TO PARAGRAPH (b)(2)(iii)(a): By court order on December 24, 2003, the second sentence of this paragraph (b)(2)(iii)(a) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.

(b) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plant pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source which:



(1) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166; or

(2) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166.

(g) Any change in ownership at a stationary source.

(h) [Reserved]

(i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(1) The State implementation plan for the State in which the project is located, and

(2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(j) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(k) The reactivation of a very clean coal-fired electric utility steam generating unit.

(iv) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph (aa) of this section for a PAL for that pollutant. Instead, the definition at paragraph (aa)(2)(viii) of this section shall apply.

(v) Fugitive emissions shall not be included in determining for any of the purposes of this section whether a

physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in paragraph (b)(1)(iii) of this section.

(3)(i) *Net emissions increase* means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(a) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to paragraph (a)(2)(iv) of this section; and

(b) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph (b)(3)(i)(b) shall be determined as provided in paragraph (b)(48) of this section, except that paragraphs (b)(48)(i)(c) and (b)(48)(ii)(d) of this section shall not apply.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on the particular change commences; and

(b) The date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if:

(a) The Administrator or other reviewing authority has not relied on it in issuing a permit for the source under this section, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(b) The increase or decrease in emissions did not occur at a Clean Unit except as provided in paragraphs (x)(8) and (y)(10) of this section.

(c) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in paragraph (b)(1)(iii) of this section or it occurs at an emission unit that is located at a major stationary source that belongs

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to one of the listed source categories.(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(v) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(vi) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins.

(c) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(vii) [Reserved]

(viii) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(ix) Paragraph (b)(21)(ii) of this section shall not apply for determining creditable increases and decreases.

(4) *Potential to emit* means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) *Stationary source* means any building, structure, facility, or installation

which emits or may emit a regulated NSR pollutant.

(6) *Building, structure, facility, or installation* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U. S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

(7) *Emissions unit* means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in paragraph (b)(31) of this section. For purposes of this section, there are two types of emissions units as described in paragraphs (b)(7)(i) and (ii) of this section.

(i) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(ii) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (b)(7)(i) of this section. A replacement unit, as defined in paragraph (b)(33) of this section, is an existing emissions unit.

(8) *Construction* means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(9) *Commence* as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) *Necessary preconstruction approvals or permits* means those permits or approvals required under Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(11) *Begin actual construction* means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(12) *Best available control technology* means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under Act which would be emitted from any proposed major stationary source or major modification which the Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the Administrator determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or

combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(13)(i) *Baseline concentration* means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) The actual emissions, as defined in paragraph (b)(21) of this section, representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b)(13)(ii) of this section; and

(b) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(ii) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emissions, as defined in paragraph (b)(21) of this section, from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases, as defined in paragraph (b)(21) of this section, at any stationary source occurring after the minor source baseline date.

(14)(i) *Major source baseline date* means:

(a) In the case of PM<sub>10</sub> and sulfur dioxide, January 6, 1975;

(b) In the case of nitrogen dioxide, February 8, 1988; and

(c) In the case of PM<sub>2.5</sub>, October 20, 2010.

(ii) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the

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relevant regulations. The trigger date is:

(a) In the case of PM<sub>10</sub> and sulfur dioxide, August 7, 1977;

(b) In the case of nitrogen dioxide, February 8, 1988; and

(c) In the case of PM<sub>2.5</sub>, October 20, 2011.

(iii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166; and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(iv) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments, except that the Administrator shall rescind a minor source baseline date where it can be shown, to the satisfaction of the Administrator, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM-10 emissions.

(15)(i) *Baseline area* means any intra-state area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than 1 µg/m<sup>3</sup> (annual average) for SO<sub>2</sub>, NO<sub>2</sub>, or PM<sub>10</sub>; or equal to or greater than 0.3 µg/m<sup>3</sup> (annual average) for PM<sub>2.5</sub>.

(ii) Area redesignations under section 107(d)(1)(A)(ii) or (iii) of the Act cannot intersect or be smaller than the area of

impact of any major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(b) Is subject to 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

(iii) Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments, except that such baseline area shall not remain in effect if the Administrator rescinds the corresponding minor source baseline date in accordance with paragraph (b)(14)(iv) of this section.

(16) *Allowable emissions* means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(i) The applicable standards as set forth in 40 CFR parts 60 and 61;

(ii) The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(iii) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(17) *Federally enforceable* means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

(18) *Secondary emissions* means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major

modification itself. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(i) Emissions from ships or trains coming to or from the new or modified stationary source; and

(ii) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(19) *Innovative control technology* means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(20) *Fugitive emissions* means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(21)(i) *Actual emissions* means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (b)(21)(ii) through (iv) of this section, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph (aa) of this section. Instead, paragraphs (b)(41) and (b)(48) of this section shall apply for those purposes.

(ii) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Administrator shall allow the use of a different time period upon a determination that it is more representative of normal source

operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(iii) The Administrator may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(iv) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(22) *Complete* means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

(23)(i) *Significant* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

POLLUTANT AND EMISSIONS RATE

Carbon monoxide: 100 tons per year (tpy)  
 Nitrogen oxides: 40 tpy  
 Sulfur dioxide: 40 tpy  
 Particulate matter: 25 tpy of particulate matter emissions  
 PM<sub>10</sub>: 15 tpy  
 PM<sub>2.5</sub>: 10 tpy of direct PM<sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM<sub>2.5</sub> precursor under paragraph (b)(50) of this section  
 Ozone: 40 tpy of volatile organic compounds or nitrogen oxides  
 Lead: 0.6 tpy  
 Fluorides: 3 tpy  
 Sulfuric acid mist: 7 tpy  
 Hydrogen sulfide (H<sub>2</sub>S): 10 tpy  
 Total reduced sulfur (including H<sub>2</sub>S): 10 tpy  
 Reduced sulfur compounds (including H<sub>2</sub>S): 10 tpy  
 Municipal waste combustor organics (measured as total tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans):  $3.2 \times 10^{M6}$  megagrams per year ( $3.5 \times 10^{M6}$  tons per year)  
 Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)  
 Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)

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Municipal solid waste landfills emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

(ii) *Significant* means, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that paragraph (b)(23)(i) of this section, does not list, any emissions rate.

(iii) Notwithstanding paragraph (b)(23)(i) of this section, *significant* means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 µg/m<sup>3</sup>, (24-hour average).

(24) *Federal Land Manager* means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(25) *High terrain* means any area having an elevation 900 feet or more above the base of the stack of a source.

(26) *Low terrain* means any area other than high terrain.

(27) *Indian Reservation* means any federally recognized reservation established by Treaty, Agreement, executive order, or act of Congress.

(28) *Indian Governing Body* means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self government.

(29) *Adverse impact on visibility* means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

(30) *Volatile organic compounds (VOC)* is as defined in § 51.100(s) of this chapter.

(31) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the

purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(32) [Reserved]

(33) *Replacement unit* means an emissions unit for which all the criteria listed in paragraphs (b)(33)(i) through (iv) of this section are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(i) The emissions unit is a reconstructed unit within the meaning of § 60.15(b)(1) of this chapter, or the emissions unit completely takes the place of an existing emissions unit.

(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(iii) The replacement does not alter the basic design parameters (as discussed in paragraph (cc)(2) of this section) of the process unit.

(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(34) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(35) *Clean coal technology demonstration project* means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of

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\$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(36) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(37) (i) *Repowering* means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(ii) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(iii) The Administrator shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Clean Air Act.

(38) *Reactivation of a very clean coal-fired electric utility steam generating unit* means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(i) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(ii) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(iii) Is equipped with low-NO<sub>x</sub> burners prior to the time of commencement of operations following reactivation; and

(iv) Is otherwise in compliance with the requirements of the Clean Air Act.

(39) *Pollution prevention* means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(40) *Significant emissions increase* means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (b)(23) of this section) for that pollutant.

(41)(i) *Projected actual emissions* means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(ii) In determining the projected actual emissions under paragraph (b)(41)(i) of this section (before beginning actual construction), the owner or operator of the major stationary source:

(a) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved State Implementation Plan; and

(b) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(c) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under paragraph (b)(48) of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(d) In lieu of using the method set out in paragraphs (a)(41)(ii)(a) through (c) of this section, may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (b)(4) of this section.

(42) [Reserved]

(43) *Prevention of Significant Deterioration (PSD) program* means the EPA-implemented major source preconstruction permit programs under this section or a major source preconstruction permit program that has been approved by the Administrator and incorporated into the State Implementation Plan pursuant to § 51.166 of this chapter to implement the requirements of that section. Any permit issued under such a program is a major NSR permit.

(44) *Continuous emissions monitoring system (CEMS)* means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(45) *Predictive emissions monitoring system (PEMS)* means all of the equipment necessary to monitor process and con-

trol device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(46) *Continuous parameter monitoring system (CPMS)* means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and to record average operational parameter value(s) on a continuous basis.

(47) *Continuous emissions rate monitoring system (CERMS)* means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(48) *Baseline actual emissions* means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs (b)(48)(i) through (iv) of this section.

(i) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-



month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used For each regulated NSR pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph (b)(48)(i)(b) of this section.

(ii) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Administrator for a permit required under this section or by the reviewing authority for a permit required by a plan, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of this chapter, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an at-

tainment demonstration or maintenance plan consistent with the requirements of § 51.165(a)(3)(ii)(G) of this chapter.

(d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used For each regulated NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs (b)(48)(ii)(b) and (c) of this section.

(iii) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(iv) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (b)(48)(i) of this section, for other existing emissions units in accordance with the procedures contained in paragraph (b)(48)(ii) of this section, and for a new emissions unit in accordance with the procedures contained in paragraph (b)(48)(iii) of this section.

(49) *Subject to regulation* means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of this chapter, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(i) *Greenhouse gases (GHGs)*, the air pollutant defined in § 86.1818-12(a) of this chapter as the aggregate group of

six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs (b)(49)(iv) through (v) of this section.

(ii) For purposes of paragraphs (b)(49)(iii) through (v) of this section, the term *tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)* shall represent an amount of GHGs emitted, and shall be computed as follows:

(a) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of part 98 of this chapter—Global Warming Potentials.

(b) Sum the resultant value from paragraph (b)(49)(ii)(a) of this section for each gas to compute a tpy CO<sub>2</sub>e.

(iii) The term *emissions increase* as used in paragraphs (b)(49)(iv) through (v) of this section shall mean that both a significant emissions increase (as calculated using the procedures in paragraph (a)(2)(iv) of this section) and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO<sub>2</sub>e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and “significant” is defined as 75,000 tpy CO<sub>2</sub>e instead of applying the value in paragraph (b)(23)(ii) of this section.

(iv) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO<sub>2</sub>e or more; or

(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO<sub>2</sub>e or more; and,

(v) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(49)(iv) of this section, the pollutant GHGs shall also be subject to regulation

(a) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO<sub>2</sub>e; or

(b) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO<sub>2</sub>e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO<sub>2</sub>e or more.

(50) *Regulated NSR pollutant*, for purposes of this section, means the following:

(i) Any pollutant for which a national ambient air quality standard has been promulgated and any pollutant identified under this paragraph (b)(50)(i) as a constituent or precursor for such pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(b) Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas.

(c) Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

(d) Volatile organic compounds are presumed not to be precursors to PM<sub>2.5</sub> in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

(ii) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(iii) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act;

(iv) Any pollutant that otherwise is subject to regulation under the Act as defined in paragraph (b)(49) of this section.

(v) Notwithstanding paragraphs (b)(50)(i) through (iv) of this section, the term *regulated NSR pollutant* shall not include any or all hazardous air pollutants either listed in section 112 of the Act, or added to the list pursuant to section 112(b)(2) of the Act, and which have not been delisted pursuant to section 112(b)(3) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act.

(vi) Particulate matter (PM) emissions, PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits. Compliance with emissions limitations for PM, PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particular matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particular matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particular matter to be included.

(51) *Reviewing authority* means the State air pollution control agency, local agency, other State agency, Indian tribe, or other agency authorized by the Administrator to carry out a permit program under § 51.165 and § 51.166 of this chapter, or the Administrator in the case of EPA-implemented permit programs under this section.

(52) *Project* means a physical change in, or change in the method of operation of, an existing major stationary source.

(53) *Lowest achievable emission rate (LAER)* is as defined in § 51.165(a)(1)(xiii) of this chapter.

(54) *Reasonably available control technology (RACT)* is as defined in § 51.100(o) of this chapter.

(55)(i) In general, *process unit* means any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an intermediate or a completed product. A single stationary source may contain more than one process unit, and a process unit may contain more than one emissions unit.

(ii) Pollution control equipment is not part of the process unit, unless it serves a dual function as both process and control equipment. Administrative and warehousing facilities are not part of the process unit.

(iii) For replacement cost purposes, components shared between two or more process units are proportionately allocated based on capacity.

(iv) The following list identifies the process units at specific categories of stationary sources.

(a) For a steam electric generating facility, the process unit consists of those portions of the plant that contribute directly to the production of electricity. For example, at a pulverized coal-fired facility, the process unit would generally be the combination of those systems from the coal receiving equipment through the emission stack (excluding post-combustion pollution controls), including the coal handling equipment, pulverizers or coal crushers, feedwater heaters, ash handling, boiler, burners, turbine-generator set, condenser, cooling tower, water treatment system, air preheaters, and operating control systems. Each separate generating unit is a separate process unit.

(b) For a petroleum refinery, there are several categories of process units: those that separate and/or distill petroleum feedstocks; those that change molecular structures; petroleum treating processes; auxiliary facilities, such as steam generators and hydrogen production units; and those that load, unload, blend or store intermediate or completed products.

(c) For an incinerator, the process unit would consist of components from the feed pit or refuse pit to the stack, including conveyors, combustion devices, heat exchangers and steam generators, quench tanks, and fans.

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NOTE TO PARAGRAPH (b)(55): By a court order on December 24, 2003, this paragraph (b)(55) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.

(56) *Functionally equivalent component* means a component that serves the same purpose as the replaced component.

NOTE TO PARAGRAPH (b)(56): By a court order on December 24, 2003, this paragraph (b)(56) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.

