

NEW RULE 26.12

NEW SOURCE REVIEW FEDERAL MAJOR MODIFICATIONS

BACKGROUND¹

On December 31, 2002, the United States Environmental Protection Agency (USEPA) promulgated amendments to the federal Clean Air Act (CAA) revising New Source Review (NSR) requirements for major stationary sources modifications and adding other provisions. USEPA mandated implementation of these amendments in state and local NSR rules by January 6, 2006. These amendments, also known as NSR Reform, were legally challenged by numerous groups, including the California Air Resources Board (CARB), the South Coast Air Quality Management District (SCAQMD), VCAPCD, and other state and local agencies. The amendments were mostly upheld upon appeal in a decision rendered June 24, 2005.

Following promulgation of NSR Reform in 2002, California enacted Senate Bill 288 (Protect California Air Act of 2003), on September 22, 2003. This statute specified that “No air quality management district or

air pollution control district may amend or revise its New Source Review rules or regulations to be less stringent than those that existed on December 30, 2002. If the state board finds, after a public hearing, that a district’s rules or regulations are not equivalent to or more stringent than the rules or regulations that existed on December 30, 2002, the state board shall promptly adopt for that district the rules or regulations that may be necessary to establish equivalency...” (Health & Safety Code § 42504(a))

Pursuant to the terms and conditions of the CAA, NSR Reform must be implemented by the District. Proposed Rule 26.12, Federal Major Modifications, will maintain the stringency of the District's existing NSR program, consistent with the provisions of SB288, while complying with federal mandates to incorporate NSR Reform requirements into District rules.

PROPOSED RULE

Draft Rule 26.12 consists of two sections. Section A establishes that a proposed major modification to an existing federal major stationary source will not constitute a Federal Major Modification if the applicant can demonstrate that the project meets one of two criteria (see Figure 1). If either one of the two exclusion criteria are met, the project will not be subject to requirements of Rule 26.2.E (Alternative Analysis)(see page 7). All other requirements of Rule 26, however, will still apply.

The first exclusion criterion appears in Subsection A.1.a and is based on revised emissions increase calculations. Emissions increases, under federal NSR Reform, can be calculated by comparing the source’s “actual emissions” during a specified baseline period to the facility’s “projected actual emissions” after the modification. In general, the baseline period is any twenty-four (24) month period out of the past ten (10) years. The facility’s projected actual emissions are

proposed by the source, and are typically included on the permit as temporary emissions limits. The temporary limit expires in ten years (five years if the unit’s potential emissions are increased).²

The second exclusion criterion appears in Subsection A.1.b and applies to major modifications under an approved Plantwide Applicability Limit (PAL). A PAL, as described in title 40, Code of Federal Regulations § 51.165(f), is a voluntary emission limit that a facility can add to its operating permit. The limit is based on the facility’s actual emissions, plus some less-than-significant increase in emissions. The facility is then allowed to make modifications to their facility at will, provided total emissions do not exceed the PAL limit. If a major modification does not exceed a pre-established and approved PAL, then the major modification is not subject to federal NSR requirements.²

Figure 1
Rule 26.12, Section A - Federal Major Modifications
(All Code of Federal Regulations references appear in Appendix A)

