

5.2.1 establish a conversion factor three times daily according to the procedures to §60.84(b) of this chapter;

5.2.2 multiply the conversion factor by the average sulfur dioxide concentration in the flue gases to obtain average sulfur dioxide emissions in Kg/metric ton (lb/short ton); and

5.2.3 report the average sulfur dioxide emission for each averaging period in excess of the applicable emission standard in the quarterly summary.

5.3 For nitric acid plants the owner or operator shall:

5.3.1 establish a conversion factor according to the procedures of §60.73(b) of this chapter;

5.3.2 multiply the conversion factor by the average nitrogen oxides concentration in the flue gases to obtain the nitrogen oxides emissions in the units of the applicable standard;

5.3.3 report the average nitrogen oxides emission for each averaging period in excess of the applicable emission standard, in the quarterly summary.

5.4 Any State may allow data reporting or reduction procedures varying from those set forth in this appendix if the owner or operator of a source shows to the satisfaction of the State that his procedures are at least as accurate as those in this appendix. Such procedures may include but are not limited to, the following:

5.4.1 Alternative procedures for computing emission averages that do not require integration of data (e.g., some facilities may demonstrate that the variability of their emissions is sufficiently small to allow accurate reduction of data based upon computing averages from equally spaced data points over the averaging period).

5.4.2 Alternative methods of converting pollutant concentration measurements to the units of the emission standards.

6.0 *Special Consideration.* The State plan may provide for approval, on a case-by-case basis, of alternative monitoring requirements different from the provisions of parts 1 through 5 of this appendix if the provisions of this appendix (*i.e.*, the installation of a continuous emission monitoring system) cannot be implemented by a source due to physical plant limitations or extreme economic reasons. To make use of this provision, States must include in their plan specific criteria for determining those physical limitations or extreme economic situations to be considered by the State. In such cases, when the State exempts any source subject to this appendix by use of this provision from installing continuous emission monitoring systems, the State shall set forth alternative emission monitoring and reporting requirements (e.g., periodic manual stack tests) to satisfy the intent of these regula-

tions. Examples of such special cases include, but are not limited to, the following:

6.1 Alternative monitoring requirements may be prescribed when installation of a continuous monitoring system or monitoring device specified by this appendix would not provide accurate determinations of emissions (e.g., condensed, uncombined water vapor may prevent an accurate determination of opacity using commercially available continuous monitoring systems).

6.2 Alternative monitoring requirements may be prescribed when the affected facility is infrequently operated (e.g., some affected facilities may operate less than one month per year).

6.3 Alternative monitoring requirements may be prescribed when the State determines that the requirements of this appendix would impose an extreme economic burden on the source owner or operator.

6.4 Alternative monitoring requirements may be prescribed when the State determines that monitoring systems prescribed by this appendix cannot be installed due to physical limitations at the facility.

[40 FR 46247, Oct. 6, 1975, as amended at 51 FR 40675, Nov. 7, 1986]

#### APPENDIXES Q-R TO PART 51 [RESERVED]

#### APPENDIX S TO PART 51—EMISSION OFFSET INTERPRETATIVE RULING

##### I. INTRODUCTION

This appendix sets forth EPA's Interpretative Ruling on the preconstruction review requirements for stationary sources of air pollution (not including indirect sources) under 40 CFR subpart I and section 129 of the Clean Air Act Amendments of 1977, Public Law 95-95, (note under 42 U.S.C. 7502). A major new source or major modification which would locate in any area designated under section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region or which would locate in an area designated in 40 CFR part 81, subpart C, as nonattainment for a pollutant for which the source or modification would be major may be allowed to construct only if the stringent conditions set forth below are met. These conditions are designed to insure that the new source's emissions will be controlled to the greatest degree possible; that more than equivalent offsetting emission reductions (*emission offsets*) will be obtained from existing sources; and that there will be progress toward achievement of the NAAQS.

For each area designated as exceeding a NAAQS (nonattainment area) under 40 CFR part 81, subpart C, or for any area designated under section 107(d) of the Act as attainment or unclassifiable for ozone that is located in

an ozone transport region, this Interpretative Ruling will be superseded after June 30, 1979 (a) by preconstruction review provisions of the revised SIP, if the SIP meets the requirements of Part D, Title I, of the Act; or (b) by a prohibition on construction under the applicable SIP and section 110(a)(2)(I) of the Act, if the SIP does not meet the requirements of Part D. The Ruling will remain in effect to the extent not superseded under the Act. This prohibition on major new source construction does not apply to a source whose permit to construct was applied for during a period when the SIP was in compliance with Part D, or before the deadline for having a revised SIP in effect that satisfies Part D.

The requirement of this Ruling shall not apply to any major stationary source or major modification that was not subject to the Ruling as in effect on January 16, 1979, if 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.

## II. INITIAL SCREENING ANALYSES AND DETERMINATION OF APPLICABLE REQUIREMENTS

A. *Definitions*—For the purposes of this Ruling:

1. *Stationary source* means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

2. *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 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).

3. *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 only 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.

4. (i) *Major stationary source* means:

(a) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act, except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the Act, according to paragraphs II.A.4(i)(a)(1) through (6) of this Ruling.

(1) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.

(2) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

(3) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area.

(4) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.

(5) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the Administrator)

(6) 70 tons per year of PM-10 in any serious nonattainment area for PM-10;

(b) For the purposes of applying the requirements of paragraph IV. H of this Ruling to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the emission thresholds in paragraphs II.A.4(i)(b)(1) through (6) of this Ruling apply in areas subject to subpart 2 of part D, title I of the Act.

(1) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(2) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(3) 100 tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(4) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(5) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(6) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or

(c) Any physical change that would occur at a stationary source not qualifying under paragraph II.A.4(i)(a) or (b) of this Ruling as a major stationary source, if the change would constitute a major stationary source by itself.

