



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA-HQ-OAR-2019-0435; FRL-10002-77-OAR]

RIN 2060-AU46

Error Corrections to New Source Review Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) proposes to revise several New Source Review (NSR) regulations by making the following types of corrections: correct typographical and grammatical errors, remove court vacated rule language, remove or update outdated or incorrect cross references, conform certain provisions to changes contained in the 1990 Clean Air Act (CAA or Act) Amendments, and remove certain outdated exemptions (grandfathering/transitional).

DATES: *Comments.* Comments must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

Public Hearing: If anyone contacts us requesting to speak at a public hearing by **[INSERT DATE 15 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**, we will hold a public hearing. Additional information about the hearing will be published in a subsequent **Federal Register** notice.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2019-0435, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The

EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*e.g.*, on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>. Certain other material, such as copyrighted material, will not be placed on the Internet but may be viewed, with prior arrangement, at the EPA Docket Center. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. 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 and Radiation Docket and Information Center is (202) 566-1742. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at: <http://www.epa.gov/epahome/dockets.htm>.

FOR FURTHER INFORMATION CONTACT: For general questions about this document, please contact Mr. Ben Garwood, New Source Review Group, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number (919) 541-1358; fax number

(919) 541-4028; email address: *garwood.ben@epa.gov*. To request a public hearing, contact Ms. Pamela Long, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division (C504-01), Research Triangle Park, NC 27711; telephone number (919) 541-0641; email address: *long.pam@epa.gov*.

SUPPLEMENTARY INFORMATION: The corrections generally address inadvertent errors and do not alter the substantive requirements of the NSR regulations. Other proposed changes simply reflect statutory changes enacted by Congress which have already been applied in practice or changes that have been necessitated by court decisions. Thus, the EPA considers the proposed rule to be administrative in nature. The EPA's intent is to provide clarity in the affected NSR regulations. The NSR regulations affected by this action contain requirements for the preconstruction review of new major stationary sources and major modifications. All of these regulations have undergone revisions and restructuring by the EPA during their long history, resulting from statutory and policy changes, as well as numerous court decisions, as explained in greater detail later. While we view these revisions as not altering substantive requirements under these regulations, we are seeking public comment on this proposed rule.

Organization of This Document. The information presented in this preamble is organized as follows:

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I. General Information

A. What entities are potentially affected by this action?

Entities potentially affected directly by this action include sources in all industry categories. Entities potentially affected by this action also include federal, state, and local air pollution control agencies (air agencies) responsible for permitting sources pursuant to the NSR program.

B. What should I consider as I prepare my comments for the EPA?

When submitting comments, remember to:

- Identify the rulemaking docket by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The proposed rule may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used to support your comment.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns wherever possible and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. How can I find information about a possible hearing?

To request a public hearing or information pertaining to a public hearing regarding this document, contact Mrs. Pam Long, OAQPS, U.S. EPA, at (919) 541-0641 or long.pam@epa.gov on or before **[INSERT DATE 15 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Additional information about the hearing, if one is requested, will be published in a subsequent **Federal Register** document.

D. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at <https://www.epa.gov/nsr> and on the tribal NSR page at <https://www.epa.gov/tribal-air/tribal-minor-new-source-review>.

II. Overview of Action

A. What regulations are being revised in this proposed corrections rule?

The regulations affected by this action are referred to as the major NSR regulations because they contain preconstruction review requirements for the construction of new major stationary sources and major modifications of existing major sources. The EPA has promulgated

these regulations pursuant to requirements contained in the CAA as part of a larger set of air quality planning and air pollution control technology provisions designed to enable states to attain and maintain the NAAQS. Accordingly, the Act sets forth requirements for two types of major NSR programs: (1) preconstruction review requirements for the construction of major stationary sources¹ locating in areas meeting the NAAQS (attainment areas),² and (2) preconstruction review requirements for the construction of major stationary sources locating in areas that are not meeting the NAAQS (nonattainment areas). Part C of title I of the Act contains the major NSR requirements for major sources locating in attainment areas, which are referred to as the PSD permit requirements. The EPA's PSD regulations which we are proposing to revise in this action are codified at 40 CFR 51.166 and 52.21. Part D of title I of the Act contains the major NSR requirements referred to as the nonattainment NSR (NNSR) permit requirements. The EPA's NNSR regulations which we are proposing to revise in this action are codified at 40 CFR 51.165 and part 51 Appendix S.

Three of the four sets of NSR regulations affected by this action are codified in part 51 of Title 40 of the CFR. Part 51 contains requirements for the preparation, adoption, and submittal of implementation plans. States apply these requirements to develop plans, which must be submitted to the EPA for approval, to attain and maintain the NAAQS. The fourth set of regulations—the EPA's federal PSD permit program—is reflected in section 52.21 of Title 40 of the CFR. Section 52.21 provides a permit program designed to fill the gap for states that do not have an approved state PSD program. While the EPA has the primary responsibility for reviewing and issuing permits to major stationary sources based on the part 52 PSD program,

¹ The major NSR programs apply to the construction of new major stationary sources as well as the expansion or major modification of existing major stationary sources.

² These regulations also cover areas which are designated as unclassifiable for any NAAQS. In this preamble when we refer to attainment areas we intend to include these areas as well.

federal authority for its implementation has, in many cases, been delegated by EPA Regional offices to states. In addition, some states with EPA-approved NSR programs may have incorporated by reference all or a portion of the permit requirements contained in section 52.21 into state law.

There may be state NSR programs, whether adopted pursuant to the part 51 NSR regulations or through an incorporation by reference of section 52.21, that have errors similar to those contained in the NSR regulations that the EPA is proposing to correct. There may also be state NSR programs that have adopted regulations that corrected the types of typographical errors and outdated references that are now being proposed for correction. For plans approved under 40 CFR 51.166, the EPA is proposing that the amendments proposed in this rule will not be subject to the deadline by which a state is typically required to revise its implementation plan in response to amendments to the federal regulations. *See* 40 CFR 51.166(a)(6). Similarly, because the EPA does not view these proposed changes as affecting the stringency of the requirements under 40 CFR 51.165, plans already approved under the current version of that section will continue to be at least as stringent as the revised regulation if these changes are finalized and states will not need to submit revisions to already approved plans. *See* 40 CFR 51.165(a)(1), (a)(2)(ii), and (a)(6) (allowing deviations only when at least as stringent). For states that incorporated by reference all or portions of the current or older versions of the part 51 or 52 regulations, the EPA does believe that an update to the incorporation by reference is necessary in response to these revisions. However, the EPA is not proposing to establish a deadline for such state revisions. The EPA is recommending that states make these types of changes when other types of required revisions are submitted to the EPA for approval.

