# Reference Table of New Source Review Error Corrections—Final Rule

## TYPOS, INCORRECT CROSS-REFERENCES AND CLARIFICATIONS IN THE NSR REGULATIONS

| Section | Proposed Correction (RLSO) | Final Correction |
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| **§ 51.165** | | |
| 51.165(a)(1)(iv)(C)(*8*) | *(8)* Municipal incinerators capable of charging more than ~~250~~ 50 tons of refuse per day; | (*8*) Municipal incinerators capable of charging more than 50 tons of refuse per day;<br><br>**(Change finalized as proposed.)** |
| 51.165(a)(1)(v)(C)(*1*) | (*1*) Routine maintenance, repair and replacement; ~~Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (h) of this section;~~<br>~~NOTE TO PARAGRAPH (a)(1)(v)(C)(*1*): On December 24, 2003, the second sentence of this paragraph (a)(1)(v)(C)(*1*) is stayed indefinitely by court order. 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.~~ | (*1*) Routine maintenance, repair and replacement;<br><br>**(Change finalized as proposed.)** |
| 51.165(a)(1)(v)(C)(*5*)(*i*) | (*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 | (*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 |

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| | established after December 12, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I~~, or § 51.166~~. | established after December 12, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I. **(Change finalized as proposed.)** |
| 51.165(a)(1)(v)(C)(*6*) | *(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 ~~or 40 CFR 51.166~~. | (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.**(Change finalized as proposed.)** |
| 51.165(a)(1)(viii) | (viii) *Secondary ~~emissons~~ 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 ~~of~~ or operation of the major stationary source ~~of~~ 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. | (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. **(Change finalized as proposed)** |
| 51.165(a)(1)(xi)(A) | (A) The applicable standards set forth in 40 CFR part 60, ~~or~~ 61, or 63; | (A) The applicable standards set forth in 40 CFR part 60 or 61; |

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| | | **(Proposed change was not finalized. Retain existing rule text)** |
| 51.165(a)(1)(xiv) | (xiv) *Federally enforceable* means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60, ~~and~~ 61, and 63 requirements within any applicable State implementation plan,… | (xiv) *Federally enforceable* means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60 and 61, requirements within any applicable State implementation plan,…<br>**(Proposed change was not finalized. Retain existing rule text as noted)** |
| 51.165(a)(1)(xxi)(A) through (D) | (C) The replacement does not alter the basic design parameters ~~(as discussed in paragraph (h)(2) of this section)~~ (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). | (xxi) *Replacement unit* means an emissions unit for which all the criteria listed in paragraphs (a)(1)(xxi)(A) through (D) of this section are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.<br>(A) 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;<br>(B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit;<br>(C) The replacement does not alter the basic design parameters of the process unit; and<br>(D) 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. |

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| | | **(Paragraph is being revised but not as proposed. The proposed add-back of definitions of "basic design parameters" and "process unit" in new location is not being made in final rule. Therefore, neither the original parentheticals nor the new ones providing cross references to new location of relocated definitions are being included in this final rule. Further, EPA added semi-colons as noted)** |
| 51.165(a)(1)(xxi)(E) | (E) *Basic design parameters*. The replacement does not change the basic design parameter(s) of the process unit to which the activity pertains.<br><br>(*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.<br><br>(*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 | **The proposed definition of "basic design parameter" paragraph 51.165(a)(1)(xxi)(E), including (E)(*1*) through (*6*), is not being relocated here from the vacated ERP provisions in this final rule.** |

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| | 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.<br><br>(*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).<br><br>(*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.<br><br>(5) If design information is not available for a process unit, then the owner or operator shall | |

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| | 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.<br><br>(*6*) Efficiency of a process unit is not a basic design parameter. | |
| 51.165(a)(1)(xxi)(F) | (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.<br><br>(*2*) The following list identifies the process units at specific categories of stationary sources:<br><br>(*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 | **The proposed relocation of the definition of "process unit" to paragraph 51.165(F)(*1*) through (*2*), from the vacated ERP provisions is not being made in this final rule.** |

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| | systems. Each separate generating unit is a separate process unit.<br><br>(*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.<br><br>(*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. | |
| 51.165(a)(1)(xl) | (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 | (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 |

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| | 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 ~~or~~, 61, or 63. If the reviewing authority determines …. | available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60, ~~or~~ 61, or 63. If the reviewing authority determines ….<br><br>**(Proposed change with the addition of part 63 is being made in final rule only for the definition of Best Available Control Technology (BACT)).** |
| 51.165(a)(1)(xliii) | ~~(xliii)(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.~~<br>(B) ~~Pollution control equipment is not part of the process unit, unless it serves a dual function as both process and control equipment. Administrative and warehousing facilities are not part of the process unit.~~<br>(C) ~~For replacement cost purposes, components shared between two or more process units are proportionately allocated based on capacity.~~<br><br>~~(D) The following list identifies the process units at specific categories of stationary sources.~~<br><br>~~*(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 | **Proposed removal of paragraph 51.165(a)(1)(xliii) and outdated court stay note finalized as proposed with the removal of the rule text.** |

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| | ~~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.~~<br><br>~~(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.~~<br><br>~~(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.~~<br><br>~~Note to paragraph (a)(1)(xliii):~~<br>~~By a court order on December 24, 2003, this paragraph (a)(1)(xliii) 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~~ | |

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| | ~~FEDERAL REGISTER advising the public of the termination of the stay.~~ | |
| 51.165(a)(1)(xliv) | ~~(xliv) *Functionally equivalent component* means a component that serves the same purpose as the replaced component.~~<br><br>~~Note to paragraph (a)(1)(xliv):~~<br>~~By a court order on December 24, 2003, this paragraph (a)(1)(xliv) 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.~~ | **(Change finalized as proposed)** |
| 51.165(a)(1)(xlv) | ~~(xlv) *Fixed capital cost* means the capital needed to provide all the depreciable components. "Depreciable components" refers to all components of fixed capital cost and is calculated by subtracting land and working capital from the total capital investment, as defined in paragraph (a)(1)(xlvi) of this section.~~<br><br>~~Note to paragraph (a)(1)(xlv):~~<br>~~By a court order on December 24, 2003, this paragraph (a)(1)(xlv) 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.~~ | **(Change finalized as proposed)** |

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| 51.165(a)(1)(xlvi) | ~~(xlvi) *Total capital investment* means the sum of the following: All costs required to purchase needed process equipment (purchased equipment costs); the costs of labor and materials for installing that equipment (direct installation costs); the costs of site preparation and buildings; other costs such as engineering, construction and field expenses, fees to contractors, startup and performance tests, and contingencies (indirect installation costs); land for the process equipment; and working capital for the process equipment.~~<br><br>~~Note to paragraph (a)(1)(xlvi):~~<br>~~By a court order on December 24, 2003, this paragraph (a)(1)(xlvi) 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.~~ | **(Change finalized as proposed)** |
| 51.165(a)(2)(ii)(A) | Except as otherwise provided in paragraph~~s~~ (a)(2)(iii) ~~and (iv)~~ 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 | 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). |

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| | (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. | 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. **(Change finalized as proposed, except note that there was not a comma following the second use of the term "of this section" in the first sentence.)** |
| 51.165(a)(2)(iii) | The plan shall require that for any major stationary source ~~for~~ with a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under paragraph (f) of this section. | Grammatical clarification "with".<br><br>**(Change finalized as proposed)** |
| 51.165(a)(3)(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). ~~Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977; (This document is also available from Mr. Ted Creekmore, Office of Air Quality Planning and Standards, (MD-15) Research Triangle Park, NC 27711.))~~ | No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except that emissions credit may be allowed for the replacement with those compounds listed as having negligible photochemical reactivity in § 51.100(s).<br>**(Change finalized as proposed with slight modification)** |
| 51.165(a)(4)(viii) | Municipal incinerators capable of charging more than ~~250~~ 50 tons of refuse per day; | Municipal incinerators capable of charging more than 50 tons of refuse per day;<br>**(Change finalized as proposed)** |
| 51.165(a)(11) | (11) Interpollutant offsetting, or interpollutant trading or interprecursor trading or interprecursor offset substitution—The plan shall require that in meeting the emissions offset requirements of | (11) Interpollutant offsetting, or interpollutant trading or interprecursor trading or interprecursor offset substitution—The plan shall require that in meeting the emissions offset requirements of |

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| | paragraph (a)(3) of this section, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph. ~~(a)(3) of this section, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph.~~ | paragraph (a)(3) of this section, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph.<br><br>**(Change was not originally proposed but identified by the EPA after issuance of rule proposal)** |
| 51.165(h) | (h) [Reserved]<br>~~*Equipment replacement provision.* Without regard to other considerations, routine maintenance, repair and replacement includes, but is not limited to, the replacement of any component of a process unit with an identical or functionally equivalent component(s), and maintenance and repair activities that are part of the replacement activity, provided that all of the requirements in paragraphs (h)(1) through (3) of this section are met.~~<br><br>~~(1) Capital Cost threshold for Equipment Replacement. (i) For an electric utility steam generating unit, as defined in §51.165(a)(1)(xx), the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced. For a process unit that is not an electric utility steam generating unit the fixed capital cost of the replacement component(s) plus the cost of any associated~~ | Equipment Replacement Provision (ERP) Rule Vacatur (See State of New York v. EPA, 443 3d 880 (DC Cir. 2006).<br><br>**(Change finalized as proposed by removing all ERP provisions and reserving the paragraph)**<br><br>Remove all vacated ERP rule provision elements and reserve entire paragraph (h). *See* related preamble discussion in section II.D.1.<br><br>**(Change finalized as proposed)** |