(ii) A major stationary source that is major for volatile organic compounds or nitrogen oxides is major for ozone.

(iii) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this ruling 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;

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

5. (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) A significant emissions increase of a regulated NSR pollutant (as defined in paragraph II.A.31 of this Ruling); and

(b) A significant net emissions increase of that pollutant from the major stationary source.

(ii) Any significant emissions increase (as defined in paragraph II.A.23 of this Ruling) from any emissions units or net emissions increase (as defined in paragraph II.A.6 of this Ruling) at a major stationary source that is significant for volatile organic compounds 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;

(b) Use of an alternative fuel or raw material by reason of an order under section 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 plan 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 December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or § 51.166; or

(2) The source is approved to use under any permit issued under this ruling;

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or § 51.166;

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

(iv) For the purpose of applying the requirements of paragraph IV.H of this Ruling to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject with respect to ozone to subpart 2, part D, title I of the Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(v) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall

be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the Act.

(vi) 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 IV.K of this ruling for a PAL for that pollutant. Instead, the definition at paragraph IV.K.2(viii) of this Ruling shall apply.

(vii) Fugitive emissions shall not be included in determining for any of the purposes of this Ruling 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 II.A.4(iii) of this Ruling.

6.(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 IV.J of this Ruling; 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 II.A.6(i)(b) shall be determined as provided in paragraph II.A.30 of this Ruling, except that paragraphs II.A.30(i)(c) and II.A.30(ii)(d) of this Ruling 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 the reviewing authority has not relied on it in issuing a permit for the source under this Ruling, which permit is in effect when the increase in actual emissions from the particular change occurs.

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

(v) 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) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR 51.165; and

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

(vi) 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.

(vii) Paragraph II.A.13(ii) of this Ruling shall not apply for determining creditable increases and decreases or after a change.

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 II.A.21 of this Ruling. For purposes of this Ruling, there are two types of emissions units as described in paragraphs II.A.7(i) and (ii) of this Ruling.

(i) A new emissions unit is any emissions unit which is (or will be) newly constructed and which 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 II.A.7(i) of this Ruling.

8. *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. For the purpose of this Ruling, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite 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.

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

10. (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  
 Ozone: 40 tpy of volatile organic compounds or nitrogen oxides  
 Lead: 0.6 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

(ii) Notwithstanding the significant emissions rate for ozone in paragraph II.A.10(i) of this Ruling, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to subpart 2, part D, title I of the Act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

(iii) For the purposes of applying the requirements of paragraph IV.H of this Ruling to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in paragraphs II.A.10(i), (ii), and (v) of this Ruling shall apply to nitrogen oxides emissions.

(iv) Notwithstanding the significant emissions rate for carbon monoxide under paragraph II.A.10(i) of this Ruling, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the Administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(v) Notwithstanding the significant emissions rates for ozone under paragraphs II.A.10(i) and (ii) of this Ruling, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the Act shall be considered a significant net emissions increase.

11. *Allowable emissions* means the emissions rate calculated using the maximum rated ca-

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) Applicable standards as set forth in 40 CFR parts 60 and 61;

(ii) Any 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.

12. *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.

13. (i) *Actual emissions* means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs II.A.13(ii) through (iv) of this Ruling, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph IV.K of this Ruling. Instead, paragraphs II.A.24 and 30 of this Ruling 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 reviewing authority 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 reviewing authority 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.

14. *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.

15. *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.

16. *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.

17. *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 of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

18. *Lowest achievable emission rate (LAER)* means, for any source, the more stringent rate of emissions based on the following:

(i) The most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(ii) The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

19. *Resource recovery facility* means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than 50 percent of the heat input to be considered a resource recovery facility under this Ruling.

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

21. *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.

22. *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.

23. *Significant emissions increase* means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph II.A.10 of this Ruling) for that pollutant.

24. (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 of 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 II.A.24(i) of this Ruling 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 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 II.A.30 of this Ruling 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 II.A.24(ii)(a) through (c) of this Ruling, may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph II.A.3 of this Ruling.

25. *Nonattainment major new source review (NSR) program* means a major source preconstruction permit program that implements Sections I through VI of this Ruling, or a program that has been approved by the Administrator and incorporated into the plan to implement the requirements of §51.165 of this part. Any permit issued under such a program is a major NSR permit.

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

27. *Predictive emissions monitoring system (PEMS)* means all of the equipment necessary 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 calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

28. *Continuous parameter monitoring system (CPMS)* means all of the equipment necessary to meet the data acquisition and availability requirements of this Ruling, 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.

29. *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).

30. *Baseline actual emissions* means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs II.A.30(i) through (iv) of this Ruling.

(1) 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 reviewing authority 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 II.A.30(i)(b) of this Ruling.

(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 reviewing authority for a permit required either under this Ruling or under a plan approved by the Administrator, 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 attainment demonstration or maintenance plan.

(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 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 II.A.30(ii)(b) and (c) of this Ruling.

(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 major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph II.A.30(i) of this Ruling, for other existing emissions units in accordance with the procedures contained in paragraph II.A.30(ii) of this Ruling, and for a new emissions unit in accordance with the procedures contained in paragraph II.A.30(iii) of this Ruling.

31. *Regulated NSR pollutant*, for purposes of this Ruling, means the following:

(i) Nitrogen oxides or any volatile organic compounds;

(ii) Any pollutant for which a national ambient air quality standard has been promulgated;

(iii) Any pollutant that is identified under this paragraph II.A.31(iii) as a constituent or precursor of a general pollutant listed under paragraph II.A.31(i) or (ii) of this Ruling, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general 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 ozone nonattainment areas.

(b) Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas; or

(iv) 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 permits issued under this ruling. 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 particulate 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 particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

32. *Reviewing authority* means the State air pollution control agency, local agency, other State agency, Indian tribe, or other agency issuing permits under this Ruling or authorized by the Administrator to carry out a permit program under §§51.165 and 51.166 of this part, or the Administrator in the case of EPA-implemented permit programs under this Ruling or under §52.21 of this chapter.