B. What types of corrections are being proposed?

The EPA is proposing to revise the affected NSR regulations to correct various typographical and grammatical errors, as well as to correct certain other errors as explained in greater detail in the following paragraphs. In this proposed rule, we are only providing revised rule language without identifying changes. In order to facilitate easier review and provide a better understanding of all the corrections being proposed, the EPA has placed in the docket for this rulemaking a table containing each revised paragraph in a redline/strikeout form and a brief explanation of the specific correction(s) being made within each paragraph.

1. Typographical errors. The EPA is proposing revisions to correct misspelled words. *See, e.g.*, proposed §§ 51.165(a)(1)(viii) and 51.166 (j)(4).
2. Grammatical and punctuation errors. In numerous instances, the EPA is proposing to correct inappropriate words or punctuation, such as capitalizations, commas and hyphens. *See, e.g.*, proposed § 51.165 (a)(2)(iii), part 51 Appendix S II.A.4.(iii). and § 52.21(b)(23)(ii).
3. Regulatory references. The EPA is proposing to correct the way in which reference is made in one regulation to requirements contained in another regulation. *See e.g.*, §§ 51.165(a)(1)(v)(C)(5)(i) and 51.166(b)(2)(iii)(e)(1).
4. Court vacatur. Some of the changes being proposed involve the removal of text that the EPA intended to remove subsequent to a court ruling for vacatur, but did not, under prior actions.

These changes include the following:

- a. In 2003, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) stayed indefinitely the effective date of the NSR provision known as the Equipment Replacement Provision (ERP), which amended the Routine Maintenance, Repair, and Replacement Exclusion

from the NSR requirements in a 2003 final rule.³ The ERP allowed sources to avoid NSR when replacing equipment under certain circumstances. The stay of the affected paragraphs was subsequently noted in the CFR under the three affected NSR regulations, § 51.165, 51.166, 52.21.⁴ Later, in a 2006 decision, the court vacated the ERP, concluding that the provision was “contrary to the plain language of section 111(a)(4) of the Act.” *New York v. EPA*, 443 F.3d 880 (D.C. Cir. 2006) (“*New York II*”). Despite the vacatur, the affected provisions and the notes pertaining to the original stay of the ERP have to this day remained in the three aforementioned NSR regulations. The EPA is now proposing to remove the vacated ERP provisions, consistent with *New York II*, as well as the notes describing the indefinite stay of the various affected provisions. *See* proposed §§ 51.165(a)(8)(v)(C)(I), 51.165(h), 51.166(b)(2)(iii)(a), 51.166(y), 52.21(b)(2)(iii)(a), and 52.21(cc).

However, two components of the 2003 ERP rule, the criteria for *basic design parameters* (contained at §§ 51.165(h), 51.166(y), and 52.21(cc)), and the definition of *process units* (contained at §§ 51.165(a)(1)(xliv)(A) and (D), 51.166(b)(53)(i) and (iv), and 52.21(b)(55)(i) and (iv)), are used in conjunction with the definition of “replacement unit,” which was not part of the *New York II* decision. The definition of “replacement unit” currently cross references or refers to these terms within the ERP. *See* §§ 51.165(a)(1)(xxi), 51.166(b)(32), and 52.21(b)(33). Since we are vacating all of the ERP in response to the *New York II* decision, the EPA is proposing to add back criteria to determine *basic design parameters* and portions of the

³ 69 FR 61248, October 23, 2003.

⁴ For example, in 40 CFR 52.21, the following note was added: “NOTE TO PARAGRAPH (cc): By court order on December 24, 2003, this paragraph (cc) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.”

definition of *process unit* not affected by the vacatur into the definition of “replacement unit” in each of the three affected NSR regulations. *See* proposed new §§ 51.165(a)(1)(xxi)(E)-(F), 51.166(b)(32)(v)-(vi), and 52.21(b)(33)(v)-(vi).⁵ In addition, this necessitates revising the cross reference to the *basic design parameters* provision to cite its new location. *See* proposed §§ 51.165(a)(1)(xxi)(C), 51.166(b)(32)(iii), and 52.21(b)(33)(iii).

Finally, the EPA notes that the ERP and the definition of “replacement unit” were not added to the NSR regulations at 40 CFR part 51 Appendix S when the EPA amended the other NSR regulations in 2003. To fix the omission of the replacement unit provision, the EPA is now proposing to add the definition of *replacement unit*, including the criteria for *basic design parameters* and the definition of *process unit*, to Appendix S. *See* proposed new paragraph II.A.37. In addition, a provision explaining that a replacement unit is considered to be an existing emissions unit is proposed to be added to the definition of “emissions unit.” *See* proposed paragraph II.A.7.(ii). Together, these proposed changes will result in the Appendix S provisions concerning replacement units being consistent with the other NSR regulations.

b. In 2007,⁶ the EPA removed certain provisions pertaining to Clean Units (CU) and Pollution Control Projects (PCP), which were vacated by the D.C. Circuit in a June 24, 2005, decision. *New York v. EPA*, 413 F.3d 3 (D.C. Cir. 2005) (“*New York I*”). The EPA explained that, although the court’s opinion addressed the CU and PCP provisions in § 52.21, but not the corresponding provisions in §§ 51.165 and 51.166, “the plain language of the Court’s opinion clearly applies to the parallel constructions in those latter provisions” 72 FR 32526, 32527, June 13, 2007. Accordingly, the EPA’s 2007 action was intended to remove the relevant

⁵ There is a provision of the description of *process unit* that was only relevant to the ERP and is therefore not being included with the definition of replacement unit.

⁶ 72 FR 32526, June 13, 2007.

provisions from all three NSR regulations, but the EPA only specified its removal from § 51.165. The EPA is proposing to remove all of the CU/PCP provisions that were to be vacated in accordance with *New York I*. See proposed §§ 51.166(b)(3)(iii)(c) and 52.21(b)(3)(iii)(b).

c. In some cases, the EPA did not remove a specific reference in the regulations to a vacated PCP provision. The EPA is proposing to remove such references from the NSR regulations. See proposed §§ 51.165 (a)(2)(ii)(A), 51.166(a)(7), 51.166 (a)(7)(iv)(a), and 52.21(a)(2)(iv)(a).

d. In 2015,⁷ the EPA amended the PSD regulations at §§ 51.166 and 52.21 to remove portions of those regulations concerning greenhouse gases (GHG) that were initially promulgated in 2010 but identified as vacated by the D.C. Circuit on April 10, 2015.⁸ While the EPA removed certain GHG provisions, it overlooked references to these provisions elsewhere in those regulations. The EPA is proposing to delete the references to the already vacated GHG provisions. See proposed §§ 51.166(b)(48)(i), 51.166(b)(48)(ii), 51.166(b)(48)(iii), 52.21(b)(49)(i), 52.21(b)(49)(ii), and 52.21(b)(49)(iii).