(57) *Fixed capital cost* means the capital needed to provide all the depreciable components. “Depreciable components” refers to all components of fixed capital cost and is calculated by subtracting land and working capital from the total capital investment, as defined in paragraph (b)(58) of this section.

NOTE TO PARAGRAPH (b)(57): By a court order on December 24, 2003, this paragraph (b)(57) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.

(58) *Total capital investment* means the sum of the following: all costs required to purchase needed process equipment (purchased equipment costs); the costs of labor and materials for installing that equipment (direct installation costs); the costs of site preparation and buildings; other costs such as engineering, construction and field expenses, fees to contractors, startup and performance tests, and contingencies (indirect installation costs); land for the process equipment; and working capital for the process equipment.

NOTE TO PARAGRAPH (b)(58): By a court order on December 24, 2003, this paragraph (b)(58) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.

(c) *Ambient air increments.* In areas designated as Class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Class I Area	
PM <sub>2.5</sub> :	
Annual arithmetic mean .....	1
24-hr maximum .....	2
PM <sub>10</sub> :	
Annual arithmetic mean .....	4
24-hr maximum .....	8
Sulfur dioxide:	
Annual arithmetic mean .....	2
24-hr maximum .....	5
3-hr maximum .....	25
Nitrogen dioxide:	
Annual arithmetic mean .....	2.5
Class II Area	
PM <sub>2.5</sub> :	
Annual arithmetic mean .....	4
24-hr maximum .....	9
PM <sub>10</sub> :	
Annual arithmetic mean .....	17
24-hr maximum .....	30
Sulfur dioxide:	
Annual arithmetic mean .....	20
24-hr maximum .....	91
3-hr maximum .....	512
Nitrogen dioxide:	
Annual arithmetic mean .....	25
Class III Area	
PM <sub>2.5</sub> :	
Annual arithmetic mean .....	8
24-hr maximum .....	18
PM <sub>10</sub> :	
Annual arithmetic mean .....	34
24-hr maximum .....	60
Sulfur dioxide:	
Annual arithmetic mean .....	40
24-hr maximum .....	182
3-hr maximum .....	700
Nitrogen dioxide:	
Annual arithmetic mean .....	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

(d) *Ambient air ceilings.* No concentration of a pollutant shall exceed:

(1) The concentration permitted under the national secondary ambient air quality standard, or

(2) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

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### (e) *Restrictions on area classifications.*

(1) All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:

- (i) International parks,
- (ii) National wilderness areas which exceed 5,000 acres in size,
- (iii) National memorial parks which exceed 5,000 acres in size, and
- (iv) National parks which exceed 6,000 acres in size.

(2) Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this section.

(3) Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this section.

(4) The following areas may be redesignated only as Class I or II:

(i) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(ii) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

(f) [Reserved]

(g) *Redesignation.* (1) All areas (except as otherwise provided under paragraph (e) of this section) are designated Class II as of December 5, 1974. Redesignation (except as otherwise precluded by paragraph (e) of this section) may be proposed by the respective States or Indian Governing Bodies, as provided below, subject to approval by the Administrator as a revision to the applicable State implementation plan.

(2) The State may submit to the Administrator a proposal to redesignate areas of the State Class I or Class II provided that:

(i) At least one public hearing has been held in accordance with procedures established in § 51.102 of this chapter;

(ii) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation were notified at

least 30 days prior to the public hearing;

(iii) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

(iv) Prior to the issuance of notice respecting the redesignation of an area that includes any Federal lands, the State has provided written notice to the appropriate Federal Land Manager and afforded adequate opportunity (not in excess of 60 days) to confer with the State respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the State shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager); and

(v) The State has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

(3) Any area other than an area to which paragraph (e) of this section refers may be redesignated as Class III if—

(i) The redesignation would meet the requirements of paragraph (g)(2) of this section;

(ii) The redesignation, except any established by an Indian Governing Body, has been specifically approved by the Governor of the State, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session (unless State law provides that the redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area to be

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redesignated enact legislation or pass resolutions concurring in the redesignation:

(iii) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and

(iv) Any permit application for any major stationary source or major modification, subject to review under paragraph (l) of this section, which could receive a permit under this section only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available insofar as was practicable for public inspection prior to any public hearing on redesignation of the area as Class III.

(4) Lands within the exterior boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body. The appropriate Indian Governing Body may submit to the Administrator a proposal to redesignate areas Class I, Class II, or Class III: *Provided*, That:

(i) The Indian Governing Body has followed procedures equivalent to those required of a State under paragraphs (g)(2), (g)(3)(iii), and (g)(3)(iv) of this section; and

(ii) Such redesignation is proposed after consultation with the State(s) in which the Indian Reservation is located and which border the Indian Reservation.

(5) The Administrator shall disapprove, within 90 days of submission, a proposed redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this paragraph or is inconsistent with paragraph (e) of this section. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

(6) If the Administrator disapproves any proposed redesignation, the State or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the Administrator.

(h) *Stack heights.* (1) The degree of emission limitation required for control of any air pollutant under this section shall not be affected in any manner by—

(i) So much of the stack height of any source as exceeds good engineering practice, or

(ii) Any other dispersion technique.

(2) Paragraph (h)(1) of this section shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

(i) *Exemptions.* (1) The requirements of paragraphs (j) through (r) of this section shall not apply to a particular major stationary source or major modification, if;

(i) Construction commenced on the source or modification before August 7, 1977. The regulations at 40 CFR 52.21 as in effect before August 7, 1977, shall govern the review and permitting of any such source or modification; or

(ii) The source or modification was subject to the review requirements of 40 CFR 52.21(d)(1) as in effect before March 1, 1978, and the owner or operator:

(a) Obtained under 40 CFR 52.21 a final approval effective before March 1, 1978;

(b) Commenced construction before March 19, 1979; and

(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(iii) The source or modification was subject to 40 CFR 52.21 as in effect before March 1, 1978, and the review of an application for approval for the stationary source or modification under 40 CFR 52.21 would have been completed by March 1, 1978, but for an extension of the public comment period pursuant to a request for such an extension. In such a case, the application shall continue to be processed, and granted or denied, under 40 CFR 52.21 as in effect prior to March 1, 1978; or

(iv) The source or modification was not subject to 40 CFR 52.21 as in effect before March 1, 1978, and the owner or operator:

(a) Obtained all final Federal, state and local preconstruction approvals or permits necessary under the applicable

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State Implementation Plan before March 1, 1978;

(b) Commenced construction before March 19, 1979; and

(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(v) The source or modification was not subject to 40 CFR 52.21 as in effect on June 19, 1978 or under the partial stay of regulations published on February 5, 1980 (45 FR 7800), and the owner or operator:

(a) Obtained all final Federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before August 7, 1980;

(b) Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable State Implementation Plan; and

(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(vi) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor of the state in which the source or modification would be located requests that it be exempt from those requirements; or

(vii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum ore reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act; or

(viii) The source is a portable stationary source which has previously received a permit under this section, and

(a) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(b) The emissions from the source would not exceed its allowable emissions; and

(c) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(d) Reasonable notice is given to the Administrator prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Administrator not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the Administrator.

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(ix) The source or modification was not subject to § 52.21, with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator:

(a) Obtained all final Federal, State, and local preconstruction approvals or permits necessary under the applicable State implementation plan before July 31, 1987;

(b) Commenced construction within 18 months after July 31, 1987, or any earlier time required under the State implementation plan; and

(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time.

(x) The source or modification was subject to 40 CFR 52.21, with respect to particulate matter, as in effect before July 31, 1987 and the owner or operator submitted an application for a permit under this section before that date, and the Administrator subsequently determines that the application as submitted was complete with respect to the particular matter requirements then in effect in the section. Instead, the requirements of paragraphs (j) through (r) of this section that were in effect before July 31, 1987 shall apply to such source or modification. (xi) The source or modification was subject to 40 CFR 52.21, with respect to  $PM_{2.5}$ , as in effect before July 15, 2008, and the owner or operator submitted an application for a permit under this section before that date consistent with EPA recommendations to use  $PM_{10}$  as a surrogate for  $PM_{2.5}$ , and the Administrator subsequently determines that the application as submitted was complete with respect to the  $PM_{2.5}$  requirements then in effect, as interpreted in the EPA memorandum entitled "Interim Implementation of New Source Review Requirements for  $PM_{2.5}$ " (October 23, 1997). Instead, the requirements of paragraphs (j) through (r) of this section, as interpreted in the aforementioned memorandum, that were in effect before July 15, 2008 shall apply to such source or modification.

(2) The requirements of paragraphs (j) through (r) of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or op-

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erator demonstrates that, as to that pollutant, the source or modification is located in an area designated as non-attainment under section 107 of the Act.

(3) The requirements of paragraphs (k), (m) and (o) of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(i) Would impact no Class I area and no area where an applicable increment is known to be violated, and

(ii) Would be temporary.

(4) The requirements of paragraphs (k), (m) and (o) of this section as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

(5) The Administrator may exempt a stationary source or modification from the requirements of paragraph (m) of this section, with respect to monitoring for a particular pollutant if:

(i) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

(a) Carbon monoxide—575  $\mu\text{g}/\text{m}^3$ , 8-hour average;

(b) Nitrogen dioxide—14  $\mu\text{g}/\text{m}^3$ , annual average;

(c)  $PM_{2.5}$ —4  $\mu\text{g}/\text{m}^3$ , 24-hour average;

(d)  $PM_{10}$ —10  $\mu\text{g}/\text{m}^3$ , 24-hour average;

(e) Sulfur dioxide—13  $\mu\text{g}/\text{m}^3$ , 24-hour average;

(f) Ozone;

(g) Lead—0.1  $\mu\text{g}/\text{m}^3$ , 3-month average;

(h) Fluorides—0.25  $\mu\text{g}/\text{m}^3$ , 24-hour average;

(i) Total reduced sulfur—10  $\mu\text{g}/\text{m}^3$ , 1-hour average;

(j) Hydrogen sulfide—0.2  $\mu\text{g}/\text{m}^3$ , 1-hour average;

(k) Reduced sulfur compounds—10  $\mu\text{g}/\text{m}^3$ , 1-hour average; or



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NOTE TO PARAGRAPH (c)(50)(i)(f): No *de minimis* air quality level is provided for ozone. However, any net emissions increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.

(ii) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in paragraph (i)(5)(i) of this section; or

(iii) The pollutant is not listed in paragraph (i)(5)(i) of this section.

(6) The requirements for best available control technology in paragraph (j) of this section and the requirements for air quality analyses in paragraph (m)(1) of this section, shall not apply to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under those regulations before August 7, 1980, and the Administrator subsequently determines that the application as submitted before that date was complete. Instead, the requirements at 40 CFR 52.21(j) and (n) as in effect on June 19, 1978 apply to any such source or modification.

(7)(i) The requirements for air quality monitoring in paragraphs (m)(1) (ii) through (iv) of this section shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Administrator subsequently determines that the application as submitted before that date was complete with respect to the requirements of this section other than those in paragraphs (m)(1) (ii) through (iv) of this section, and with respect to the requirements for such analyses at 40 CFR 52.21(m)(2) as in effect on June 19, 1978. Instead, the latter requirements shall apply to any such source or modification.

(ii) The requirements for air quality monitoring in paragraphs (m)(1) (ii) through (iv) of this section shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if the

owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Administrator subsequently determines that the application as submitted before that date was complete, except with respect to the requirements in paragraphs (m)(1) (ii) through (iv).

(8)(i) At the discretion of the Administrator, the requirements for air quality monitoring of PM<sub>10</sub> in paragraphs (m)(1) (i)-(iv) of this section may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for a permit under this section on or before June 1, 1988 and the Administrator subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in paragraphs (m)(1) (i)-(iv).

(ii) The requirements for air quality monitoring of PM<sub>10</sub> in paragraphs (m)(1), (ii) and (iv) and (m)(3) of this section shall apply to a particular source or modification if the owner or operator of the source or modification submits an application for a permit under this section after June 1, 1988 and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988 to the date the application becomes otherwise complete in accordance with the provisions set forth under paragraph (m)(1)(viii) of this section, except that if the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over a shorter period.

(9) The requirements of paragraph (k)(1)(ii) of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increase took effect as part of the applicable implementation

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plan and the Administrator subsequently determined that the application as submitted before that date was complete.

(10) The requirements in paragraph (k)(1)(ii) of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM-10 if (i) the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increases for PM-10 took effect in an implementation plan to which this section applies, and (ii) the Administrator subsequently determined that the application as submitted before that date was otherwise complete. Instead, the requirements in paragraph (k)(1)(ii) shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

(j) *Control technology review.* (1) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 CFR parts 60 and 61.

(2) A new major stationary source shall apply best available control technology for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of

any previous determination of best available control technology for the source.

(k) *Source impact analysis*—(1) *Required demonstration.* The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

(i) Any national ambient air quality standard in any air quality control region; or

(ii) Any applicable maximum allowable increase over the baseline concentration in any area.

(2) *Significant impact levels.* For purposes of PM<sub>2.5</sub>, the demonstration required in paragraph (k)(1) of this section is deemed to have been made if the emissions increase from the new stationary source alone or from the modification alone would cause, in all areas, air quality impacts less than the following amounts:

Pollutant	Averaging time	Class I area	Class II area	Class III area
PM <sub>2.5</sub> ... .....	Annual .....	0.06 µg/m <sup>3</sup>	0.3 µg/m <sup>3</sup>	0.3 µg/m <sup>3</sup>
	24-hour .....	0.07 µg/m <sup>3</sup>	1.2 µg/m <sup>3</sup>	1.2 µg/m <sup>3</sup>

(1) *Air quality models.* (1) All estimates of ambient concentrations required under this paragraph shall be based on applicable air quality models, data bases, and other requirements specified in appendix W of part 51 of this chapter (Guideline on Air Quality Models).

(2) Where an air quality model specified in appendix W of part 51 of this chapter (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (q) of this section.

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(m) *Air quality analysis*—(1) *Preapplication analysis.* (i) Any application for a permit under this section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(a) For the source, each pollutant that it would have the potential to omit in a significant amount;

(b) For the modification, each pollutant for which it would result in a significant net emissions increase.