1. Major modifications, as defined in Rule 26.1.17, are also federal major modifications, unless the applicant demonstrates that the proposed major modification meets the criteria of at least one of the following exclusions:
 - a. Less-Than-Significant Emissions Increase Exclusion: An emissions increase for the project, or a net emissions increase for the project [as determined by the procedures in 40 CFR § 51.165 (a)(2)(ii)(B) through (D), and (F)], that is not significant for a given regulated NSR pollutant, is not a federal major modification for that pollutant. 40 CFR § 51.165 (a)(2)(ii)(E), relating to clean units, shall not be used in these calculations.
 - 1) To determine the post-project projected actual emissions from existing units, the provisions of 40 CFR § 51.165 (a)(1)(xxviii) shall be used.
 - 2) To determine the pre-project baseline actual emissions, the provisions of 40 CFR § 51.165 (a)(1)(xxxv)(A) through (C) shall be used.
 - 3) Emissions increases calculated pursuant to this section are significant if they are equal to or greater than the significance thresholds specified in Rule 26.1.17.
 - 4) If the project is determined not to be a federal major modification pursuant to the provisions of 40 CFR § 51.165 (a)(2)(ii)(B) through (D) and (F), and Subsection A.1.a.3) above, but there is a reasonable possibility that the project may result in a significant emissions increase, the owner or operator shall comply with all of the provisions of 40 CFR § 51.165 (a)(6) and (a)(7).
 - b. Plantwide Applicability Limit (PAL) Exclusion: A major modification that does not cause emissions to exceed a pre-established PAL, as defined in 40 CFR § 51.165 (f)(2)(v), for the respective pollutant, is not a federal major modification for that pollutant.
 - 1) For the purposes of this exclusion, a PAL must be established by a permitting action prior to the major modification permitting action.
 - 2) All PALs shall be established according to the provisions of 40 CFR § 51.165 (f)(1) through (15).
 - 3) All PALs shall comply with the requirements under 40 CFR § 51.165 (f)(1) through (15) to either maintain, renew or retire the PAL.
2. If an applicant can demonstrate that the proposed major modification does not constitute a federal major modification, the major modification shall be exempt from the requirements of Rule 26.2.E, Analysis of Alternatives.

The provisions in Section A of Rule 26.12 are not a relaxation of the District's new source review rule under state air pollution control law. The analysis of alternatives required in Subsection 26.2.E will be addressed by compliance with the California Environmental Quality Act (CEQA), which requires an analysis of project alternatives.

Section B of the proposed rule specifies that the terms used in Section A shall be those that appear in 40 CFR § 51.165, except as specified below:¹

1. "reviewing authority" means the Ventura County Air Pollution Control District,

2. “major stationary source” means a stationary source that either emits or has the potential to emit the amounts specified in Rule 26.1.16 (definition of major source which includes a threshold of equal to or less than 25 tpy of NO_x or ROC), and
3. “significant” means a rate of emissions equal to or greater than those specified in Rule 26.1.17 (definition of major modification also including a threshold of equal to or less than 25 tpy of NO_x or ROC).

See Appendix B for the relevant subsections of Rule 26.1.

DISCUSSION¹

On December 31, 2002, USEPA promulgated amendments to federal NSR regulations and requirements for federal major stationary sources, as set forth in 42 U.S.C. §§ 7502 and 7503. These amendments, known as NSR Reform, changed the definition of “major modification.” Projects that are major modifications are subject to Federal NSR requirements.

The most important requirements of federal NSR are:

1. The requirement that the source meet the Lowest Achievable Emissions Rate (LAER), which is defined under state law as Best Available Control Technology (BACT),
2. The requirement that the source provide offsets (emission reduction credits) to more than offset the increased emissions from the new source or modification, and,
3. The requirement that the source demonstrate that its emissions will not cause a violation or make significantly worse an existing violation of national ambient air quality standards.

Under the CAA, these requirements are only applicable to new major stationary sources (25 tons per year or more for ROC and NO_x), and major modifications to major stationary sources. However, District rules are more stringent: they require BACT on all new or modified sources (Rule 26.2.A) and offsets from sources with emissions of over 5 tons per year of either NO_x or ROC (Rule 26.2.B).

USEPA promulgated NSR Reform in response to complaints it had received over the years from regulated industry that the methods for determining whether a change at a source qualifies as a “modification” created a disincentive to changes that improve efficiency and reduce emissions. Industry claimed that, in some cases, the emissions increase calculation method resulted in a “paper” increase where no actual increase would occur, thus triggering BACT and offsets. Facing the great expense of

complying with NSR, industry would choose not to make the change in question, even though it would be environmentally beneficial.

In response, USEPA changed the emissions increase calculation method to more closely reflect what it considered to be actual increases in emissions. However, USEPA did so in a way that would significantly change the method for calculating an emission increase; sources are allowed to measure increases against the highest two of the last ten years’ emissions, instead of the two years immediately preceding the modification. USEPA also made other changes which CARB and the California air districts considered to be significant negative changes to federal NSR.