5. Outdated and incorrect references.

a. In 1980, the EPA made significant revisions to the PSD regulations under parts 51 and 52.⁹ One revision deleted existing paragraph (k) and redesignated paragraphs (l) through (s) as (k) through (r). The EPA is proposing to correct incorrect references affected by the 1980 redesignation of paragraphs (l) through (s). See proposed §§ 51.166(p)(3), 51.166(p)(5)(i), 51.166(p)(5)(iii), 51.166(p)(7), 52.21(n)(1), 52.21(p)(6), 52.21(p)(7), 52.21(p)(8), and 52.21(u)(2)(ii).

⁷ 80 FR 50199, August 19, 2015.

⁸ Amended Judgment by the D.C. Circuit, *Coalition for Responsible Regulation v. EPA*, Nos. 09-1322, 10-073, 10-1092 and 10-1167 (D.C. Cir. April 10, 2015) (Amended Judgment).

⁹ 48 FR 52676, August 7, 1980.

b. Also in 1980, in the same rulemaking just described, the EPA added a provision under the source obligation requirements at § 51.166(r) applicable to stationary sources that could allow a relaxation of a prior enforceable limitation that allowed the source to be regulated as a “minor” rather than a major stationary source. The provision requires that such sources would become subject to the permit requirements for a major stationary source, as if they were a new source. The provision references the permit requirements contained under paragraphs (j) through (s) under § 51.166. However, paragraph(s) contains discretionary provisions concerning the application of innovative control technology. In light of the non-mandatory nature of those provisions, they should not have been included in the reference to required permit elements. Accordingly, the EPA is proposing to correct the source obligation requirement at § 51.166(r)(2) by removing the reference to paragraph (s) and replacing it with a reference to paragraph (r). *See* proposed § 51.166(r)(2).

b. The NNSR regulations at § 51.165 and part 51 Appendix S contain an outdated reference to a list of compounds that the EPA has determined make a negligible contribution to tropospheric ozone formation. The original list was contained in guidance that the EPA issued in 1977. We are proposing to revise both sets of NNSR regulations to provide an updated reference to the list, which is now included as part of the regulatory definition of “volatile organic compounds” codified at 40 CFR 51.100(s). *See* proposed § 51.165(s)(1) and section IV.C 4 at part 51 Appendix S.

c. In 1986, the NSR regulations codified at 40 CFR § 51.18 were included in a restructuring rule that placed them under new subpart I of part 51.¹⁰ Section 51.18 is an old reference to the NSR regulations applicable to minor sources, major sources locating in areas

¹⁰ 51 FR 40656, November 7, 1986.

that do not meet the NAAQS (§ 51.18(j)), and major sources locating in areas that meet the NAAQS but significantly impact an area that is not meeting the NAAQS (§ 51.18(k)). Subpart I now contains the preconstruction review requirements for minor NSR (§§ 51.160-164) as well as major NNSR (§ 51.165).¹¹ The EPA is proposing to update the reference to old § 51.18 (as it specifically applied to major stationary sources) by replacing it with a reference to § 51.165, which includes NSR requirements for major stationary sources in nonattainment areas. *See* proposed section V.A (second paragraph) of part 51 Appendix S.

d. On December 31, 2002, at 67 FR 80186, the EPA amended its NSR regulations to add, among other things, provisions for Plantwide Applicability Limits (PAL). In each of the NSR regulations, new provisions were added to require major stationary sources with PAL permits to monitor affected emissions units in accordance with monitoring requirements set forth elsewhere in the regulations. The PSD regulations at 40 CFR 51.166 incorrectly provided a reference to the paragraph containing the recordkeeping requirements under paragraph (w)(13) instead of the intended monitoring requirements for PALs at paragraph (w)(12). The other NSR regulations provided the correct cross reference to the monitoring requirements. The EPA is proposing to correctly reference the monitoring requirements for PALs in 40 CFR 51.166. *See* proposed § 51.166(w)(7)(vii).

e. On December 21, 2007, at 72 FR 72616, the EPA amended the NSR regulations by, among other things, adding new paragraphs to explain when a stationary source will have a “reasonable possibility” of causing a significant emissions increase. In § 51.166(r)(6)(vi)(b), reference is incorrectly made to “paragraph (a)(6)(vi)(a)” and “paragraphs (a)(6)(ii) through (v).”

¹¹ Subpart I of part 51 also contains the PSD regulations at § 51.166, which were previously codified at § 51.24.

Both references mistakenly reference paragraph (a), which is where similar references are made in the “reasonable possibility” provision contained in § 51.165(a)(6)(vi)(B). The EPA is proposing to correct the references in § 51.166 by referencing the applicable subparagraphs under paragraph (r). *See* proposed § 51.166(r)(6)(vi)(b).

5. Clean Air Act Amendments. Some of the proposed corrections result from new statutory requirements introduced in the 1990 CAA Amendments, which the EPA did not address in subsequent rulemakings involving the affected NSR regulations. Specifically:

a. Major source threshold for municipal incinerators. The 1990 CAA Amendments amended the definition of “major emitting facility” at section 169(1) by striking out the words “two hundred and” as those words appeared in the phrase “municipal incinerators capable of charging more than two hundred and fifty tons of refuse per day.” This amendment had the effect of lowering (from 250 tons of refuse per day to 50 tons of refuse per day) the charging capacity threshold for a municipal incinerator, thereby providing that such a source would qualify as a major emitting facility if it also has the potential to emit at least 100 tons per year of any regulated NSR pollutant. In this action, the EPA is proposing to revise all four sets of major NSR regulations to reflect this change with regards to the statutory definition of “major emitting facility” for municipal incinerators. *See* proposed §§ 51.165 (a)(1)(iv)(C)(8), 51.165 (a)(4)(viii), 51.166 (b)(1)(i)(a), 51.166 (b)(1)(iii)(h), 51.166 (i)(1)(ii)(h); part 51 Appendix S II.A.4.(iii)(h); part 51 Appendix S II.F(8); and §§ 52.21 (b)(1)(i)(a), 52.21 (b)(1)(iii)(h), and 52.21 (i)(1)(vii)(h).

b. Standards under section 112 of the Act. The NSR regulations in several places make reference to emissions standards established pursuant to 40 CFR part 61. *See e.g.*, § 51.166(b)(12). Part 61 contains national emission standards for hazardous pollutants (NESHAP), which conform to the statutory requirements at section 112 of the Act. The 1990 CAA

Amendments revised the statutory NESHAP provisions under section 112, causing the EPA to promulgate additional NESHAP, which are included in part 63. Accordingly, to ensure that the requirements associated with section 112 standards are adequately addressed in the NSR regulations, each regulatory reference to part 61 should also include a reference to part 63. The EPA is proposing to make the necessary updates in the affected NSR regulations. *See* proposed §§ 51.165(a)(1)(xi)(A), 51.165(a)(1)(xiv), 51.165(a)(1)(xl), 51.166(b)(12), 51.166(b)(16)(i), 51.166(b)(17), 51.166(j)(1); part 51 Appendix S II.A.11.(i), part 51 Appendix S II.A.12, part 51 Appendix S II.A.34, part 51 Appendix S II.B; and §§ 52.21(b)(12), 52.21(b)(16)(i), 52.21(b)(17), and 52.21(j)(1).