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

34. *Best available control technology (BACT)* means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, 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 part 60 or 61. If the reviewing authority 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 BACT. 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.

35. *Prevention of Significant Deterioration (PSD) permit* means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of §51.166 of



this chapter, or under the program in §52.21 of this chapter.

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

B. *Review of all sources for emission limitation compliance.* The reviewing authority must examine each proposed major new source and proposed major modification<sup>1</sup> to determine if such a source will meet all applicable emission requirements in the SIP, any applicable new source performance standard in 40 CFR part 60, or any national emission standard for hazardous air pollutants in 40 CFR part 61. If the reviewing authority determines that the proposed major new source cannot meet the applicable emission requirements, the permit to construct must be denied.

C. *Review of specified sources for air quality impact.* In addition, the reviewing authority must determine whether the major stationary source or major modification would be constructed in an area designated in 40 CFR 81.300 *et seq.* as nonattainment for a pollutant for which the stationary source or modification is major.

D.-E. [Reserved]

F. *Fugitive emission sources.* Section IV.A. of this Ruling shall not apply to a source or modification that 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 such source does not belong to any of the following categories:

- (1) Coal cleaning plants (with thermal dryers);
- (2) Kraft pulp mills;
- (3) Portland cement plants;
- (4) Primary zinc smelters;
- (5) Iron and steel mills;
- (6) Primary aluminum ore reduction plants;
- (7) Primary copper smelters;
- (8) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (9) Hydrofluoric, sulfuric, or nitric acid plants;
- (10) Petroleum refineries;
- (11) Lime plants;
- (12) Phosphate rock processing plants;
- (13) Coke oven batteries;

<sup>1</sup>Hereafter the term *source* will be used to denote both any source and any modification.

- (14) Sulfur recovery plants;
- (15) Carbon black plants (furnace process);
- (16) Primary lead smelters;
- (17) Fuel conversion plants;
- (18) Sintering plants;
- (19) Secondary metal production plants;
- (20) 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;
- (21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (23) Taconite ore processing plants;
- (24) Glass fiber processing plants;
- (25) Charcoal production plants;
- (26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (27) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

G. *Secondary emissions.* Secondary emissions need not be considered in determining whether the emission rates in Section II.C. above would be exceeded. However, if a source is subject to this Ruling on the basis of the direct emissions from the source, the applicable conditions of this Ruling must also be met for secondary emissions. However, secondary emissions may be exempt from Conditions 1 and 2 of Section IV. Also, since EPA's authority to perform or require indirect source review relating to mobile sources regulated under Title II of the Act (motor vehicles and aircraft) has been restricted by statute, consideration of the indirect impacts of motor vehicles and aircraft traffic is not required under this Ruling.

### III. SOURCES LOCATING IN DESIGNATED CLEAN OR UNCLASSIFIABLE AREAS WHICH WOULD CAUSE OR CONTRIBUTE TO A VIOLATION OF A NATIONAL AMBIENT AIR QUALITY STANDARD

A. This section applies only to major sources or major modifications which would locate in an area designated in 40 CFR 81.300 *et seq.* as attainment or unclassifiable in a State where EPA has not yet approved the State preconstruction review program required by 40 CFR 51.165(b), if the source or modification would exceed the following significance levels at any locality that does not meet the NAAQS:

Pollutant	Annual	Averaging time (hours)			
		24	8	3	1
SO <sub>2</sub> .....	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>		25 µg/m <sup>3</sup>	
PM <sub>10</sub> .....	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>			
PM <sub>2.5</sub> .....	0.3 µg/m <sup>3</sup>	1.2 µg/m <sup>3</sup>			
NO <sub>2</sub> .....	1.0 µg/m <sup>3</sup>				
CO .....			0.5 mg/m <sup>3</sup>		2 mg/m <sup>3</sup>

B. Sources to which this section applies must meet Conditions 1, 2, and 4 of Section IV.A. of this ruling.<sup>2</sup> However, such sources may be exempt from Condition 3 of Section IV.A. of this ruling.

C. *Review of specified sources for air quality impact.* For *stable* air pollutants (i.e., SO<sub>2</sub>, particulate matter and CO), the determination of whether a source will cause or contribute to a violation of an NAAQS generally should be made on a case-by-case basis as of the proposed new source's start-up date using the source's allowable emissions in an atmospheric simulation model (unless a source will clearly impact on a receptor which exceeds an NAAQS).

For sources of nitrogen oxides, the initial determination of whether a source would cause or contribute to a violation of the NAAQS for NO<sub>2</sub> should be made using an atmospheric simulation model assuming all the nitric oxide emitted is oxidized to NO<sub>2</sub> by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

For ozone, sources of volatile organic compounds, locating outside a designated ozone nonattainment area, will be presumed to have no significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, then the source may be permitted under the provisions of any State plan adopted pursuant to section 110(a)(2)(D) of the Act until the area is designated nonattainment and a State Implementation Plan revision is approved. If no State plan pursuant to section 110(a)(2)(D) has been adopted and approved, then this Ruling shall apply.

As noted above, the determination as to whether a source would cause or contribute to a violation of an NAAQS should be made as of the new source's start-up date. Therefore, if a designated nonattainment area is projected to be an attainment area as part of an approved SIP control strategy by the new source start-up date, offsets would not be required if the new source would not cause a new violation.

<sup>2</sup>The discussion in this paragraph is a proposal, but represents EPA's interim policy until final rulemaking is completed.

D. *Sources locating in clean areas*, but would cause a new violating of an NAAQS. If the reviewing authority finds that the emissions from a proposed source would cause a new violation of an NAAQS, but would not contribute to an existing violation, approval may be granted only if both of the following conditions are met:

*Condition 1.* The new source is required to meet a more stringent emission limitation<sup>3</sup> and/or the control of existing sources below allowable levels is required so that the source will not cause a violation of any NAAQS.