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| | ~~maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced.~~<br>~~(ii) In determining the replacement value of the process unit; and, except as otherwise allowed under paragraph (h)(1)(iii) of this section, the owner or operator shall determine the replacement value of the process unit on an estimate of the fixed capital cost of constructing a new process unit, or on the current appraised value of the process unit.~~<br>~~(iii) As an alternative to paragraph (h)(1)(ii) of this section for determining the replacement value of a process unit, an owner or operator may choose to use insurance value (where the insurance value covers only complete replacement), investment value adjusted for inflation, or another accounting procedure if such procedure is based on Generally Accepted Accounting Principles, provided that the owner or operator sends a notice to the reviewing authority. The first time that an owner or operator submits such a notice for a particular process unit, the notice may be submitted at any time, but any subsequent notice for that process unit may be submitted only at the beginning of the process unit's fiscal year. Unless the owner or operator submits a notice to the reviewing authority, then paragraph (h)(1)(ii) of this section will be used to establish the replacement value of the process unit. Once the owner or operator submits a notice to use an alternative accounting procedure, the | |

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| | ~~owner or operator must continue to use that procedure for the entire fiscal year for that process unit. In subsequent fiscal years, the owner or operator must continue to use this selected procedure unless and until the owner or operator sends another notice to the reviewing authority selecting another procedure consistent with this paragraph or paragraph (h)(1)(ii) of this section at the beginning of such fiscal year.~~<br><br>~~(2) Basic design parameters. The replacement does not change the basic design parameter(s) of the process unit to which the activity pertains.~~<br>~~NOTE TO PARAGRAPH (h): By a court order on December 24, 2003, this paragraph (h) 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.~~<br>~~(i) Except as provided in paragraph (h)(2)(iii) of this section, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.~~ | Remove outdated stay note.<br>**(Change finalized as proposed)** |

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| | ~~(ii) Except as provided in paragraph (h)(2)(iii) of this section, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.~~<br>~~(iii) If the owner or operator believes the basic design parameter(s) in paragraphs (h)(2)(i) and (ii) of this section is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).~~<br>~~(iv) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in paragraphs (h)(2)(i) and (ii) of this section.~~ | |

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| | ~~(v) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.~~<br>~~(vi) Efficiency of a process unit is not a basic design parameter.~~<br><br>~~(3) The replacement activity shall not cause the process unit to exceed any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.~~ | |
| **§ 51.166** | | |
| 51.166(a)(7) | (7) *Applicability.* Each plan shall contain procedures that incorporate the requirements in paragraphs (a)(7)(i) through ~~(vi)~~ (v) of this section. | (7) *Applicability*. Each plan shall contain procedures that incorporate the requirements in paragraphs (a)(7)(i) through (v) of this section.<br><br>**(Change finalized as proposed)** |
| 51.166(a)(7)(iv)(*a*) | (*a*) Except as otherwise provided in paragraph~~s~~ (a)(7)(v) ~~and (vi)~~ of this section, and consistent with the definition of major modification contained in paragraph (b)(2) of this section, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (b)(39) of this section), and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section). The | (*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 |

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| | 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. | 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. **Change finalized as proposed)** |
| 51.166(a)(7)(v) | (v) The plan shall require that for any major stationary source ~~for~~ with a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under paragraph (w) of this section. | (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. **(Change finalized as proposed)** |
| 51.166(b)(1)(i)(*a*) | (*a*) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants (with thermal dryers), primary copper smelters, municipal incinerators capable of charging more than ~~250~~ 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 | **(Change finalized as proposed)** |

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| | 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; | |
| 51.166(b)(1)(i)(*c*) | (*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. | **(Change finalized as proposed)** |
| 51.166(b)(1)(iii)(*h*) | (*h*) Municipal incinerators capable of charging more than ~~250~~ 50 tons of refuse per day; | **(Change finalized as proposed)** |
| 51.166(b)(1)(iii)(*z*) | (*z*) Fossil fuel-fired steam electric plants of more ~~that~~ than 250 million British thermal units per hour heat input, and | **(Change finalized as proposed)** |
| 51.166(b)(2)(iii)(*a*) | (*a*) Routine maintenance, repair and replacement. ~~Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (y) of this section;~~<br>~~Note to paragraph (b)(2)(iii)(*a*):~~<br>~~On December 24, 2003, the second sentence of this paragraph (b)(2)(iii)(*a*) is stayed indefinitely by court order. 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.~~ | (*a*) Routine maintenance, repair and replacement; **(Change finalized as proposed with minor change of an addition of a semicolon instead of a period since there are logically following exceptions in subparagraphs)** |

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| 51.166(b)(2)(iii)(*e*)(*1*) | *(1)* The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I ~~or § 51.166~~. | (*1*) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I.<br>**(Change finalized as proposed)** |
| 51.166(b)(2)(iii)(*f*) | *(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 ~~or §51.166~~. | (*f*) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I.<br>**(Change finalized as proposed)** |
| 51.166(b)(3)(iii)(*c*) | (*c*) [Reserved]~~The increase or decrease in emissions did not occur at a Clean Unit, except as provided in paragraphs (t)(8) and (u)(10) of this section.~~ | (*c*) [Reserved]<br>**(Change finalized as proposed)** |
| 51.166(b)(12) | (12) *Best available control technology* means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each ~~a~~ 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 | (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 |

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| | 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 ~~or,~~ 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. | 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.<br>**(Proposed change of the addition of part 63 is being made in final rule only for the definition of Best Available Control Technology (BACT) and minor typo corrected with the removal of "a")** |
| 51.166(b)(16)(i) | (i) The applicable standards as set forth in 40 CFR parts 60, ~~and~~ 61, and 63; | **(Proposed change was not finalized)** |
| 51.166(b)(17) | (17) *Federally enforceable* means all limitations and conditions which are enforceable by the | |

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| | Administrator, including those requirements developed pursuant to 40 CFR parts 60, ~~and~~ 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. | **(The proposed changes are not being included in the final rule)** |
| 51.166(b)(23)(ii) | (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. | (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.<br>**(Change finalized as proposed)** |
| 51.166(b)(32)(i) through (iv) | (iii) The replacement does not change the basic design parameter(s) ~~(as discussed in paragraph (y)(2) of this section)~~ (as discussed in paragraph (b)(32)(v) of this section) of the process unit (as discussed in paragraph (b)(32)(vi) of this section). | (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;<br>(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit;<br>(iii) The replacement does not change the basic design parameter(s) of the process unit; and<br>(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 |

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| | | emissions unit is brought back into operation, it shall constitute a new emissions unit.<br><br>**(Paragraph is being revised but not as proposed. The proposed add-back of definitions of "basic design parameters" and "process unit" in new location is not being made in final rule. Therefore, neither the original parentheticals nor the new ones providing cross references to new location of added back definitions are being included in this final rule. Further, EPA added semi-colons as noted)** |
| 51.166 (b)(32)(v) and (vi) | (v) *Basic design parameters*. The replacement does not change the basic design parameter(s) of the process unit to which the activity pertains.<br><br>(*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.<br><br>(*b*) Except as provided in paragraph (b)(32)(v)(*c*) of this section, the basic design parameter(s) for | **(The proposed changes are not being included in the final rule.)** |

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| | 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.<br><br>(*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).<br><br>(*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. | |

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| | (*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.<br><br>(*f*) Efficiency of a process unit is not a basic design parameter.<br><br>(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.<br><br>(*b*) The following list identifies the process units at specific categories of stationary sources.<br><br>(*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 | |

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| | set, condenser, cooling tower, water treatment system, air preheaters, and operating control systems. Each separate generating unit is a separate process unit.<br><br>(*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.<br><br>(*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. | |
| 51.166(b)(48)(i) | (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~~s~~ (b)(48)(iv) ~~through (v)~~ of this section. | (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.<br>**(Change finalized as proposed)** |
| 51.166(b)(48)(ii) | (ii) For purposes of paragraphs (b)(48)(iii) through ~~(v)~~ (iv) of this section, the term tpy *$CO_2$ equivalent emissions ($CO_2e$)* shall represent an | (ii) For purposes of paragraphs (b)(48)(iii) and (iv) of this section, the term tpy *$CO_2$ equivalent* |

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| | amount of GHGs emitted, and shall be computed as follows: | *emissions ($CO_2e$)* shall represent an amount of GHGs emitted, and shall be computed as follows:<br><br>**(Proposed changes being finalized; additional change ("through" to "and") as recommended by commenter is being finalized.)** |
| 51.166(b)(48)(ii)(*a*) | (*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. ~~For purposes of this paragraph (b)(48)(ii)(a), prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).~~ | (*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.<br><br>**(Change finalized as proposed.)** |
| 51.166(b)(48)(iii) | (iii) The term *emissions increase* as used in paragraph~~s~~ (b)(48)(iv) ~~through (v)~~ of this section shall mean that both a significant emissions increase (as calculated using the procedures in (a)(7)(iv) of this section) and a significant net emissions increase (as defined in paragraphs | (iii) The term *emissions increase* as used in paragraph~~s~~ (b)(48)(iv) ~~through (v)~~ of this section shall mean that both a significant emissions increase (as calculated using the procedures in (a)(7)(iv) of this section) and a significant net emissions increase (as defined in paragraphs |

