■ b. Removing ''medical record'' each time it appears and adding in its place ''health record''.
■ c. In the list of definitions in paragraph (a), revising the definition of ''Practitioner''.

The revision reads as follows:

§ 17.32 Informed consent and advance care planning.

(a) * * *

Practitioner. Any physician, dentist, or health care professional who has been granted specific clinical privileges to perform the treatment or procedure. For the purpose of obtaining informed consent for medical treatment, the term practitioner includes medical and dental residents and other appropriately trained health care professionals designated by VA regardless of whether they have been granted clinical privileges.

* * * * *

[FR Doc. E7–4142 Filed 3–7–07; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2001–0004; FRL–8283–9]

RIN 2060–AM59

Nonattainment New Source Review (NSR)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing revisions to the regulations governing the nonattainment new source review (NSR) program mandated by section 110(a)(2)(C) of the Clean Air Act (CAA or Act). These revisions implement changes to the preconstruction review requirements for major stationary sources in nonattainment areas in interim periods between designation of new nonattainment areas and adoption of a revised State Implementation Plan (SIP). The revisions conform the nonattainment permitting rules that apply during the SIP development period following nonattainment designations before SIP approval to the Federal permitting rules applicable to SIP-approved programs. The changes are intended to provide a consistent national program for permitting major stationary sources in nonattainment areas under section 110(a)(2)(C) and part D of title I of the Act. In particular, these changes conform the regulations to the NSR reform provisions that EPA promulgated by notice dated December 31, 2002, except that these changes do not include the NSR reform provisions for ''clean units'' or ''pollution control projects,'' which the U.S. Court of Appeals for the D.C. Circuit vacated in *New York* v. *EPA*, 413 F.3d 3 (DC Cir. 2005). In addition, these changes include an interim interpretation of the NSR reform provision for a ''reasonable possibility'' standard for recordkeeping and reporting requirements, in accordance with that court decision. This interim interpretation to the ''reasonable possibility'' standard applies for appendix S purposes, pending the completion of rulemaking to develop a more complete interpretation.

DATES: This final rule is effective on May 7, 2007.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2001–0004. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Sutton, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–3450; *fax number:* (919) 541–5509; *e-mail address: sutton.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities affected by this rule include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups:

Industry Group	SIC [a]	NAICS [b]
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122.
Petroleum Refining	291	324110.
Industrial Inorganic Chemicals	281	325181, 325120, 325131, 325182, 211112, 325998, 331311, 325188.
Industrial Organic Chemicals	286	325110, 325132, 325192, 325188, 325193, 325120, 325199.
Miscellaneous Chemical Products	289	325520, 325920, 325910, 325182, 325510.
Natural Gas Liquids	132	211112.
Natural Gas Transport	492	486210, 221210.
Pulp and Paper Mills	261	322110, 322121, 322122, 322130.
Paper Mills	262	322121, 322122.
Automobile Manufacturing	371	336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213.
Pharmaceuticals	283	325411, 325412, 325413, 325414.

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

Entities affected by the rule also include States, local permitting authorities, and Indian tribes whose lands contain new and modified major stationary sources.

B. Where Can I Obtain Additional Information?

In addition to being available in the docket, an electronic copy of this final

rule is also available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted on the EPA's NSR Web site, under Regulations & Standards, at *http://www.epa.gov/nsr.*

C. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

II. Overview of This Final Action

In this action, we are finalizing previously proposed changes to the regulations that govern NSR permitting of major stationary sources in nonattainment areas in appendix S of 40 CFR part 51. Appendix S contains the permitting program for major stationary sources that are located either in nonattainment areas or in the Ozone Transport Region (OTR), in transition periods before EPA approves a SIP to implement the NSR requirements in part D of title I. These final rules revise appendix S to generally conform it to regulations at 40 CFR 51.165 for SIP programs for nonattainment major NSR, as those regulations were revised to implement NSR reform. 67 FR 80816 (December 31, 2002) (2002 NSR reform rules). However, the U.S. Court of Appeals for the D.C. Circuit, in *New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005) (*New York*), vacated the Clean Unit provision and the Pollution Control Project (PCP) exemption in the 2002 NSR reform rules. Therefore, these final rules do not conform appendix S to the 2002 rules with respect to Clean Units or PCPs. The *New York* case also remanded the ''reasonable possibility'' recordkeeping and reporting provision of the 2002 NSR reform rules for the EPA either to provide an acceptable explanation or to devise an appropriately supported alternative. In a separate **Federal Register** notice published on this date, we are proposing clarification of the ''reasonable possibility'' standard to address under which circumstances records must be kept for projects that do not trigger NSR. In the interim, the ''reasonable possibility'' standard remains in effect in our major NSR regulations and we provide an interpretation that indicates one set of circumstances under which the ''reasonable possibility'' standard is met. States may provide different recordkeeping requirements provided that the recordkeeping requirements address the concerns noted in the Court's remand.

III. Background

A. The Major NSR Program

The major NSR program contained in parts C and D of title I of the Act is a preconstruction review and permitting program applicable to new and modified major stationary sources of air pollutants regulated under the Act. In areas not meeting health-based national ambient air quality standards (NAAQS) and in ozone transport regions, the program is implemented under the requirements of section 110(a)(2)(C) and part D of title I of the Act. We call this program the ''nonattainment'' NSR program. Subpart 1 of part D of title I contains general requirements for nonattainment areas for any pollutant for which there is a NAAQS.

In areas meeting the NAAQS (''attainment'' areas) or for which there is insufficient information to determine whether they meet the NAAQS (''unclassifiable'' areas), the NSR requirements under part C of title I of the Act apply. This program is called the Prevention of Significant Deterioration (PSD) program. Collectively, we also commonly refer to the attainment and nonattainment programs as the major NSR program. Regulations comprising the major NSR program are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, appendix S. Of these, the nonattainment area regulations are contained in 40 CFR 51.165, 52.24, and part 51, appendix S.

The NSR provisions of the Act are implemented primarily through State preconstruction permitting programs. As provided in section 172(c)(4) of the Act, the SIP must require permits for the construction and operation of new or modified major stationary sources in accordance with section 173 of the Act. The permitting requirements for SIPs for major stationary sources locating in nonattainment areas are found in 40 CFR 51.165. 40 CFR 52.24(k) specifies that appendix S governs permits to construct and operate when such permits were applied for during the period between the date of designation as nonattainment and the date we approve the part D major NSR plan. Appendix S states that it is an interpretation of 40 CFR subpart I (including § 51.165), and it has historically reflected substantially the same requirements as the part D NSR requirements. This includes the requirement to comply with the lowest achievable emission rate (LAER) and obtain offsetting emission reductions, with a limited exemption in section VI of the appendix that applies to sources that will not interfere with an area's attainment deadline and that will meet applicable SIP emissions limitations. Thus, consistent with section 110(a)(2)(C) of the Act, permitting of new and modified stationary sources in the area will be regulated as necessary to ensure that they do not interfere with attaining the NAAQS.

As we describe further in section III.B of this preamble, these final regulations generally conform the regulatory language of appendix S to the major NSR program as revised on December 31, 2002, except for the provisions of that program vacated by the *New York* case. For a summary of the regulatory development process and stakeholder development for that rulemaking, see 67 FR 80188.

B. What We Proposed

On July 23, 1996, we proposed changes to the major NSR program, including the regulations contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51 appendix S (61 FR 38250). The 1996 proposal concerned, in part, five major changes to the NSR program-baseline emissions, actual-to-projected-actual methodology, Clean Units, Plantwide Applicability Limitations (PALs), and PCPs.