*Condition 2.* The new emission limitations for the new source as well as any existing sources affected must be enforceable in accordance with the mechanisms set forth in Section V of this appendix.

IV. SOURCES THAT WOULD LOCATE IN A DESIGNATED NONATTAINMENT AREA

A. *Conditions for approval.* If the reviewing authority finds that the major stationary source or major modification would be constructed in an area designated in 40 CFR 81.300 *et seq* as nonattainment for a pollutant for which the stationary source or modification is major, approval may be granted only if the following conditions are met:

<sup>3</sup>If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the authority may instead prescribe a design, operational or equipment standard. In such cases, the reviewing authority shall make its best estimate as to the emission rate that will be achieved and must specify that rate in the required submission to EPA (see Part V). Any permits issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained (or that the operational conditions will be properly performed) so as to continuously achieve the assumed degree of control. Such conditions shall be enforceable as emission limitations by private parties under section 304. Hereafter, the term *emission limitation* shall also include such design, operational, or equipment standards.

*Condition 1.* The new source is required to meet an emission Limitation<sup>4</sup> which specifies the lowest achievable emission rate for such source.

*Condition 2.* The applicant must certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the same State as the proposed source are in compliance with all applicable emission limitations and standards under the Act (or are in compliance with an expeditious schedule which is Federally enforceable or contained in a court decree).

*Condition 3.* Emission reductions (*offsets*) from existing sources<sup>5</sup> in the area of the proposed source (whether or not under the same ownership) are required such that there will be reasonable progress toward attainment of the applicable NAAQS.<sup>6</sup> Except as provided in paragraph IV.G.5 of this Ruling (addressing PM<sub>2.5</sub> and its precursors), only intrapollutant emission offsets will be acceptable (e.g., hydrocarbon increases may not be offset against SO<sub>2</sub> reductions).

<sup>5</sup>Subject to the provisions of paragraph IV.C of this Ruling.

<sup>6</sup>The discussion in this paragraph is a proposal, but represents EPA's interim policy until final rulemaking is completed.

*Condition 4.* The emission offsets will provide a positive net air quality benefit in the affected area (see Section IV.D. below). Atmospheric simulation modeling is not necessary for volatile organic compounds and NO<sub>x</sub>. Fulfillment of Condition 3 and Section IV.D. will be considered adequate to meet this condition.

<sup>4</sup>If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the authority may instead prescribe a design, operational or equipment standard. In such cases, the reviewing authority shall make its best estimate as to the emission rate that will be achieved and must specify that rate in the required submission to EPA (see Part V). Any permits issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained (or that the operational conditions will be properly performed) so as to continuously achieve the assumed degree of control. Such conditions shall be enforceable as emission limitations by private parties under section 304. Hereafter, the term *emission limitation* shall also include such design, operational, or equipment standards.

*B. Exemptions from certain conditions.* The reviewing authority may exempt the following sources from Condition 1 under Section III or Conditions 3 and 4. Section IV.A.:

(i) Resource recovery facilities burning municipal solid waste, and (ii) sources which must switch fuels due to lack of adequate fuel supplies or where a source is required to be modified as a result of EPA regulations (e.g., lead-in-fuel requirements) and no exemption from such regulation is available to the source. Such an exemption may be granted only if:

1. The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with Condition 1 under Section III or Conditions 3 and 4 under Section IV.A. and that such efforts were unsuccessful;

2. The applicant has secured all available emission offsets; and

3. The applicant will continue to seek the necessary emission offsets and apply them when they become available.

Such an exemption may result in the need to revise the SIP to provide additional control of existing sources.

Temporary emission sources, such as pilot plants, portable facilities which will be relocated outside of the nonattainment area after a short period of time, and emissions resulting from the construction phase of a new source, are exempt from Conditions 3 and 4 of this section.

*C. Baseline for determining credit for emission and air quality offsets.* The baseline for determining credit for emission and air quality offsets will be the SIP emission limitations in effect at the time the application to construct or modify a source is filed. Thus, credit for emission offset purposes may be allowable for existing control that goes beyond that required by the SIP. Emission offsets generally should be made on a pounds per hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowed production rate. The reviewing agency should specify other averaging periods (e.g., tons per year) in addition to the pounds per hour basis if necessary to carry out the intent of this Ruling. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offsets should be calculated using the actual annual operating hours for the previous one or two year period (or other appropriate period if warranted by cyclical business conditions). Where the SIP requires certain hardware controls in lieu of an emission limitation (e.g., floating roof tanks for petroleum storage), baseline allowable emissions should be based on actual operating conditions for the previous one or two year period (*i.e.*, actual throughput and vapor pressures) in conjunction with the required hardware controls.

1. *No meaningful or applicable SIP requirement.* Where the applicable SIP does not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be the actual emissions determined in accordance with the discussion above regarding operating conditions.

Where the SIP emission limit allows greater emissions than the uncontrolled emission rate of the source (as when a State has a single particulate emission limit for all fuels), emission offset credit will be allowed only for control below the uncontrolled emission rate.

2. *Combustion of fuels.* Generally, the emissions for determining emission offset credit involving an existing fuel combustion source will be the allowable emissions under the SIP for the type of fuel being burned at the time the new source application is filed (*i.e.*, if the existing source has switched to a different type of fuel at some earlier date, any resulting emission reduction [either actual or allowable] shall not be used for emission offset credit). If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit based on the allowable emissions for the fuels involved is not acceptable unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date. The reviewing authority should ensure that adequate long-term supplies of the new fuel are available before granting emission offset credit for fuel switches.

3. *Emission Reduction Credits from Shutdowns and Curtailments.*

(i) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours may be generally credited for offsets if they meet the requirements in paragraphs IV.C.3.i.1. through 2 of this section.