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| | (b)(3) and (b)(23) of this section) occur. For the pollutant GHGs, an emissions increase shall be based on tpy $CO_2e$, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" ~~is~~ shall be defined as 75,000 tpy $CO_2e$ instead of applying the value in paragraph (b)(23)(ii) of this section. | (b)(3) and (b)(23) of this section) occur. For the pollutant GHGs, an emissions increase shall be based on tpy $CO_2e$, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant~~,~~ and "significant" is ~~shall be~~ defined as 75,000 tpy $CO_2e$ instead of applying the value in paragraph (b)(23)(ii) of this section.<br><br>**(Modification based upon comment received)** |
| 51.166(b)(48)(iv)(*b*) | (*b*) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy $CO_2e$ or more.~~;~~ ~~and~~, | (*b*) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy $CO_2e$ or more.<br>**(Change finalized as proposed)** |
| 51.166(b)(53) through (56) | ~~(53)(i) In general, *process unit* means any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an intermediate or a completed product. A single stationary source may contain more than one process unit, and a process unit may contain more than one emissions unit.~~<br><br>~~(ii) Pollution control equipment is not part of the process unit, unless it serves a dual function as both process and control equipment. Administrative and warehousing facilities are not part of the process unit.~~ | **(Change finalized as proposed)** |

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| | ~~(iii) For replacement cost purposes, components shared between two or more process units are proportionately allocated based on capacity.~~<br><br>~~(iv) The following list identifies the process units at specific categories of stationary sources.~~<br><br>~~*(a)* For a steam electric generating facility, the process unit consists of those portions of the plant that contribute directly to the production of electricity. For example, at a pulverized coal-fired facility, the process unit would generally be the combination of those systems from the coal receiving equipment through the emission stack (excluding post-combustion pollution controls), including the coal handling equipment, pulverizers or coal crushers, feedwater heaters, ash handling, boiler, burners, turbine-generator set, condenser, cooling tower, water treatment system, air preheaters, and operating control systems. Each separate generating unit is a separate process unit.~~<br><br>~~*(b)* For a petroleum refinery, there are several categories of process units: those that separate and/or distill petroleum feedstocks; those that change molecular structures; petroleum treating processes; auxiliary facilities, such as steam generators and hydrogen production units; and those that load, unload, blend or store intermediate or completed products.~~ | |

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| | ~~*(c)* For an incinerator, the process unit would consist of components from the feed pit or refuse pit to the stack, including conveyors, combustion devices, heat exchangers and steam generators, quench tanks, and fans.~~<br><br>~~Note to paragraph (b)(53):~~<br>~~By a court order on December 24, 2003, this paragraph (b)(53) 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.~~<br><br>~~(54) *Functionally equivalent component* means a component that serves the same purpose as the replaced component.~~<br><br>~~Note to paragraph (b)(54):~~<br>~~By a court order on December 24, 2003, this paragraph (b)(54) 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.~~<br><br>~~(55) *Fixed capital cost* means the capital needed to provide all the depreciable components. "Depreciable components" refers to all components of fixed capital cost and is calculated by subtracting land and working capital from the~~ | Remove outdated court stay note.<br>**(Change finalized as proposed)**<br><br>Remove vacated language and outdated court stay note.<br>**(Change finalized as proposed)** |

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| | ~~total capital investment, as defined in paragraph (b)(56) of this section.~~<br><br>~~Note to paragraph (b)(55):~~<br>~~By a court order on December 24, 2003, this paragraph (b)(55) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.~~<br><br>~~(56) *Total capital investment* means the sum of the following: all costs required to purchase needed process equipment (purchased equipment costs); the costs of labor and materials for installing that equipment (direct installation costs); the costs of site preparation and buildings; other costs such as engineering, construction and field expenses, fees to contractors, startup and performance tests, and contingencies (indirect installation costs); land for the process equipment; and working capital for the process equipment.~~<br><br>~~Note to paragraph (b)(56):~~<br>~~By a court order on December 24, 2003, this paragraph (b)(56) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.~~ | Remove vacated language and outdated court stay note.<br><br>**(Change finalized as proposed)**<br><br>Remove vacated language and outdated court stay note.<br>**(Change finalized as proposed)** |

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| 51.166(g)(4) | (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~~ provided that: | (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:<br>**(Change finalized as proposed)** |
| 51.166(i)(1)(ii)(*h*) | *(h)* Municipal incinerators capable of charging more than ~~250~~ 50 tons of refuse per day; | (h) Municipal incinerators capable of charging more than 50 tons of refuse per day;<br>**(Change finalized as proposed)** |
| 51.166(i)(6) through (11) | (6) [Reserved] ~~If EPA approves a plan revision under 40 CFR 51.166 as in effect before August 7, 1980, any subsequent revision which meets the requirements of this section may contain transition provisions which parallel the transition provisions of 40 CFR 52.21(i)(9), (i)(10) and (m)(1)(v) as in effect on that date, which provisions relate to requirements for best available control technology and air quality analyses. Any such subsequent revision may not contain any transition provision which in the context of the revision would operate any less stringently than would its counterpart in 40 CFR 52.21.~~<br><br>(7) [Reserved] ~~If EPA approves a plan revision under § 51.166 as in effect before July 31, 1987, any subsequent revision which meets the requirements of this section may contain~~ | (6) [Reserved]<br><br>(7) [Reserved]<br><br>(8) [Reserved]<br><br>(9) [Reserved]<br><br>(10) [Reserved]<br><br>(11) [Reserved]<br><br>**(Change finalized as proposed with the addition of Ozone PSD Grandfathering paragraph 11 vacated by court decision)** |

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| | ~~transition provisions which parallel the transition provisions of § 52.21 (i)(11), (m)(1)(vii) and (m)(1)(viii) of this chapter as in effect on that date, these provisions being related to monitoring requirements for particulate matter. Any such subsequent revision may not contain any transition provision which in the context of the revision would operate any less stringently than would its counterpart in § 52.21 of this chapter.~~<br><br>(8) [Reserved] ~~The plan may provide that the permitting requirements equivalent to those contained in paragraph (k)(1)(ii) of this section do not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under the applicable permit program approved or promulgated under the Act before the provisions embodying the maximum allowable increase took effect as part of the plan and the permitting authority subsequently determined that the application as submitted before that date was complete.~~<br><br>(9) [Reserved] ~~The plan may provide that the permitting requirements equivalent to those contained in paragraph (k)(1)(ii) of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM-10 if (i) the owner or operator of the source or modification submitted an application for a permit under the applicable~~ | |

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| | ~~permit program approved under the Act before the provisions embodying the maximum allowable increases for PM-10 took effect as part of the plan, and (ii) the permitting authority subsequently determined that the application as submitted before that date was complete. Instead, the applicable requirements equivalent to paragraph (k)(1)(ii) shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.~~<br><br>(10) [Reserved] ~~The plan may provide that the requirements of paragraph (k)(1) of this section shall not apply to a stationary source or modification with respect to the national ambient air quality standards for PM2.5 in effect on March 18, 2013, if:~~<br><br>~~(i) The reviewing authority has determined a permit application subject to this section to be complete on or before December 14, 2012. Instead, the requirements in paragraph (k)(1) of this section shall apply with respect to the national ambient air quality standards for PM2.5 in effect at the time the reviewing authority determined the permit application to be complete; or~~<br><br>~~(ii) The reviewing authority has first published before March 18, 2013, a public notice of a preliminary determination for the permit application subject to this section. Instead, the requirements in paragraph (k)(1) of this section~~ | |

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| | ~~shall apply with respect to the national ambient air quality standards for PM2.5 in effect at the time of first publication of a public notice on the preliminary determination.~~ | |
| 51.166(j)(1) | (1) A major stationary source or major modification shall meet each applicable emissions limitation under the State ~~Implementation Plan~~ implementation plan and each applicable emission standards and standard of performance under 40 CFR parts 60, ~~and~~ 61, and 63. | (1) A major stationary source or major modification shall meet each applicable emissions limitation under the State implementation plan and each applicable emission ~~standards~~ standard and standard of performance under 40 CFR parts 60, 61, or 63. **(Change finalized with small changes including substituting "and" with "or")** |
| 51.166(j)(2) | (2) A new major stationary source shall apply best available control technology for each ~~a~~ regulated NSR pollutant that it would have the potential to emit in significant amounts. | (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. **(Change finalized as proposed)** |
| 51.166(j)(4) | (4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the ~~least~~latest reasonable time which occurs no later than 18 months ... | (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 ... **(Change finalized as proposed)** |
| 51.166(k)(1) | (1) *Required demonstration*. The plan shall provide that the owner or operator of the proposed source or modification shall demonstrate that allowable emission increases | (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 |