(ii) With respect to any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Administrator determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(iii) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(iv) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

(v) For any application which becomes complete, except as to the requirements of paragraphs (m)(1) (iii) and (iv) of this section, between June 8, 1981, and February 9, 1982, the data that paragraph (m)(1)(iii) of this section, requires shall have been gathered over at least the period from February 9, 1981, to the date the application becomes otherwise complete, except that:

(a) If the source or modification would have been major for that pollut-

ant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over at least the period required by those regulations.

(b) If the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that paragraph (m)(1)(iii) of this section, requires shall have been gathered over at least that shorter period.

(c) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the Administrator may waive the otherwise applicable requirements of this paragraph (v) to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

(vi) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 40 CFR part 51 Appendix S, section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under paragraph (m)(1) of this section.

(vii) For any application that becomes complete, except as to the requirements of paragraphs (m)(1) (iii) and (iv) pertaining to PM<sub>10</sub>, after December 1, 1988 and no later than August 1, 1989 the data that paragraph (m)(1)(iii) requires shall have been gathered over at least the period from August 1, 1988 to the date the application becomes otherwise complete, except that if the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over that shorter period.

(viii) With respect to any requirements for air quality monitoring of PM<sub>10</sub> under paragraphs (i)(1) (i) and (ii) of this section the owner or operator of the source or modification shall use a monitoring method approved by the Administrator and shall estimate the ambient concentrations of PM<sub>10</sub>

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using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Administrator.

(2) Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Administrator determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(3) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to part 58 of this chapter during the operation of monitoring stations for purposes of satisfying paragraph (m) of this section.

(n) *Source information.* The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this section.

(1) With respect to a source or modification to which paragraphs (j), (l), (n) and (p) of this section apply, such information shall include:

(i) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(ii) A detailed schedule for construction of the source or modification;

(iii) A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

(2) Upon request of the Administrator, the owner or operator shall also provide information on:

(i) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(ii) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred

since August 7, 1977, in the area the source or modification would affect.

(o) *Additional impact analyses.* (1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

(3) *Visibility monitoring.* The Administrator may require monitoring of visibility in any Federal class I area near the proposed new stationary source for major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(p) *Sources impacting Federal Class I areas—additional requirements—(1) Notice to Federal land managers.* The Administrator shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal land manager and the Federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area. The Administrator shall also provide the Federal land manager and such Federal officials with a copy of the preliminary determination required under paragraph (q) of this section, and shall make available to them any materials used in making that determination, promptly after the Administrator makes such determination. Finally, the Administrator shall also

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notify all affected Federal land managers within 30 days of receipt of any advance notification of any such permit application.

(2) *Federal Land Manager.* The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Administrator, whether a proposed source or modification will have an adverse impact on such values.

(3) *Visibility analysis.* The Administrator shall consider any analysis performed by the Federal land manager, provided within 30 days of the notification required by paragraph (p)(1) of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. Where the Administrator finds that such an analysis does not demonstrate to the satisfaction of the Administrator that an adverse impact on visibility will result in the Federal Class I area, the Administrator must, in the notice of public hearing on the permit application, either explain his decision or give notice as to where the explanation can be obtained.

(4) *Denial—impact on air quality related values.* The Federal Land Manager of any such lands may demonstrate to the Administrator that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Administrator concurs with such demonstration, then he shall not issue the permit.

(5) *Class I variances.* The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding

that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal land manager concurs with such demonstration and he so certifies, the State may authorize the Administrator: *Provided*, That the applicable requirements of this section are otherwise met, to issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, PM<sub>2.5</sub>, PM<sub>10</sub>, and nitrogen oxides would not exceed the following maximum allowable increases over minor source base-line concentration for such pollutants:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
PM <sub>2.5</sub> :	
Annual arithmetic mean .....	4
24-hr maximum .....	9
PM <sub>10</sub> :	
Annual arithmetic mean .....	17
24-hr maximum .....	30
Sulfur dioxide:	
Annual arithmetic mean .....	20
24-hr maximum .....	91
3-hr maximum .....	325
Nitrogen dioxide:	
Annual arithmetic mean .....	25

(6) *Sulfur dioxide variance by Governor with Federal Land Manager's concurrence.* The owner or operator of a proposed source or modification which cannot be approved under paragraph (q)(4) of this section may demonstrate to the Governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of twenty-four hours or less applicable to any Class I area and, in the case of Federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the Administrator shall issue a permit to such source or modification pursuant to the requirements of paragraph (q)(7) of this section: *Provided*,

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That the applicable requirements of this section are otherwise met.

(7) *Variance by the Governor with the President's concurrence.* In any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the Administrator shall issue a permit pursuant to the requirements of paragraph (q)(7) of this section: *Provided*, That the applicable requirements of this section are otherwise met.

(8) *Emission limitations for Presidential or gubernatorial variance.* In the case of a permit issued pursuant to paragraph (q) (5) or (6) of this section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE [Micrograms per cubic meter]		
Period of exposure	Terrain areas	
	Low	High
24-hr maximum .....	36	62
3-hr maximum .....	130	221

(q) *Public participation.* The Administrator shall follow the applicable procedures of 40 CFR part 124 in processing applications under this section. The Administrator shall follow the procedures at 40 CFR 52.21(r) as in effect on June 19, 1979, to the extent that the procedures of 40 CFR part 124 do not apply.

(r) *Source obligation.* (1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Administrator may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State implementation plan and any other requirements under local, State, or Federal law.

(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements or paragraphs (j) through (s) of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5) [Reserved]

(6) Except as otherwise provided in paragraph (r)(6)(vi)(b) of this section, the provisions of this paragraph (r)(6) apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major

stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph (r)(6)(vi) of this section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (b)(41)(ii)(a) through (c) of this section for calculating projected actual emissions.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(a) A description of the project;

(b) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(c) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (b)(41)(ii)(c) of this section and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(ii) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph (r)(6)(i) of this section to the Administrator. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any determination from the Administrator before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph (r)(6)(i)(b) of this section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design ca-

capacity or potential to emit that regulated NSR pollutant at such emissions unit.

(iv) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Administrator within 60 days after the end of each year during which records must be generated under paragraph (r)(6)(iii) of this section setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(v) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Administrator if the annual emissions, in tons per year, from the project identified in paragraph (r)(6)(i) of this section, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (r)(6)(i)(c) of this section), by a significant amount (as defined in paragraph (b)(23) of this section) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (r)(6)(i)(c) of this section. Such report shall be submitted to the Administrator within 60 days after the end of such year. The report shall contain the following:

(a) The name, address and telephone number of the major stationary source;

(b) The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and

(c) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(vi) A "reasonable possibility" under paragraph (r)(6) of this section occurs when the owner or operator calculates the project to result in either:

(a) A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under paragraph (b)(40) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph

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(b)(41)(ii)(c) of this section, sums to at least 50 percent of the amount that is a “significant emissions increase,” as defined under paragraph (b)(40) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (r)(6)(vi)(b) of this section, and not also within the meaning of paragraph (r)(6)(vi)(a) of this section, then provisions (r)(6)(ii) through (v) do not apply to the project.

(7) The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph (r)(6) of this section available for review upon a request for inspection by the Administrator or the general public pursuant to the requirements contained in § 70.4(b)(3)(viii) of this chapter.

(s) *Environmental impact statements.* Whenever any proposed source or modification is subject to action by a Federal Agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this section shall be coordinated with the broad environmental reviews under that Act and under section 309 of the Clean Air Act to the maximum extent feasible and reasonable.

(t) *Disputed permits or redesignations.* If any State affected by the redesignation of an area by an Indian Governing Body, or any Indian Governing Body of a tribe affected by the redesignation of an area by a State, disagrees with such redesignation, or if a permit is proposed to be issued for any major stationary source or major modification proposed for construction in any State which the Governor of an affected State or Indian Governing Body of an affected tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected State or Indian Reservation, the Governor or Indian Governing Body may request the Administrator to enter into negotiations with the parties involved to resolve such dispute. If requested by

any State or Indian Governing Body involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable State implementation plan and shall be enforceable as part of such plan. In resolving such disputes relating to area redesignation, the Administrator shall consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area.

(u) *Delegation of authority.* (1) The Administrator shall have the authority to delegate his responsibility for conducting source review pursuant to this section, in accordance with paragraphs (v) (2) and (3) of this section.

(2) Where the Administrator delegates the responsibility for conducting source review under this section to any agency other than a Regional Office of the Environmental Protection Agency, the following provisions shall apply:

(i) Where the delegate agency is not an air pollution control agency, it shall consult with the appropriate State and local air pollution control agency prior to making any determination under this section. Similarly, where the delegate agency does not have continuing responsibility for managing land use, it shall consult with the appropriate State and local agency primarily responsible for managing land use prior to making any determination under this section.

(ii) The delegate agency shall send a copy of any public comment notice required under paragraph (r) of this section to the Administrator through the appropriate Regional Office.

(3) The Administrator’s authority for reviewing a source or modification located on an Indian Reservation shall not be redelegated other than to a Regional Office of the Environmental Protection Agency, except where the State has assumed jurisdiction over such land under other laws. Where the State has assumed such jurisdiction,



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the Administrator may delegate his authority to the States in accordance with paragraph (v)(2) of this section.

(4) In the case of a source or modification which proposes to construct in a class III area, emissions from which would cause or contribute to air quality exceeding the maximum allowable increase applicable if the area were designated a class II area, and where no standard under section 111 of the act has been promulgated for such source category, the Administrator must approve the determination of best available control technology as set forth in the permit.

(v) *Innovative control technology.* (1) An owner or operator of a proposed major stationary source or major modification may request the Administrator in writing no later than the close of the comment period under 40 CFR 124.10 to approve a system of innovative control technology.

(2) The Administrator shall, with the consent of the governor(s) of the affected state(s), determine that the source or modification may employ a system of innovative control technology, if:

(i) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(ii) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph (j)(2) of this section, by a date specified by the Administrator. Such date shall not be later than 4 years from the time of startup or 7 years from permit issuance;

(iii) The source or modification would meet the requirements of paragraphs (j) and (k) of this section, based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Administrator;

(iv) The source or modification would not before the date specified by the Administrator:

(a) Cause or contribute to a violation of an applicable national ambient air quality standard; or

(b) Impact any area where an applicable increment is known to be violated; and

(v) All other applicable requirements including those for public participation have been met.

(vi) The provisions of paragraph (p) of this section (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

(3) The Administrator shall withdraw any approval to employ a system of innovative control technology made under this section, if:

(i) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

(ii) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(iii) The Administrator decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with paragraph (v)(3) of this section, the Administrator may allow the source or modification up to an additional 3 years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

(w) *Permit rescission.* (1) Any permit issued under this section or a prior version of this section shall remain in effect, unless and until it expires under paragraph (s) of this section or is rescinded.

(2) Any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under 40 CFR 52.21 as in effect on July 30, 1987, or any earlier version of this section, may request that the Administrator rescind the permit or a particular portion of the permit.

(3) The Administrator shall grant an application for rescission if the application shows that this section would

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not apply to the source or modification.

(4) If the Administrator rescinds a permit under this paragraph, the public shall be given adequate notice of the rescission. Publication of an announcement of rescission in a newspaper of general circulation in the affected region within 60 days of the rescission shall be considered adequate notice.

(x)–(z) [Reserved]

(aa) *Actuals PALs*. The provisions in paragraphs (aa)(1) through (15) of this section govern actuals PALs.

(1) *Applicability*. (i) The Administrator may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in paragraphs (aa)(1) through (15) of this section. The term “PAL” shall mean “actuals PAL” throughout paragraph (aa) of this section.

(ii) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs (aa)(1) through (15) of this section, and complies with the PAL permit:

(a) Is not a major modification for the PAL pollutant;

(b) Does not have to be approved through the PSD program; and

(c) Is not subject to the provisions in paragraph (r)(4) of this section (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

(iii) Except as provided under paragraph (aa)(1)(ii)(c) of this section, a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) *Definitions*. For the purposes of this section, the definitions in paragraphs (aa)(2)(i) through (xi) of this section apply. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (b) of this section or in the Act.

(i) *Actuals PAL* for a major stationary source means a PAL based on the baseline actual emissions (as defined in

paragraph (b)(48) of this section) of all emissions units (as defined in paragraph (b)(7) of this section) at the source, that emit or have the potential to emit the PAL pollutant.

(ii) *Allowable emissions* means “allowable emissions” as defined in paragraph (b)(16) of this section, except as this definition is modified according to paragraphs (aa)(2)(i)(a) and (b) of this section.

(a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit’s potential to emit.

(b) An emissions unit’s potential to emit shall be determined using the definition in paragraph (b)(4) of this section, except that the words “or enforceable as a practical matter” should be added after “federally enforceable.”

(iii) *Small emissions unit* means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph (b)(23) of this section or in the Act, whichever is lower.

(iv) *Major emissions unit* means:

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(b) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Act for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(v) *Plantwide applicability limitation (PAL)* means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs (aa)(1) through (15) of this section.

(vi) *PAL effective date* generally means the date of issuance of the PAL

permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(vii) *PAL effective period* means the period beginning with the PAL effective date and ending 10 years later.

(viii) *PAL major modification* means, notwithstanding paragraphs (b)(2) and (b)(3) of this section (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(ix) *PAL permit* means the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the State Implementation Plan, or the title V permit issued by the Administrator that establishes a PAL for a major stationary source.

(x) *PAL pollutant* means the pollutant for which a PAL is established at a major stationary source.

(xi) *Significant emissions unit* means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph (b)(23) of this section or in the Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (aa)(2)(iv) of this section.

(3) *Permit application requirements.* As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Administrator for approval:

(i) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations, or work practices apply to each unit.

(ii) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but

also emissions associated with startup, shutdown, and malfunction.

(iii) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph (aa)(13)(i) of this section.

(4) *General requirements for establishing PALs.* (i) The Administrator is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs (aa)(4)(i)(a) through (g) of this section are met.

(a) The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in paragraph (aa)(5) of this section.

(c) The PAL permit shall contain all the requirements of paragraph (aa)(7) of this section.