6. Outdated exemptions.

The PSD regulations at §§ 51.166 and 52.21 contain various exemption provisions that allow permit applicants under specific conditions (e.g., portable stationary sources, nonprofit health or nonprofit educational institutions), to be exempt from all or a portion of the PSD preconstruction review requirements. In some cases, these provisions have allowed permit applicants to be excluded from certain new requirements (e.g., new or revised NAAQS or PSD increments), which became effective before a final permit could be issued (i.e., commonly known as grandfathering provisions). Some of the existing exemption provisions are outdated because the time in which they were relevant has long since passed. Accordingly, the EPA is proposing to remove such outdated provisions, which allow for grandfathering or the implementation of alternative procedures, for PSD permit applicants under the regulations at §§ 51.166 and 52.21. The EPA is particularly interested in any comments that may provide a basis for retaining any of these exemption provisions that the EPA otherwise considers outdated. *See*

proposed §§ 51.166(i)(6)-(10); 52.21(i)(1)(i)-(v), 52.21(i)(viii)-(x); 52.21(i)(4), 52.21(i)(6)-(11), and 52.21(m)(1)(v), and 52.21(m)(1)(vii)-(viii).

III. Environmental Justice Considerations

This action proposes corrections to minor, inadvertent, and non-substantive errors in 40 CFR parts 51 and 52 regulatory text concerning NSR permitting programs, and updates the regulatory text to reflect statutory changes or certain court decisions vacating elements of the regulatory text, but does not change the requirements within these programs. Therefore, these proposed changes will not change the protection for all those residing, working, attending school, or otherwise present in the applicable areas, regardless of minority and economic status. Further, this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action is clerical in nature addressing non-controversial edits to errors in the NSR regulatory text. Therefore, this proposed rulemaking does not impose any new information collection burden.

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0003.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action corrects minor, inadvertent and non-substantive errors in existing rules. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

This action corrects minor, inadvertent and non-substantive errors in existing rules.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It 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.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action only makes technical amendments to correct minor, inadvertent, and non-substantive errors in existing rules. None of these technical amendments has a substantial direct effect on any tribal land; thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in Section III of this preamble titled “Environmental Justice Considerations.” This action makes technical amendments to correct minor, inadvertent, and non-substantive errors to existing rules.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, National Ambient Air Quality Standards, New Source Review, Nitrogen dioxide, Ozone, Particulate matter, Preconstruction permitting, Sulfur oxides, Transportation, Volatile organic compounds.

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, BACT, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, National Ambient Air Quality Standards, New Source Review, Nitrogen dioxide, Ozone, Particulate matter, Preconstruction permitting, Sulfur oxides, Volatile organic compounds.

Dated: November 22, 2019.

Andrew R. Wheeler,
Administrator.

For the reasons set forth in the preamble, title 40, Chapter I of the Code of Federal Regulations is proposed to be corrected as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401, *et seq.*

Subpart I—Review of New Sources and Modifications

2. Amend § 51.165 by:

- a. Revising paragraph (a)(1)(iv)(C)(8);
- b. Revising paragraph (a)(1)(v)(C)(1);
- c. Revising paragraph (a)(1)(v)(C)(5)(i);
- d. Revising paragraph (a)(1)(v)(C)(6);
- e. Revising paragraph (a)(1)(viii);
- f. Revising paragraph (a)(1)(xi)(A);
- g. Revising paragraph (a)(1)(xiv);
- h. Revising paragraph (a)(1)(xxi)(C);
- i. Adding paragraphs (a)(1)(xxi)(E) and (F);
- j. Revising paragraph (a)(1)(xl);
- k. Removing paragraphs (a)(1)(xliii) through (xlvi);
- l. Revising paragraph (a)(2)(ii)(A);
- m. Revising paragraph (a)(2)(iii);
- n. Revising paragraph (a)(3)(ii)(D);
- o. Revising paragraph (a)(4)(viii);

p. Removing and reserving paragraph (h);

The revisions read as follows:

§ 51.165 Permit requirements. [Corrected]

(a) * * *

(1) * * *

(iv) * * *

(C) * * *

(8) *Municipal incinerators capable of charging more than 50 tons of refuse per day;*

* * * * *

(v) * * *

(C) * * *

(I) Routine maintenance, repair and replacement.

* * * * *

(5) * * *

(i) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I.

* * * * *

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR part 51, subpart I.

* * * * *

(viii) *Secondary emissions* means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

* * * * *

(xi) * * *

(A) The applicable standards set forth in 40 CFR part 60, 61, or 63;

* * * * *

(xiv) *Federally enforceable* means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60, 61, and 63 requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

* * * * *

(xxi) * * *

(A) * * *

* * * * *

(C) The replacement does not alter the basic design parameters (as discussed in paragraph (a)(1)(xxi)(E) of this section) of the process unit (as discussed in paragraph (a)(1)(xxi)(F) of this section).

* * * * *

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

(1) Except as provided in paragraph (a)(1)(xxi)(E)(3) of this section, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(2) Except as provided in paragraph (a)(1)(xxi)(E)(3) of this section, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

(3) If the owner or operator believes the basic design parameter(s) in paragraphs (a)(1)(xxi)(E)(1) and (2) of this section is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(4) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in paragraphs (a)(1)(xxi)(E)(1) and (2) of this section.

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

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

(F) (1) In general, *process unit* means any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an intermediate or a completed product. A single stationary source may contain more than one process unit, and a process unit may contain more than one emissions unit.

(2) The following list identifies the process units at specific categories of stationary sources:

(i) For a steam electric generating facility, the process unit consists of those portions of the plant that contribute directly to the production of electricity. For example, at a pulverized

coal-fired facility, the process unit would generally be the combination of those systems from the coal receiving equipment through the emission stack (excluding post-combustion pollution controls), including the coal handling equipment, pulverizers or coal crushers, feedwater heaters, ash handling, boiler, burners, turbine-generator set, condenser, cooling tower, water treatment system, air preheaters, and operating control systems. Each separate generating unit is a separate process unit.

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

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

* * * * *

(xl) *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 parts 60, 61, or 63. 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.