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| | 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: | 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: **(Change finalized as proposed)** |
| 51.166(m)(1)(iii) | (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 ~~maxiumum~~ maximum allowable increase. | (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. **(Change finalized as proposed)** |
| 51.166(p)(3) | (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 ~~(r)~~(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 | (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 |

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| | concurs with such demonstration, the reviewing authority shall not issue the permit. | concurs with such demonstration, the reviewing authority shall not issue the permit.<br>**(Change finalized as proposed)** |
| 51.166(p)(4) | (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~~ 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, $PM_{2.5}$, $PM_{10}$, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants: | (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, $PM_{2.5}$, $PM_{10}$, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:<br>**(Change finalized as proposed)** |
| 51.166(p)(5)(i) | (i) The owner or operator of a proposed source or modification which cannot be approved under procedures developed pursuant to paragraph ~~(q)~~(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 | (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 |

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| | 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); | 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);<br>**(Change finalized as proposed)** |
| 51.166(p)(5)(iii) | (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 ~~(q)~~(p)(7) of this section~~:~~ ~~Provided, That~~ provided that the applicable requirements of the plan are otherwise met. | (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.<br>**(Changes finalized as proposed)** |
| 51.166(p)(6)(iii). | (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 ~~(q)~~(p)(7) of this section~~:~~ ~~Provided, That~~ provided that the applicable requirements of the plan are otherwise met. | (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.<br>**(Changes finalized as proposed)** |
| 51.166(p)(7) | (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 ~~(q)~~(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 | (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 |

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| | 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: | 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: **(Change finalized as proposed.)** |
| 51.166(r)(2) | (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)~~(s)~~ of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification. | (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. **(Change finalized as proposed)** |
| 51.166(r)(6)(vi)(*b*). | (*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 | (*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 |

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| | possibility occurs only within the meaning of this paragraph (r)(6)(vi)(*b*) ~~of this section~~, and not also within the meaning of paragraph ~~(a)~~(r)(6)(vi)(*a*) of this section, then the provisions under paragraphs ~~(a)~~(r)(6)(ii) through (v) of this section do not apply to the project. | 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. **(Change finalized as proposed)** |
| 51.166(w)(7)(vii) | (vii) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under paragraph (w)~~(13)~~(12) 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 (w)(12) of this section. **(Change finalized as proposed)** |
| 51.166(w)(9)(ii) | (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. | (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. **(Change finalized as proposed with minor edit being the addition of an oxford comma after PEMS noted by EPA during review for the final rule)** |
| 51.166(y) | ~~*(y)Equipment replacement provision.* Without regard to other considerations, routine maintenance, repair and replacement includes, but is not limited to, the replacement of any component of a process unit with an identical or functionally equivalent component(s), and maintenance and repair activities that are part of the replacement activity, provided that all of the requirements in paragraphs (y)(1) through (3) of this section are met.~~ | **(Change finalized as proposed)** |

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| | ~~(1)*Capital Cost threshold for Equipment Replacement.*~~<br>~~(i) For an *electric utility steam generating unit*, as defined in § 51.166(b)(30), the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced. For a process unit that is not an electric utility steam generating unit the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced.~~<br><br>~~(ii) In determining the replacement value of the process unit; and, except as otherwise allowed under paragraph (y)(1)(iii) of this section, the owner or operator shall determine the replacement value of the process unit on an estimate of the fixed capital cost of constructing a new process unit, or on the current appraised value of the process unit.~~<br>~~As an alternative to paragraph (y)(1)(ii) of this section for determining the replacement value of a process unit, an owner or operator may choose to use insurance value (where the insurance value covers only complete replacement), investment value adjusted for inflation, or another accounting~~ | |

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| | ~~procedure if such procedure is based on Generally Accepted Accounting Principles, provided that the owner or operator sends a notice to the reviewing authority. The first time that an owner or operator submits such a notice for a particular process unit, the notice may be submitted at any time, but any subsequent notice for that process unit may be submitted only at the beginning of the process unit's fiscal year. Unless the owner or operator submits a notice to the reviewing authority, then paragraph (y)(1)(ii) of this section will be used to establish the replacement value of the process unit. Once the owner or operator submits a notice to use an alternative accounting procedure, the owner or operator must continue to use that procedure for the entire fiscal year for that process unit. In subsequent fiscal years, the owner or operator must continue to use this selected procedure unless and until the owner or operator sends another notice to the reviewing authority selecting another procedure consistent with this paragraph or paragraph (y)(1)(ii) of this section at the beginning of such fiscal year.~~<br><br>~~(2) *Basic design parameters.* The replacement does not change the basic design parameter(s) of the process unit to which the activity pertains.~~<br><br>~~(i) Except as provided in paragraph (y)(2)(iii) of this section, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either~~ | |

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| | ~~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.~~<br><br>~~(ii) Except as provided in paragraph (y)(2)(iii) of this section, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.~~<br><br>~~(iii) If the owner or operator believes the basic design parameter(s) in paragraphs (y)(2)(i) and (ii) of this section is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority shall issue a permit that is legally enforceable that records~~ | |

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| | ~~such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).~~<br><br>~~(iv) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in paragraphs (y)(2)(i) and (ii) of this section.~~<br><br>~~(v) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.~~<br><br>~~(vi) Efficiency of a process unit is not a basic design parameter.~~<br><br>~~(3) The replacement activity shall not cause the process unit to exceed any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.~~<br><br>~~Note to paragraph (y):~~<br>~~By a court order on December 24, 2003, this paragraph (y) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA~~ | |

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| | ~~will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.~~ | |
| **Part 51 Appendix S** | | |
| Appendix S I. Introduction [paragraphs 1 and 2] | This appendix sets forth EPA's Interpretative Ruling on the preconstruction review requirements for stationary sources of air pollution (not including indirect sources) under 40 CFR part 51, subpart I and section 129 of the Clean Air Act Amendments of 1977, Public Law 95-95, (note under 42 U.S.C. 7502). A major new source or major modification which would locate in any area designated under section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region or which would locate in an area designated in 40 CFR part 81, subpart C, as nonattainment for a pollutant for which the source or modification would be major may be allowed to construct only if the stringent conditions set forth below are met. These conditions are designed to ~~insure~~ 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.<br><br>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 | This appendix sets forth EPA's Interpretative Ruling on the preconstruction review requirements for stationary sources of air pollution (not including indirect sources) under 40 CFR part 51, subpart I ~~and section 129 of the Clean Air Act Amendments of 1977, Public Law 95-95, (note under 42 U.S.C. 7502)~~. A major new source or major modification which would locate in any area designated under section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region or which would locate in an area designated in 40 CFR part 81, subpart C, as nonattainment for a pollutant for which the source or modification would be major may be allowed to construct only if the stringent conditions set forth below are met. These conditions are designed to 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.<br><br>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 |

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| | 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~~ 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~~ 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~~ part D, or before the deadline for having a revised SIP in effect that satisfies ~~Part~~ part D. | 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.<br><br>**(Finalize as proposed with changes noted by Commenter API including deletion of reference to CAA 129)** |
| Appendix S II.A.4.(i)(*a*) | *(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~~Ruling. | (*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.<br>**(Change finalized as proposed)** |
| Appendix S II.A.4.(iii) | (iii) The fugitive emissions of a stationary source shall not be included in determining for any of the | (iii) The fugitive emissions of a stationary source shall not be included in determining for any of the |

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| | purposes of this ~~ruling~~Ruling whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: | purposes of this Ruling whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:<br><br>**(Change finalized as proposed)** |
| Appendix S II.A.4.(iii)(*h*) | *(h)* Municipal incinerators capable of charging more than ~~250~~ 50 tons of refuse per day; | (*h*) Municipal incinerators capable of charging more than 50 tons of refuse per day;<br>**(Change finalized as proposed)** |
| Appendix S II.A.5.(iii)(*e*)(*1*) | *(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 §51.166~~; or | (*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<br>**(Change finalized as proposed.)** |
| Appendix S II.A.5.(iii)(*e*)(*2*) | *(2)* The source is approved to use under any permit issued under this ~~ruling~~Ruling; | (*2*) The source is approved to use under any permit issued under this Ruling;<br>**(Change finalized as proposed)** |
| Appendix S II.A.5.(iii)(*f*) | *(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~~or §51.166~~; | (*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;<br><br>**(Change finalized as proposed)** |
| Appendix S II.A.7.(ii) | (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 | (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 |

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| | unit, as defined in paragraph II.A.37 of this Ruling, is an existing emissions unit. | unit, as defined in paragraph II.A.37 of this Ruling, is an existing emissions unit.<br><br>**(Change finalized as proposed)** |
| Appendix S II.A.11.(i) | (i) Applicable standards as set forth in 40 CFR parts 60, ~~and~~ 61, and 63; | **(The proposed changes are not being included in the final rule.)** |
| Appendix S II.A.12 | 12. *Federally enforceable* means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60, ~~and~~ 61, 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. | **(The proposed changes are not being included in the final rule.)** |
| Appendix S II.A.34 | 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 | 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 |