In 2003, NSR Reform was legally challenged by numerous state and local governments, including CARB, SCAQMD, VCAPCD, and other environmental and industry groups for a variety of reasons. The primary reason for the petition for judicial review by the public agencies is because NSR Reform greatly reduces the applicability of this foundational CAA requirement and thus undercuts the state and local governments’ ability to curb air pollution. After a lengthy briefing and argument schedule, the United States Court of Appeals for the District of Columbia Circuit upheld a majority of NSR Reform in a decision rendered June 24, 2005.

In the meantime, the California legislature enacted the Protect California Air Act of 2003 (SB288 (Sher), Health & Safety Code § 42500 et seq.) on September 22, 2003. This law prohibits California air pollution control districts from amending their NSR rules to be less stringent in specific respects than they were on December 30, 2002 (the day before USEPA promulgated NSR Reform). As a result of this anti-backsliding statute, many California air districts are faced with the task of amending rules to comply with NSR Reform by January 6, 2006, as required by USEPA, yet not making their rules any less stringent than they were on December 30, 2002. Staff has worked

closely with the California Air Pollution Control Officers Association, CARB, and USEPA to develop a method of meeting these two conflicting requirements.

The method that has been developed relies on the fact that, under the CAA, state and local air pollution control agencies are free to adopt rules that are more stringent than those required by the CAA. Thus, USEPA recognizes that state and local agencies are free to require BACT and offsets to changes at a source that would not qualify as a "federal major modification" under USEPA's NSR Reform. The District's program imposes these requirements.

After much discussion, USEPA preliminarily concurs that the District may comply with NSR Reform by amending their rules so that certain changes would not qualify as "Federal major modifications" under the NSR Reform, but would continue to be subject to BACT, offsets and modeling under existing Rule 26, pursuant to state law. This is a "bifurcated" approach that preserves both federal NSR Reform requirements and the more stringent state NSR requirements.

Proposed Rule 26.12 implements the bifurcated approach by specifying that major modifications that do not qualify as "Federal major modifications" under NSR Reform are excluded from one of the requirements in Rule 26 that are applicable only to Federal major modifications. Such modifications will remain subject to BACT, offsets, and modeling.

The provisions of Rule 26 that are applicable only to Federal major modifications are the requirement that a source perform an alternatives analysis, and the requirement that the source operator certify that all the operator's facilities in the state are in compliance with the CAA. However, a petition dated January 13, 2006, was received by CARB challenging under Senate Bill 288 an exemption from statewide compliance certification adopted by the San Joaquin Valley Unified Air Pollution Control District (see page 7). Therefore, we have removed from Rule 26.12 a proposed exemption from Rule 26.2.D until a clear determination of the applicability of SB 288 is made. Under Rule 26.12, only the requirement for an alternative analysis will no longer apply to changes that do not qualify as Federal major modifications because of NSR Reform. Staff believes that proposed Rule 26.12 does not violate SB 288, as discussed below.

USEPA staff at both Region IX and Headquarters have indicated preliminary approval of this approach, including removal of the statewide compliance

certification provision. USEPA staff has been involved in the rule development process. Of course, USEPA notes that, before Rule 26.12 can be approved and added to the State Implementation Plan (SIP), it must undergo a public review and comment process. Therefore, USEPA cannot guarantee that the rule will ultimately be approved. However, staff believes that Rule 26.12 is essentially the only way to comply with the conflicting requirements of NSR Reform and SB288.

Protect California Air Act of 2003 (SB 288)

In September, 2003, the California legislature passed SB 288, which prevents the weakening of NSR rules statewide. Health & Safety Code Section 42504 now states that no air district "may amend or revise its new source review rules or regulations to be less stringent than those that existed on December 20, 2002." The legislation includes a list of qualifications for amendments to new source review rules.

According to SB288, an NSR revision may not "exempt, relax or reduce the obligations of a stationary source" from the following requirements:

1. *The requirement to undergo NSR*
2. *The requirement for BACT*
3. *The requirement for air quality impact analysis*
4. *The requirement for recordkeeping*
5. *The requirement for regulating any air pollutant*
6. *The requirement for public participation*

CARB states that if any NSR elements are modified, it must be done such that none of above six specified NSR requirements are relaxed. A discussion of the six requirements follows, along with a discussion of why the proposed rule is not a relaxation.