(1) Such reductions are surplus, permanent, quantifiable, and federally enforceable.

(2) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, a reviewing authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

(i) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours and that do not meet the requirements in paragraphs

IV.C.3.i.1. through 2 of this section may be generally credited only if:

(1) The shutdown or curtailment occurred on or after the date the new source permit application is filed; or

(2) The applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the emissions reductions achieved by the shutdown or curtailment met the requirements of paragraphs IV.C.3.i.1. through 2 of this section.

4. *Credit for VOC substitution.* As set forth in the Agency's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977), EPA has found that almost all non-methane VOCs are photochemically reactive and that low reactivity VOCs eventually form as much ozone as the highly reactive VOCs. Therefore, no emission offset credit may be allowed for replacing one VOC compound with another of lesser reactivity, except for those compounds listed in Table 1 of the above policy statement.

5. *"Banking" of emission offset credit.* For new sources obtaining permits by applying offsets after January 16, 1979, the reviewing authority may allow offsets that exceed the requirements of reasonable progress toward attainment (Condition 3) to be "banked" (*i.e.*, saved to provide offsets for a source seeking a permit in the future) for use under this Ruling. Likewise, the reviewing authority may allow the owner of an existing source that reduces its own emissions to bank any resulting reductions beyond those required by the SIP for use under this Ruling, even if none of the offsets are applied immediately to a new source permit. A reviewing authority may allow these banked offsets to be used under the preconstruction review program required by Part D, as long as these banked emissions are identified and accounted for in the SIP control strategy. A reviewing authority may not approve the construction of a source using banked offsets if the new source would interfere with the SIP control strategy or if such use would violate any other condition set forth for use of offsets. To preserve banked offsets, the reviewing authority should identify them in either a SIP revision or a permit, and establish rules as to how and when they may be used.

6. *Offset credit for meeting NSPS or NESHAPS.* Where a source is subject to an emission limitation established in a New Source Performance Standard (NSPS) or a National Emission Standard for Hazardous Air Pollutants (NESHAPS), (*i.e.*, requirements under sections 111 and 112, respectively, of the Act), and a different SIP limitation, the more stringent limitation shall be used as the baseline for determining credit for emission and air quality offsets. The difference in emissions between the SIP and the NSPS or NESHAPS, for such source may

not be used as offset credit. However, if a source were not subject to an NSPS or NESHAPS, for example if its construction had commenced prior to the proposal of an NSPS or NESHAPS for that source category, offset credit can be permitted for tightening the SIP to the NSPS or NESHAPS level for such source.

D. *Location of offsetting emissions.* The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this Ruling for increased emissions of any air pollutant only by obtaining emissions reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the reviewing authority may allow the owner or operator of a source to obtain such emissions reductions in another nonattainment area if the conditions in IV.D.1 and 2 are met.

1. The other area has an equal or higher nonattainment classification than the area in which the source is located.

2. Emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

E. *Reasonable further progress.* Permits to construct and operate may be issued if the reviewing authority determines that, by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained, such that total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources prior to the application for such permit to construct or modify so as to represent (when considered together with the plan provisions required under CAA section 172) reasonable further progress (as defined in CAA section 171).

F. *Source obligation.* 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 of this Ruling shall apply to the source or modification as though construction had not yet commenced on the source or modification.

G. *Offset Ratios.*

1. In meeting the emissions offset requirements of paragraph IV.A, Condition 3 of this Ruling, the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in paragraphs IV.G.2 through IV.G.4.

2. In meeting the emissions offset requirements of paragraph IV.A, Condition 3 of this

Ruling for ozone nonattainment areas that are subject to subpart 2, part D, title I of the Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(i) In any marginal nonattainment area for ozone—at least 1.1:1;

(ii) In any moderate nonattainment area for ozone—at least 1.15:1;

(iii) In any serious nonattainment area for ozone—at least 1.2:1;

(iv) In any severe nonattainment area for ozone—at least 1.3:1 (except that the ratio may be at least 1.2:1 if the State also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

(v) In any extreme nonattainment area for ozone—at least 1.5:1 (except that the ratio may be at least 1.2:1 if the State also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

3. Notwithstanding the requirements of paragraph IV.G.2 of this Ruling for meeting the requirements of paragraph IV.A, Condition 3 of this Ruling, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to subpart 2, part D, title I of the Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to subpart 2, part D, title I of the Act.

4. In meeting the emissions offset requirements of paragraph IV.A, Condition 3 of this Ruling for ozone nonattainment areas that are subject to subpart 1, part D, title I of the Act (but are not subject to subpart 2, part D, title I of the Act, including 8-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1:1.

5. *Interpollutant offsetting.* In meeting the emissions offset requirements of paragraph IV.A, Condition 3 of this Ruling, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interpollutant offsetting is permitted for a particular pollutant as specified in this paragraph IV.G.5. The offset requirements of paragraph IV.A, Condition 3 of this Ruling for direct PM<sub>2.5</sub> emissions or emissions of precursors of PM<sub>2.5</sub> may be satisfied by offsetting reductions of direct PM<sub>2.5</sub> emissions or emissions of any PM<sub>2.5</sub> precursor identified under paragraph II.A.31 (iii) of this Ruling if such offsets comply with an interprecursor trading hierarchy and ratio approved by the Administrator.

H. *Additional provisions for emissions of nitrogen oxides in ozone transport regions and nonattainment areas.* The requirements of this Ruling applicable to major stationary sources and major modifications of volatile

organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas where the Administrator has granted a NO<sub>x</sub> waiver applying the standards set forth under 182(f) and the waiver continues to apply.

*I. Applicability procedures.*

1. To determine whether a project constitutes a major modification, the reviewing authority shall apply the principles set out in paragraphs IV.I.1(i) through (v) of this Ruling.