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| | 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, ~~or~~ 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. | 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.<br><br>**(Proposed change of the addition of part 63 is being made in final rule only for the definition of Best Available Control Technology (BACT)).** |
| Appendix S II.A.35 | 35. *Prevention of Significant Deterioration (PSD) permit* means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of § 51.166 ~~of this chapter~~, or under the program in § 52.21 of this chapter. | 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.<br>**(Change finalized as proposed)** |

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| Appendix S II.A.37 | 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.<br><br>*(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.<br><br>*(*ii*)* The emissions unit is identical to or functionally equivalent to the replaced emissions unit.<br><br>*(*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).<br><br>*(*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. | 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.<br><br>(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;<br><br>(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit;<br><br>(iii) The replacement does not alter the basic design parameters of the process unit; and<br><br>(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.<br><br>**(Portion of proposed change is being finalized to make Appendix S consistent with other NSR regulations for replacement units prior to ERP with the addition of semi-colons as noted)** |

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| Appendix S II.B. | B. *Review of all sources for emission limitation compliance*. The reviewing authority must examine each proposed major new source and proposed major modification[1] 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 ~~part~~ 63 of this chapter. If the reviewing authority determines that the proposed major new source cannot meet the applicable emission requirements, the permit to construct must be denied. | **(Change finalized as proposed)** |
| Appendix S II.F.8 | (8) Municipal incinerators capable of charging more than ~~250~~ 50 tons of refuse per day; | (8) Municipal incinerators capable of charging more than 50 tons of refuse per day;<br>**(Change finalized as proposed)** |
| Appendix S II.G. | G. *Secondary emissions*. Secondary emissions need not be considered in determining whether the emission rates in ~~Section~~ 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~~ 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 | 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. |

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| | vehicles and aircraft traffic is not required under this Ruling. | **(Change finalized as proposed)** |
| Appendix S III.B. | B. Sources to which this section applies must meet Conditions 1, 2, and 4 of ~~Section~~section IV.A. of this ~~ruling~~Ruling.[2] However, such sources may be exempt from Condition 3 of ~~Section~~section IV.A. of this ~~ruling~~Ruling. | 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.<br><br>Note that there is a footnote (fn 2) that needs to be retained. Footnote text does not change.<br>**(Change finalized as proposed)** |
| Appendix S III.C. | C. *Review of specified sources for air quality impact*. For *stable* air pollutants (*i.e.*, $SO_2$, particulate matter and CO), the determination of whether a source will cause or contribute to a violation of ~~an~~ 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 ~~an~~ a NAAQS).<br><br>For sources of nitrogen oxides, the initial determination of whether a source would cause or contribute to a violation of the NAAQS for $NO_2$ should be made using an atmospheric simulation model assuming all the nitric oxide emitted is oxidized to $NO_2$ 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.<br><br>For ozone, sources of volatile organic compounds, locating outside a designated ozone | C. *Review of specified sources for air quality impact*. For *stable* air pollutants (*i.e.*, $SO_2$, 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).<br><br>For sources of nitrogen oxides, the initial determination of whether a source would cause or contribute to a violation of the NAAQS for $NO_2$ should be made using an atmospheric simulation model assuming all the nitric oxide emitted is oxidized to $NO_2$ 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.<br><br>For ozone, sources of volatile organic compounds, locating outside a designated ozone nonattainment |

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| | 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~~ 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.<br><br>As noted above, the determination as to whether a source would cause or contribute to a violation of ~~an~~ 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. | 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.<br><br>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.<br>**(Change finalized as proposed.)** |
| Appendix S III.D. *Condition 1.* | *Condition 1.* The new source is required to meet a more stringent emission limitation[3] and/or the control of existing sources below allowable levels is required so that the source will not cause a violation of any NAAQS.<br><br>[3]If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission | *Condition 1.* The new source is required to meet a more stringent emission limitation[3] and/or the control of existing sources below allowable levels is required so that the source will not cause a violation of any NAAQS.<br><br>[3]If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission |

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| | 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~~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. Hereafter, the term *emission limitation* shall also include such design, operational, or equipment standards. | 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. Hereafter, the term *emission limitation* shall also include such design, operational, or equipment standards.<br><br>**(Change finalized as proposed)** |
| Appendix S IV.A. *Condition 1.* | *Condition 1.* The new source is required to meet an emission limitation[4] which specifies the lowest achievable emission rate for such source.<br><br>[3]If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the authority may instead prescribe a design, operational or equipment standard. In such cases, the reviewing authority shall make its best estimate as to the emission rate | *Condition 1.* The new source is required to meet an emission limitation[4] which specifies the lowest achievable emission rate for such source.<br><br>[3]If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the authority may instead prescribe a design, operational or equipment standard. In such cases, the reviewing authority shall make its best estimate as to the emission rate |

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| | that will be achieved and must specify that rate in the required submission to EPA (see ~~Part~~ 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. Hereafter, the term *emission limitation* shall also include such design, operational, or equipment standards. | 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. Hereafter, the term *emission limitation* shall also include such design, operational, or equipment standards.<br>**(Change finalized as proposed)** |
| Appendix S IV.A. *Condition 4.* | *Condition 4.* The emission offsets will provide a positive net air quality benefit in the affected area (see ~~Section~~section IV.D. ~~below).~~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~~section IV.D. of this Ruling will be considered adequate to meet this condition. | *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.<br>**(Changes finalized as proposed.)** |
| Appendix S IV.B. | B. *Exemptions from certain conditions*. The reviewing authority may exempt the following sources from Condition 1 under ~~S~~section III.D. of this Ruling or Conditions 3 and ~~4.~~ under ~~Section~~section IV.A. of this Ruling: | 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: |

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| | | **(Changes finalized as proposed.)** |
| Appendix S IV.B.(i).1. | 1. The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with Condition 1 under ~~S~~section III.D. of this Ruling or Conditions 3 and 4 under ~~Section~~section IV.A. of this Ruling and that such efforts were unsuccessful; | 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;<br>**(Changes finalized as proposed.)** |
| Appendix S IV.C.3.(i) | (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~~ IV.C.3.(i)(*1*) ~~Through~~ and ~~2~~ (*2*) of this ~~section~~Ruling. | (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.<br>**(Change finalized as proposed)** |
| Appendix S IV.C.3.(ii) | (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.~~ IV.C.3.(i)(*1*) ~~through~~ and ~~2~~ (*2*) of this ~~section~~ Ruling may be generally credited only if: | (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:<br>**(Change finalized as proposed)** |
| Appendix S IV.C.3.(ii)(2) | (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.~~ IV.C.3.(i)(*1*) ~~through~~ and ~~2~~ (*2*) of this ~~section~~Ruling. | (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 Ruling.<br>**(Change finalized as proposed.)** |
| Appendix S IV.C.4 | 4. *Credit for VOC substitution.* ~~As set forth in the Agency's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977),~~ EPA has found that almost all non- | 4. *Credit for VOC substitution*. No emission offset credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except that an emission credit may be |

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| | 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) ~~in Table 1 of the above policy statement~~. | allowed for the replacement with those compounds listed as having negligible photochemical reactivity in § 51.100(s).<br>**(Change finalized as proposed with minor language modification)** |
| Appendix S IV.C.5 | 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~~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 | 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 |

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| | 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. | authority should identify them in either a SIP revision or a permit, and establish rules as to how and when they may be used. **(Change finalized as proposed.)** |
| Appendix S IV.D. | D. *Location of offsetting emissions.* The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this Ruling for increased emissions of any air pollutant only by obtaining emissions reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the reviewing authority may allow the owner or operator of a source to obtain such emissions reductions in another nonattainment area if the conditions ~~in~~under paragraphs V.D.1 and 2 ~~IV.D.1 and 2~~ of this Ruling are met. | 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 IV.D.1 and 2 of this Ruling are met. **(Portion of proposed change finalized as proposed; inadvertent change of "IV.D.1 and 2" to "V.D.1 and 2" is not being finalized.)** |
| Appendix S IV.G.1. | 1. In meeting the emissions offset requirements of ~~paragraph IV.A.~~ 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. | 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. **(Change finalized as proposed)** |
| Appendix S IV.H. | 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 | 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 |

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| | 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. | 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 NOx waiver applying the standards set forth under section 182(f) of the Act and the waiver continues to apply.<br>**(Change finalized as proposed)** |
| Appendix S IV.I.2 | 2. For any major stationary source ~~for~~with a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under paragraph IV.K of this Ruling. | 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.<br>**(Change finalized as proposed)** |
| Appendix S IV.J.6.(ii) | (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 paragraph 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. | (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 paragraph 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.<br>**(Change finalized as proposed)** |

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| Appendix S IV.K.5. | 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. | 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.<br>**(Change finalized as proposed)** |
| Appendix S IV.K.14. | 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. | 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.<br>**(Change finalized as proposed)** |
| Appendix S V.A. and footnote 7 in 1st paragraph | A. *Source initiated emission offsets.* A source may propose emission offsets which involve:<br><br>(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 | A. *Source initiated emission offsets*. A source may propose emission offsets which involve:<br><br>(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 |

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| | 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.<br><br>[7]The 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. | 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.<br><br>[7]The 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.<br>**(Change finalized as proposed.)** |
| Appendix S V.A. [2nd paragraph] | The form of the SIP revision may be a State or local regulation, operating permit condition, consent or enforcement order, or any other mechanism available to the State that is enforceable under the Clean Air Act. If a SIP revision is required, the public hearing on the revision may be substituted for the normal public comment procedure required for all major sources under ~~40 CFR 51.18~~§ 51.165. The formal | 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~~51.102. The formal publication of |