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(e) Each PAL shall regulate emissions of only one pollutant.

(f) Each PAL shall have a PAL effective period of 10 years.

(g) The owner or operator of the major stationary source with a PAL

shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (aa)(12) through (14) of this section for each emissions unit under the PAL through the PAL effective period.

(ii) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under § 51.165(a)(3)(ii) of this chapter unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(5) *Public participation requirements for PALs.* PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with §§ 51.160 and 51.161 of this chapter. This includes the requirement that the Administrator provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Administrator must address all material comments before taking final action on the permit.

(6) *Setting the 10-year actuals PAL level.* (i) Except as provided in paragraph (aa)(6)(ii) of this section, the plan shall provide that the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph (b)(48) of this section) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (b)(23) of this section or under the Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The reviewing authority shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become

effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the reviewing authority is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO<sub>x</sub> to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(ii) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in paragraph (aa)(6)(i) of this section, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(7) *Contents of the PAL permit.* The PAL permit must contain, at a minimum, the information in paragraphs (aa)(7)(i) through (x) of this section.

(i) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(ii) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(iii) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with paragraph (aa)(10) of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by a reviewing authority.

(iv) A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.

(v) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of paragraph (aa)(9) of this section.

(vi) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by paragraph (aa)(13)(i) of this section.

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(vii) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under paragraph (aa)(12) of this section.

(viii) A requirement to retain the records required under paragraph (aa)(13) of this section on site. Such records may be retained in an electronic format.

(ix) A requirement to submit the reports required under paragraph (aa)(14) of this section by the required deadlines.

(x) Any other requirements that the Administrator deems necessary to implement and enforce the PAL.

(8) *PAL effective period and reopening of the PAL permit.* The requirements in paragraphs (aa)(8)(i) and (ii) of this section apply to actuals PALs.

(i) *PAL effective period.* The Administrator shall specify a PAL effective period of 10 years.

(ii) *Reopening of the PAL permit.* (a) During the PAL effective period, the Administrator must reopen the PAL permit to:

(1) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(2) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under § 51.165(a)(3)(ii) of this chapter; and

(3) Revise the PAL to reflect an increase in the PAL as provided under paragraph (aa)(11) of this section.

(b) The Administrator shall have discretion to reopen the PAL permit for the following:

(1) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(2) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the State Implementation Plan; and

(3) Reduce the PAL if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value

that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(c) Except for the permit reopening in paragraph (aa)(8)(ii)(a)(1) of this section for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph (aa)(5) of this section.

(9) *Expiration of a PAL.* Any PAL that is not renewed in accordance with the procedures in paragraph (aa)(10) of this section shall expire at the end of the PAL effective period, and the requirements in paragraphs (aa)(9)(i) through (v) of this section shall apply.

(i) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs (aa)(9)(i)(a) and (b) of this section.

(a) Within the time frame specified for PAL renewals in paragraph (aa)(10)(ii) of this section, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Administrator) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph (aa)(10)(v) of this section, such distribution shall be made as if the PAL had been adjusted.

(b) The Administrator shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Administrator determines is appropriate.

(ii) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Administrator may approve the use of monitoring systems (source testing,

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emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(iii) Until the Administrator issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph (aa)(9)(i)(b) of this section, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(iv) Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in paragraph (b)(2) of this section.

(v) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph (r)(4) of this section, but were eliminated by the PAL in accordance with the provisions in paragraph (aa)(1)(ii)(c) of this section.

(10) *Renewal of a PAL.* (i) The Administrator shall follow the procedures specified in paragraph (aa)(5) of this section in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Administrator.

(ii) *Application deadline.* A major stationary source owner or operator shall submit a timely application to the Administrator to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this

time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(iii) *Application requirements.* The application to renew a PAL permit shall contain the information required in paragraphs (aa)(10)(iii)(a) through (d) of this section.

(a) The information required in paragraphs (aa)(3)(i) through (iii) of this section.

(b) A proposed PAL level.

(c) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(d) Any other information the owner or operator wishes the Administrator to consider in determining the appropriate level for renewing the PAL.

(iv) *PAL adjustment.* In determining whether and how to adjust the PAL, the Administrator shall consider the options outlined in paragraphs (aa)(10)(iv)(a) and (b) of this section. However, in no case may any such adjustment fail to comply with paragraph (aa)(10)(iv)(c) of this section.

(a) If the emissions level calculated in accordance with paragraph (aa)(6) of this section is equal to or greater than 80 percent of the PAL level, the Administrator may renew the PAL at the same level without considering the factors set forth in paragraph (aa)(10)(iv)(b) of this section; or

(b) The Administrator may set the PAL at a level that he or she determines to be more representative of the source's baseline actual emissions, or that he or she determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Administrator in his or her written rationale.

(c) Notwithstanding paragraphs (aa)(10)(iv)(a) and (b) of this section:

(1) If the potential to emit of the major stationary source is less than the PAL, the Administrator shall adjust the PAL to a level no greater than the potential to emit of the source; and

(2) The Administrator shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the

provisions of paragraph (aa)(11) of this section (increasing a PAL).

(v) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Administrator has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

(11) *Increasing a PAL during the PAL effective period.* (i) The Administrator may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs (aa)(11)(i)(a) through (d) of this section.

(a) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(b) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(c) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph (aa)(11)(i)(a) of this section, regardless of the magnitude of the emissions increase resulting from them (that is, no

significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

(d) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(ii) The Administrator shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph (aa)(11)(i)(b)), plus the sum of the baseline actual emissions of the small emissions units.

(iii) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of paragraph (aa)(5) of this section.

(12) *Monitoring requirements for PALs.* (i) *General requirements.* (a) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs (aa)(12)(i)(a) through (d) of this section and must be approved by the Administrator.

(c) Notwithstanding paragraph (aa)(12)(i)(b) of this section, you may also employ an alternative monitoring approach that meets paragraph (aa)(12)(i)(a) of this section if approved by the Administrator.

(d) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(ii) Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (aa)(12)(iii) through (ix) of this section:

(a) Mass balance calculations for activities using coatings or solvents;

(b) CEMS;

(c) CPMS or PEMS; and

(d) Emission factors.

(iii) *Mass balance calculations.* An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(a) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(b) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(c) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Administrator determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(iv) *CEMS.* An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and

(b) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(v) *CPMS or PEMS.* An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) The CPMS or the PEMS must be based on current site-specific data

demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(b) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Administrator, while the emissions unit is operating.

(vi) *Emission factors.* An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(a) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(c) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Administrator determines that testing is not required.

(vii) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(viii) Notwithstanding the requirements in paragraphs (aa)(12)(iii) through (vii) of this section, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Administrator shall, at the time of permit issuance:

(a) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or



(b) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(ix) *Re-validation*. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Administrator. Such testing must occur at least once every 5 years after issuance of the PAL.

(13) *Recordkeeping requirements*. (i) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (aa) of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(ii) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

(a) A copy of the PAL permit application and any applications for revisions to the PAL; and

(b) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(14) *Reporting and notification requirements*. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Administrator in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs (aa)(14)(i) through (iii) of this section.

(i) *Semi-annual report*. The semi-annual report shall be submitted to the Administrator within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs (aa)(14)(i)(a) through (g) of this section.

(a) The identification of owner and operator and the permit number.

(b) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (aa)(13)(i) of this section.

(c) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

(d) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

(e) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by (aa)(12)(vii).

(g) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(ii) *Deviation report*. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to § 70.6(a)(3)(iii)(B) of this chapter shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing § 70.6(a)(3)(iii)(B) of this chapter. The reports shall contain the following information:

(a) The identification of owner and operator and the permit number;

(b) The PAL requirement that experienced the deviation or that was exceeded;

(c) Emissions resulting from the deviation or the exceedance; and

(d) A signed statement by the responsible official (as defined by the applicable title V operating permit program)

certifying the truth, accuracy, and completeness of the information provided in the report.

(iii) *Re-validation results.* The owner or operator shall submit to the Administrator the results of any re-validation test or method within 3 months after completion of such test or method.

(15) *Transition requirements.* (i) The Administrator may not issue a PAL that does not comply with the requirements in paragraphs (aa)(1) through (15) of this section after March 3, 2003.

(ii) The Administrator may supersede any PAL that was established prior to March 3, 2003 with a PAL that complies with the requirements of paragraphs (aa)(1) through (15) of this section.

(bb) If any provision of this section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(cc) Without regard to other considerations, routine maintenance, repair and replacement includes, but is not limited to, the replacement of any component of a process unit with an identical or functionally equivalent component(s), and maintenance and repair activities that are part of the replacement activity, provided that all of the requirements in paragraphs (cc)(1) through (3) of this section are met.

(1) *Capital cost threshold for equipment replacement.* (i) For an *electric utility steam generating unit*, as defined in § 52.21(b)(31), the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced. For a process unit that is not an electric utility steam generating unit the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced.

(ii) In determining the replacement value of the process unit; and, except

as otherwise allowed under paragraph (cc)(1)(iii) of this section, the owner or operator shall determine the replacement value of the process unit on an estimate of the fixed capital cost of constructing a new process unit, or on the current appraised value of the process unit.

(iii) As an alternative to paragraph (cc)(1)(ii) of this section for determining the replacement value of a process unit, an owner or operator may choose to use insurance value (where the insurance value covers only complete replacement), investment value adjusted for inflation, or another accounting procedure if such procedure is based on Generally Accepted Accounting Principles, provided that the owner or operator sends a notice to the reviewing authority. The first time that an owner or operator submits such a notice for a particular process unit, the notice may be submitted at any time, but any subsequent notice for that process unit may be submitted only at the beginning of the process unit's fiscal year. Unless the owner or operator submits a notice to the reviewing authority, then paragraph (cc)(1)(ii) of this section will be used to establish the replacement value of the process unit. Once the owner or operator submits a notice to use an alternative accounting procedure, the owner or operator must continue to use that procedure for the entire fiscal year for that process unit. In subsequent fiscal years, the owner or operator must continue to use this selected procedure unless and until the owner or operator sends another notice to the reviewing authority selecting another procedure consistent with this paragraph or paragraph (cc)(1)(ii) of this section at the beginning of such fiscal year.

(2) *Basic design parameters.* The replacement does not change the basic design parameter(s) of the process unit to which the activity pertains.

(i) Except as provided in paragraph (cc)(2)(iii) of this section, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow

rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(ii) Except as provided in paragraph (cc)(2)(iii) of this section, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

(iii) If the owner or operator believes the basic design parameter(s) in paragraphs (cc)(2)(i) and (ii) of this section is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(iv) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in paragraphs (cc)(2)(i) and (ii) of this section.

(v) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(vi) Efficiency of a process unit is not a basic design parameter.

(3) The replacement activity shall not cause the process unit to exceed

any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.

NOTE TO PARAGRAPH (cc): By a court order on December 24, 2003, this paragraph (cc) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.

[43 FR 26403, June 19, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 52.21, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

EFFECTIVE DATE NOTE: At 76 FR 17556, Mar. 30, 2011, § 52.21(b)(2)(v) and (b)(3)(iii)(c) were stayed indefinitely.

EFFECTIVE DATE NOTE: At 76 FR 28661, May 18, 2011, § 52.21 was amended by removing paragraph (i)(1)(xi), effective July 18, 2011.

**§ 52.22 Enforceable commitments for further actions addressing the pollutant greenhouse gases (GHGs).**

(a) *Definitions.* (1) *Greenhouse Gases (GHGs)* means the air pollutant as defined in § 86.1818–12(a) of this chapter as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(2) All other terms used in this section shall have the meaning given in § 52.21.

(b) *Further action to regulate GHGs under the PSD program.*

(1) *Near term action on GHGs.* The Administrator shall solicit comment, under section 307(b) of the Act, on promulgating lower GHGs thresholds for PSD applicability. Such action shall be finalized by July 1, 2012 and become effective July 1, 2013.

(2) *Further study and action on GHGs.*

(i) No later than April 30, 2015 the Administrator shall complete a study projecting the administrative burdens that remain with respect to stationary sources for which GHGs do not constitute a regulated NSR pollutant. Such study shall account, among other things, for permitting authorities ability to secure resources, hire and train

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staff; experiences associated with GHG permitting for new types of sources and technologies; and, the success of streamlining measures developed by EPA (and adopted by the states) for reducing the permitting burden associated with such stationary sources.

(ii) Based on the results of the study described in paragraph (b)(2)(i) of this section, the Administrator shall propose a rule addressing the permitting obligations of such stationary sources under § 52.21 and § 51.166 of this chapter. The Administrator shall take final action on such a rule no later than April 30, 2016.

(iii) Before completing the rule described in paragraph (b)(2)(ii) of this section, the Administrator shall take no action to make the pollutant GHGs subject to regulation at stationary sources that emit or have the potential to emit less than 50,000 tpy CO<sub>2</sub>e, or for physical changes or changes in the method of operations at stationary sources that result in an emissions increase of less than 50,000 tpy CO<sub>2</sub>e (as determined using the methodology described in § 52.21(b)(49)(ii).)

[75 FR 31607, June 3, 2010]

## § 52.23 Violation and enforcement.

Failure to comply with any provisions of this part, or with any approved regulatory provision of a State implementation plan, or with any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the State implementation plan, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. With regard to compliance schedules, a person or Governmental entity will be considered to have failed to comply with the requirements of this part if it fails to timely submit any required compliance schedule, if the compliance schedule when submitted does not contain each of the elements it is required to contain, or if

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the person or Governmental entity fails to comply with such schedule.

[39 FR 33512, Sept. 18, 1974, as amended at 54 FR 27285, June 28, 1989]

## § 52.24 Statutory restriction on new sources.

(a) Any area designated nonattainment pursuant to section 107(d) of the Act to which, immediately prior to the enactment of the Amendments to the Act of 1990 (November 15, 1990), a prohibition of construction or modification of major stationary sources was applied, shall retain that prohibition if such prohibition was applied by virtue of a finding of the Administrator that the State containing such an area:

(1) Failed to submit an implementation plan meeting the requirements of an approvable new source review permitting program; or

(2) Failed to submit an implementation plan that provided for timely attainment of the national ambient air quality standard for sulfur dioxide by December 31, 1982. This prohibition shall apply until the Administrator approves a plan for such area as meeting the applicable requirements of part D of title I of the Act as amended (NSR permitting requirements) or subpart 5 of part D of title I of the Act as amended (relating to attainment of the national ambient air quality standards for sulfur dioxide), as applicable.