1. *The requirement to undergo NSR*
The District's requirements to undergo NSR permits are detailed in Rule 26.2, New Source Review – Requirements, and Rule 26.3, New Source Review – Exemptions. Neither of these rules is being amended; therefore the requirement to undergo NSR stays the same.

Proposed Rule 26.12 provide an exclusion from the provisions of Rule 26.2.D and 26.2.E; as discussed below, staff does not believe that these provisions violate SB288.

2. *The requirement for BACT.*
Proposed Rule 26.12 does not change in any way BACT triggering requirements established

in the version of Rule 26.2 in effect on December 30, 2002. BACT requirements appear in Section A of that rule; the wording and resulting requirements are not being amended. Proposed Rule 26.12 does not address BACT. Therefore, no relaxation of requirement for BACT will occur.

3. *The requirement for air quality impact analysis*
Staff is proposing no change to either the requirements or the thresholds for performing an air quality impact analyses as required by the December 30, 2002, version of Rule 26.2.C. CARB has stated that compliance with CEQA meets this part of SB 288. Staff has proposed no change to the implementation of CEQA in either Rule 26.2 or proposed Rule 26.12. Therefore, no relaxation to the requirement for an air quality impact analysis has occurred.
4. *The requirement for monitoring, recordkeeping, and reporting.*
Rule 29 specifies that permits shall be conditioned such that adequate monitoring, recordkeeping, and reporting is performed to assure the assumptions and calculations of the application and the District's analysis are assured to be enforceable. No changes to Rule 29 are proposed. Proposed Rule 26.12 does not address this issue. No relaxation has occurred.
5. *The requirement for regulating any air pollutant.*
The specific language from SB 288 is as follows: "Any requirements for regulating any air pollutant covered by new source review rules and regulations." The District interprets this section as prohibiting the removal or relaxation of NSR applicability for any given air pollutant; for example, if NSR no longer applied

to NOx emissions. The propose rule makes no such change. All pollutants that were regulated by the version of Rule 26.2 in affect on December 30, 2002, will remain regulated under proposed Rule 26.12.

CARB, on the other hand, has broadly interpreted this section to prohibit the relaxation of any NSR requirement, and has further claimed that this section prohibits the relaxation of any requirement to obtain offsets. The District, along with other local air pollution control districts, does not agree with this interpretation. Nevertheless, the District is proposing no relaxation of any requirement to obtain offsets, nor are we relaxing any part of Rule 26 that would affect the quantity offsets required. Proposed Rule 26.12 does not address offsets. Therefore, the proposal is in compliance with ARB's interpretation of SB 288.

6. *The requirement for public participation.*
Rule 26.7, New Source Review – Notification, is not proposed for revision. Proposed Rule 26.12 does not address public participation. All existing public participation and notice provisions in Rule 26, remain unchanged.

Excluded Provisions

The principal method used to carry out the alternatives analysis under Rule 26.2.E is to comply with CEQA requirements. Changes that would have been subject to the alternatives analysis under NSR before Rule 26.12 will still be subject to CEQA after the rule is adopted. Therefore, this District NSR requirement remains effectively the same as it was before December 31, 2002. Therefore, proposed Rule 26.12 is in compliance with SB288.

EMISSION REDUCTION / COST EFFECTIVENESS

Proposed Rule 26.12 involves a federal requirement to address the application of Federal Major Modification requirements on proposed major modifications. The proposal is not included in an AQMP control measure. Health & Safety Code § 40703 states that the district must consider, and make public, "the cost-effectiveness of a control measure." Therefore, it is not necessary to calculate the cost-effectiveness of the

proposed revision. Nevertheless, the proposed rule is administrative in nature and no additional costs to either the District or stakeholders are expected.

In addition, because BACT requirements and feasible control measures are not involved, an incremental cost-effectiveness analysis under Health & Safety Code Section 40920.6 is not required.

SOCIOECONOMIC IMPACT

Health & Safety Code § 40728.5 requires the Air Pollution Control Board consider the socioeconomic impact of any new rule or amendment to an existing rule if air quality or emission limits are significantly affected. Proposed Rule 26.12 is administrative in nature and involves the application of “analysis of

alternatives” requirements (Rule 26.2.E). The proposed rule will significantly affect neither air quality nor emission limitations in Ventura County. Therefore, an evaluation of the requirements of Health & Safety Code § 40728.5 is not necessary.