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| | 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. | 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. **(Change from proposed cross reference 40 CFR § 51.165 to 40 CFR § 51.102 to better reflect SIP public participation. This was noted by EPA post proposal)** |
| **§ 52.21** | | |
| 52.21(a)(2)(iv)(*a*) | (*a*) Except as otherwise provided in ~~paragraphs~~ paragraph (a)(2)(v) ~~and (vi)~~ of this section, and consistent with the definition of major modification contained in paragraph (b)(2) of this section, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (b)(40) of this section)~~,~~ and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase. | (*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) 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. **(Change finalized as proposed)** |

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| 52.21(a)(2)(iv)(*f*) | (*f*) *Hybrid test for projects that involve multiple types of emissions units*. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (a)(2)(iv)(*c*) ~~through~~ 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). | (*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).<br>**(Change finalized as proposed)** |
| 52.21(b)(1)(i)(*a*) | (*a*) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants (with thermal dryers), primary copper smelters, municipal incinerators capable of charging more than ~~250~~ 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 | (*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 |

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| | 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; | 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;<br>**(Change finalized as proposed)** |
| 52.21(b)(1)(i)(*b*) | (*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 | (*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<br>**(Change finalized as proposed.)** |
| 52.21(b)(1)(i)(*c*) | (*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 ~~changes~~change would constitute a major stationary source by itself. | (*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.<br>**(Change finalized as proposed)** |
| 52.21(b)(1)(iii)(*h*) | (*h*) Municipal incinerators capable of charging more than ~~250~~ 50 tons of refuse per day; | (*h*) Municipal incinerators capable of charging more than 50 tons of refuse per day;<br>**(Change finalized as proposed)** |
| 52.21(b)(1)(iii)(*z*) | | (*z*) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, and |

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| | | **(Change was not proposed but recommended by a commenter)** |
| 52.21(b)(2)(iii)(*a*) | (*a*) Routine maintenance, repair and replacement; ~~Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc) of this section;~~<br><br>~~NOTE TO PARAGRAPH (b)(2)(iii)(*a*): By court order on December 24, 2003, the second sentence of this paragraph (b)(2)(iii)(a) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.~~ | (*a*) Routine maintenance, repair and replacement; **(Change finalized as proposed)** |
| 52.21(b)(2)(iii)(*b*) | | *(b)* Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan~~t~~ pursuant to the Federal Power Act;<br>**(Change was not proposed; however, it was noticed by EPA post-proposal and changed in this final rule from "plant" to "plan")** |
| 52.21(b)(2)(iii)(*e*)(*1*) | *(1)* The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or | (*1*) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or |

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| | under regulations approved pursuant to 40 CFR part 51, subpart I ~~or 40 CFR 51.166~~; or | under regulations approved pursuant to 40 CFR part 51, subpart I; or<br>**(Change finalized as proposed)** |
| 52.21(b)(2)(iii)(*f*) | (*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~~or 40 CFR 51.166~~. | (*f*) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I.<br>**(Change finalized as proposed)** |
| 52.21(b)(3)(iii)(*b*) | (*b*) [Reserved]~~The increase or decrease in emissions did not occur at a Clean Unit except as provided in paragraphs (x)(8) and (y)(10) of this section.~~ | (*b*) [Reserved]<br>**(Change finalized as proposed)** |
| 52.21(b)(3)(vi)(*c*) | (*c*) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.~~; and~~ | (*c*) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.<br>**(Change finalized as proposed)** |
| 52.21(b)(12) | (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 | (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 |

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| | modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60, ~~and~~ 61, 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. | 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~~ or 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.<br>**(Proposed change of the addition of part 63 is being made in final rule only for the definition of Best Available Control Technology (BACT). Additionally, changed "and" to "or" after review of comments received.)** |
| 52.21(b)(16)(i) | (i) The applicable standards as set forth in 40 CFR parts 60, ~~and~~ 61, and 63; | (i) The applicable standards as set forth in 40 CFR parts 60 and 61;<br>**(The proposed changes are not being included in the final rule.)** |

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| 52.21(b)(17) | (17) *Federally enforceable* means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60, ~~and~~ 61, 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. | (17) *Federally enforceable* means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60 and 61 requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.<br>**(Proposed changes not being included in final rule.)** |
| 52.21(b)(23)(ii) | (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. | (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.<br>**(Change finalized as proposed)** |
| 52.21(b)(33)(i) through (iv) | (iii) The replacement does not alter the basic design parameters ~~(as discussed in paragraph (cc)(2) of this section)~~ (as discussed in paragraph (b)(33)(v) of this section) of the process unit (as discussed in paragraph (b)(33)(vi) of this section). | (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;<br>(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit;<br>(iii) The replacement does not alter the basic design parameters of the process unit; and<br>(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently |

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| | | 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.<br><br>**(Proposed change is not being included in the final rule; however, original parenthetical will be removed in the final rule. Further a minor edit by EPA between the proposal and final rule of the addition of semi-colons to the subparagraphs (i) through (iv))** |
| 52.21(b)(33)(v) and (vi) | (v) *Basic design parameters.* The replacement does not change the basic design parameter(s) of the process unit to which the activity pertains.<br><br>(*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.<br><br>(*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 | **(Proposed changes are not being included in the final rule.)** |

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| | 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.<br><br>(*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).<br><br>(*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)(a) and (b) of this section.<br><br>(*e*) If design information is not available for a process unit, then the owner or operator shall | |

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| | 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.<br><br>(*f*) Efficiency of a process unit is not a basic design parameter.<br><br>(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.<br><br>(*b*) The following list identifies the process units at specific categories of stationary sources:<br><br>(*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 | **(Proposed changes are not being included in the final rule)**<br><br>**(The proposed changes are not being included in the final rule.)** |

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| | systems. Each separate generating unit is a separate process unit.<br><br>(*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.<br><br>(*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. | |
| 52.21(b)(41)(ii)(*c*) | (*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 | (*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<br>**(Change finalized as proposed)** |
| 52.21(b)(48)(i)(*c*) | | (*c*) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to |

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| | | determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used ~~For~~for each regulated NSR pollutant.<br>**(Change was not proposed; however, it was correctly recommended by a commenter.)** |
| 52.21(b)(48)(ii)*(d)* | (*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~~for each regulated NSR pollutant. | (*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.<br>**(Change finalized as proposed)** |
| 52.21(b)(49)(i) | (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~~s~~ (b)(49)(iv) ~~through (v)~~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. | Remove outdated cross reference. Paragraph (v) was removed 80 FR 50199, August 19, 2015 – PSD and Title V GHG vacated elements rule. *See* related preamble discussion in section II.B.4.d.<br>**(Change finalized as proposed)** |
| 52.21(b)(49)(ii) | (ii) For purposes of paragraphs (b)(49)(iii) through (iv)~~(v)~~ of this section, the term *tpy $CO_2$ equivalent emissions ($CO_2e$)* shall represent an amount of GHGs emitted, and shall be computed as follows: | (ii) For purposes of paragraphs (b)(49)(iii) ~~through~~ and (iv) of this section, the term *tpy $CO_2$ equivalent emissions ($CO_2e$)* shall represent an amount of GHGs emitted, and shall be computed as follows: |

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| | | **(Proposed changes being finalized; additional change ("through" to "and") as recommended by commenter is being finalized.)** |
| 52.21(b)(49)(ii)(*a*) | (*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. ~~For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).~~ | (*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.<br>**(Change finalized as proposed)** |
| 52.21(b)(49)(iii) | (iii) The term *emissions increase* as used in paragraph~~s~~ (b)(49)(iv) ~~through (v)~~of this section shall mean that both a significant emissions increase (as calculated using the procedures in paragraph (a)(2)(iv) of this section) and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section) occur. For the pollutant GHGs, an emissions increase shall be based on tpy $CO_2e$, and shall be | (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 $CO_2e$, and shall be calculated assuming the |

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| | calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" ~~is~~ shall be defined as 75,000 tpy $CO_2e$ instead of applying the value in paragraph (b)(23)(ii) of this section. | pollutant GHGs is a regulated NSR pollutant~~,~~ and "significant" is ~~shall be~~ defined as 75,000 tpy $CO_2e$ instead of applying the value in paragraph (b)(23)(ii) of this section. **(Modified based upon comment received.)** |
| 52.21(b)(49)(iv)(*b*) | (*b*) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy $CO_2e$ or more.~~;~~ ~~and~~ | (*b*) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy $CO_2e$ or more. **(Change finalized as proposed)** |
| 52.21(b)(51) | (51) *Reviewing authority* means the State air pollution control agency, local agency, other State agency, Indian tribe, or other agency authorized by the Administrator to carry out a permit program under § 51.165 ~~and~~or § 51.166 of this chapter, or the Administrator in the case of EPA-implemented permit programs under this section. | (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. **(Change finalized as proposed)** |
| 52.21(b)(55) through (58) | ~~(55)(i) In general, *process unit* means any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an intermediate or a completed product. A single stationary source may contain more than one process unit, and a process unit may contain more than one emissions unit.~~<br><br>~~(ii) Pollution control equipment is not part of the process unit, unless it serves a dual function as~~ | **(Change finalized as proposed)** |