* * * * *

(2) * * *

(ii) * * *

(A) Except as otherwise provided in paragraph (a)(2)(iii) of this section, and consistent with the definition of major modification contained in paragraph (a)(1)(v)(A) of this section, a project is a major modification for a regulated NSR pollutant (as defined in paragraph (a)(1)(xxxvii) of this section) if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (a)(1)(xxvii) of this section) and a significant net emissions increase (as defined in paragraphs (a)(1)(vi) and (x) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

* * * * *

(iii) The plan shall require that for any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under paragraph (f) of this section.

* * * * *

(3)(i) * * *

(ii) * * *

(D) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed as having negligible photochemical reactivity in § 51.100(s).

* * * * *

(4) * * *

(viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;

* * * * *

(h) [Reserved]

* * * * *

3. Amend § 51.166 by:

- a. Revising paragraph (a)(7);
- b. Revising paragraph (a)(7)(iv)(a);
- c. Revising paragraph (a)(7)(v);
- d. Revising paragraph (b)(1)(i)(a);
- e. Revising paragraph (b)(1)(i)(c);
- f. Revising paragraph (b)(1)(iii)(h);
- g. Revising paragraph (b)(1)(iii)(z);

- h. Revising paragraph (b)(2)(iii)(a);
- i. Revising paragraph (b)(2)(iii)(e)(1);
- j. Revising paragraph (b)(2)(iii)(f);
- k. Removing and reserving paragraph (b)(3)(iii)(c);
- l. Revising paragraph (b)(12);
- m. Revising paragraph (b)(16)(i);
- n. Revising paragraph (b)(17);
- o. Revising paragraph (b)(23)(ii);
- p. Revising paragraph (b)(32)(iii);
- q. Adding paragraphs (b)(32)(v) and (vi);
- r. Revising paragraph (b)(48)(i);
- s. Revising paragraph (b)(48)(ii) introductory text and paragraph (b)(48)(ii)(a);
- t. Revising paragraph (b)(48)(iii);
- u. Revising paragraph (b)(48)(iv)(b);
- v. Removing paragraphs (b)(53) through (56);
- w. Revising paragraph (g)(4);
- x. Revising paragraph (i)(1)(ii)(h);
- y. Removing and reserving paragraphs (i)(6) through (10);
- z. Revising paragraph (j)(1);
- aa. Revising paragraph (j)(2);
- bb. Revising paragraph (j)(4);
- cc. Revising paragraph (k)(1);
- dd. Revising paragraph (m)(1)(iii);

- ee. Revising paragraph (p)(3);
- ff. Revising paragraph (p)(4);
- gg. Revising paragraph (p)(5)(i);
- hh. Revising paragraph (p)(5)(iii);
- ii. Revising paragraph (p)(6)(iii);
- jj. Revising paragraph (p)(7);
- kk. Revising paragraph (r)(2);
- ll. Revising paragraph (r)(6)(vi)(b);
- mm. Revising paragraph (w)(7)(vii);
- nn. Revising paragraph (w)(9)(ii);
- oo. Removing paragraph (y).

The revisions read as follows:

§ 51.166 Prevention of significant deterioration of air quality. [Corrected]

(a) * * *

(7) *Applicability*. Each plan shall contain procedures that incorporate the requirements in paragraphs (a)(7)(i) through (v) of this section.

* * * * *

(iv) * * *

(a) Except as otherwise provided in paragraph (a)(7)(v) of this section, and consistent with the definition of major modification contained in paragraph (b)(2) of this section, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (b)(39) of this section) and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section).

The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

* * * * *

(v) The plan shall require that for any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under paragraph (w) of this section.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants (with thermal dryers), primary copper smelters, municipal incinerators capable of charging more than 50 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140), fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units

per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

* * * * *

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

* * * * *

(iii) * * *

(h) Municipal incinerators capable of charging more than 50 tons of refuse per day;

* * * * *

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

* * * * *

(2) * * *

(iii) * * *

(a) Routine maintenance, repair and replacement.

* * * * *

(e) * * *

(l) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I.

* * * * *

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I.

* * * * *

(12) *Best available control technology* 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 combination techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60, 61, or 63. 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 best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

* * * * *

(16) * * *

(i) The applicable standards as set forth in 40 CFR parts 60, 61, and 63;

* * * * *

(17) *Federally enforceable* means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60, 61, and 63, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

* * * * *

(23)(i) * * *

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

* * * * *

(32) * * *

(i) * * *

(iii) The replacement does not change the basic design parameter(s) (as discussed in paragraph (b)(32)(v) of this section) of the process unit (as discussed in paragraph (b)(32)(vi) of this section).

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

(a) Except as provided in paragraph (b)(32)(v)(c) of this section, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(b) Except as provided in paragraph (b)(32)(v)(c) of this section, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

(c) If the owner or operator believes the basic design parameter(s) in paragraphs (b)(32)(v)(a) and (b) of this section is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(d) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in paragraphs (b)(32)(v)(a) and (b) of this section.

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

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

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

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

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

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

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

* * * * *

(48) * * *

(i) *Greenhouse gases (GHGs)*, the air pollutant defined in § 86.1818-12(a) of this chapter as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraph (b)(48)(iv) of this section.

(ii) For purposes of paragraphs (b)(48)(iii) through (iv) of this section, the term *tpy CO₂ equivalent emissions (CO₂e)* shall represent an amount of GHGs emitted, and shall be computed as follows:

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

* * * * *

(iii) The term *emissions increase* as used in paragraph (b)(48)(iv) of this section shall mean that both a significant emissions increase (as calculated using the procedures in paragraph (a)(7)(iv) of this section) and a significant net emissions increase (as defined in paragraphs (b)(3)

and (b)(23) of this section) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO₂e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and “significant” is defined as 75,000 tpy CO₂e instead of applying the value in paragraph (b)(23)(ii) of this section.

(iv) * * *

(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO₂e or more.

* * * * *

(g) * * *

(4) The plan shall provide that lands within the exterior boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body. The appropriate Indian Governing Body may submit to the Administrator a proposal to redesignate areas Class I, Class II, or Class III provided that:

* * * * *

(i) *Exemptions* (1) * * *

(ii) * * *

(h) Municipal incinerators capable of charging more than 50 tons of refuse per day;

* * * * *

(j) * * *

(1) A major stationary source or major modification shall meet each applicable emissions limitation under the State implementation plan and each applicable emission standards and standard of performance under 40 CFR parts 60, 61, and 63.

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

* * * * *

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

* * * * *

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

* * * * *

(m) *Air quality analysis—(1) Preapplication analysis.* (i) * * *

* * * * *

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

* * * * *

(p) * * *

(3) *Denial—impact on air quality related values.* The plan shall provide a mechanism whereby a Federal Land Manager of any such lands may present to the State, after the reviewing authority's preliminary determination required under procedures developed in accordance with paragraph (q) of this section, a demonstration that the emissions from the proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of any Federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the State concurs with such demonstration, the reviewing authority shall not issue the permit.