(i) Except as otherwise provided in paragraph IV.I.2 of this Ruling, and consistent with the definition of major modification contained in paragraph II.A.5 of this Ruling, 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 II.A.23 of this Ruling), and a significant net emissions increase (as defined in paragraphs II.A.6 and 10 of this Ruling). 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.

(ii) 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 IV.I.1(ii) through (v) of this Ruling. 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 II.A.6 of this Ruling. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(iii) *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 II.A.24 of this Ruling) and the baseline actual emissions (as defined in paragraphs II.A.30(i) and (ii) of this Ruling, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph II.A.10 of this Ruling).

(iv) *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 II.A.3 of this Ruling) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph II.A.30(iii) of this Ruling) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph II.A.10 of this Ruling).

(v) *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 IV.I.1(iii) through (iv) of this Ruling 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 II.A.10 of this Ruling).

2. For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under paragraph IV.K of this Ruling.

*J. Provisions for projected actual emissions.*

Except as otherwise provided in paragraph IV.J.6(ii) of this Ruling, the provisions of this paragraph IV.J 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 IV.J.6 of this Ruling, 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 II.A.24(ii)(a) through (c) of this Ruling for calculating projected actual emissions.

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

(i) A description of the project;

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

(iii) 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 II.A.24(ii)(c) of this Ruling and an explanation for why such amount was excluded, and any netting calculations, if applicable.

2. 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 IV.J.1 of this Ruling to the reviewing authority. Nothing in this paragraph IV.J.2 shall be construed to

require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

3. 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 units identified in paragraph IV.J.1(ii) of this Ruling; 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 capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

4. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority within 60 days after the end of each year, during which records must be generated under paragraph IV.J.3 of this Ruling setting out the unit's annual emissions during the year that preceded submission of the report.

5. 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 reviewing authority if the annual emissions, in tons per year, from the project identified in paragraph IV.J.1 of this Ruling, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph IV.J.1(iii) of this Ruling) by a significant amount (as defined in paragraph II.A.10 of this Ruling) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph IV.J.1(iii) of this Ruling. Such report shall be submitted to the reviewing authority within 60 days after the end of such year. The report shall contain the following:

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

(ii) The annual emissions as calculated pursuant to paragraph IV.J.3 of this Ruling; and

(iii) 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).

6. A "reasonable possibility" under paragraph IV.J of this Ruling occurs when the owner or operator calculates the project to result in either:

(i) A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under paragraph II.A.23 of this Ruling (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(ii) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph II.A.24(ii)(c), sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under paragraph II.A.23 of this Ruling (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 IV.J.6(ii) of this Ruling, and not also within the meaning of paragraph IV.J.6(i) of this Ruling, then provisions IV.J.2 through IV.J.5 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 this paragraph IV.J of this Ruling available for review upon a request for inspection by the reviewing authority or the general public pursuant to the requirements contained in §70.4(b)(3)(viii) of this chapter.

K. *Actuals PALs.* The provisions in paragraphs IV.K.1 through 15 of this Ruling govern actuals PALs.

#### 1. Applicability.

(i) The reviewing authority may approve the use of an actuals PAL for any existing major stationary source (except as provided in paragraph IV.K.1(ii) of this Ruling) if the PAL meets the requirements in paragraphs IV.K.1 through 15 of this Ruling. The term "PAL" shall mean "actuals PAL" throughout paragraph IV.K of this Ruling.

(ii) The reviewing authority shall not allow an actuals PAL for VOC or NO<sub>x</sub> for any major stationary source located in an extreme ozone nonattainment area.

(iii) 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 IV.K.1 through 15 of this Ruling, and complies with the PAL permit:

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

(b) Does not have to be approved through a nonattainment major NSR program; and

(c) Is not subject to the provisions in paragraph IV.F of this Ruling (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of a nonattainment major NSR program).

(iv) Except as provided under paragraph IV.K.1(iii)(c) of this Ruling, 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 paragraph IV.K, the definitions in paragraphs IV.K.2(i) through (xi) of this Ruling apply.

When a term is not defined in these paragraphs, it shall have the meaning given in paragraph II.A of this Ruling 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 II.A.30 of this Ruling) of all emissions units (as defined in paragraph II.A.7 of this Ruling) at the source, that emit or have the potential to emit the PAL pollutant.

(ii) *Allowable emissions* means “allowable emissions” as defined in paragraph II.A.11 of this Ruling, except as this definition is modified according to paragraphs IV.K.2(ii)(a) through (b) of this Ruling.

(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 II.A.3 of this Ruling, except that the words “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 II.A.10 of this Ruling 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 IV.K.1 through 15 of this Ruling.

(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 which 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 II.A.5 and 6 of this Ruling (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 permit issued under this Ruling, the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the plan, or the title V permit issued by the reviewing authority 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 II.A.10 of this Ruling 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 IV.K.2(iv) of this Ruling.

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 reviewing authority 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 IV.K.13(i) of this Ruling.

4. General requirements for establishing PALs.

(i) The reviewing authority is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs IV.K.4(i) (a) through (g) of this Ruling 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 IV.K.5 of this Ruling.

(c) The PAL permit shall contain all the requirements of paragraph IV.K.7 of this Ruling.

(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 IV.K. 12 through 14 of this Ruling 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, which occur during the PAL effective period, creditable as decreases for purposes of offsets under paragraph IV.C of this Ruling 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 requirement 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 reviewing authority 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 reviewing authority must address all material comments before taking final action on the permit.

6. *Setting the 10-year actuals PAL level.* The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph II.A.30 of this Ruling) 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 II.A.10 of this Ruling 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. Emissions from units on which actual construction began after the 24-month period must be added to the PAL level in an amount equal to the potential to emit of the units. 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).

7. *Contents of the PAL permit.* The PAL permit contain, at a minimum, the information in paragraphs IV.K.7 (i) through (x) of this Ruling.