ENVIRONMENTAL IMPACTS OF METHODS OF COMPLIANCE / CEQA

Methods of Compliance

California Public Resources Code § 21159 requires the District to perform an environmental analysis of the reasonably foreseeable methods of compliance if the proposed rule requires "the installation of pollution control equipment, or [specifies] a performance standard or treatment requirement..." Proposed Rule 26.12 is administrative in nature and does not specifically involve a requirement to install air pollution control equipment. Therefore, an analysis is not necessary.

CEQA Requirements

Staff has determined that proposed Rule 26.12 is exempt from CEQA requirements because the project involves the adoption of already approved federal NSR requirements (40 CFR §51.165), which included environmental analyses during the federal rulemaking process. Rule 26.12 is therefore exempt from the requirements of the CEQA under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that these changes may have a significant effect on the environment.

ANALYSIS OF EXISTING FEDERAL AND DISTRICT REGULATIONS

California Health & Safety Code § 40727.2(a) requires districts to provide a written analysis of existing regulations prior to adopting, amending or repealing a regulation. Section 40727.2(a) states:

In complying with Section 40727, the district shall prepare a written analysis as required by this section. In the analysis, the district shall identify all existing federal air pollution control requirements, including, but not limited to, emission control standards constituting best available control technology for new or modified equipment, that apply to the same equipment or source type as the rule or regulation proposed for adoption or modification by the district. The analysis shall

also identify any of that district's existing or proposed rules and regulations that apply to the same equipment or source type, and all air pollution control requirements and guidelines that apply to the same equipment or source type and of which the district has been informed pursuant to subdivision (b).

Proposed Rule 26.12 includes no emission control standards; therefore, the requirements of Health & Safety Code § 40727.2(a) are satisfied pursuant to Health & Safety Code § 40727.2(g).

Note that proposed Rule 26.12 references NSR Reform provisions from 40 CFR § 51.165 and applies to major modifications.

COMMENTS AND PUBLIC MEETINGS

United States EPA
February 1, 2006

USEPA suggested minor syntax changes to proposed Rule 26.12. These suggestions have been incorporated into the proposed rule.

Public Workshop
February 23, 2006

Staff conducted a public workshop on proposed Rule 26.12 on February 23, 2006. No significant comments were received at this meeting, resulting in no change to the proposed rule.

Air Resources Board
March 14, 2006

Section A.2: A provision in this section exempts major modifications that are not federal major modifications from the requirements of Section D, Certification of Statewide Compliance, in District Rule 26.2, New Source Review - Requirements. This exemption may be challenged regarding whether it is allowed under Senate Bill 288. The Air Resources Board recently received a petition challenging a similar provision adopted by the San Joaquin Valley Unified Air Pollution Control District. Your District may wish to consider excluding that provision in Section A.2 from Rule 26.12 until such time that there is a clear determination regarding its coverage under Senate Bill 288.

Staff has accepted this recommendation and removed from proposed Rule 26.12, Subsection A.2, the

exemption for non-federal major modifications from the requirements of Rule 26.2.D, Certification of Statewide Compliance.

Advisory Committee
March 28, 2006

Advisory Committee discussion centered on a staff discussion of the details and implications of federal NSR Reform and Senate Bill 288. No significant issues with the proposed rule were discussed. In its motion, the committee asked staff to verify that the rule applies only to non-attainment pollutants (NOx and ROC) and does not apply to prevention of significant deterioration (PSD) sources. The rule refers to definitions in Rule 26.1 that specify only NOx and ROC (see Appendix B). Although PSD sources are not specifically excluded, staff believes that the applicability of the rule is sufficiently clear.

REFERENCES

1. Letter to the SCAQMD Board, *Adopt Proposed Rule 1316 – Federal Major Modifications*, Barry R. Wallerstein, D.Env., Executive Officer, South Coast AQMD, December 2, 2005.
2. *Final Draft Staff Report, Draft Amendments to Rule 2201 (New and Modified Stationary Source Review Rule)*, Carlos Garcia, Technical Projects Coordinator, San Joaquin Valley Unified APCD, November 17, 2005.