(4) *Class I Variances.* The plan may provide that the owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source would have no adverse impact on the air quality related values of such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal land manager concurs with such demonstration and so certifies to the State, the reviewing authority may, provided that the applicable requirements are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, PM_{2.5}, PM₁₀, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

(5) * * *

(i) The owner or operator of a proposed source or modification which cannot be approved under procedures developed pursuant to paragraph (p)(4) of this section may demonstrate to the Governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty-four hours or less applicable to any Class I area and, in the case of Federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility);

(ii) * * *

(iii) If such variance is granted, the reviewing authority may issue a permit to such source or modification in accordance with provisions developed pursuant to paragraph (p)(7) of this section provided that the applicable requirements of the plan are otherwise met.

(6) * * *

(iii) If such a variance is approved, the reviewing authority may issue a permit in accordance with provisions developed pursuant to the requirements of paragraph (p)(7) of this section provided that the applicable requirements of the plan are otherwise met.

(7) *Emission limitations for Presidential or gubernatorial variance.* The plan shall provide that, in the case of a permit issued under procedures developed pursuant to paragraph (p)(5) or (6) of this section, the source or modification shall comply with emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable

increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

* * * * *

(r) * * *

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

* * * * *

(6) * * *

(vi) * * *

(b) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (b)(40)(ii)(c) of this section, sums to at least 50 percent of the amount that is a “significant emissions increase,” as defined under paragraph (b)(39) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this paragraph (r)(6)(vi)(b), and not also within the meaning of paragraph (r)(6)(vi)(a) of this section, then the provisions under paragraphs (r)(6)(ii) through (v) of this section do not apply to the project.

* * * * *

(w) * * *

(7) * * *

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

* * * * *

(9) * * *

(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.

* * * * *

4. Appendix S to part 51 is corrected by:

- a. Revising paragraph I. Introduction;
- b. Revising paragraph II.A.4.(i)(a);
- c. Revising paragraph II.A.4.(iii);
- d. Revising paragraph II.A.4.(iii)(h);
- e. Revising paragraphs II.A.5.(iii)(e)(1)-(2);
- f. Revising paragraph II.A.5.(iii)(f);
- g. Revising paragraph II.A.7.(ii);
- h. Revising paragraph II.A.11.(i);
- i. Revising paragraph II.A.12;
- j. Revising paragraph II.A.34;
- k. Revising paragraph II.A.35;
- l. Adding new paragraph II.A.37

- m. Revising paragraph II.B;
- n. Revising paragraph II.F.8;
- o. Revising paragraph II.G;
- p. Revising paragraph III.B;
- q. Revising paragraph III.C;
- r. Revising paragraph III.D. *Condition 1*;
- s. Revising paragraph IV.A. *Condition 1*;
- t. Revising paragraph IV.A. *Condition 4*;
- u. Revising paragraph IV.B;
- v. Revising paragraph IV.B.(i)(1);
- w. Revising paragraph IV.C.3.(i);
- x. Revising paragraph IV.C.3.(ii);
- y. Revising paragraph IV.C.3.(ii)(2);
- z. Revising paragraph IV.C.4;
- aa. Revising paragraph IV.C.5;
- bb. Revising paragraph IV.D;
- cc. Revising paragraph IV.G.1;
- dd. Revising paragraph IV.H;
- ee. Revising paragraph IV.I.2;
- ff. Revising paragraph IV.J.6.(ii);
- gg. Revising paragraph IV.K.5;
- hh. Revising paragraph IV.K.14;
- ii. Revising paragraphs V.A (1) and (2);

The revisions read as follows:

APPENDIX S TO PART 51—EMISSION OFFSET INTERPRETATIVE RULING

I. INTRODUCTION

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

For each area designated as exceeding a NAAQS (nonattainment area) under 40 CFR part 81, subpart C, or for any area designated under section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region, this Interpretative Ruling will be superseded after June 30, 1979 (a) by preconstruction review provisions of the revised SIP, if the SIP meets the requirements of part D, Title 1, of the Act; or (b) by a prohibition on construction under the applicable SIP and section 110(a)(2)(I) of the Act, if the SIP does not meet the requirements of part D. The Ruling will remain in effect to the extent not superseded under the Act. This prohibition on major new source construction does not apply to a source

whose permit to construct was applied for during a period when the SIP was in compliance with part D, or before the deadline for having a revised SIP in effect that satisfies part D.

* * * * *

II. INITIAL SCREENING ANALYSES AND DETERMINATION OF APPLICABLE REQUIREMENTS

A. * * *

4. (i) * * *

(a) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant (as defined in paragraph II.A.31 of this Ruling), except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the Act, according to paragraphs II.A.4(i)(a)(1) through (8) of this Ruling.

* * * * *

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

* * * * *

(h) Municipal incinerators capable of charging more than 50 tons of refuse per day;

* * * * *

5. * * *

(iii) * * *

(e) * * *

(1) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was

established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I; or

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

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I;

* * * * *

7. * * *

(ii) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph II.A.7(i) of this Ruling. A replacement unit, as defined in paragraph II.A.37 of this Ruling, is an existing emissions unit.

11. * * *

(i) Applicable standards as set forth in 40 CFR parts 60, 61, and 63;

* * * * *

12. *Federally enforceable* means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60, 61, or 63, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

* * * * *

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 parts 60, 61, or 63. 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, or under the program in § 52.21 of this chapter.

* * * * *

37. *Replacement unit* means an emissions unit for which all the criteria listed in paragraphs II.A.37.(i) through (iv) of this Ruling are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

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

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

(iii) The replacement does not alter the basic design parameters (as discussed in paragraph II.A.37.(v) of this Ruling) of the process unit (as discussed in paragraph II.A.37(vi) of this section).

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

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

(a) Except as provided in paragraph II.A.37.(v)(c) of this Ruling, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(b) Except as provided in paragraph II.A.37.(v)(c) of this Ruling, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

(c) If the owner or operator believes the basic design parameter(s) in paragraphs II.A.37.(v)(a) and (b) of this Ruling is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(d) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in paragraphs II.A.37.(v)(a) and (b) of this Ruling.

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

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

(vi) (a) In general, *process unit* means any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an

intermediate or a completed product. A single stationary source may contain more than one process unit, and a process unit may contain more than one emissions unit.

(b) The following list identifies the process units at specific categories of stationary sources:

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

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

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

B. Review of all sources for emission limitation compliance. The reviewing authority must examine each proposed major new source and proposed major modification¹ to determine if such a source will meet all applicable emission requirements in the SIP, any applicable new source performance standard in part 60 of this chapter, or any national emission standard for

hazardous air pollutants in parts 61 or 63 of this chapter. If the reviewing authority determines that the proposed major new source cannot meet the applicable emission requirements, the permit to construct must be denied.