(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 IV.K.10 of this Ruling 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 the reviewing authority.

(iv) A requirement that emission calculations for compliance purposes 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 IV.K.9 of this Ruling.

(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 for each month as required by paragraph IV.K.13(i) of this Ruling.

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

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

(ix) A requirement to submit the reports required under paragraph IV.K.14 of this Ruling by the required deadlines.

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

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

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

(ii) Reopening of the PAL permit.

(a) During the PAL effective period, the reviewing authority 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 paragraph IV.C of this Ruling.

(3) Revise the PAL to reflect an increase in the PAL as provided under paragraph IV.K.11 of this Ruling.

(b) The reviewing authority 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 plan.

(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 IV.K.8(ii)(a)(1) of this Ruling 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 IV.K.5 of this Ruling.

9. *Expiration of a PAL.* Any PAL which is not renewed in accordance with the procedures in paragraph IV.K.10 of this Ruling shall expire at the end of the PAL effective period, and the requirements in paragraphs

IV.K.9(i) through (v) of this Ruling 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 IV.K.9(i)(a) through (b) of this Ruling.

(a) Within the time frame specified for PAL renewals in paragraph IV.K.10(ii) of this Ruling, 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 reviewing authority) 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 IV.K.10(v) of this Ruling, such distribution shall be made as if the PAL had been adjusted.

(b) The reviewing authority 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 reviewing authority determines is appropriate.

(ii) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The reviewing authority may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(iii) Until the reviewing authority issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph IV.K.9(i)(a) of this Ruling, 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 the nonattainment major NSR requirements if such change meets the definition of major modification in paragraph II.A.5 of this Ruling.

(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 IV.F of this Ruling, but were eliminated by the PAL in accordance with the provisions in paragraph IV.K.1(iii)(c) of this Ruling.

10. Renewal of a PAL.

(i) The reviewing authority shall follow the procedures specified in paragraph IV.K.5 of this Ruling 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 reviewing authority.

(ii) *Application deadline.* The major stationary source owner or operator shall submit a timely application to the reviewing authority 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 IV.K.10(iii)(a) through (d) of this Ruling.

(a) The information required in paragraphs IV.K.3(i) through (iii) of this Ruling.

(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 reviewing authority to consider in determining the appropriate level for renewing the PAL.

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

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

(b) The reviewing authority may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be 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 reviewing authority in its written rationale.

(c) Notwithstanding paragraphs IV.K.10(iv)(a) and (b) of this Ruling,

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

(2) The reviewing authority shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph IV.K.11 of this Ruling (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 reviewing authority 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 reviewing authority may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs IV.K.11(i)(a) through (d) of this Ruling.

(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 IV.K.11(i)(a) of this Ruling, 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 nonattainment major NSR program process (for example, LAER), 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 reviewing authority 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 IV.K.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 IV.K.5 of this Ruling.

#### 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 IV.K.12(ii)(a) through (d) of this Ruling and must be approved by the reviewing authority.

(c) Notwithstanding paragraph IV.K.12(i)(b) of this Ruling, you may also employ an alternative monitoring approach that meets paragraph IV.K.12(i)(a) of this Ruling if approved by the reviewing authority.

(d) Failure to use a monitoring system that meets the requirements of this Ruling 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 IV.K.12(iii) through (ix) of this Ruling:

(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 reviewing authority 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 reviewing authority, 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 reviewing authority 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 IV.K.12(iii) through (vii) of this Ruling, 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 reviewing authority 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 reviewing authority. 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 IV.K of this Ruling 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 reviewing authority in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs IV.K.14(i) through (iii).

(i) Semi-Annual Report. The semi-annual report shall be submitted to the reviewing authority within 30 days of the end of each reporting period. This report shall contain

the information required in paragraphs IV.K.14(i)(a) through (g) of this Ruling.

(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 IV.K.13(i) of this Ruling.

(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 paragraph IV.K.12(vii) of this Ruling.

(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 reviewing authority the results of any re-validation test or method within 3 months after completion of such test or method.

#### 15. Transition requirements.

(i) No reviewing authority may issue a PAL that does not comply with the requirements in paragraphs IV.K.1 through 15 of this Ruling after the date that this Ruling becomes effective for the State in which the major stationary source is located.

(ii) The reviewing authority may supersede any PAL which was established prior to the date that this Ruling becomes effective for the State in which the major stationary source is located with a PAL that complies with the requirements of paragraphs IV.K.1 through 15 of this Ruling.

L. *Severability*. If any provision of this Ruling, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Ruling, 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.

#### V. ADMINISTRATIVE PROCEDURES

The necessary emission offsets may be proposed either by the owner of the proposed source or by the local community or the State. The emission reduction committed to must be enforceable by authorized State and/or local agencies and under the Clean Air Act, and must be accomplished by the new source's start-up date. If emission reductions are to be obtained in a State that neighbors the State in which the new source is to be located, the emission reductions committed to must be enforceable by the neighboring State and/or local agencies and under the Clean Air Act. Where the new facility is a replacement for a facility that is being shut down in order to provide the necessary offsets, the reviewing authority may allow up to 180 days for shakedown of the new facility before the existing facility is required to cease operation.

A. *Source initiated emission offsets*. A source may propose emission offsets which involve:

(1) Reductions from sources controlled by the source owner (internal emission offsets); and/or (2) reductions from neighboring sources (external emission offsets). The source does not have to investigate all possible emission offsets. As long as the emission offsets obtained represent reasonable progress toward attainment, they will be acceptable. It is the reviewing authority's responsibility to assure that the emission offsets will be as effective as proposed by the source. An internal emission offset will be considered enforceable if it is made a SIP requirement by inclusion as a condition of the new source permit and the permit is forwarded to the appropriate EPA Regional Office.<sup>7</sup> An external emission offset will not be

enforceable unless the affected source(s) providing the emission reductions is subject to a new SIP requirement to ensure that its emissions will be reduced by a specified amount in a specified time. Thus, if the source(s) providing the emission reductions does not obtain the necessary reduction, it will be in violation of a SIP requirement and subject to enforcement action by EPA, the State and/or private parties.