APPENDIX A
Code of Federal Regulations Referenced in Rule 26.12

51.165 (a)(1)

(a) State Implementation Plan and Tribal Implementation Plan provisions satisfying sections 172(c)(5) and 173 of the Act shall meet the following conditions:

(1) All such plans shall use the specific definitions. Deviations from the following wording will be approved only if the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definition below:

51.165 (a)(1)(xxviii)

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

(B) In determining the projected actual emissions under paragraph (a)(1)(xxviii)(A) of this section before beginning actual construction, the owner or operator of the major stationary source:

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

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

(3) 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

(a)(1)(xxxv) of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(4) In lieu of using the method set out in paragraphs (a)(1)(xxviii)(B)(1) through (3) of this section, may

elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (a)(1)(iii) of this section.

51.165 (a)(1)(xxxv)(A) through (D)

(xxxv) *Baseline actual emissions* means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs (a)(1)(xxxv)(A) through (D) of this section.

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

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

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

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

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph (a)(1)(xxxv)(A)(2) of this section.

(B) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is

received by the reviewing authority for a permit required either under this section or under a plan approved by the Administrator, whichever is earlier, except that the 10- year period shall not include any period earlier than November 15, 1990.

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

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

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of this chapter, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of paragraph (a)(3)(ii)(G) of this section.

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

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs (a)(1)(xxxv)(B)(2) and (3) of this section.

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

(D) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (a)(1)(xxxv)(A) of this section, for other existing emissions units in accordance with the procedures contained in paragraph (a)(1)(xxxv)(B) of this section, and for a new emissions unit in accordance with the procedures contained in paragraph (a)(1)(xxxv)(C) of this section.

51.165 (a)(2)(ii)(B) through (D), and (F)

(B) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.*, the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (a)(2)(ii)(C) through (F) of this section. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.*, the second step of the process) is contained in the definition in paragraph (a)(1)(vi) of this section. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(C) *Actual-to-projected-actual applicability test for projects that only involve existing emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph (a)(1)(xxviii) of this section) and the baseline actual emissions (as defined in paragraphs (a)(1)(xxxv)(A) and (B) of this section, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (a)(1)(x) of this section).

(D) *Actual-to-potential test for projects that only involve construction of a new emissions unit(s).* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph (a)(1)(iii) of this section) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (a)(1)(xxxv)(C) of this section) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (a)(1)(x) of this section).

(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)(ii)(C) through (E) 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 (a)(1)(x) of this section). For example, if a project involves both an existing emissions unit and a Clean Unit, the projected increase is determined by summing the values determined using the method

specified in paragraph (a)(2)(ii)(C) of this section for the existing unit and using the method specified in paragraph (a)(2)(ii)(E) of this section for the Clean Unit.

51.165 (a)(2)(ii)(B)

(B) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.*, the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (a)(2)(ii)(C) through (F) of this section. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.*, the second step of the process) is contained in the definition in paragraph (a)(1)(vi) of this section. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

51.165 (a)(2)(ii)(E)

(E) *Emission test for projects that involve Clean Units.* For a project that will be constructed and operated at a Clean Unit without causing the emissions unit to lose its Clean Unit designation, no emissions increase is deemed to occur.

51.165 (a)(6) and (a)(7)

(6) Each plan shall provide that the following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a Clean Unit or at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (a)(1)(xxviii)(B)(1) through (3) of this section for calculating projected actual emissions. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (a)(6)(i) through (v) of this section.

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

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

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (a)(1)(xxviii)(B)(3) of this section and an explanation for why such amount was excluded, and any netting calculations, if applicable.

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

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

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

(v) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority if the annual emissions, in tons per year, from the project identified in paragraph (a)(6)(i) of this section, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (a)(6)(i)(C) of this section, by a significant amount (as defined in paragraph (a)(1)(x) of this section) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (a)(6)(i)(C) of this section. Such report shall be submitted to the reviewing authority within 60 days after the end of such year. The report shall contain the following:

- (A) The name, address and telephone number of the major stationary source;
- (B) The annual emissions as calculated pursuant to paragraph (a)(6)(iii) of this section; and
- (C) Any other information that the owner or operator wishes to include in the report (*e.g.*, an explanation as

to why the emissions differ from the preconstruction projection).