* * * * *

F. * * *

(8) Municipal incinerators capable of charging more than 50 tons of refuse per day;

* * * * *

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

* * * * *

III. * * *

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

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

C. Review of specified sources for air quality impact. For stable air pollutants (*i.e.*, SO₂, particulate matter and CO), the determination of whether a source will cause or contribute to a violation of a NAAQS generally should be made on a case-by-case basis as of the proposed new source's start-up date using the source's allowable emissions in an atmospheric simulation model (unless a source will clearly impact on a receptor which exceeds a NAAQS).

For sources of nitrogen oxides, the initial determination of whether a source would cause or contribute to a violation of the NAAQS for NO₂ should be made using an atmospheric simulation model assuming all the nitric oxide emitted is oxidized to NO₂ by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

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

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

D. * * *

Condition 1. The new source is required to meet a more stringent emission limitation³ and/or the control of existing sources below allowable levels is required so that the source will not cause a violation of any NAAQS.

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

* * * * *

IV. * * *

A. * * *

Condition 1. The new source is required to meet an emission limitation⁴ which specifies the lowest achievable emission rate for such source.

⁴If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the authority may instead

prescribe a design, operational or equipment standard. In such cases, the reviewing authority shall make its best estimate as to the emission rate that will be achieved and must specify that rate in the required submission to EPA (see part V of this Ruling). Any permits issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained (or that the operational conditions will be properly performed) so as to continuously achieve the assumed degree of control. Such conditions shall be enforceable as emission limitations by private parties under section 304 of the Act. Hereafter, the term emission limitation shall also include such design, operational, or equipment standards.

* * * * *

Condition 4. The emission offsets will provide a positive net air quality benefit in the affected area (see section IV.D. of this Ruling). Atmospheric simulation modeling is not necessary for volatile organic compounds and NO_x. Fulfillment of Condition 3 under section IV.A of this Ruling and the requirements under section IV.D. of this Ruling will be considered adequate to meet this condition.

* * * * *

B. Exemptions from certain conditions. The reviewing authority may exempt the following sources from Condition 1 under section III.D of this Ruling or Conditions 3 and 4 under section IV.A. of this Ruling:

(i) * * *

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

* * * * *

C. * * *

3. * * *

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

* * * * *

(ii) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours and that do not meet the requirements in paragraphs IV.C.3.(i)(1) and (2) of this Ruling may be generally credited only if:

* * * * *

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

4. *Credit for VOC substitution.* EPA has found that almost all non-methane VOCs are photochemically reactive and that low reactivity VOCs eventually form as much ozone as the highly reactive VOCs. Therefore, no emission offset credit may be allowed for replacing one VOC compound with another of lesser reactivity, except for those compounds listed as having negligible photochemical reactivity in § 51.100(s).

5. *“Banking” of emission offset credit.* For new sources obtaining permits by applying offsets after January 16, 1979, the reviewing authority may allow offsets that exceed the requirements of reasonable progress toward attainment (Condition 3 under paragraph IV.A of this Ruling) to be “banked” (i.e., saved to provide offsets for a source seeking a permit in the

future) for use under this Ruling. Likewise, the reviewing authority may allow the owner of an existing source that reduces its own emissions to bank any resulting reductions beyond those required by the SIP for use under this Ruling, even if none of the offsets are applied immediately to a new source permit. A reviewing authority may allow these banked offsets to be used under the preconstruction review program required by part D of the Act, as long as these banked emissions are identified and accounted for in the SIP control strategy. A reviewing authority may not approve the construction of a source using banked offsets if the new source would interfere with the SIP control strategy or if such use would violate any other condition set forth for use of offsets. To preserve banked offsets, the reviewing authority should identify them in either a SIP revision or a permit and establish rules as to how and when they may be used.

* * * * *

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

* * * * *

G. * * *

1. In meeting the emissions offset requirements of Condition 3 under paragraph IV.A. of this Ruling, the ratio of total actual emissions reductions to the emissions increase shall be at

least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in paragraphs IV.G.2 through IV.G.4 of this Ruling.

* * * * *

H. *Additional provisions for emissions of nitrogen oxides in ozone transport regions and nonattainment areas.* The requirements of this Ruling applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas where the Administrator has granted a NO_x waiver applying the standards set forth under section 182(f) of the Act and the waiver continues to apply

I. * * *

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

J. * * *

6. * * *

(ii) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph II.A.24(ii)(c) of this Ruling, sums to at least 50 percent of the amount that is a “significant emissions increase,” as defined under paragraph II.A.23 of this Ruling (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph IV.J.6(ii) of this Ruling, and not also within the meaning of section IV.J.6(i) of this Ruling, then provisions in paragraphs IV.J.2 through IV.J.5 of this Ruling do not apply to the project.

* * * * *

K. * * *

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. 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.

* * * * *

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) of this Ruling.

* * * * *

V. * * *

A. * * *

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

the appropriate EPA Regional Office.⁷ An external emission offset will not be enforceable unless the affected source(s) providing the emission reductions is subject to a new SIP requirement to ensure that its emissions will be reduced by a specified amount in a specified time. Thus, if the source(s) providing the emission reductions does not obtain the necessary reduction, it will be in violation of a SIP requirement and subject to enforcement action by EPA, the State, and/or private parties.

⁷The emission offset will, therefore, be enforceable by EPA under section 113 of the Act as an applicable SIP requirement and will be enforceable by private parties under section 304 of the Act as an emission limitation.

The form of the SIP revision may be a State or local regulation, operating permit condition, consent or enforcement order, or any other mechanism available to the State that is enforceable under the Clean Air Act. If a SIP revision is required, the public hearing on the revision may be substituted for the normal public comment procedure required for all major sources under § 51.165. The formal publication of the SIP revision approval in the FEDERAL REGISTER need not appear before the source may proceed with construction. To minimize uncertainty that may be caused by these procedures, EPA will, if requested by the State, propose a SIP revision for public comment in the FEDERAL REGISTER concurrently with the State public hearing process. Of course, any major change in the final permit/SIP revision submitted by the State may require a reproposal by EPA.