(b) Permits to construct and operate as required by permit programs under section 172(c)(5) of the Act may not be issued for new or modified major stationary sources proposing to locate in nonattainment areas or areas in a transport region where the Administrator has determined that the applicable implementation plan is not being adequately implemented for the nonattainment area or transport region in which the proposed source is to be constructed or modified in accordance with the requirements of part D of title I of the Act.

(c) Whenever, on the basis of any information, the Administrator finds that a State is not in compliance with any requirement or prohibition of the Act relating to the construction of new sources or the modification of existing sources, the Administrator may issue an order under section 113(a)(5) of the

Act prohibiting the construction or modification of any major stationary source in any area to which such requirement applies.

(d) The restrictions in paragraphs (a) and (b) of this section apply only to major stationary sources of emissions that cause or contribute to concentrations of the pollutant (or precursors, as applicable) for which the transport region or nonattainment area was designated such, and for which the applicable implementation plan is not being carried out in accordance with, or does not meet, the requirements of part D of title I of the Act.

(e) For any transport region or any area designated as nonattainment for any national ambient air quality standard, the restrictions in paragraphs (a) and (b) of this section shall apply to any major stationary source or major modification that would be major for the pollutant (or precursors, where applicable) for which the area is designated nonattainment or a transport region, if the stationary source or major modification would be constructed anywhere in the designated nonattainment area or transport region.

(f) The provisions in § 51.165 of this chapter shall apply in interpreting the terms under this section.

(g) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then:

(1) If the construction moratorium imposed pursuant to this section is still in effect for the nonattainment area or transport region in which the source or modification is located, then the permit may not be so revised; or

(2) If the construction moratorium is no longer in effect in that area, then the requirements of § 51.165 of this chapter shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(h) This section does not apply to major stationary sources or major

modifications locating in a clearly defined part of a nonattainment area or transport region (such as a political subdivision of a State), where EPA finds that a plan which meets the requirements of part D of title I of the Act is in effect and is being implemented in that part.

(i)-(j) [Reserved]

(k) For an area designated as nonattainment after July 1, 1979, the Emission Offset Interpretative Ruling, 40 CFR part 51, appendix S shall govern permits to construct and operate applied for during the period between the date of designation as nonattainment and the date the NSR permit program meeting the requirements of part D is approved. The Emission Offset Interpretative Ruling, 40 CFR part 51, appendix S, shall also govern permits to construct and operate applied for in any area designated under section 107(d) of the CAA as attainment or unclassifiable for ozone that is located in an ozone transport region prior to the date the NSR permitting program meeting the requirements of part D is approved.

[70 FR 71704, Nov. 29, 2005]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 52.24, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

#### § 52.26 Visibility monitoring strategy.

(a) *Plan Disapprovals.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to visibility monitoring. Specific disapprovals are listed where applicable in Subparts B through DD of this part. The provisions of this section have been incorporated by reference into the applicable implementation plan for various States, as provided in Subparts B through DDD of this part.

(b) *Definitions.* For the purposes of this section:

(1) *Visibility protection area* means any area listed in 40 CFR 81.401–81.436 (1984).

(2) All other terms shall have the meaning ascribed to them in the Clean Air Act, or in the protection of visibility program (40 CFR 51.301), all as in effect on July 12, 1985.

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(c) *Monitoring Requirements.* (1) The Administrator, in cooperation with the appropriate Federal land manager, shall monitor visibility within each visibility protection area in any State whose State implementation plan is subject to a disapproval for failure to satisfy 40 CFR 51.305 (1984).

(2) The Administrator, in monitoring visibility within each such area, shall determine both background visibility conditions and reasonably attributable visibility impairment caused by a source or small group of sources for that area. The extent and the form of monitoring shall be sufficient for use in determining the potential effects of a new stationary source on visibility in the area, the stationary source or sources that are causing any visibility impairment, and progress toward remedying that impairment.

(3) The Administrator shall use the following as appropriate to monitor visibility within each such area: (i) photographic cameras, (ii) fine particulate matter samplers, (iii) teleradiometers, (iv) nephelometers, (v) human observation, or (vi) other appropriate technology.

(4) The Administrator, in cooperation with the Federal land managers, shall prepare monitoring plans that describe, to the maximum extent practicable, the methods and instruments of data collection, the monitoring locations and frequencies, the implementation schedule, the quality assurance procedures, and the methods of data reporting that the Administrator will use for each area. The Administrator shall make these plans available to the public.

(5) The Administrator shall establish a central repository of monitoring data that includes any data on background visibility conditions and reasonably attributable impairment that the Administrator collects under this section and that the Federal land manager may collect or may have collected independently. These data shall be available to any person, subject to reasonable charges for copying.

(d) *Monitoring Plan Revision.* (1) The Administrator shall review the monitoring plan annually for each visibility protection area, revise it as necessary, and include an assessment of changes

to visibility conditions since the last review. The Administrator shall make all plan revisions available to the public.

(2) Any person may make a request to the Administrator, at any time, for a revision to a monitoring plan. The Administrator shall respond to any such request within one year.

(e) *Delegation.* The Administrator may delegate, with respect to a particular visibility protection area, any of his functions under this section to any State or local air pollution control agency of any State whose boundaries encompass that area or to any Federal land manager with jurisdiction over the area.

[50 FR 28550, July 12, 1985]

**§ 52.27 Protection of visibility from sources in attainment areas.**

(a) *Plan disapproval.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to protection of visibility, in mandatory Class I Federal areas, from sources emitting pollutants in any portion of any State where the existing air quality is better than the national ambient air quality standards for such pollutants, and where a State PSD program has been approved as part of the applicable SIP pursuant to 40 CFR 51.24. Specific disapprovals are listed where applicable in Subparts B through DDD of this part. The provisions of this section have been incorporated by reference into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part.

(b) *Definitions.* For purposes of this section, all terms shall have the meaning ascribed to them in the Clean Air Act, in the prevention of significant deterioration (PSD) program approved as part of the applicable SIP pursuant to 40 CFR 51.24 for the State, or in the protection of visibility program (40 CFR 51.301), all as in effect on July 12, 1985.

(c) *Federal visibility analysis.* Any person shall have the right, in connection with any application for a permit to construct a major stationary source or major modification, to request that the administrator take responsibility from the State for conducting the required

review of a proposed source's impact on visibility in any Federal Class I area. If requested, the Administrator shall take such responsibility and conduct such review pursuant to paragraphs (e), (f) and (g) of this section in any case where the State fails to provide all of the procedural steps listed in paragraph (d) of this section. A request pursuant to this paragraph must be made within 60 days of the notice soliciting public comment on a permit, unless such notice is not properly given. The Administrator will not entertain requests challenging the substance of any State action concerning visibility where the State has provided all of the procedural steps listed in paragraph (d) of this section.

(d) *Procedural steps in visibility review.*

(1) The reviewing authority must provide written notification to all affected Federal land managers of any permit application for any proposed new major stationary source or major modification that may affect visibility in any Federal Class I area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include the proposed source's anticipated impacts on visibility in any Federal Class I area as provided by the applicant. Notification must also be given to all affected Federal land managers within 30 days of receipt of any advance notification of any such permit application.

(2) The reviewing authority must consider any analysis performed by the Federal land managers, provided within 30 days of the notification required by paragraph (d)(1) of this section, that shows that such proposed new major stationary source or major modification may have:

(i) An adverse impact on visibility in any Federal Class I area, or

(ii) An adverse impact on visibility in an integral vista codified in part 81 of this title.

(3) Where the reviewing authority finds that such an analysis does not demonstrate that the effect in paragraphs (d)(2) (i) or (ii) of this section will occur, either an explanation of its

decision or notification as to where the explanation can be obtained must be included in the notice of public hearing.

(4) Where the reviewing authority finds that such an analysis does demonstrate that the effect in paragraph (d)(2)(i) of this section will occur, the permit shall not be issued.

(5) Where the reviewing authority finds that such an analysis does demonstrate that the effect in paragraph (d)(2)(ii) of this section will occur, the reviewing authority may issue a permit if the emissions from the source or modification will be consistent with reasonable progress toward the national goal. In making this decision, the reviewing authority may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(e) *Federal land manager notification.* The Administrator shall provide all of the procedural steps listed in paragraph (d) of this section in conducting reviews pursuant to this section.

(f) *Monitoring.* The Administrator may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(g) *Public participation.* The Administrator shall follow the applicable procedures at 40 CFR part 124 in conducting reviews under this section. The Administrator shall follow the procedures at 40 CFR 52.21(q) as in effect on August 7, 1980, to the extent that the procedures of 40 CFR part 124 do not apply.

(h) *Federal permit.* In any case where the Administrator has made a finding that a State consistently fails or is unable to provide the procedural steps listed in paragraph (d) of this section, the Administrator shall require all prospective permit applicants in such State to apply directly to the Administrator, and the Administrator shall conduct a visibility review pursuant to this section for all permit applications.

[50 FR 28551, July 12, 1985, as amended at 52 FR 45137, Nov. 24, 1987]

**§ 52.28 Protection of visibility from sources in nonattainment areas.**

(a) *Plan disapproval.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to protection of visibility, in mandatory Class I Federal areas where visibility is considered an important value, from sources emitting pollutants in any portion of any State where the existing air quality is not in compliance with the national ambient air quality standards for such pollutants. Specific disapprovals are listed where applicable in Subparts B through DDD of this part. The provisions of this section have been incorporated into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part.

(b) *Definitions.* For the purposes of this section:

(1) *Visibility protection area* means any area listed in 40 CFR 81.401-81.436 (1984).

(2) All other terms shall have the meaning ascribed to them in the protection of visibility program (40 CFR 51.301) or the prevention of significant deterioration (PSD) program either approved as part of the applicable SIP pursuant to 40 CFR 51.24 or in effect for the applicable SIP pursuant to 40 CFR 52.21, all as in effect on July 12, 1985.

(c) *Review of major stationary sources and major modifications—source applicability and exemptions.* (1) No stationary source or modification to which the requirements of this section apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements. The Administrator has sole authority to issue any such permit unless the authority has been delegated pursuant to paragraph (i) of this section.

(2) The requirements of this section shall apply to construction of any new major stationary source or major modification that would both be constructed in an area classified as nonattainment under section 107(d)(1)(A), (B) or (C) of the Clean Air Act and potentially have an impact on visibility in any visibility protection area.

(3) The requirements of this section shall apply to any such major stationary source and any such major

modification with respect to each pollutant subject to regulation under the Clean Air Act that it would emit, except as this section otherwise provides.

(4) The requirements of this section shall not apply to a particular major stationary source or major modification, if:

(i) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor of the State in which the source or modification would be located requests that it be exempt from those requirements; or

(ii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(A) Coal cleaning plants (with thermal dryers);

(B) Kraft pulp mills;

(C) Portland cement plants;

(D) Primary zinc smelters;

(E) Iron and steel mills;

(F) Primary aluminum ore reduction plants;

(G) Primary copper smelters;

(H) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(I) Hydrofluoric, sulfuric, or nitric acid plants;

(J) Petroleum refineries;

(K) Lime plants;

(L) Phosphate rock processing plants;

(M) Coke oven batteries;

(N) Sulfur recovery plants;

(O) Carbon black plants (furnace process);

(P) Primary lead smelters;

(Q) Fuel conversion plants;

(R) Sintering plants;

(S) Secondary metal production plants;

(T) Chemical process plants;

(U) Fossil-fuel boiler (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(W) Taconite ore processing plants;



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(X) Glass fiber processing plants;  
(Y) Charcoal production plants;  
(Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(AA) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act; or

(iii) The source is a portable stationary source which has previously received a permit under this section, and

(A) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(B) The emissions from the source would not exceed its allowable emissions; and

(C) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(D) Reasonable notice is given to the Administrator, prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Administrator not less than 10 days in advance of the proposed relocation, unless a different time duration is previously approved by the Administrator.

(5) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as attainment under section 107 of the Clean Air Act.

(6) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(i) Would impact no Class I area and no area where an applicable increment is known to be violated, and

(ii) Would be temporary.

(d) *Visibility Impact Analyses.* The owner or operator of a source shall provide an analysis of the impairment to visibility that would occur as a result of the source or modification and gen-

eral commercial, residential, industrial and other growth associated with the source or modification.

(e) *Federal land manager notification.*

(1) The Federal land manager and the Federal official charged with direct responsibility for management of Federal Class I areas have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Administrator, whether a proposed source or modification will have an adverse impact on such values.

(2) The Administrator shall provide written notification to all affected Federal land managers of any permit application for any proposed new major stationary source or major modification that may affect visibility in any visibility protection area. The Administrator shall also provide for such notification to the Federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in any visibility protection area. The Administrator shall also notify all affected FLM's within 30 days of receipt of any advance notification of any such permit application.

(3) The Administrator shall consider any analysis performed by the Federal land manager, provided within 30 days of the notification required by paragraph (e)(2) of this section, that such proposed new major stationary source or major modification may have an adverse impact on visibility in any visibility protection area. Where the Administrator finds that such an analysis does not demonstrate to the satisfaction of the Administrator that an adverse impact on visibility will result in the visibility protection area, the Administrator must, in the notice of public hearing, either explain his decision or give notice as to where the explanation can be obtained.

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(f) *Public participation.* The Administrator shall follow the applicable procedures of 40 CFR part 124 in processing applications under this section. The Administrator shall follow the procedures at 40 CFR 52.21(q) as in effect on August 7, 1980, to the extent that the procedures of 40 CFR part 124 do not apply.

(g) *National visibility goal.* The Administrator shall only issue permits to those sources whose emissions will be consistent with making reasonable progress toward the national goal of preventing any future, and remedying any existing, impairment of visibility in visibility protection areas which impairment results from man-made air pollution. In making the decision to issue a permit, the Administrator may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(h) *Monitoring.* The Administrator may require monitoring of visibility in any visibility protection area near the proposed new stationary source or major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(i) *Delegation of authority.* (1) The Administrator shall have the authority to delegate the responsibility for conducting source review pursuant to this section to any agency in accordance with paragraphs (i)(2) and (3) of this section.