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

51.165 (f)

(f) *Actuals PALs*. The plan shall provide for PALs according to the provisions in paragraphs (f)(1) through (15) of this section.

51.165 (f)(1) through (15)

(f) *Actuals PALs*. The plan shall provide for PALs according to the provisions in paragraphs (f)(1) through (15) of this section.

(1) *Applicability*.

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

(ii) The reviewing authority shall not allow an actuals PAL for VOC or NOX for any major stationary source located in an extreme ozone nonattainment area.

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

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

(B) Does not have to be approved through the plan's nonattainment major NSR program; and

(C) Is not subject to the provisions in paragraph (a)(5)(ii) of this section (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major NSR program).

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

(2) *Definitions*. The plan shall use the definitions in paragraphs (f)(2)(i) through (xi) of this section for the purpose of developing and implementing regulations that authorize the use of actuals PALs consistent with paragraphs (f)(1) through (15) of this section. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (a)(1) of this section or in the Act.

(i) *Actuals PAL* for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph (a)(1)(xxxv) of this section) of all emissions units (as defined in paragraph (a)(1)(vii) of this section) at the source, that emit or have the potential to emit the PAL pollutant.

(ii) *Allowable emissions* means "allowable emissions" as defined in paragraph (a)(1)(xi) of this section, except as this definition is modified according to paragraphs (f)(2)(ii)(A) through (B) of this section.

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

(B) An emissions unit's potential to emit shall be determined using the definition in paragraph (a)(1)(iii) of this section, except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

(iii) *Small emissions unit* means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph (a)(1)(x) of this section or in the Act, whichever is lower.

(iv) *Major emissions unit* means: (A) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (B) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Act for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

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

(vi) *PAL effective date* generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any

emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

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

(viii) *PAL major modification* means, notwithstanding paragraphs (a)(1)(v) and (vi) of this section (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

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

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

(xi) *Significant emissions unit* means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph (a)(1)(x) of this section or in the Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (f)(2)(iv) of this section.

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

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

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

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

(4) *General requirements for establishing PALs.* (i) The plan allows the reviewing authority to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs (f)(4)(i)(A) through (G) of this section are met.

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

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

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

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

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

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

(G) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (f)(12) through (14) of this section for each emissions unit under the PAL through the PAL effective period. (ii) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under paragraph (a)(3)(ii) of this section unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

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

(6) *Setting the 10-year actuals PAL level.*

(i) Except as provided in paragraph (f)(6)(ii) of this section, the plan shall provide that the actuals PAL

level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph (a)(1)(xxxv) of this section) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (a)(1)(x) of this section or under the Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The reviewing authority shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the reviewing authority is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NOX to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

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

(7) *Contents of the PAL permit.* The plan shall require that the PAL permit contain, at a minimum, the information in paragraphs (f)(7)(i) through (x) of this section.

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

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

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

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

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

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

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

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

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

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

(8) *PAL effective period and reopening of the PAL permit.* The plan shall require the information in paragraphs (f)(8)(i) and (ii) of this section.

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

(ii) *Reopening of the PAL permit.* (A) During the PAL effective period, the plan shall require the reviewing authority to reopen the PAL permit to:

(1) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.
(2) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under paragraph (a)(3)(ii) of this section.

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

(B) The plan shall provide the reviewing authority discretion to reopen the PAL permit for the following:

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

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

(3) Reduce the PAL if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and

for which information is available to the general public.

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

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

(i) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs (f)(9)(i)(A) through (B) of this section. (A) Within the time frame specified for PAL renewals in paragraph (f)(10)(ii) of this section, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the reviewing authority) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph (f)(10)(v) of this section, such distribution shall be made as if the PAL had been adjusted.

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

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

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

(iv) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements

if such change meets the definition of major modification in paragraph (a)(1)(v) of this section.

(v) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph (a)(5)(ii) of this section, but were eliminated by the PAL in accordance with the provisions in paragraph (f)(1)(iii)(C) of this section.