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—GENERAL PROVISIONS

2. Amend § 52.21 by:

- a. Revising paragraph (a)(2)(iv)(a);
- b. Revising paragraph (a)(2)(iv)(f);
- c. Revising paragraphs (b)(1)(i)(a) through (c);
- d. Revising paragraph (b)(1)(iii)(h);
- e. Revising paragraph (b)(2)(iii)(a);
- f. Revising paragraph (b)(2)(iii)(e)(I);
- g. Revising paragraph (b)(2)(iii)(f);
- h. Removing and reserving paragraph (b)(3)(iii)(b);
- i. Revising paragraph (b)(3)(vi)(c);
- j. Revising paragraph (b)(12);
- k. Revising paragraph (b)(16(i));
- l. Revising paragraph (b)(17);
- m. Revising paragraph (b)(23)(ii);
- n. Revising paragraph (b)(33)(iii);
- o. Adding paragraphs (b)(33)(v) and (vi);
- p. Revising paragraph (b)(41)(ii)(c);
- q. Revising paragraph (b)(48)(ii)(d);
- r. Revising paragraph (b)(49)(i) through (iii);
- s. Revising paragraph (b)(49)(iv)(b);
- t. Revising paragraph (b)(51);
- u. Removing paragraphs (b)(55) through (58);

- v. Revising paragraph (g)(4);
- w. Removing and reserving paragraphs (i)(1)(i) through (v);
- x. Revising paragraph (i)(1)(vii)(h);
- y. Removing paragraphs (i)(1)(ix) and (x);
- z. Removing and reserving paragraphs (i)(6) through (11);
- aa. Revising paragraph (j)(1);
- bb. Revising paragraph (m)(1)(i)(a);
- cc. Removing and reserving paragraph (m)(1)(v);
- dd. Removing paragraphs (m)(1)(vii) and (viii);
- ee. Revising paragraph (n)(1);
- ff. Revising paragraph (p)(5) through (8);
- gg. Revising paragraph (r)(4);
- hh. Revising paragraph (u)(2)(ii);
- ii. Revising paragraph (u)(3);
- jj. Revising paragraph (w)(1)
- kk. Removing paragraph (cc);

The revisions read as follows:

§ 52.21 Prevention of significant deterioration of air quality [Corrected]

(a) * * *

(2) * * *

(iv) * * *

(a) Except as otherwise provided in paragraph (a)(2)(v) of this section, and consistent with the definition of major modification contained in paragraph (b)(2) of this section, a project

is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (b)(40) section) and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section).

The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

* * * * *

(f) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (a)(2)(iv)(c) and (d) of this section as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

* * * * *

(b) * * *

(1) * * *

(i) * * *

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants (with thermal dryers), primary copper smelters, municipal incinerators capable of charging more than 50 tons of refuse

per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140), fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

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

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

* * * * *

(iii) * * *

(h) Municipal incinerators capable of charging more than 50 tons of refuse per day;

* * * * *

(2)(i) * * *

(iii) * * *

(a) Routine maintenance, repair and replacement.

* * * * *

(e) * * *

(I) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to part 51, subpart I; or

* * * * *

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I.

* * * * *

(3) * * *

(vi) * * *

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

* * * * *

(12) *Best available control technology* means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Act which would be emitted from any proposed major stationary source or major modification which the Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for

control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60, 61, and 63. If the Administrator determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

* * * * *

(16) * * *

(i) The applicable standards as set forth in 40 CFR parts 60, 61, and 63;

* * * * *

(17) *Federally enforceable* means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60, 61, and 63, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

* * * * *

(23)(i) * * *

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

* * * * *

(33) * * *

(iii) The replacement does not alter the basic design parameters (as discussed in paragraph (b)(33)(v) of this section) of the process unit (as discussed in paragraph (b)(33)(vi) of this section).

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

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

(a) Except as provided in paragraph (b)(33)(v)(iii) of this section, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(b) Except as provided in paragraph (b)(33)(v)(iii) of this section, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum

rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

(c) If the owner or operator believes the basic design parameter(s) in paragraphs (b)(33)(v)(i) and (ii) of this section is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(d) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in paragraphs (b)(33)(v)(i) and (ii) of this section.

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

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

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

(b) The following list identifies the process units at specific categories of stationary sources:

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

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

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

* * * * *

(41) * * *

(ii) * * *

(c) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual

emissions under paragraph (b)(48) of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

* * * * *

(48) * * *

(ii) * * *

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

* * * * *

(49) * * *

(i) *Greenhouse gases (GHGs)*, the air pollutant defined in § 86.1818-12(a) of this chapter as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraph (b)(49)(iv) of this section and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements in paragraphs (aa)(1) through (15) of this section, and complies with the PAL permit containing the GHG PAL.

(ii) For purposes of paragraphs (b)(49)(iii) through (iv) of this section, the term *tpy CO₂ equivalent emissions (CO₂e)* shall represent an amount of GHGs emitted, and shall be computed as follows:

(a) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1

to subpart A of part 98 of this chapter—Global Warming Potentials.

(b) Sum the resultant value from paragraph (b)(49)(ii)(a) of this section for each gas to compute a tpy CO₂e.

(iii) The term *emissions increase* as used in paragraph (b)(49)(iv) of this section shall mean that both a significant emissions increase (as calculated using the procedures in paragraph (a)(2)(iv) of this section) and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO₂e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and “significant” shall be defined as 75,000 tpy CO₂e instead of applying the value in paragraph (b)(23)(ii) of this section.

(iv) * * *

(a) * * *

(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO₂e or more.

* * * * *

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

* * * * *

(g) * * *

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

* * * * *

(h) Municipal incinerators capable of charging more than 50 tons of refuse per day;

* * * * *

(j) (1) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 CFR parts 60, 61, and 63.

* * * * *

(m) *Air quality analysis*—(1) *Preapplication analysis*. (i) * * *

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

* * * * *

(n) * * *

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

* * * * *

(p) * * *

* * * * *

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

visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and he so certifies, the State may authorize the Administrator, provided that the applicable requirements of this section are otherwise met, to issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, PM_{2.5}, PM₁₀, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

(6) *Sulfur dioxide variance by Governor with Federal Land Manager's concurrence.* The owner or operator of a proposed source or modification which cannot be approved under paragraph (p)(5) of this section may demonstrate to the Governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of 24 hours or less applicable to any Class I area and, in the case of Federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the Administrator shall issue a permit to such source or modification pursuant to the requirements of paragraph (p)(8) of this section provided that the applicable requirements of this section are otherwise met.

(7) *Variance by the Governor with the President's concurrence.* In any case where the Governor recommends a variance with which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the

President. The President may approve the Governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the Administrator shall issue a permit pursuant to the requirements of paragraph (p)(8) of this section provided that the applicable requirements of this section are otherwise met.

(8) *Emission limitations for Presidential or gubernatorial variance.* In the case of a permit issued pursuant to paragraph (p)(6) or (7) of this section, the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

* * * * *

(r) * * *

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

* * * * *

(u) * * *

(2) * * *

(i) * * *

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

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

* * * * *

(w) *Permit rescission.* (1) Any permit issued under this section or a prior version of this section shall remain in effect, unless and until it expires under paragraph (r)(2) of this section or is rescinded under this paragraph (w).

* * * * *

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