On December 31, 2002 (67 FR 80187), we promulgated final changes concerning baseline emissions, actual-to-projected-actual methodology, Clean Units, PALs, and PCPs. We promulgated these changes in the regulations at 40 CFR 51.165, 51.166, and 52.21, and at the same time stated our intention to later conform the regulatory language in appendix S (and 40 CFR 52.24) to the final regulations.

Today's actions finalize these changes to the regulations for both the approval and promulgation of implementation plans and requirements for preparation, adoption, and submittal of implementation plans governing the NSR programs mandated by parts C and D of title I of the Act. We also proposed conforming changes to 40 CFR (Code of Federal Regulations) part 51, appendix S, and part 52.24. Today we have not included the final regulatory language for these regulations. It is our intention to include regulatory changes that conform appendix S and 40 CFR 52.24 to today's final rules in any final regulations that set forth an interim implementation strategy for the 8-hour ozone standard. We intend to finalize changes to these sections precisely as we have finalized requirements for other parts of the program. Because these are conforming changes and the public has had an opportunity for review and comment, we will not be soliciting additional comments before we finalize them.

We published final rules addressing implementation of the 8-hour ozone NAAQS, on April 30, 2004 (69 FR 23951) and November 29, 2005 (70 FR 71612). In the November 2005 final rule, in part, we revised appendix S to incorporate the major stationary source thresholds, significant emission rates, and offset ratios for sources of ozone precursors pursuant to part D, subpart 1 and subpart 2 of title I of the 1990 CAA Amendments, but we did not at that time include the regulatory changes we had proposed to conform appendix S language to that of the NSR reform rules.

IV. Description of This Final Action and Legal Basis

A. Final Changes to Appendix S

In this final action, we have revised appendix S as proposed to generally conform the regulatory language in appendix S to that of the NSR reform rules. Specifically, the changes proposed in 1996 concerning baseline emission determinations, actual-to-projected-actual methodology, and PALs have been incorporated in sections II and IV of appendix S. As indicated at 67 FR 80187, it was our intent to finalize the changes to appendix S precisely as we have finalized requirements for other parts of the program. However, subsequently, the *New York* case vacated the Clean Unit provision and the PCP exemption in the 2002 NSR reform rules. Therefore, these final rules do not conform appendix S to the 2002 rule revisions relating to Clean Units and PCPs. In addition, as discussed later, these final rules conform appendix S to the ''reasonable possibility'' standard in the NSR reform rules. In a separate **Federal Register** notice published on this date, we are proposing clarification of the ''reasonable possibility'' standard to address under which circumstances records must be kept for projects that do not trigger NSR. We provide, in this preamble, an interim interpretation which addresses the issues raised by the Court in its remand. Table 1 shows where to find the changes being made to appendix S.

TABLE 1.—PROPOSED CHANGES TO APPENDIX S

For the following provision * * *	Added to § 51.165 in December 2002 at * * *	Analogous provisions have been added to appendix S at paragraph
Offsets	(a)(3)(ii) (H) through (J)	IV.C.7 through 8.
Applicability test	(a)(2)(ii)	IV.I.1.
Projected actual emissions (including ''reasonable possibility'' standard).	(a)(6)	IV.J.
Clean Unit provisions for emissions units subject to LAER.	(c)	
Clean Unit provisions for emissions units achieving emission limitation comparable to LAER.	(d)	
PCP exclusion	(e)	
Actuals PALs	(f)	IV.K.
Severability	(g)	IV.L.

B. Legal Basis for Changes to Appendix S

Appendix S provides on its face that it is an interpretation of the NSR permitting rules in subpart I, including (51.165. Therefore, it is necessary to have appendix S reflect substantially the same requirements as are in § 51.165.[1] Thus, we proposed to amend appendix S in this manner in the 1996 NSR proposal.