(2) Where the Administrator delegates the responsibility for conducting source review under this section to any agency other than a Regional Office of the Environmental Protection Agency, the following provisions shall apply:

(i) Where the delegate agency is not an air pollution control agency it shall consult with the appropriate State and local air pollution control agency prior to making any determination under this section. Similarly, where the delegate agency does not have continuing responsibility for managing land use, it shall consult with the appropriate State and local agency primarily responsible for managing land use prior to making any determination under this section.

(ii) The delegate agency shall submit a copy of any public comment notice required under paragraph (f) of this section to the Administrator through the appropriate Regional Office.

(3) The Administrator's authority for reviewing a source or modification located on an Indian Reservation shall not be redelegated other than to a Regional Office of the Environmental Protection Agency, except where the State has assumed jurisdiction over such land under other laws. Where the State has assumed such jurisdiction, the Administrator may delegate his authority to the States in accordance with paragraph (i)(2) of this section.

[50 FR 28551, July 12, 1985]

### § 52.29 Visibility long-term strategies.

(a) *Plan disapprovals.* The provisions of this section are applicable to any State implementation plan which has been disapproved for not meeting the requirements of 40 CFR 51.306 regarding the development, periodic review, and revision of visibility long-term strategies. Specific disapprovals are listed where applicable in Subparts B through DDD of this part. The provisions of this section have been incorporated into the applicable implementation plan for various States, as provided in Subparts B through DDD of this part.

(b) *Definitions.* For the purposes of this section, all terms shall have the meaning as ascribed to them in the Clean Air Act, or in the protection of visibility program (40 CFR 51.301).

(c) *Long-term strategy.* (1) A long-term strategy is a 10- to 15-year plan for making reasonable progress toward the national goal specified in § 51.300(a). This strategy will cover any existing impairment certified by the Federal land manager and any integral vista which has been identified according to § 51.304.

(2) The Administrator shall review, and revise if appropriate, the long-term strategies developed for each visibility protection area. The review and revisions will be completed no less frequently than every 3 years from November 24, 1987.

(3) During the long-term strategy review process, the Administrator shall consult with the Federal land managers responsible for the appropriate

mandatory Class I Federal areas, and will coordinate long-term strategy development for an area with existing plans and goals, including those provided by the Federal land managers.

(4) The Administrator shall prepare a report on any progress made toward the national visibility goal since the last long-term strategy revisions. A report will be made available to the public not less frequently than 3 years from November 24, 1987. This report must include an assessment of:

(i) The progress achieved in remedying existing impairment of visibility in any mandatory Class I Federal area;

(ii) The ability of the long-term strategy to prevent future impairment of visibility in any mandatory Class I Federal area;

(iii) Any change in visibility since the last such report, or in the case of the first report, since plan approval;

(iv) Additional measures, including the need for SIP revisions, that may be necessary to assure reasonable progress toward the national visibility goal;

(v) The progress achieved in implementing best available retrofit technology (BART) and meeting other schedules set forth in the long-term strategy;

(vi) The impact of any exemption granted under § 51.303;

(vii) The need for BART to remedy existing visibility impairment of any integral vista identified pursuant to § 51.304.

(d) *Delegation of authority.* The Administrator may delegate with respect to a particular visibility protection area any of his functions under this section, except the making of regulations, to any State or local air pollution control agency of any State whose boundaries encompass that area.

[52 FR 45137, Nov. 24, 1987]

**§ 52.30 Criteria for limiting application of sanctions under section 110(m) of the Clean Air Act on a statewide basis.**

(a) *Definitions.* For the purpose of this section:

(1) The term "political subdivision" refers to the representative body that is responsible for adopting and/or implementing air pollution controls for

one, or any combination of one or more of the following: city, town, borough, county, parish, district, or any other geographical subdivision created by, or pursuant to, Federal or State law. This will include any agency designated under section 174, 42 U.S.C. 7504, by the State to carry out the air planning responsibilities under part D.

(2) The term "required activity" means the submission of a plan or plan item, or the implementation of a plan or plan item.

(3) The term "deficiency" means the failure to perform a required activity as defined in paragraph (a)(2) of this section.

(4) For purposes of § 52.30, the terms "plan" or "plan item" mean an implementation plan or portion of an implementation plan or action needed to prepare such plan required by the Clean Air Act, as amended in 1990, or in response to a SIP call issued pursuant to section 110(k)(5) of the Act.

(b) *Sanctions.* During the 24 months after a finding, determination, or disapproval under section 179(a) of the Clean Air Act is made, EPA will not impose sanctions under section 110(m) of the Act on a statewide basis if the Administrator finds that one or more political subdivisions of the State are principally responsible for the deficiency on which the finding, disapproval, or determination as provided under section 179(a)(1) through (4) is based.

(c) *Criteria.* For the purposes of this provision, EPA will consider a political subdivision to be principally responsible for the deficiency on which a section 179(a) finding is based, if all five of the following criteria are met.

(1) The State has provided adequate legal authority to a political subdivision to perform the required activity.

(2) The required activity is one which has traditionally been performed by the local political subdivision, or the responsibility for performing the required activity has been delegated to the political subdivision.

(3) The State has provided adequate funding or authority to obtain funding (when funding is necessary to carry out the required activity) to the political subdivision to perform the required activity.

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(4) The political subdivision has agreed to perform (and has not revoked that agreement), or is required by State law to accept responsibility for performing, the required activity.

(5) The political subdivision has failed to perform the required activity.

(d) *Imposition of sanctions.* (1) If all of the criteria in paragraph (c) of this section have been met through the action or inaction of one political subdivision, EPA will not impose sanctions on a statewide basis.

(2) If not all of the criteria in paragraph (c) of this section have been met through the action or inaction of one political subdivision, EPA will determine the area for which it is reasonable and appropriate to apply sanctions.

[59 FR 1484, Jan. 11, 1994]

### **§ 52.31 Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act.**

(a) *Purpose.* The purpose of this section is to implement 42 U.S.C. 7509(a) of the Act, with respect to the sequence in which sanctions will automatically apply under 42 U.S.C. 7509(b), following a finding made by the Administrator pursuant to 42 U.S.C. 7509(a).

(b) *Definitions.* All terms used in this section, but not specifically defined herein, shall have the meaning given them in § 52.01.

(1) *1990 Amendments* means the 1990 Amendments to the Clean Air Act (Pub. L. No. 101-549, 104 Stat. 2399).

(2) *Act* means Clean Air Act, as amended in 1990 (42 U.S.C. 7401 *et seq.* (1991)).

(3) *Affected area* means the geographic area subject to or covered by the Act requirement that is the subject of the finding and either, for purposes of the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section, is or is within an area designated nonattainment under 42 U.S.C. 7407(d) or, for purposes of the offset sanction under paragraph (e)(1) of this section, is or is within an area otherwise subject to the emission offset requirements of 42 U.S.C. 7503.

(4) *Criteria pollutant* means a pollutant for which the Administrator has

promulgated a national ambient air quality standard pursuant to 42 U.S.C. 7409 (i.e., ozone, lead, sulfur dioxide, particulate matter, carbon monoxide, nitrogen dioxide).

(5) *Findings* or *Finding* refer(s) to one or more of the findings, disapprovals, and determinations described in subsection 52.31 (c).

(6) *NAAQS* means national ambient air quality standard the Administrator has promulgated pursuant to 42 U.S.C. 7409.

(7) *Ozone precursors* mean nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC).

(8) *Part D* means part D of title I of the Act.

(9) *Part D SIP or SIP revision or plan* means a State implementation plan or plan revision that States are required to submit or revise pursuant to part D.

(10) *Precursor* means pollutant which is transformed in the atmosphere (later in time and space from point of emission) to form (or contribute to the formation of) a criteria pollutant.

(c) *Applicability.* This section shall apply to any State in which an affected area is located and for which the Administrator has made one of the following findings, with respect to any part D SIP or SIP revision required under the Act:

(1) A finding that a State has failed, for an area designated nonattainment under 42 U.S.C. 7407(d), to submit a plan, or to submit one or more of the elements (as determined by the Administrator) required by the provisions of the Act applicable to such an area, or has failed to make a submission for such an area that satisfies the minimum criteria established in relation to any such element under 42 U.S.C. 7410(k);

(2) A disapproval of a submission under 42 U.S.C. 7410(k), for an area designated nonattainment under 42 U.S.C. 7407(d), based on the submission's failure to meet one or more of the elements required by the provisions of the Act applicable to such an area;

(3)(i) A determination that a State has failed to make any submission required under the Act, other than one described under paragraph (c)(1) or (c)(2) of this section, including an adequate maintenance plan, or has failed

to make any submission, required under the Act, other than one described under paragraph (c)(1) or (c)(2) of this section, that satisfies the minimum criteria established in relation to such submission under 42 U.S.C. 7410(k)(1)(A); or

(ii) A disapproval in whole or in part of a submission described under paragraph (c)(3)(i) of this section; or

(4) A finding that any requirement of an approved plan (or approved part of a plan) is not being implemented.

(d) *Sanction application sequencing.* (1) To implement 42 U.S.C. 7509(a), the offset sanction under paragraph (e)(1) of this section shall apply in an affected area 18 months from the date when the Administrator makes a finding under paragraph (c) of this section unless the Administrator affirmatively determines that the deficiency forming the basis of the finding has been corrected. To further implement 42 U.S.C. 7509(a), the highway sanction under paragraph (e)(2) of this section shall apply in an affected area 6 months from the date the offset sanction under paragraph (e)(1) of this section applies, unless the Administrator affirmatively determines that the deficiency forming the basis of the finding has been corrected. For the findings under paragraphs (c)(2), (c)(3)(ii), and (c)(4) of this section, the date of the finding shall be the effective date as defined in the final action triggering the sanctions clock.

(2)(i) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and the Administrator, prior to 18 months from the finding, has proposed to fully or conditionally approve the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section shall be deferred unless and until the Administrator proposes to or takes final action to disapprove the plan in whole or in part. If the Administrator issues such a proposed or final disapproval of the plan, the offset sanc-

tion under paragraph (e)(1) of this section shall apply in the affected area on the later of the date the Administrator issues such a proposed or final disapproval, or 18 months following the finding that started the sanctions clock. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area 6 months after the date the offset sanction under paragraph (e)(1) of this section applies, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected.

(ii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and after 18 but before 24 months from the finding the Administrator has proposed to fully or conditionally approve the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section shall be stayed and application of the highway sanction under paragraph (e)(2) of this section shall be deferred unless and until the Administrator proposes to or takes final action to disapprove the plan in whole or in part. If the Administrator issues such a proposed or final disapproval of the plan, the offset sanction under paragraph (e)(1) of this section shall reapply in the affected area on the date the Administrator issues such a proposed or final disapproval. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area on the later of 6 months from the date the offset sanction under paragraph (e)(1) of this section first applied in the affected area, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected, or immediately if the proposed or final disapproval occurs more than 6 months after initial application of the offset sanction under paragraph (e)(1) of this section.

(iii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted

a revised plan to correct the deficiency prompting the finding and more than 24 months after the finding the Administrator has proposed to fully or conditionally approve the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section and application of the highway sanction under paragraph (e)(2) of this section shall be stayed unless and until the Administrator proposes to or takes final action to disapprove the plan in whole or in part. If the Administrator issues such a proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall reapply in the affected area on the date the Administrator issues such proposed or final disapproval.

(3)(i) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and the Administrator, prior to 18 months from the finding, has conditionally-approved the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section shall be deferred unless and until the conditional approval converts to a disapproval or the Administrator proposes to or takes final action to disapprove in whole or in part the revised SIP the State submits to fulfill the commitment in the conditionally-approved plan. If the conditional approval so becomes a disapproval or the Administrator issues such a proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section shall apply in the affected area on the later of the date the approval becomes a disapproval or the Administrator issues such a proposed or final disapproval, whichever is applicable, or 18 months following the finding that started the sanctions clock. The highway sanction under paragraph (e)(2) of this section shall

apply in the affected area 6 months after the date the offset sanction under paragraph (e)(1) of this section applies, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected.

(ii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and after 18 but before 24 months from the finding the Administrator has conditionally approved the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section shall be stayed and application of the highway sanction under paragraph (e)(2) of this section shall be deferred unless and until the conditional approval converts to a disapproval or the Administrator proposes to or takes final action to disapprove in whole or in part the revised SIP the State submits to fulfill the commitment in the conditionally-approved plan. If the conditional approval so becomes a disapproval or the Administrator issues such a proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section shall reapply in the affected area on the date the approval becomes a disapproval or the Administrator issues such a proposed or final disapproval, whichever is applicable. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area on the later of 6 months from the date the offset sanction under paragraph (e)(1) of this section first applied in the affected area, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected, or immediately if the conditional approval becomes a disapproval or the Administrator issues such a proposed or final disapproval, whichever is applicable, more than 6 months after initial application of the offset sanction under paragraph (e)(1) of this section.

(iii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of

this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and after 24 months from the finding the Administrator has conditionally approved the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section and application of the highway sanction under paragraph (e)(2) of this section shall be stayed unless and until the conditional approval converts to a disapproval or the Administrator proposes to or takes final action to disapprove in whole or in part the revised SIP the State submits to fulfill its commitment in the conditionally-approved plan. If the conditional approval so becomes a disapproval or the Administrator issues such a proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall reapply in the affected area on the date the conditional approval becomes a disapproval or the Administrator issues such a proposed or final disapproval, whichever is applicable.