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| | ~~both process and control equipment. Administrative and warehousing facilities are not part of the process unit.~~<br><br>~~(iii) For replacement cost purposes, components shared between two or more process units are proportionately allocated based on capacity.~~<br><br>~~(iv) The following list identifies the process units at specific categories of stationary sources.~~<br><br>~~*(a)* For a steam electric generating facility, the process unit consists of those portions of the plant that contribute directly to the production of electricity. For example, at a pulverized coal-fired facility, the process unit would generally be the combination of those systems from the coal receiving equipment through the emission stack (excluding post-combustion pollution controls), including the coal handling equipment, pulverizers or coal crushers, feedwater heaters, ash handling, boiler, burners, turbine-generator set, condenser, cooling tower, water treatment system, air preheaters, and operating control systems. Each separate generating unit is a separate process unit.~~<br><br>~~*(b)* For a petroleum refinery, there are several categories of process units: those that separate and/or distill petroleum feedstocks; those that change molecular structures; petroleum treating processes; auxiliary facilities, such as steam generators and hydrogen production units; and~~ | |

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| | those that load, unload, blend or store intermediate or completed products.<br><br>*(c)* For an incinerator, the process unit would consist of components from the feed pit or refuse pit to the stack, including conveyors, combustion devices, heat exchangers and steam generators, quench tanks, and fans.<br><br>NOTE TO PARAGRAPH (b)(55):<br>By a court order on December 24, 2003, this paragraph (b)(55) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.<br><br>(56) *Functionally equivalent component* means a component that serves the same purpose as the replaced component.<br><br>NOTE TO PARAGRAPH (b)(56):<br>By a court order on December 24, 2003, this paragraph (b)(56) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.<br><br>(57) *Fixed capital cost* means the capital needed to provide all the depreciable components. | Remove vacated language and outdated court stay note.<br><br>**(Change finalized as proposed)**<br><br>Remove vacated language and outdated court stay note.<br><br>**(Change finalized as proposed)** |

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| | ~~"Depreciable components" refers to all components of fixed capital cost and is calculated by subtracting land and working capital from the total capital investment, as defined in paragraph (b)(58) of this section.~~<br><br>~~NOTE TO PARAGRAPH (b)(57):~~<br>~~By a court order on December 24, 2003, this paragraph (b)(57) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.~~<br><br>~~(58) *Total capital investment* means the sum of the following: all costs required to purchase needed process equipment (purchased equipment costs); the costs of labor and materials for installing that equipment (direct installation costs); the costs of site preparation and buildings; other costs such as engineering, construction and field expenses, fees to contractors, startup and performance tests, and contingencies (indirect installation costs); land for the process equipment; and working capital for the process equipment.~~<br><br>~~NOTE TO PARAGRAPH (b)(58):~~<br>~~By a court order on December 24, 2003, this paragraph (b)(58) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At~~ | Remove vacated language and outdated court stay note.<br><br>**(Change finalized as proposed)**<br><br>Remove vacated language and outdated court stay note.<br>**(Change finalized as proposed)** |

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| | ~~that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.~~ | |
| 52.21(g)(4) | (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~~provided that: | (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:<br>**(Change finalized as proposed)** |
| 52.21(i)(1)(i) through (v) | (i) [Reserved] ~~Construction commenced on the source or modification before August 7, 1977. The regulations at 40 CFR 52.21 as in effect before August 7, 1977, shall govern the review and permitting of any such source or modification; or~~<br><br>(ii) [Reserved] ~~The source or modification was subject to the review requirements of 40 CFR 52.21(d)(1) as in effect before March 1, 1978, and the owner or operator:~~<br><br>~~(a) Obtained under 40 CFR 52.21 a final approval effective before March 1, 1978;~~<br><br>~~(b) Commenced construction before March 19, 1979; and~~<br><br>~~(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or~~ | (i) [Reserved]<br><br>(ii) [Reserved]<br><br>(iii) [Reserved]<br><br>(iv) [Reserved]<br><br>(v) [Reserved]<br>**(Change finalized as proposed)** |

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| | (iii) [Reserved] ~~The source or modification was subject to 40 CFR 52.21 as in effect before March 1, 1978, and the review of an application for approval for the stationary source or modification under 40 CFR 52.21 would have been completed by March 1, 1978, but for an extension of the public comment period pursuant to a request for such an extension. In such a case, the application shall continue to be processed, and granted or denied, under 40 CFR 52.21 as in effect prior to March 1, 1978; or~~<br>(iv) [Reserved] ~~The source or modification was not subject to 40 CFR 52.21 as in effect before March 1, 1978, and the owner or operator:~~<br><br>~~(a) Obtained all final Federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before March 1, 1978;~~<br><br>~~(b) Commenced construction before March 19, 1979; and~~<br><br>~~(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or~~<br><br>(v) [Reserved] ~~The source or modification was not subject to 40 CFR 52.21 as in effect on June 19, 1978 or under the partial stay of regulations published on February 5, 1980 (45 FR 7800), and the owner or operator:~~ | |

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| | ~~(a) Obtained all final Federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before August 7, 1980;~~<br><br>~~(b) Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable State Implementation Plan; and~~<br><br>~~(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or~~ | |
| 52.21(i)(1)(vii)(*h*) | (h) Municipal incinerators capable of charging more than ~~250~~ 50 tons of refuse per day; | (h) Municipal incinerators capable of charging more than 50 tons of refuse per day;<br>**(Change finalized as proposed)** |
| 52.21(i)(1)(ix) and (x) | ~~(ix) The source or modification was not subject to §52.21, with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator:~~<br><br>~~(a) Obtained all final Federal, State, and local preconstruction approvals or permits necessary under the applicable State implementation plan before July 31, 1987;~~<br><br>~~(b) Commenced construction within 18 months after July 31, 1987, or any earlier time required under the State implementation plan; and~~ | **(Change finalized as proposed)**<br>NOTE: NPRM preamble indicated that paragraph (i)(1)(viii) was proposed to be deleted along with paragraphs (i)(1)(ix) and (x); however, that was not EPA's intent and paragraph (i)(1)(viii) was not included for deletion in the regulatory text. |

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| | ~~(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time.~~<br><br>~~(x) The source or modification was subject to 40 CFR 52.21, with respect to particulate matter, as in effect before July 31, 1987 and the owner or operator submitted an application for a permit under this section before that date, and the Administrator subsequently determines that the application as submitted was complete with respect to the particular matter requirements then in effect in the section. Instead, the requirements of paragraphs (j) through (r) of this section that were in effect before July 31, 1987 shall apply to such source or modification.~~ | |
| 52.21(i)(6) through (12) | (6) [Reserved] ~~The requirements for best available control technology in paragraph (j) of this section and the requirements for air quality analyses in paragraph (m)(1) of this section, shall not apply to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under those regulations before August 7, 1980, and the Administrator subsequently determines that the application as submitted before that date was complete. Instead, the requirements at 40 CFR 52.21(j) and (n) as in effect on June 19, 1978 apply to any such source or modification.~~ | (6) [Reserved]<br><br>(7) [Reserved]<br><br>(8) [Reserved]<br><br>(9) [Reserved]<br><br>(10) [Reserved]<br><br>(11) [Reserved]<br><br>**(12) [Reserved]** |

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| | (7) [Reserved] ~~(i)The requirements for air quality monitoring in paragraphs (m)(1)(ii) through (iv) of this section shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Administrator subsequently determines that the application as submitted before that date was complete with respect to the requirements of this section other than those in paragraphs (m)(1)(ii) through (iv) of this section, and with respect to the requirements for such analyses at 40 CFR 52.21(m)(2) as in effect on June 19, 1978. Instead, the latter requirements shall apply to any such source or modification.~~<br><br>~~(ii) The requirements for air quality monitoring in paragraphs (m)(1)(ii) through (iv) of this section shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Administrator subsequently determines that the application as submitted before that date was complete, except with respect to the requirements in paragraphs (m)(1)(ii) through (iv).~~<br><br>(8) [Reserved] ~~(i) At the discretion of the Administrator, the requirements for air quality~~ | **(Change finalized as proposed with the addition of subparagraph 12 for the vacatur of Ozone grandfathering)** |

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| | ~~monitoring of PM10 in paragraphs (m)(1) (i) (iv) of this section may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for a permit under this section on or before June 1, 1988 and the Administrator subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in paragraphs (m)(1)(i) (iv).~~<br><br>~~(ii) The requirements for air quality monitoring pf PM10 in paragraphs (m)(1), (ii) and (iv) and (m)(3) of this section shall apply to a particular source or modification if the owner or operator of the source or modification submits an application for a permit under this section after June 1, 1988 and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988 to the date the application becomes otherwise complete in accordance with the provisions set forth under paragraph (m)(1)(viii) of this section, except that if the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over a shorter period.~~<br><br>(9) [Reserved] ~~The requirements of paragraph (k)(1)(ii) of this section shall not apply to a stationary source or modification with respect to~~ | |