The legal basis for these changes is the same as that set forth in the preamble to the December 31, 2002, final rule providing NSR reforms for the other major NSR regulations. Additionally, we believe it is necessary to have appendix S reflect substantially the same requirements as codified at 40 CFR 51.165 because appendix S is an interpretation of the NSR permitting rules at 40 CFR part 51 subpart I, including § 51.165, as discussed earlier. As explained in section IV.A of this preamble, we are not amending appendix S to adopt the Clean Unit provision and PCP exemption that are in § 51.165, because the D.C. Circuit Court of Appeals vacated those provisions in the *New York* decision.

Section 110(a)(2)(C) of the Act does not define specific requirements States must follow for issuing major source permits during the interim period between nonattainment designation and EPA approval of a nonattainment NSR SIP. However, we have historically recognized that the SIP development period provided for in section 172(b) of the Act leaves a gap in part D major NSR permitting and have determined that this gap is to be filled with an interim major NSR program that is substantially similar to the requirements of part D, including the LAER and offset requirements from part D, subject to a limited exemption where the attainment deadline will be met (57 FR at 18070, 18076). This interim NSR program has been implemented to date through

[1] Thus, EPA has typically conformed appendix S to the part D nonattainment NSR permitting provisions governing SIPs at 40 CFR 51.165 (originally codified at § 51.18) whenever those regulations were revised. See, for example, 45 FR 52676 (Aug. 7, 1980); 47 FR 27554 (June 25, 1982); 49 FR 43210 (Oct. 26, 1984); 54 FR 27274 (June 28, 1989); 57 FR 3941 (Feb. 3, 1992).

appendix S.[2] Our regulations at 40 CFR 52.24(k) require States to follow appendix S during the time period between the date of designation as nonattainment and the date the part D major NSR plan is approved. Additionally, in the 1977 CAA Amendments, Congress indicated its intent that major NSR permitting apply during the SIP development period. [See Pub. L. No. 95–95, § 129(a), 91 Stat. 685 (1977).] Specifically, in 1977, when Congress enacted a moratorium on construction in any area lacking an approved part D NSR SIP, with a delayed effective date of July 1, 1979, Congress provided that appendix S govern permitting of sources constructing in such areas prior to that date, subject to a limited waiver by the Administrator. *Id.* 108(b), 129(a). We subsequently codified the use of appendix S as the interim major NSR program in 40 CFR 52.24(k), reasoning (in the context of implementing a delay in the construction ban for then-recently designated nonattainment areas) that Congress had provided that appendix S would remain in effect to protect air quality while State plans were being designed (45 FR 91604). When Congress removed the construction ban (except as provided in section 110(n)(3) of the Act), it left in place 40 CFR 52.24(k), implementing the interim major NSR program under appendix S.

The continued application of appendix S through § 52.24(k) is also supported by the purpose of the CAA, specifically, section 101(b)(1), ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' This provision was the basis for the original judicial finding that the Act imposed an obligation to prevent significant deterioration in areas that meet the NAAQS, prior to Congress' enactment of the PSD program at part C of the Act.[3] This policy of non-degradation and promoting productive capacity applies with even greater force in areas that fail to meet the NAAQS. Thus, we believe that an interim major NSR program for the SIP development period—as codified at appendix S—is supported by section 110(a)(2)(C), section 101(b)(1), Congressional intent, and our gapfilling authority under section 301(a) of the Act.

C. Approach for ''Reasonable Possibility'' Standard

These appendix S rules include the ''reasonable possibility'' standard of the 2002 NSR reform rules. In response to the remand of that standard handed down by the D.C. Circuit in the *New York* case, EPA provides an interim interpretation of ''reasonable possibility'' that is consistent with the Court's decision. We note that in a separate **Federal Register** notice published on this date, we are proposing clarification of the ''reasonable possibility'' standard to address under which circumstances a source that does not trigger NSR may nonetheless still be required to keep records.