(10) *Renewal of a PAL*

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

(ii) *Application deadline.* The plan shall require that a major stationary source owner or operator shall submit a timely application to the reviewing authority to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

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

(A) The information required in paragraphs (f)(3)(i) through (iii) of this section.

(B) A proposed PAL level.

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

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

(iv) *PAL adjustment.* In determining whether and how to adjust the PAL, the reviewing authority shall consider the options outlined in paragraphs (f)(10)(iv)(A) and (B) of this section. However, in no case may any such adjustment fail to comply with paragraph (f)(10)(iv)(C) of this section.

(A) If the emissions level calculated in accordance with paragraph (f)(6) of this section is equal to or

greater than 80 percent of the PAL level, the reviewing authority may renew the PAL at the same level without considering the factors set forth in paragraph (f)(10)(iv)(B) of this section; or

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

(C) Notwithstanding paragraphs (f)(10)(iv)(A) and (B) of this section,

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

(2) The reviewing authority shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph (f)(11) of this section (increasing a PAL). (v) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the reviewing authority has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

(11) Increasing a PAL during the PAL effective period.

(i) The plan shall require that the reviewing authority may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs (f)(11)(i)(A) through (D) of this section.

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

(B) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is

submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(C) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph (f)(11)(i)(A) of this section, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

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

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

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

(12) Monitoring requirements for PALs—

(i) General requirements.

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

(B) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs (f)(12)(ii)(A) through (D) of this section and must be approved by the reviewing authority.

(C) Notwithstanding paragraph (f)(12)(i)(B) of this section, you may also employ an alternative monitoring approach that meets paragraph (f)(12)(i)(A) of this section if approved by the reviewing authority.

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

(ii) Minimum Performance Requirements for Approved Monitoring Approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (f)(12)(iii) through (ix) of this section:

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

(B) CEMS;

(C) CPMS or PEMS; and

(D) Emission Factors.

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

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

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

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

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

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

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

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

(A) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

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

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

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

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

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

(vii) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit. (viii) Notwithstanding the requirements in paragraphs (f)(12)(iii) through (vii) of this section, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the reviewing authority shall, at the time of permit issuance:

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

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

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

(13) *Recordkeeping requirements.*

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

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

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

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

(14) Reporting and notification requirements.

The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the reviewing authority in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs (f)(14)(i) through (iii).

(i) Semi-Annual Report. The semi-annual report shall be submitted to the reviewing authority within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs (f)(14)(i)(A) through (G) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) Transition requirements.

(i) No reviewing authority may issue a PAL that does not comply with the requirements in paragraphs (f)(1) through (15) of this section after the Administrator has approved regulations incorporating these requirements into a plan.

(ii) The reviewing authority may supersede any PAL which was established prior to the date of approval of the plan by the Administrator with a PAL that complies with the requirements of paragraphs (f)(1) through (15) of this section.

51.165 (f)(2)(v)

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

APPENDIX B

Rule 26.1, New Source Review - Definitions
Subsections Referenced in Rule 26.12
As revised on March 14, 2006

16. "Major Source": A stationary source which emits or has the potential to emit 25 tons per year or more of nitrogen oxides (NO_x) or reactive organic compounds (ROC).

A major source is also any physical change at a stationary source if such a change would constitute a major source by itself.

Fugitive emissions shall be included when determining if a source is a major source if the source belongs to any of the categories listed in 40 CFR 51.165(a)(1)(iv)(C).

17. "Major Modification": Any physical change or change in method of operation of a major source that would result in a federally significant contemporaneous net emissions increase.

For the purpose of this section, a "federally significant contemporaneous net emissions increase" means a contemporaneous net emissions increase equal to or exceeding any of the following thresholds:

ROC 25 tons per year
NO_x 25 tons per year

For the purpose of this section a "contemporaneous net emissions increase" is the sum, during the specified evaluation period, of all emission increases calculated pursuant to Rule 26.6.D and all emission reductions calculated pursuant to Rule 26.6.E. The specified evaluation period is the five consecutive calendar years including the calendar year of the most recent application and the four previous calendar years. Emission reductions that are not surplus at the time of use shall not be included.