(4)(i) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following findings under paragraph (c)(4) of this section, if the Administrator, prior to 18 months from the finding, has proposed to find that the State is implementing the approved plan and has issued an interim final determination that the deficiency prompting the finding has been corrected, application of the offset sanction under paragraph (e)(1) of this section shall be deferred unless and until the Administrator preliminarily or finally determines, through a proposed or final finding, that the State is not implementing the approved plan and that, therefore, the State has not corrected the deficiency. If the Administrator so preliminarily or finally determines that the State has not corrected the deficiency, the offset sanction under paragraph (e)(1) of this section shall apply in the affected area on the later of the date the Administrator proposes to take action or takes final action to find that the finding of nonimplementation has not

been corrected, or 18 months following the finding that started the sanctions clock. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area 6 months after the date the offset sanction under paragraph (e)(1) of this section first applies, unless the Administrator preliminarily or finally determines that the deficiency forming the basis of the finding has been corrected.

(ii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following findings under paragraph (c)(4) of this section, if after 18 months but before 24 months from the finding the Administrator has proposed to find that the State is implementing the approved plan and has issued an interim final determination that the deficiency prompting the finding has been corrected, application of the offset sanction under paragraph (e)(1) of this section shall be stayed and application of the highway sanction under paragraph (e)(2) of this section shall be deferred unless and until the Administrator preliminarily or finally determines, through a proposed or final finding, that the State is not implementing the approved plan and that, therefore, the State has not corrected the deficiency. If the Administrator so preliminarily or finally determines that the State has not corrected the deficiency, the offset sanction under paragraph (e)(1) of this section shall reapply in the affected area on the date the Administrator proposes to take action or takes final action to find that the finding of nonimplementation has not been corrected. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area on the later of 6 months from the date the offset sanction under paragraph (e)(1) of this section first applied in the affected area, unless the Administrator preliminarily or finally determines that the deficiency forming the basis of the finding has been corrected, or immediately if EPA's proposed or final action finding the deficiency has not been corrected occurs more than 6 months after initial application of the offset sanction under paragraph (e)(1) of this section.

(iii) Notwithstanding paragraph (d)(1) of this section, to further implement 42

U.S.C. 7509(a), following findings under paragraph (c)(4) of this section, if after 24 months from the finding the Administrator has proposed to find that the State is implementing the approved plan and has issued an interim final determination that the deficiency prompting the finding has been corrected, application of the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall be stayed unless and until the Administrator preliminarily or finally determines, through a proposed or final finding, that the State is not implementing the approved plan, and that, therefore, the State has not corrected the deficiency. If the Administrator so preliminarily or finally determines that the State has not corrected the deficiency, the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall reapply in the affected area on the date the Administrator proposes to take action or takes final action to find that the finding of nonimplementation has not been corrected.

(5) Any sanction clock started by a finding under paragraph (c) of this section will be permanently stopped and sanctions applied, stayed or deferred will be permanently lifted upon a final EPA finding that the deficiency forming the basis of the finding has been corrected. For a sanctions clock and applied sanctions based on a finding under paragraphs (c)(1) and (c)(3)(i) of this section, a finding that the deficiency has been corrected will occur by letter from the Administrator to the State governor. For a sanctions clock or applied, stayed or deferred sanctions based on a finding under paragraphs (c)(2) and (c)(3)(ii) of this section, a finding that the deficiency has been corrected will occur through a final notice in the FEDERAL REGISTER fully approving the revised SIP. For a sanctions clock or applied, stayed or deferred sanctions based on a finding under paragraph (c)(4) of this section, a finding that the deficiency has been corrected will occur through a final notice in the FEDERAL REGISTER finding that the State is implementing the approved SIP.

(6) Notwithstanding paragraph (d)(1) of this section, nothing in this section will prohibit the Administrator from determining through notice-and-comment rulemaking that in specific circumstances the highway sanction, rather than the offset sanction, shall apply 18 months after the Administrator makes one of the findings under paragraph (c) of this section, and that the offset sanction, rather than the highway sanction, shall apply 6 months from the date the highway sanction applies.

(e) *Available sanctions and method for implementation*—(1) *Offset sanction.* (i) As further set forth in paragraphs (e)(1)(ii)–(e)(1)(vi) of this section, the State shall apply the emissions offset requirement in the timeframe prescribed under paragraph (d) of this section on those affected areas subject under paragraph (d) of this section to the offset sanction. The State shall apply the emission offset requirements in accordance with 42 U.S.C. 7503 and 7509(b)(2), at a ratio of at least two units of emission reductions for each unit of increased emissions of the pollutant(s) and its (their) precursors for which the finding(s) under paragraph (c) of this section is (are) made. If the deficiency prompting the finding under paragraph (c) of this section is not specific to one or more particular pollutants and their precursors, the 2-to-1 ratio shall apply to all pollutants (and their precursors) for which an affected area within the State listed in paragraph (e)(1)(i) of this section is required to meet the offset requirements of 42 U.S.C. 7503.

(ii) Notwithstanding paragraph (e)(1)(i) of this section, when a finding is made with respect to a requirement for the criteria pollutant ozone or when the finding is not pollutant-specific, the State shall not apply the emissions offset requirements at a ratio of at least 2-to-1 for emission reductions to increased emissions for nitrogen oxides where, under 42 U.S.C. 7511a(f), the Administrator has approved an NO<sub>x</sub> exemption for the affected area from the Act's new source review requirements under 42 U.S.C. 7501–7515 for NO<sub>x</sub> or where the affected area is not otherwise subject to the Act's new source review requirements



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for emission offsets under 42 U.S.C. 7501-7515 for NO<sub>x</sub>.

(iii) Notwithstanding paragraph (e)(1)(i) of this section, when a finding under paragraph (c) of this section is made with respect to PM-10, or the finding is not pollutant-specific, the State shall not apply the emissions offset requirements, at a ratio of at least 2-to-1 for emission reductions to increased emissions to PM-10 precursors if the Administrator has determined under 42 U.S.C. 7513a(e) that major stationary sources of PM-10 precursors do not contribute significantly to PM-10 levels which exceed the NAAQS in the affected area.

(iv) For purposes of applying the emissions offset requirement set forth in 42 U.S.C. 7503, at the 2-to-1 ratio required under this section, the State shall comply with the provisions of a State-adopted new source review (NSR) program that EPA has approved under 42 U.S.C. 7410(k)(3) as meeting the nonattainment area NSR requirements of 42 U.S.C. 7501-7515, as amended by the 1990 Amendments, or, if no plan has been so approved, the State shall comply directly with the nonattainment area NSR requirements specified in 42 U.S.C. 7501-7515, as amended by the 1990 Amendments, or cease issuing permits to construct and operate major new or modified sources as defined in those requirements. For purposes of applying the offset requirement under 42 U.S.C. 7503 where EPA has not fully approved a State's NSR program as meeting the requirements of part D, the specifications of those provisions shall supersede any State requirement that is less stringent or inconsistent.

(v) For purposes of applying the emissions offset requirement set forth in 42 U.S.C. 7503, any permit required pursuant to 42 U.S.C. 7503 and issued on or after the date the offset sanction applies under paragraph (d) of this section shall be subject to the enhanced 2-to-1 ratio under paragraph (e)(1)(i) of this section.

(2) *Highway funding sanction.* The highway sanction shall apply, as provided in 42 U.S.C. 7509(b)(1), in the timeframe prescribed under paragraph (d) of this section on those affected areas subject under paragraph (d) of this section to the highway sanction,

but shall apply only to those portions of affected areas that are designated nonattainment under 40 CFR part 81.

[59 FR 39859, Aug. 4, 1994]

### § 52.32 Sanctions following findings of SIP inadequacy.

For purposes of the SIP revisions required by § 51.120, EPA may make a finding under section 179(a) (1)-(4) of the Clean Air Act, 42 U.S.C. 7509(a) (1)-(4), starting the sanctions process set forth in section 179(a) of the Clean Air Act. Any such finding will be deemed a finding under § 52.31(c) and sanctions will be imposed in accordance with the order of sanctions and the terms for such sanctions established in § 52.31.

[60 FR 4737, Jan. 24, 1995]

### § 52.33 Compliance certifications.

(a) For the purpose of submitting compliance certifications, nothing in this part or in a plan promulgated by the Administrator shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

(b) For all federal implementation plans, paragraph (a) of this section is incorporated into the plan.

[62 FR 8328, Feb. 24, 1997]

### § 52.34 Action on petitions submitted under section 126 relating to emissions of nitrogen oxides.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Administrator* means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

(2) *Large Electric Generating Units (large EGUs)* means:

(i) For units that commenced operation before January 1, 1997, a unit serving during 1995 or 1996 a generator that had a nameplate capacity greater than 25 MWe and produced electricity for sale under a firm contract to the electric grid.

(ii) For units that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit serving at any time during 1997 or 1998 a generator that had a nameplate capacity greater than 25 MWe and produced electricity for sale under a firm contract to the electric grid.

(iii) For units that commence operation on or after January 1, 1999, a unit serving at any time a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale.

(3) *Large Non-Electric Generating Units (large non-EGUs)* means:

(i) For units that commenced operation before January 1, 1997, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

(ii) For units that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve at any time during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

(iii) For units that commence operation on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr that:

(A) At no time serves a generator producing electricity for sale; or

(B) At any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of 25 MWe or less and has the potential to use 50 percent or less of the potential electrical output capacity of the unit.

(4) *New sources* means new and modified sources.

(5)  $NO_x$  means oxides of nitrogen.

(6) *OTAG* means the Ozone Transport Assessment Group (active 1995-1997), a national work group that addressed the problem of ground-level ozone and the long-range transport of air pollution across the Eastern United States. The OTAG was a partnership between EPA, the Environmental Council of the States, and various industry and environmental groups.

(7) *Ozone season* means the period of time beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(8) *Potential electrical output capacity* means, with regard to a unit, 33 percent of the maximum design heat input of the unit.

(9) *Unit* means a fossil-fuel fired stationary boiler, combustion turbine, or combined cycle system.

(b) *Purpose and applicability.* Paragraphs (c), (e)(1) and (e)(2), (g), and (h)(1) and (h)(2) of this section set forth the Administrator's findings with respect to the 1-hour national ambient air quality standard (NAAQS) for ozone that certain new and existing sources of emissions of nitrogen oxides ("NO<sub>x</sub>") in certain States emit or would emit NO<sub>x</sub> in violation of the prohibition in section 110(a)(2)(D)(i) of the Clean Air Act (CAA) on emissions in amounts that contribute significantly to nonattainment in certain States that submitted petitions in 1997-1998 addressing such NO<sub>x</sub> emissions under section 126 of the CAA. Paragraphs (d), (e)(3) and (e)(4), (f), and (h)(3) and (h)(4) of this section set forth the Administrator's affirmative technical determinations with respect to the 8-hour NAAQS for ozone that certain new and existing sources of emissions of NO<sub>x</sub> in certain States emit or would emit NO<sub>x</sub> in violation of the prohibition in section 110(a)(2)(D)(i) of the CAA on emissions in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, certain States that submitted petitions in 1997-1998 addressing such NO<sub>x</sub> emissions under section 126 of the CAA. (As used in this section, the term new source includes modified sources, as well.) Paragraph (i) of this section explains the circumstances under which the findings for sources in a specific State would be withdrawn. Paragraph (j) of this section sets forth the control requirements that apply to the sources of NO<sub>x</sub> emissions affected by the findings. Paragraph (k) of this section indefinitely stays the effectiveness of the affirmative technical determinations with respect to the 8-hour ozone standard.

(1) The States that submitted such petitions are Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont (each of which, hereinafter in this section, may be referred to also as a “petitioning State”).

(2) The new and existing sources of NO<sub>x</sub> emissions covered by the petitions that emit or would emit NO<sub>x</sub> emissions in amounts that make such significant contributions are large electric generating units (EGUs) and large non-EGUs.

(c) *Section 126(b) findings relating to impacts on ozone levels in Connecticut—*(1) *Section 126(b) findings with respect to the 1-hour ozone standard in Connecticut.* The Administrator finds that any existing or new major source or group of stationary sources emits or would emit NO<sub>x</sub> in violation of the Clean Air Act section 110(a)(2)(d)(i) prohibition with respect to the 1-hour ozone standard in the State of Connecticut if it is or will be:

- (i) In a category of large EGUs or large non-EGUs;
- (ii) Located in one of the States (or portions thereof) listed in paragraph (c)(2) of this section; and
- (iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Connecticut.

(2) *States or portions of States that contain sources for which the Administrator is making section 126(b) findings with respect to the 1-hour ozone standard in Connecticut.* The States, or portions of States, that contain sources of NO<sub>x</sub> emissions for which the Administrator is making section 126(b) findings under paragraph (c)(1) of this section are:

- (i) Delaware.
- (ii) District of Columbia.
- (iii) Portion of Indiana located in OTAG Subregions 2 and 6, as shown in appendix F, Figure F-2, of this part.
- (iv) Portion of Kentucky located in OTAG Subregion 6, as shown in appendix F, Figure F-2, of this part.
- (v) Maryland.
- (vi) Portion of Michigan located south of 44 degrees latitude in OTAG Subregion 2, as shown in appendix F, Figure F-2, of this part.

(vii) Portion of North Carolina located in OTAG Subregion 7, as shown in appendix F, Figure F-2, of this part.

(viii) New Jersey.

(ix) Portion of New York extending west and south of Connecticut, as shown in appendix F, Figure F-2, of this part.

(x) Ohio.

(xi) Pennsylvania.

(xii) Virginia.

(xiii) West Virginia.

(d) *Affirmative technical determinations relating to impacts on ozone levels in Maine—*(1) *Affirmative technical determinations with respect to the 8-hour ozone standard in Maine.* The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO<sub>x</sub> in amounts that contribute significantly to nonattainment in the State of Maine, with respect to the 8-hour NAAQS for ozone if it is or will be:

- (i) In a category of large EGUs or large non-EGUs;
- (ii) Located in one of the States (or portions thereof) listed in paragraph (d)(2) of this section; and
- (iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 of appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Maine.

(2) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in Maine.* The States that contain sources for which EPA is making an affirmative technical determination are:

- (i) Connecticut.
- (ii) Delaware.
- (iii) District of Columbia.
- (iv) Maryland.
- (v) Massachusetts.
- (vi) New Jersey.
- (vii) New York.
- (viii) Pennsylvania.
- (ix) Rhode Island.
- (x) Virginia.