A major stationary source in a nonattainment area (or in the OTR) triggers the application of NSR when it makes a ''modification,'' which is defined as ''any physical change * * * or change in the method of operation * * * which increases the amount of any air pollutant emitted'' for which an area is in nonattainment or results in the emission of any such air pollutant not previously emitted by the source. CAA sections 172(c)(5), 171(4), 111(a)(4). The amount of the increase must be significant, and EPA, through rulemaking, has determined significance levels for various pollutants where the Act does not independently specify a significance threshold. See 40 CFR 51.165(a)(1)(x), 51.166(b)(23)(i), paragraph II.A.10 of appendix S to Part 51, and 52.21(b)(23)(i).

To determine the amount of increase from the change, the NSR rules prior to revision by the 2002 NSR reform rules generally required a source other than an electric utility steam generating unit (EUSGU) to compare the amount of the source's actual emissions during a baseline period to the amount the source would emit after the change based on the source's potential to emit (PTE) to determine if a ''significant net emissions increase'' has occurred. The 2002 NSR reform rules provided non-EUSGU sources a choice in how to determine the post-change amount: these sources could continue to use the PTE amount (the actuals-to-potentials test), or they could use the amount of actual emissions the sources projected to occur (the actuals-to-projected-actuals test). The preamble to the NSR reform rules contains a more detailed discussion, 67 FR at 80,187.

For a source that elects the actuals-to-projected-actuals test and calculates that the amount of any increase would not exceed the significance levels and therefore does not trigger NSR, the NSR reform rules provide requirements to maintain records of the calculations and post-change emissions if the source determines that there is ''a reasonable possibility that [the change] may result in a significant emissions increase * * *.'' 40 CFR 52.21(r)(6).

In the *New York* case, the DC Circuit remanded this provision, stating:

> Because EPA has failed to explain how it can ensure NSR compliance without the relevant data, we will remand for it either to provide an acceptable explanation for its ''reasonable possibility'' standard or to devise an appropriately supported alternative.

413 F.3d at 35–36.

In a separate **Federal Register** notice published on this date, we are proposing clarification of the ''reasonable possibility'' standard to identify when a source must keep records despite the fact that a physical or operational change does not trigger NSR. The EPA intends, as part of that rulemaking, to revise appendix S to the extent necessary to conform to the results of that rulemaking.

In the interim, until EPA completes the rulemaking, EPA announces that it interprets the standard so that a source may conclude there is no ''reasonable possibility'' that the change will result in a significant increase in emissions only if the change's projected actual emissions increase is below 50 percent of the applicable NSR significance level for any pollutant. This test may be termed the ''percentage increase trigger.'' We base our conclusion on an assumption that the magnitude of projected actual emissions correlates positively to the likelihood of a significant emissions increase. The EPA believes that this interpretation addresses the issues identified by the Court in the *New York* case.

[2] Appendix S was originally promulgated in 1976 to address whether, and to what extent, new and modified sources would be allowed to construct in nonattainment areas whose attainment deadlines had already passed, in light of the regulatory requirement that new or modified sources be disapproved where the source would interfere with attainment of the NAAQS. 41 FR 55524 (Dec. 21, 1976). It required, *inter alia,* compliance with the LAER and with offsetting emission reductions in excess of the new source's emissions. At that time, part D NSR was not part of the CAA.

When the part D NSR provisions were added in the 1977 Amendments to the CAA, Congress added the requirement that SIPs contain nonattainment NSR provisions as set forth in section 173, including LAER and the requirement to either offset the increase in new source emissions or ensure that emissions fell within a growth allowance. (The growth allowance provision was repealed in 1990.) Additionally, Congress provided that appendix S would govern preconstruction permitting in areas lacking approved part D SIPs before a construction ban went into effect, as discussed in more detail earlier.