The form of the SIP revision may be a State or local regulation, operating permit condition, consent or enforcement order, or any other mechanism available to the State that is enforceable under the Clean Air Act. If a SIP revision is required, the public hearing on the revision may be substituted for the normal public comment procedure required for all major sources under 40 CFR 51.18. The formal publication of the SIP revision approval in the FEDERAL REGISTER need not appear before the source may proceed with construction. To minimize uncertainty that may be caused by these procedures, EPA will, if requested by the State, propose a SIP revision for public comment in the FEDERAL REGISTER concurrently with the State public hearing process. Of course, any major change in the final permit/SIP revision submitted by the State may require a reproposal by EPA.

B. *State or community initiated emission offsets*. A State or community which desires that a source locate in its area may commit to reducing emissions from existing sources (including mobile sources) to sufficiently outweigh the impact of the new source and thus open the way for the new source. As with source-initiated emission offsets, the commitment must be something more than one-for-one. This commitment must be submitted as a SIP revision by the State.

#### VI. POLICY WHERE ATTAINMENT DATES HAVE NOT PASSED

In some cases, the dates for attainment of primary standards specified in the SIP under section 110 have not yet passed due to a delay in the promulgation of a plan under this section of the Act. In addition the Act provides more flexibility with respect to the dates for attainment of secondary NAAQS than for primary standards. Rather than setting specific deadlines, section 110 requires secondary NAAQS to be achieved within a "reasonable time". Therefore, in some cases, the date for attainment of secondary standards specified in the SIP under section 110 may also not yet have passed. In such cases, a new source locating in an area designated in 40 CFR 81.300 *et seq.* as nonattainment (or, where section III of this Ruling is applicable, a new source that would cause or contribute

<sup>7</sup>The emission offset will, therefore, be enforceable by EPA under section 113 as an applicable SIP requirement and will be enforce-

able by private parties under section 304 as an emission limitation.

to a NAAQS violation) may be exempt from the Conditions of section IV.A if the conditions in paragraphs VI.A through C are met.

A. The new source meets the applicable SIP emission limitations.

B. The new source will not interfere with the attainment date specified in the SIP under section 110 of the Act.

C. The Administrator has determined that conditions A and B of this section are satisfied and such determination is published in the FEDERAL REGISTER.

(Secs. 101(b)(1), 110, 160–169, 171–178, and 301(a), Clean Air Act, as amended (42 U.S.C. 7401(b)(1), 7410, 7470–7479, 7501–7508, and 7601(a)); sec. 129(a), Clean Air Act Amendments of 1977 (Pub. L. 95–95, 91 Stat. 685 (Aug., 7, 1977)))

[44 FR 3282, Jan. 16, 1979]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting appendix S to part 51, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

EFFECTIVE DATE NOTE: At 76 FR 17554, Mar. 30, 2011, part 51, appendix S, paragraph II.A.5 (vii) is stayed indefinitely.

EFFECTIVE DATE NOTE: At 76 FR 38807, July 1, 2011, appendix S to part 51 was amended by revising paragraph II.B and adding condition 5 to paragraph IV.A, effective Aug. 30, 2011. For the convenience of the user, the added and revised text is set forth as follows:

APPENDIX S TO PART 51—EMISSION OFFSET INTERPRETATIVE RULING

\* \* \* \* \*

II. \* \* \*

B. *Review of all sources for emission limitation compliance.* The reviewing authority must examine each proposed major new source and proposed major modification<sup>1</sup> to determine if such a source will meet all applicable emission requirements in the SIP, any applicable new source performance standard in part 60 or any national emission standard for hazardous air pollutants in part 61 or part 63 of this chapter. If the reviewing authority determines that the proposed major new source cannot meet the applicable emission requirements, the permit to construct must be denied.

IV. \* \* \*

A. \* \* \*

*Condition 5.* The permit applicant shall conduct an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed

<sup>1</sup>Hereafter the term *source* will be used to denote both any source and any modification.

source that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

\* \* \* \* \*

APPENDIXES T–U TO PART 51 [RESERVED]

APPENDIX V TO PART 51—CRITERIA FOR DETERMINING THE COMPLETENESS OF PLAN SUBMISSIONS

1.0. PURPOSE

This appendix V sets forth the minimum criteria for determining whether a State implementation plan submitted for consideration by EPA is an official submission for purposes of review under §51.103.

1.1 The EPA shall return to the submitting official any plan or revision thereof which fails to meet the criteria set forth in this appendix V, and request corrective action, identifying the component(s) absent or insufficient to perform a review of the submitted plan.

1.2 The EPA shall inform the submitting official whether or not a plan submission meets the requirements of this appendix V within 60 days of EPA’s receipt of the submittal, but no later than 6 months after the date by which the State was required to submit the plan or revision. If a completeness determination is not made by 6 months from receipt of a submittal, the submittal shall be deemed complete by operation of law on the date 6 months from receipt. A determination of completeness under this paragraph means that the submission is an official submission for purposes of §51.103.

2.0. CRITERIA

The following shall be included in plan submissions for review by EPA:

2.1. Administrative Materials

(a) A formal letter of submittal from the Governor or his designee, requesting EPA approval of the plan or revision thereof (hereafter “the plan”).

(b) Evidence that the State has adopted the plan in the State code or body of regulations; or issued the permit, order, consent agreement (hereafter “document”) in final form. That evidence shall include the date of adoption or final issuance as well as the effective date of the plan, if different from the adoption/issuance date.

(c) Evidence that the State has the necessary legal authority under State law to adopt and implement the plan.