(e) *Section 126(b) findings and affirmative technical determinations relating to impacts on ozone levels in Massachusetts—*(1) *Section 126(b) findings with respect to the 1-hour ozone standard in Massachusetts.* The Administrator finds

that any existing major source or group of stationary sources emits NO<sub>x</sub> in violation of the Clean Air Act section 110(a)(2)(d)(i) prohibition with respect to the 1-hour ozone standard in the State of Massachusetts if it is:

- (i) In a category of large EGUs or large non-EGUs;
- (ii) Located in one of the States (or portions thereof) listed in paragraph (e)(2) of this section; and
- (iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Massachusetts.

(2) *States that contain sources for which the Administrator is making section 126(b) findings with respect to the 1-hour ozone standard in Massachusetts.* The portions of States that contain sources of NO<sub>x</sub> emissions for which the Administrator is making section 126(b) findings under paragraph (e)(1) of this section are:

- (i) All counties in West Virginia located within a 3-county-wide band of the Ohio River, as shown in appendix F, Figure F-4, of this part.

(ii) [Reserved]

(3) *Affirmative technical determinations with respect to the 8-hour ozone standard in Massachusetts.* The Administrator of EPA finds that any existing major source or group of stationary sources emits NO<sub>x</sub> in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, the State of Massachusetts, with respect to the 8-hour NAAQS for ozone if it is:

- (i) In a category of large EGUs or large non-EGUs;
- (ii) Located in one of the States (or portions thereof) listed in paragraph (e)(4) of this section; and
- (iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Massachusetts.

(4) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in Massachusetts.* The portions of States that contain sources for which EPA is

making an affirmative technical determination are:

- (i) All counties in Ohio located within a 3-county-wide band of the Ohio River, as shown in appendix F, Figure F-4, of this part.
- (ii) All counties in West Virginia located within a 3-county-wide band of the Ohio River, as shown in appendix F, Figure F-4, of this part.

(f) *Affirmative technical determinations relating to impacts on ozone levels in New Hampshire—(1) Affirmative technical determinations with respect to the 8-hour ozone standard in New Hampshire.* The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO<sub>x</sub> in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, the State of New Hampshire, with respect to the 8-hour NAAQS for ozone if it is or will be:

- (i) In a category of large EGUs or large non-EGUs;
- (ii) Located in one of the States (or portions thereof) listed in paragraph (f)(2) of this section; and
- (iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 of appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of New Hampshire.

(2) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in New Hampshire.* The States that contain sources for which EPA is making an affirmative technical determination are:

- (i) Connecticut.
- (ii) Delaware.
- (iii) District of Columbia.
- (iv) Maryland.
- (v) Massachusetts.
- (vi) New Jersey.
- (vii) New York.
- (viii) Pennsylvania.
- (ix) Rhode Island.

(g) *Section 126(b) findings relating to impacts on ozone levels in the State of New York—(1) Section 126(b) findings with respect to the 1-hour ozone standard in the State of New York.* The Administrator finds that any existing or new major source or group of stationary

sources emits or would emit NO<sub>x</sub> in violation of the Clean Air Act section 110(a)(2)(d)(i) prohibition with respect to the 1-hour ozone standard in the State of New York if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (g)(2) of this section; and

(iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of New York.

(2) *States or portions of States that contain sources for which the Administrator is making section 126(b) findings with respect to the 1-hour ozone standard in New York.* The States, or portions of States, that contain sources of NO<sub>x</sub> emissions for which the Administrator is making section 126(b) findings under paragraph (g)(1) of this section are:

(i) Delaware.

(ii) District of Columbia.

(iii) Portion of Indiana located in OTAG Subregions 2 and 6, as shown in appendix F, Figure F-6, of this part.

(iv) Portion of Kentucky located in OTAG Subregion 6, as shown in appendix F, Figure F-6, of this part.

(v) Maryland.

(vi) Portion of Michigan located south of 44 degrees latitude in OTAG Subregion 2, as shown in appendix F, Figure F-6, of this part.

(vii) Portion of North Carolina located in OTAG Subregions 6 and 7, as shown in appendix F, Figure F-6, of this part.

(viii) New Jersey.

(ix) Ohio.

(x) Pennsylvania.

(xi) Virginia.

(xii) West Virginia.

(h) *Section 126(b) findings and affirmative technical determinations relating to impacts on ozone levels in the State of Pennsylvania—(1) Section 126(b) findings with respect to the 1-hour ozone standard in the State of Pennsylvania.* The Administrator finds that any existing or new major source or group of stationary sources emits or would emit NO<sub>x</sub> in violation of the Clean Air Act section 110(a)(2)(d)(i) prohibition with respect to the 1-hour ozone standard in

the State of Pennsylvania if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (h)(2) of this section; and (iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Pennsylvania.

(2) *States that contain sources for which the Administrator is making section 126(b) findings with respect to the 1-hour ozone standard in Pennsylvania.* The States that contain sources of NO<sub>x</sub> emissions for which the Administrator is making section 126(b) findings under paragraph (h)(1) of this section are:

(i) North Carolina.

(ii) Ohio.

(iii) Virginia.

(iv) West Virginia.

(3) *Affirmative technical determinations with respect to the 8-hour ozone standard in Pennsylvania.* The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO<sub>x</sub> in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, the State of Pennsylvania, with respect to the 8-hour NAAQS for ozone:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (h)(4) of this section; and

(iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Pennsylvania.

(4) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in Pennsylvania.* The States that contain sources for which EPA is making an affirmative technical determination are:

(i) Alabama.

(ii) Illinois.

(iii) Indiana.

(iv) Kentucky.

(v) Michigan.

- (vi) Missouri.
- (vii) North Carolina.
- (viii) Ohio.
- (ix) Tennessee.
- (x) Virginia.
- (xi) West Virginia.

(i) *Withdrawal of section 126 findings.*

Notwithstanding any other provision of this subpart, a finding under paragraphs (c), (e)(1) and (e)(2), (g), and (h)(1) and (h)(2) of this section as to a particular major source or group of stationary sources in a particular State will be deemed to be withdrawn, and the corresponding part of the relevant petition(s) denied, if the Administrator issues a final action putting in place implementation plan provisions that comply with the requirements of §§ 51.121 and 51.122 of this chapter for such State.

(j) *Section 126 control remedy.* The Federal NO<sub>x</sub> Budget Trading Program in part 97 of this chapter applies to the owner or operator of any new or existing large EGU or large non-EGU as to which the Administrator makes a finding under section 126(b) of the Clean Air Act pursuant to the provisions of paragraphs (c), (e)(1) and (e)(2), (g), and (h)(1) and (h)(2) of this section.

(k) *Stay of findings with respect to the 8-hour ozone standard.* Notwithstanding any other provisions of this subpart, the effectiveness of paragraphs (d), (e)(3) and (e)(4), (f), (h)(3) and (h)(4) of this section is stayed.

(l) *Temporary stay of rules.* Notwithstanding any other provisions of this subpart, the effectiveness of this section is stayed from July 26, 1999 until February 17, 2000.

[64 FR 28318, May 25, 1999, as amended at 64 FR 33961, June 24, 1999; 65 FR 2042, Jan. 13, 2000; 65 FR 2726, Jan. 18, 2000; 69 FR 31505, June 3, 2004]

**§ 52.35 What are the requirements of the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule (CAIR) relating to emissions of nitrogen oxides?**

(a)(1) The Federal CAIR NO<sub>x</sub> Annual Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions that relate to annual emissions of nitrogen oxides (NO<sub>x</sub>). Each State that is described in § 51.123(c)(1) and (2) of this chapter re-

ceived a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the PM<sub>2.5</sub> NAAQS. The provisions of subparts AA through II of part 97 of this chapter, regarding the CAIR NO<sub>x</sub> Annual Trading Program, apply to the sources in each of these States that has not promulgated a SIP approved by the Administrator as correcting that deficiency. Following promulgation of an approval by the Administrator of a State's SIP as meeting the requirements of CAIR for PM<sub>2.5</sub> relating to NO<sub>x</sub> under § 51.123 of this chapter, these provisions of part 97 of this chapter will no longer apply to the sources in that State, except to the extent the Administrator's approval of the SIP is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated any CAIR NO<sub>x</sub> allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO<sub>x</sub> allowances for those years shall continue to apply, unless the Administrator approves a SIP that provides for the allocation of the remaining CAIR NO<sub>x</sub> allowances for those years.

(b)(1) The Federal CAIR NO<sub>x</sub> Ozone Season Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions that relate to emissions of nitrogen oxides (NO<sub>x</sub>) during the ozone season, as defined in § 97.302 of this chapter. Each State that is described in § 51.123(c)(1) and (3) of this chapter received a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the 8-hour ozone NAAQS. The provisions of subparts AAAA through IIII of part 97 of this chapter, regarding the CAIR NO<sub>x</sub> Ozone Season Trading Program, apply to sources in each of these States that

has not promulgated a SIP revision approved by the Administrator as correcting that deficiency. Following promulgation of an approval by the Administrator of a State's SIP as meeting the requirements of CAIR for ozone relating to NO<sub>x</sub> under §51.123 of this chapter, these provisions of part 97 of this chapter will no longer apply to sources in that State, except to the extent the Administrator's approval of the SIP is partial or conditional or unless such approval is under §51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated any CAIR NO<sub>x</sub> Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO<sub>x</sub> Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP that provides for the allocation of the remaining CAIR NO<sub>x</sub> Ozone Season allowances for those years.

(c) The provisions of this section do not invalidate or otherwise affect the obligations of States, emissions sources, or other responsible entities with respect to all portions of plans approved or promulgated under this part or the obligations of States under the requirements of §§51.123 and 51.125 of this chapter.

(d)(1) The States with SIPs approved by the Administrator as meeting the requirements of CAIR for PM<sub>2.5</sub> relating to NO<sub>x</sub> under §51.123(o) of this chapter are: Indiana, and Ohio.

(2) The States with SIPs approved by the Administrator as meeting the requirements of CAIR for ozone relating to NO<sub>x</sub> under §51.123(aa) of this chapter, are: Indiana, and Ohio.

(e) Notwithstanding paragraphs (a) and (b) of this section, such paragraphs are not applicable as they relate to sources in the State of Minnesota as of December 3, 2009, except as provided in §52.1240(b).

[72 FR 62343, Nov. 2, 2007, as amended at 74 FR 48862, Sept. 25, 2009; 74 FR 56726, Nov. 3, 2009; 75 FR 72962, Nov. 29, 2010]

**§ 52.36 What are the requirements of the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule (CAIR) relating to emissions of sulfur dioxide?**

(a) The Federal CAIR SO<sub>2</sub> Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions for emissions of sulfur dioxide (SO<sub>2</sub>). Each State that is described in §51.124(c) of this chapter is subject to a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the PM<sub>2.5</sub> NAAQS. The provisions of subparts AAA through III of part 97 of this chapter, regarding the CAIR SO<sub>2</sub> Trading Program, apply to sources in each of these States that has not promulgated a SIP revision approved by the Administrator as correcting that deficiency. Following promulgation of an approval by the Administrator of a State's SIP as meeting the requirements of CAIR for PM<sub>2.5</sub> relating to SO<sub>2</sub> under §51.124 of this chapter, these provisions of part 97 of this chapter will no longer apply to sources in that State, except to the extent the Administrator's approval of the SIP is partial or conditional or unless such approval is under §51.124(r) of this chapter.

(b) The provisions of this section do not invalidate or otherwise affect the obligations of States, emissions sources, or other responsible entities with respect to all portions of plans approved or promulgated under this part or the obligations of States under the requirements of §§51.124 and 51.125 of this chapter.

(c) The States with SIPs approved by the Administrator as meeting the requirements of CAIR for PM<sub>2.5</sub> relating to SO<sub>2</sub> under §51.124(o) of this chapter are: Indiana, and Ohio

(d) Notwithstanding paragraph (a) of this section, such paragraph is not applicable as it relates to sources in the State of Minnesota as of December 3, 2009.

[72 FR 62343, Nov. 2, 2007, as amended at 74 FR 48863, Sept. 25, 2009; 74 FR 56726, Nov. 3, 2009; 75 FR 72962, Nov. 29, 2010]

**§ 52.37 What are the requirements of the Federal Implementation Plans (FIPs) to issue permits under the Prevention of Significant Deterioration requirements to sources that emit greenhouse gases?**

(a) The requirements of sections 160 through 165 of the Clean Air Act are not met to the extent the plan, as approved, of the states listed in paragraph (b) of this section does not apply with respect to emissions of the pollutant GHGs from certain stationary sources. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby made a part of the plan for each state listed in paragraph (b) of this section for:

(1) Beginning January 2, 2011, the pollutant GHGs from stationary sources described in § 52.21(b)(49)(iv), and

(2) beginning July 1, 2011, in addition to the pollutant GHGs from sources described under paragraph (a)(1) of this section, stationary sources described in § 52.21(b)(49)(v).

(b) Paragraph (a) of this section applies to:

(1) Arizona, Pinal County; Rest of State (Excludes Maricopa County, Pima County, and Indian Country);

(2) Arkansas;

(3) Florida;

(4) Idaho;

(5) [Reserved]

(6) Wyoming;

(7) Jefferson County, Kentucky.

(c) For purposes of this section, the “pollutant GHGs” refers to the pollutant GHGs, as described in § 52.21(b)(49)(i).

[75 FR 82254, Dec. 30, 2010, as amended at 76 FR 2589, Jan. 14, 2011; 76 FR 9664, Feb. 22, 2011]

**Subpart B—Alabama**

**§ 52.50 Identification of plan.**

(a) *Purpose and scope.* This section sets forth the applicable State implementation plan for Alabama under sec-

tion 110 of the Clean Air Act, 42 U.S.C. 7401, and 40 CFR part 51 to meet national ambient air quality standards.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to August 1, 2008, for Alabama was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the FEDERAL REGISTER. Entries in paragraphs (c) and (d) of this section with EPA approval dates after August 1, 2008, for Alabama will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of the dates referenced in paragraph (b)(1).

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303 the Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566-1742. For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(c) EPA Approved Alabama Regulations.

EPA APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
<b>Chapter No. 335–3–1 General Provision</b>				
Section 335–3–1–.01 ..	Purpose .....	6/22/89	3/19/90; 55 FR 10062.	