[3] See *Alabama Power Co.* v. *Costle,* 636 F.3d 323, 346–047 (DC Cir. 1980) (discussing *Sierra Club* v. *Ruckelshaus,* 344 F. Supp. 253 (D.D.C. 1972), aff'd per curiam 4 ERC 1815 (DC Cir. 1972), aff'd by an equally divided court, sub nom *Fri* v. *Sierra Club,* 412 U.S. 541 (1973).

V. Summary of Major Comments and Responses

As we noted in section III.B of this preamble, we proposed changes to appendix S and the other major NSR regulations in 1996. Thus, the comments and responses concerning the final regulations on December 31, 2002 also apply to these final changes to appendix S. You will find the major comments and responses at 67 FR 80186. For a complete summary of the comments and responses, please see our Technical Support Document for the December 31, 2002 final rules, which is posted on the World Wide Web, on the EPA's New Source Review Web site, at *http://www.epa.gov/nsr/documents/nsr-tsd_11–22–02.pdf.*

VI. Effective Date for Requirements

These final changes to appendix S of 40 CFR part 51 will take effect in the NSR permitting programs for nonattainment areas on May 7, 2007. This means that appendix S as amended in this final action will apply on May 7, 2007 in any nonattainment area without an approved part D NSR SIP that applies to major sources in the nonattainment area for the nonattainment pollutant.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The OMB has previously approved the information collection requirements contained in the existing regulations (40 CFR parts 51 and 52) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0003, EPA ICR number 1230.17. A copy of the OMB-approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We are imposing no new requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As this final rule generally incorporates the December 31, 2002 final rules into appendix S, we believe these rule changes will actually reduce the regulatory burden associated with the major NSR program by improving the operational flexibility of owners or operators and clarifying the requirements. Additionally, States are not required to revise their SIPs with respect to appendix S. The EPA will act as the reviewing authority where the State lacks authority to issue permits that meet the conditions of appendix S. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Because we have not required any new Federal mandates, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include

regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. Nevertheless, as described in section III.B of this preamble, in developing this rule, we consulted with affected parties and interested stakeholders, including State and local authorities, to enable them to provide timely input in the development of this rule. The rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The revisions to appendix S do not have substantial direct effects on State and local agencies because State and local agencies are not required to revise their programs with respect to appendix S. The EPA will act as the reviewing authority where the State lacks authority to issue permits that meet the conditions of appendix S. Moreover, this revision provides sources permitted by States under appendix S greater certainty in application of the program, which should in turn reduce the overall burden of the program on State and local authorities. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply.

The purpose of this final rule, like that for the December 31, 2002 rules, is to add greater flexibility to the existing major NSR regulations. These changes have been incorporated into appendix S. Appendix S affects sources located in Indian country but has no direct effect on Indian tribes. Although major stationary sources affected by this final rule could be located in or near Indian country and/or be owned or operated by tribal governments, such sources would not incur additional costs or compliance burdens as a result of this rule. Instead, the only effect on such sources should be the benefit of the added certainty and flexibility provided by the rule.

Although Executive Order 13175 does not apply to this rule, EPA afforded Tribal officials the opportunity to comment on the December 31, 2002 final rules, which were developed largely prior to issuance of Executive Order 13175. Two tribes submitted comments on that action. We recognize the importance of including tribal consultation as part of the rulemaking process. We will continue to consult with tribes on future rulemaking to assess and address tribal implications, and will work with tribes interested in seeking TIP approval to implement the NSR program to ensure consistency of tribal plans with this rule.