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| | ~~any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increase took effect as part of the applicable implementation plan and the Administrator subsequently determined that the application as submitted before that date was complete.~~<br><br>(10) [Reserved] ~~The requirements in paragraph (k)(1)(ii) of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM-10 if (i) the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increases for PM-10 took effect in an implementation plan to which this section applies, and (ii) the Administrator subsequently determined that the application as submitted before that date was otherwise complete. Instead, the requirements in paragraph (k)(1)(ii) shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.~~<br><br>(11) [Reserved] ~~The requirements of paragraph (k)(1) of this section shall not apply to a stationary source or modification with respect to the national ambient air quality standards for PM2.5 in effect on March 18, 2013 if:~~ | |

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| | ~~(i) The Administrator has determined a permit application subject to this section to be complete on or before December 14, 2012. Instead, the requirements in paragraph (k)(1) of this section shall apply with respect to the national ambient air quality standards for PM2.5 in effect at the time the Administrator determined the permit application to be complete; or~~<br><br>~~(ii) The Administrator has first published before March 18, 2013 a public notice that a draft permit subject to this section has been prepared. Instead, the requirements in paragraph (k)(1) of this section shall apply with respect to the national ambient air quality standards for PM2.5 in effect on the date the Administrator first published a public notice that a draft permit has been prepared.~~ | |
| 52.21(j)(1) | (1) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 CFR parts 60, ~~and~~ 61, and 63. | (1) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 CFR parts 60, ~~and~~ 61, or 63. **(Proposed change finalized with slight variation)** |
| 52.21(m)(1)(i)(*a*) | (*a*) For the source, each pollutant that it would have the potential to ~~omit~~emit in a significant amount; | (*a*) For the source, each pollutant that it would have the potential to emit in a significant amount; **(Change finalized as proposed)** |
| 52.21(m)(1)(v) | [Reserved] ~~For any application which becomes complete, except as to the requirements of paragraphs (m)(1) (iii) and (iv) of this section,~~ | (v) [Reserved]<br><br>**(Change finalized as proposed)** |

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| | ~~between June 8, 1981, and February 9, 1982, the data that paragraph (m)(1)(iii) of this section, requires shall have been gathered over at least the period from February 9, 1981, to the date the application becomes otherwise complete, except that:~~<br><br>~~(*a*) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over at least the period required by those regulations.~~<br>~~(*b*) If the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that paragraph (m)(1)(iii) of this section requires shall have been gathered over at least that shorter period.~~<br>~~(*c*) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the Administrator may waive the otherwise applicable requirements of this paragraph (v) to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.~~ | |
| 52.21(m)(1)(vii) and (viii) | (vii) [Reserved]~~ For any application that becomes complete, except as to the requirements of paragraphs (m)(1) (iii) and (iv) pertaining to PM10, after December 1, 1988 and no later than~~ | (vii) [Reserved]<br><br>(viii) [Reserved] |

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| | ~~August 1, 1989 the data that paragraph (m)(1)(iii) requires shall have been gathered over at least the period from August 1, 1988 to the date the application becomes otherwise complete, except that if the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over that shorter period.~~<br><br>(viii) [Reserved] ~~With respect to any requirements for air quality monitoring of $PM_{10}$ under paragraphs (i)(8) (i) and (ii) of this section, the owner or operator of the source or modification shall use a monitoring method approved by the Administrator and shall estimate the ambient concentrations of $PM_{10}$ using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Administrator.~~ | **(Change finalized as proposed)** |
| 52.21(n)(1) | (1) With respect to a source or modification to which paragraphs (j), ~~(l), (n) and (p)~~ (k), (m), and (o) of this section apply, such information shall include: | (1) With respect to a source or modification to which paragraphs (j), (k), (m), and (o) of this section apply, such information shall include:<br>**(Change finalized as proposed)** |
| 52.21(p)(5) | (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 | (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 |

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| | 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~~ 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, $PM_{2.5}$, $PM_{10}$, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants: | 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, $PM_{2.5}$, $PM_{10}$, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants: **(Change finalized as proposed)** |
| 52.21(p)(6) | (6) *Sulfur dioxide variance by Governor with Federal Land Manager's concurrence*. The owner or operator of a proposed source or modification which cannot be approved under paragraph ~~(q)(4)~~(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 ~~twenty-four~~ 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 | (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 |

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| | increase. If such variance is granted, the Administrator shall issue a permit to such source or modification pursuant to the requirements of paragraph ~~(q)(7)~~ (p)(8) of this section: ~~*Provided,* That~~ provided that the applicable requirements of this section are otherwise met. | 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. **(Change finalized as proposed)** |
| 52.21(p)(7) | (7) *Variance by the Governor with the President's concurrence*. In any case where the Governor recommends a variance ~~in~~ 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 ~~(q)(7)~~(p)(8) of this section~~: *Provided,* That~~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. **(Change finalized as proposed)** |
| 52.21(p)(8) | (8) *Emission limitations for Presidential or gubernatorial variance*. In the case of a permit issued pursuant to paragraph ~~(q) (5)~~(p)(6) or ~~(6)~~(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 | (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 |

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| | 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: | 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:<br>**(Change finalized as proposed)** |
| 52.21(r)(4) | (4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements ~~or~~ 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. | (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.<br>**(Change finalized as proposed)** |
| 52.21(u)(2)(ii) | (ii) The delegate agency shall send a copy of any public comment notice required under paragraph ~~(r)~~(q) of this section to the Administrator through the appropriate Regional Office. | (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.<br><br>**(Change finalized as proposed)** |
| 52.21(u)(3) | (3) In the case of a source or modification which proposes to construct in a ~~class~~ 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 | (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 II |

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| | ~~class~~ Class III ~~II~~ area, and where no standard under section 111 of the ~~act~~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. | 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.<br><br>**(Change finalized as proposed with minor edit noted)**<br><br>**NOTE: As correctly identified by a commenter the term "Class II area" was inadvertently changed to "Class III area" in the proposed rule. The EPA is correcting this change in the final rule to retain the term "Class II area."** |
| 52.21(w)(1) | (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). | (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).<br>**(Change finalized as proposed)** |
| 52.21(cc) | ~~(cc) Without regard to other considerations, routine maintenance, repair and replacement includes, but is not limited to, the replacement of any component of a process unit with an identical or functionally equivalent component(s), and maintenance and repair activities that are part of the replacement activity, provided that all of the requirements in paragraphs (cc)(1) through (3) of this section are met.~~ | **(Change finalized as proposed)** |

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| | ~~(1)*Capital cost threshold for equipment replacement.*~~<br><br>~~(i) For an *electric utility steam generating unit*, as defined in § 52.21(b)(31), the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced. For a process unit that is not an electric utility steam generating unit the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced.~~<br><br>~~(ii) In determining the replacement value of the process unit; and, except as otherwise allowed under paragraph (cc)(1)(iii) of this section, the owner or operator shall determine the replacement value of the process unit on an estimate of the fixed capital cost of constructing a new process unit, or on the current appraised value of the process unit.~~<br><br>~~(iii) As an alternative to paragraph (cc)(1)(ii) of this section for determining the replacement value of a process unit, an owner or operator may choose to use insurance value (where the insurance value covers only complete replacement), investment value adjusted for~~ | |

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| | ~~inflation, or another accounting procedure if such procedure is based on Generally Accepted Accounting Principles, provided that the owner or operator sends a notice to the reviewing authority. The first time that an owner or operator submits such a notice for a particular process unit, the notice may be submitted at any time, but any subsequent notice for that process unit may be submitted only at the beginning of the process unit's fiscal year. Unless the owner or operator submits a notice to the reviewing authority, then paragraph (cc)(1)(ii) of this section will be used to establish the replacement value of the process unit. Once the owner or operator submits a notice to use an alternative accounting procedure, the owner or operator must continue to use that procedure for the entire fiscal year for that process unit. In subsequent fiscal years, the owner or operator must continue to use this selected procedure unless and until the owner or operator sends another notice to the reviewing authority selecting another procedure consistent with this paragraph or paragraph (cc)(1)(ii) of this section at the beginning of such fiscal year.~~<br><br>~~(2) *Basic design parameters.* The replacement does not change the basic design parameter(s) of the process unit to which the activity pertains.~~<br><br>~~(i) Except as provided in paragraph (cc)(2)(iii) of this section, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either~~ | |

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| | ~~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.~~<br><br>~~(ii) Except as provided in paragraph (cc)(2)(iii) of this section, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.~~<br><br>~~(iii) If the owner or operator believes the basic design parameter(s) in paragraphs (cc)(2)(i) and (ii) of this section is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority shall issue a permit that is legally enforceable that records~~ | |

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| | ~~such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).~~<br><br>~~(iv) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in paragraphs (cc)(2)(i) and (ii) of this section.~~<br><br>~~(v) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.~~<br><br>~~(vi) Efficiency of a process unit is not a basic design parameter.~~<br><br>~~(3) The replacement activity shall not cause the process unit to exceed any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.~~<br><br>~~Note to paragraph (cc):~~<br>~~By a court order on December 24, 2003, this paragraph (cc) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA~~ | Remove outdated court stay note.<br>**(Change finalized as proposed)** |

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| | ~~will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.~~ | |
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