G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) As ''economically significant'' as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Based on our Supplemental Analysis, we believe that the December 31, 2002 rules that have been incorporated into this final action will result in equal or better environmental protection than provided by the prior regulations, and do so in a more streamlined and effective manner.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355; May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This final rule improves the ability of sources to undertake pollution prevention or energy efficiency projects, switch to less polluting fuels or raw materials, maintain the reliability of production facilities, and effectively utilize and improve existing capacity. The rule also includes a number of provisions to streamline administrative and permitting processes so that facilities can quickly accommodate changes in supply and demand. The regulations provide several alternatives that are specifically designed to reduce administrative burden for sources that use pollution prevention or energy efficient projects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), P.L. 104–113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Although this rule does involve the use of technical standards, it does not preclude the State, local, and tribal reviewing agencies from using voluntary consensus standards. This final rule is an improvement of the existing NSR permitting program. As such, it only ensures that promulgated technical standards are considered and appropriate controls are installed, prior to the construction of major sources of air emissions. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high

and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. Based on our Supplemental Analysis, we believe that the December 31, 2002 rules that have been incorporated into this final action will result in equal or better environmental protection than provided by the prior regulations, and do so in a more streamlined and effective manner.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective May 7, 2007.

VIII. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 7, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

Pursuant to section 307(d)(1)(U) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(U) provides that the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.'' This action finalizes elements of previous proposed actions that were determined to be subject to section 307(d)—the NSR rules published on December 31, 2002 (67 FR at 80244). Therefore, the procedural requirements of section 307(d) have been complied with for purposes of this action.

IX. Statutory Authority

The statutory authority for this action is provided by sections 101, 112, 114, 116, and 301 of the Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601). This rulemaking is also subject to section 307(d) of the Act (42 U.S.C. 7407(d)).

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List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

Dated: February 28, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Appendix S to Part 51—[Amended]

■ 2. Appendix S to Part 51 is amended as follows:

■ a. By revising paragraph II.A.1.

■ b. By revising paragraphs II.A.5(i) and (ii).

■ c. By adding paragraph II.A.5(vi).

■ d. By revising paragraph II.A.6(i).

■ e. By revising paragraph II.A.6(iii).

■ f. By revising paragraph II.A.6(v)(*b*) through (*d*).

■ g. By adding paragraph II.A.6(vii).

■ h. By revising paragraph II.A.7.

■ i. By revising paragraph II.A.13.

■ j. By revising paragraph II.A.14.

■ k. By revising the introductory text in paragraph II.A.18.

■ l. By adding paragraphs II.A.21 through 36.

■ m. By adding paragraphs IV. I through L.

The revisions and additions read as follows:

Appendix S to Part 51—Emission Offset Interpretative Ruling

* * * * *

II. * * *

A. * * *

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

* * * * *

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.

* * * * *

(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.

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.

* * * * *

(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.

* * * * *

(v) * * *

(*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.

* * * * *

(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.

* * * * *

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.

* * * * *

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

* * * * *

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_2 or CO_2 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_2 or CO_2 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.

(i) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The 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; or

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

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.

* * * * *

IV. * * *

* * * * *

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(iii) 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.* The provisions of this paragraph IV.J apply to 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 that a project that is not a part of a major modification may result in a significant emissions increase 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. [Reserved]

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_X 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_X 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.

[FR Doc. E7–3888 Filed 3–7–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2006–1015; FRL–8285–1]

Approval and Promulgation of Implementation Plans; Iowa; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is revising the Iowa State Implementation Plan (SIP) for the purpose of approving the Iowa Department of Natural Resources' (IDNR) actions to address the ''good neighbor'' provisions of the Clean Air Act section 110(a)(2)(D)(i). These provisions require each state to submit a SIP that prohibits emissions that adversely affect another state's air quality through interstate transport. IDNR has adequately addressed the four distinct elements related to the impact of interstate transport of air pollutants. These include prohibiting significant contribution to downwind nonattainment of the National Ambient Air Quality Standards (NAAQS), interference with maintenance of the NAAQS, prevention of significant deterioration of air quality, and protection of visibility. The requirements for public notification were also met by IDNR.

DATES: This direct final rule will be effective May 7, 2007, without further notice, unless EPA receives adverse comment by April 9, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–1015, by one of the following methods:

1. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

2. *E-mail: Hamilton.heather@epa.gov*.

3. *Mail:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier.* Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2006–1015. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *Hamilton.heather@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever