

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

PART 5. PERMITS FOR PART 70 SOURCES

252:100-8-2. Definitions

The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise. Except as specifically provided in this Section, terms used in this Part retain the meaning accorded them under the applicable requirements of the Act.

"Administratively complete" means an application that provides:

- (A) All information required under OAC 252:100-8-5(c), (d), or (e);
- (B) A landowner affidavit as required by OAC 252:2-15-20(b)(3);
- (C) The appropriate application fees as required by OAC 252:100-8-1.7; and
- (D) Certification by the responsible official as required by OAC 252:100-8-5(f).

"Affected source" means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

"Affected states" means:

- (A) all states:
 - (i) That are one of the following contiguous states: Arkansas, Colorado, Kansas, Missouri, New Mexico and Texas, and
 - (ii) That in the judgment of the DEQ may be directly affected by emissions from the facility seeking the permit, permit modification, or permit renewal being proposed; or
- (B) all states that are within 50 miles of the permitted source.

"Affected unit" means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source subject to this Chapter (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future effective compliance dates):

- (A) Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52;
- (B) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Act;
- (C) Any standard or other requirement under section 111 of the Act, including section 111(d);
- (D) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act, but not including the contents of any risk management plan required under 112(r) of the Act;
- (E) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;
- (F) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;
- (G) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;
- (H) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

- (I) Any standard or other requirement for tank vessels, under section 183(f) of the Act;
- (J) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit; and
- (K) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

"Begin actual construction" means for purposes of this Part, that the owner or operator has begun the construction or installation of the emitting equipment on a pad or in the final location at the facility.

"Designated representative" means with respect to affected units, a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

"Draft permit" means the version of a permit for which the DEQ offers public participation under 27A O.S. §§ 2-14-101 through 2-14-401 and OAC 252:4-7 or affected State review under OAC 252:100-8-8.

"Emergency" means, when used in OAC 252:100-8-6(a)(3)(C)(iii)(I) and (e), any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

"Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. Fugitive emissions from valves, flanges, etc. associated with a specific unit process shall be identified with that specific emission unit. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act.

"Final permit" means the version of a part 70 permit issued by the DEQ that has completed all review procedures required by OAC 252:100-8-7 through 252:100-8-7.5 and OAC 252:100-8-8.

"Fugitive emissions" means those emissions of regulated air pollutants which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

"General permit" means a part 70 permit that meets the requirements of OAC 252:100-8-6.1.

"Insignificant activities" means individual emissions units that are either on the list approved by the Administrator and contained in Appendix I, or whose actual calendar year emissions do not exceed any of the limits in (A) and (B) of this definition. Any activity to which a State or federal applicable requirement applies is not insignificant even if it meets the criteria below or is included on the insignificant activities list.

(A) 5 tons per year of any one criteria pollutant.

(B) 2 tons per year for any one hazardous air pollutant (HAP) or 5 tons per year for an

aggregate of two or more HAP's, or 20 percent of any threshold less than 10 tons per year for single HAP that the EPA may establish by rule.

"MACT" means maximum achievable control technology.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that is described in subparagraph (A), (B), or (C) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit primary SIC code) as described in the Standard Industrial Classification Manual, 1987.

(A) A major source under section 112 of the Act, which is defined as:

- (i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ~~10 tons per year ("tpy")~~ TPY or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, ~~25 tpy~~ TPY or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or.
- (ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, ~~100 tpy~~ TPY or more of any regulated air pollutant (except that fraction of particulate matter that exhibits an average aerodynamic particle diameter of more than 10 micrometers GPM) (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary sources:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;

- (xv) Carbon black plants (furnace process);
 - (xvi) Primary lead smelters;
 - (xvii) Fuel conversion plants;
 - (xviii) Sintering plants;
 - (xix) Secondary metal production plants;
 - (xx) Chemical process plants (not including ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140);
 - (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
 - (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - (xxiii) Taconite ore processing plants;
 - (xxiv) Glass fiber processing plants;
 - (xxv) Charcoal production plants;
 - (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
 - (xxvii) All other stationary source categories which, as of August 7, 1980, are being regulated by a standard promulgated under section 111 or 112 of the Act.
- (C) A major stationary source as defined in part D of Title I of the Act, including:
- (i) For ozone non-attainment areas, sources with the potential to emit 100-tpy TPY or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50-tpy TPY or more in areas classified as "serious," 25-tpy TPY or more in areas classified as "severe," and 10-tpy TPY or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10-tpy TPY of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;
 - (ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50-tpy TPY or more of volatile organic compounds;
 - (iii) For carbon monoxide non-attainment areas:
 - (I) that are classified as "serious"; and
 - (II) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50-tpy TPY or more of carbon monoxide; and
 - (iv) For particulate matter (PM-10) non-attainment areas classified as "serious," sources with the potential to emit 70-tpy TPY or more of PM-10.

"Maximum capacity" means the quantity of air contaminants that theoretically could be emitted by a stationary source without control devices based on the design capacity or maximum production capacity of the source and 8,760 hours of operation per year. In determining the maximum theoretical emissions of VOCs for a source, the design capacity or maximum production capacity shall include the use of raw materials, coatings and inks with the highest VOC content used in practice by the source.

"Permit" means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

"Permit modification" means a revision to a Part 70 construction or operating permit that meets the requirements of OAC 252:100-8-7.2(b).

"Permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in OAC 252:100-5-2.2 (whether such costs are incurred by the DEQ or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

"Permit revision" means any permit modification or administrative permit amendment.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder.

"Proposed permit" means the version of a permit that the DEQ proposes to issue and forwards to the Administrator for review in compliance with OAC 252:100-8-8.

"Regulated air pollutant" means the following:

(A) Nitrogen oxides or any volatile organic compound (VOC), including those substances defined in OAC 252:100-1-3, 252:100-37-2, and 252:100-39-2, except those specifically excluded in the EPA definition of VOC in 40 CFR 51.100(s);

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

(C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(D) Any Class I or II ozone-depleting substance subject to a standard promulgated under or established by Title VI of the Act;

(E) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act (Hazardous Air Pollutants), including sections 112(g) (Modifications), (j) (Equivalent Emission Limitation by Permit, and (r) (Prevention of Accidental Releases), including the following:

(i) any pollutant subject to the requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act (Schedule for Standards and Review), any pollutant for which a subject source would be major shall be considered to be regulated as to that source on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and,

(ii) any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the section 112(g)(2) requirement; or

(F) Any other substance for which an air emission limitation or equipment standard is set by an existing permit or regulation.

"Renewal" means the process by which a permit is reissued at the end of its term.

~~**"Responsible official"** means one of the following:~~

~~(A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:~~

~~(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or~~

- ~~(ii) The delegation of authority to such representatives is approved in advance by the DEQ;~~
- ~~(B) For the partnership or sole proprietorship: a general partner or the proprietor, respectively;~~
- ~~(C) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this Subchapter, a principal executive officer or installation commander of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or~~
- ~~(D) For affected sources:~~
- ~~(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and~~
- ~~(ii) The designated representative for any other purposes under this Subchapter.~~

"Section 502(b)(10) changes" means changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

"Small unit" means a fossil fuel fired combustion device which serves a generator with a name plate capacity of 25 MWe or less.

"State-only requirement" means any standard or requirement pursuant to Oklahoma Clean Air Act (27A O.S. §§ 2-5-101 through 2-5-118, as amended) that is not contained in the State Implementation Plan (SIP).

"State program" means a program approved by the Administrator under 40 CFR Part 70.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act as it existed on January 2, 2006.

"Trivial activities" means any individual or combination of air emissions units that are considered inconsequential and are on a list approved by the Administrator and contained in Appendix J.

"Unit" means, for purposes of Title IV, a fossil fuel-fired combustion device.

252:100-8-4. Requirements for construction and operating permits

(a) Construction permits.

(1) **Construction permit required.** No person shall begin actual construction or installation of any new source that will require a Part 70 operating permit without first obtaining a DEQ-issued air quality construction permit. A construction permit is also required prior to reconstruction of a major affected source under 40 CFR Part 63, reconstruction of a major source if it would then become a major affected source under 40 CFR 63, or for any physical change that would be a significant modification under OAC 252:100-8-7.2(b)(2). In addition to the requirements of this Part, sources subject to Part 7 or Part 9 of this Subchapter must also meet the applicable requirements contained therein.

(2) Requirement for case-by-case MACT determinations.

(A) **Applicability.** The requirement for case-by-case MACT determinations apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after June 29, 1998, unless the source has been specifically regulated or exempted from

regulation under a subpart of 40 CFR Part 63, or the owner or operator has received all necessary air quality permits for such construction or reconstruction before June 29, 1998.

(B) **Exclusions.** The following sources are not subject to this subsection.

(i) Electric utility steam generating units unless and until these units are added to the source category list.

(ii) Stationary sources that are within a source category that has been deleted from the source category list.

(iii) Research and development activities as defined in 40 CFR § 63.41.

(C) **MACT determinations.** If subject to this subsection, an owner or operator may not begin actual construction or reconstruction of a major source of HAP until obtaining from the DEQ an approved MACT determination in accordance with the following regulations: 40 CFR 63.41, 40 CFR 63.43 and 40 CFR 63.44, which are hereby incorporated by reference as they exist on July 1, 2000.

(b) **Operating permits.**

(1) **Operating permits required.** Except as provided in subparagraphs (A) and (B) of this section, no Part 70 source subject to this Chapter may operate after the time that it is required to file a timely application with the DEQ, except in compliance with a DEQ-issued permit.

(A) If the owner or operator of a source subject to the requirement to obtain a Part 70 permit submits a timely application for Part 70 permit issuance or renewal, that source's failure to have a Part 70 permit shall not be a violation of the requirement to have such a permit until the DEQ takes final action on the application. This protection shall cease to apply if the applicant fails to submit, by the deadline specified in writing by the DEQ or OAC 252:100-8-4, any additional information identified as being reasonably required to process the application.

(B) If the owner or operator of a source subject to this Subchapter files a timely application that the DEQ determines to be administratively incomplete due to the applicant's failure to timely provide additional information requested by the DEQ, the applicant loses the protection granted under paragraph (A) of this Section. The source's failure to have a Part 70 permit shall be deemed a violation of this Subchapter.

(C) Filing an operating permit application shall not affect the requirement, if any, that a source have a construction permit.

(2) **Duty to apply.** For each Part 70 source, the owner or operator shall submit a timely and complete permit application on forms supplied by the DEQ in accordance with this section.

(3) **Timely application.** Sources that are subject to the operating permit program established by this Chapter as of March 6, 1996, shall file applications on the following schedules outlined in OAC 252:100-8-4(b)(4). A timely application is one that is postmarked on or before the relevant date listed below. In the event a major source consists of operations under multiple SIC codes, the primary activity shall form the basis for the initial permit application.

(4) **Application submittal schedule.** The following sources are subject to the operating permit program and shall submit initial permit applications according to the following schedule.

(A) No later than September 5, 1996:

(i) Affected sources under the acid rain provisions of the Act shall submit a permit application for at least the affected units at the site. Regardless of the effective date of the program and the requirement to file an application defined in this section, applications for initial Phase II acid rain permits shall be submitted to the DEQ no later than January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides, pursuant to the Act,

§407.

(ii) Any owner or operator shall submit no less than one-third of their total applications for Part 70 sources located at sources classified by the following Source Standard Industrial Classification Codes and which belong to a single major industrial grouping other than 28 (Chemicals and allied products) or 29 (Petroleum refining and related industries):

- (I) Petroleum and Natural Gas, 1311;
- (II) Natural Gas Liquids, 1321;
- (III) Electric Services, 4911, 4961;
- (IV) Natural Gas Transmission, 4922;
- (V) Natural Gas Transmission and Distribution, 4923; and
- (VI) Petroleum Bulk Stations and Terminals, 5171.

(B) All remaining Part 70 sources identified in (b)(4)(A)(ii) of this Subsection shall be subject to the operating permit program and shall submit initial permit applications no later than March 5, 1997.

(C) No later than March 5, 1997, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:

- (i) Metals, 3312, 3315, 3321, 3341, 3351, 3411, 3412, 3432, 3466,
- (ii) Brick Plants, 3251, 3297,
- (iii) Commercial Printing, 2752, 2761.

(D) No later than July 5, 1998, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:

- (i) Refineries, 2911;
- (ii) Cement Plants, 3241;
- (iii) Chemical/Carbon, 2819, 2821, 2851, 2861, 2869, 2891, 2895, 2899, 2999, 3053, 3086, 3089;
- (iv) Petroleum Transportation/Terminals/Storage, 4612, 4613;
- (v) Food Products, 2013, 2074, 2095.

(E) All remaining Part 70 sources shall be subject to the operating permit program and shall submit initial permit applications no later than March 6, 1999.

(5) **Newly regulated sources.** A source that becomes subject to the operating permit program established by this Chapter at any time following the effective date shall file an administratively complete operating permit application within 180 days of commencement of operation.

(6) **Application acceptability.** Notwithstanding the deadlines established in paragraph (4) of this subsection, an application filed prior to the above deadlines following submission of the state program to EPA for approval shall be accepted for processing.

(7) **112(g) applications.** A source that is required to meet the requirements under section 112(g) of the Act, or to have a permit under a preconstruction review program under Title I of such Act, shall file an application to obtain an operating permit or permit amendment or modification within twelve months of commencing operation. Where an existing Part 70 operating permit would prohibit such construction or change in operation, the source must obtain a construction permit before commencing construction.

(8) **Application for renewal.** Sources subject to this Chapter shall file an application for renewal of an operating permit at least ~~six months~~ 180 days before the date of permit expiration, unless

a longer period (not to exceed ~~18 months~~ 540 days) is specified in the permit. Renewal periods greater than ~~six months~~ 180 days are subject to negotiation on a case-by-case basis.

(9) **Phase II acid rain permits.** Sources required to submit applications under the Acid Rain Program shall submit these applications as required by 40 CFR 72.30(b)(2)(i) through (viii).

(10) **Application completeness.** See Environmental Permit Process, OAC 252:4-7-7 and the definition of "administratively complete" in OAC 252:100-8-2.

PART 7. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) REQUIREMENTS FOR ATTAINMENT AREAS

252:100-8-30. Applicability

(a) General applicability.

(1) The requirements of this Part shall apply to the construction of any new major stationary source or any project that is a major modification at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Act.

(2) The requirements of OAC 252:100-8-34 through 252:100-8-36.2 apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this Part otherwise provides.

(3) No new major stationary source or major modification to which the requirements of OAC 252:100-8-34 through 252:100-8-36.2(b) apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

(4) The requirements of OAC 252:100-8, Parts 1, 3, and 5 also apply to the construction of all new major stationary sources and major modifications.

(b) Major modification.

(1) Major modification applicability determination.

(A) Except as otherwise provided in OAC 252:100-8-30(c), and consistent with the definition of "major modification", a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases:

- (i) a significant emissions increase and
- (ii) a significant net emissions increase.

(B) 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.

(2) Calculating significant emissions increase and significant net emissions increase before beginning actual construction. The procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified, according to OAC 252:100-8-30(b)(3) through (5). This is the first step in determining if a proposed modification would be considered a major modification. The procedure for calculating whether a significant net emissions increase will occur at the major stationary source is contained in the definition of "net emissions increase". This is the second step in the process of determining if a proposed modification is a major modification. Both steps occur prior to the beginning of actual construction. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual

emissions for each existing emissions unit, equals or exceeds the amount that is significant for that pollutant.

(4) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the amount that is significant for that pollutant.

(5) **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 OAC 252:100-8-30(b)(3) or (4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the amount that is significant for that pollutant. ~~For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in OAC 252:100-8-30(b)(3) for the existing unit and determined using the method specified in 252:100-8-30(b)(4) for the new emissions unit.~~

(6) **Actual-to-potential test for projects that only involve existing emissions units.** In lieu of using the actual-to-projected-actual test, owners or operators may choose to use the actual-to-potential test to determine if a significant emissions increase of a regulated NSR pollutant will result from a proposed project. A significant emissions increase of a regulated NSR pollutant will occur if the sum of the difference between the potential emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the amount that is significant for that pollutant. Owners or operators who use the actual to potential test will not be subject to the recordkeeping requirements in OAC 252:100-8-36.2(c).

(c) **Plantwide applicability limitation (PAL).** Major stationary sources seeking to obtain or maintain a PAL shall comply with the requirements under OAC 252:100-8-38.

252:100-8-31. Definitions

The following words and terms when used in this Part shall have the following meaning, unless the context clearly indicates otherwise. All terms used in this Part that are not defined in this ~~Subsection~~ Section shall have the meaning given to them in OAC 252:100-1-3, 252:100-8-1.1, or in the Oklahoma Clean Air Act.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (A) through (C) of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under OAC 252:100-8-38. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

(A) In general, actual emissions as of a particular date shall equal the average rate in TPY at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(B) The Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(C) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Allowable emissions" means the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- (A) the applicable standards as set forth in 40 CFR Parts 60 and 61;
- (B) the applicable State rule allowable emissions; or,
- (C) the emissions rate specified as an enforceable permit condition.

"Baseline actual emissions" means the rate of emissions, in TPY, of a regulated NSR pollutant, as determined in accordance with paragraphs (A) through (E) of this definition.

(A) The baseline actual emissions shall be based on current emissions data and the unit's utilization during the period chosen. Current emission data means the most current and accurate emission factors available and could include emissions used in the source's latest permit or permit application, the most recent CEM data, stack test data, manufacturer's data, mass balance, engineering calculations, and other emission factors.

(B) For any existing electric utility steam generating unit (EUSGU), baseline actual emissions means the average rate, in TPY, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Director for a permit required under OAC 252:100-8. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with start-ups, shutdowns, and malfunctions.

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

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

(iv) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in TPY, and for adjusting this amount if required by (B)(ii) of this definition.

(C) For an existing emissions unit (other than an EUSGU), baseline actual emissions means the average rate in TPY, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Director for a permit required either under this Part or under a plan approved by the Administrator, whichever is earlier, except that the 10 year period shall not include any period earlier than November 15, 1990.

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

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

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a MACT standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if DEQ has taken credit for such emissions reduction in an attainment demonstration ~~of~~ or maintenance plan consistent with requirements of 40 CFR 51.165(a)(3)(ii)(G).

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

(v) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in TPY, and for adjusting this amount if required by (C)(ii) and (iii) of this definition.

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

(E) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing EUSGU in accordance with the procedures contained in paragraph (B) of this definition, for other existing emissions units in accordance with the procedures contained in Paragraph (C) of this definition, and for a new emissions unit in accordance with the procedures contained in paragraph (D) of this definition.

"Baseline area" means any intrastate areas (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than $1 \mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established.

(A) Area redesignations under section 107(d)(1)(D) or (E) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(i) establishes a minor source baseline date; or

(ii) is subject to 40 CFR 52.21 or OAC 252:100-8, Part 7, and would be constructed in the same State as the State proposing the redesignation.

(B) Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments, except that such baseline area shall not remain in effect if the Director rescinds the corresponding minor source baseline date in accordance with paragraph (D) of the definition of "baseline date".

"Baseline concentration" means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date.

(A) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(i) the actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in (B) of this definition.

(ii) the allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor

source baseline date.

(B) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

- (i) actual emissions from any major stationary source on which construction commenced after the major source baseline date; and,
- (ii) actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date" means:

(A) Major source baseline date means:

- (i) in the case of particulate matter and sulfur dioxide, January 6, 1975, and
- (ii) in the case of nitrogen dioxide, February 8, 1988.

(B) Minor source baseline date means the earliest date after the trigger date on which a major stationary source or major modification (subject to 40 CFR 52.21 or OAC 252:100-8, Part 7) submits a complete application. The trigger date is:

- (i) in the case of particulate matter and sulfur dioxide, August 7, 1977, and
- (ii) in the case of nitrogen dioxide, February 8, 1988.

(C) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

- (i) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under OAC 252:100-8, Part 7; and
- (ii) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(D) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments, except that the Director may rescind any such minor source baseline date where it can be shown, to the satisfaction of the Director, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM-10 emissions.

"Begin actual construction" means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature.

(A) Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

(B) With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

"Best available control technology" or "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 Director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed

by any applicable standard under 40 CFR parts 60 and 61. If the Director 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.

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the EPA. The Federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence" means, as applied to construction of a major stationary source or major modification, that the owner or operator has all necessary preconstruction approvals or permits and either has:

- (A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or,
- (B) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

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

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂, or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

"Electric utility steam generating unit" or "EUSGU" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential

to emit any regulated NSR pollutant and includes an EUSGU. There are two types of emissions units as described in paragraphs (A) and (B) of this definition.

(A) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(B) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (A) of this definition. A replacement unit is an existing emissions unit.

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

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

"Low terrain" means any area other than high terrain.

"Major modification" means:

(A) Any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source is a major modification.

(i) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for VOC or NO_x shall be considered significant for ozone.

(ii) A physical change or change in the method of operation shall not include:

(I) routine maintenance, repair and replacement;

(II) use of an alternative fuel or raw material by reason of any 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 pursuant to the Federal Power Act;

(III) use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(IV) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(V) use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before January 6, 1975, (unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975) or the source is approved to use under any permit issued under 40 CFR 52.21 or OAC 252:100-7 or 252:100-8;

(VI) 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;

(VII) any change in source ownership;

(VIII) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided the project complies with OAC 252:100 and other requirements necessary to attain and maintain the NAAQS during the

project and after it is terminated;

(IX) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant (on a pollutant-by-pollutant basis) emitted by the unit; or

(X) the reactivation of a very clean coal-fired EUSGU.

(B) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under OAC 252:100-8-38 for a PAL for that pollutant. Instead, the definition of "PAL major modification" at 40 CFR 51.166(w)(2)(viii) shall apply.

"Major stationary source" means

(A) A major stationary source is:

(i) any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 TPY or more of a regulated NSR pollutant:

(I) carbon black plants (furnace process),

(II) charcoal production plants,

(III) chemical process plants, (not including ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140),

(IV) coal cleaning plants (with thermal dryers),

(V) coke oven batteries,

(VI) fossil-fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input,

(VII) fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input,

(VIII) fuel conversion plants,

(IX) glass fiber processing plants,

(X) hydrofluoric, sulfuric or nitric acid plants,

(XI) iron and steel mill plants,

(XII) kraft pulp mills,

(XIII) lime plants,

(XIV) municipal incinerators capable of charging more than 50 tons of refuse per day,

(XV) petroleum refineries,

(XVI) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels,

(XVII) phosphate rock processing plants,

(XVIII) portland cement plants,

(XIX) primary aluminum ore reduction plants,

(XX) primary copper smelters,

(XXI) primary lead smelters,

(XXII) primary zinc smelters,

(XXIII) secondary metal production plants,

(XXIV) sintering plants,

(XXV) sulfur recovery plants, or

(XXVI) taconite ore processing plants;

(ii) any other stationary source not on the list in (A)(i) of this definition which emits, or has the potential to emit, 250 TPY or more of a regulated NSR pollutant;

(iii) any physical change that would occur at a stationary source not otherwise qualifying as a major stationary source under this definition if the change would constitute a major stationary source by itself.

(B) A major source that is major for VOC or NO_x shall be considered major for ozone.

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

(i) the stationary sources listed in (A)(i) of this definition;

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

"Necessary preconstruction approvals or permits" means those permits or approvals required under all applicable air quality control laws and rules.

"Net emissions increase" means:

(A) with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to OAC 252:100-8-30(b); and,

(ii) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under (A)(ii) of this definition shall be determined as provided in the definition of "baseline actual emissions", except that (B)(iii) and (C)(iv) of that definition shall not apply.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within 3 years before the date that the increase from the particular change occurs.

(C) An increase or decrease in actual emissions is creditable only if:

(i) it is contemporaneous; and

(ii) the Director has not relied on it in issuing a permit for the source under OAC 252:100-8, Part 7, which permit is in effect when the increase in actual emissions from the particular change occurs.

(D) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

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

(F) A decrease in actual emissions is creditable only to the extent that it meets all the conditions in (F)(i) through (iii) of this definition.

(i) It is creditable if the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions.

(ii) It is creditable if it is enforceable as a practical matter at and after the time that actual construction on the particular change begins.

(iii) It is creditable if it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(G) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular

pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(H) Paragraph (A) of the definition of "actual emissions" shall not apply for determining creditable increases and decreases.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂, or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

"Prevention of Significant Deterioration (PSD) program" means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or the program in 40 CFR 52.21. Any permit issued under such a program is a major NSR permit.

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

"Projected actual emissions" means

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

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

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

(ii) shall include fugitive emissions to the extent quantifiable and emissions associated with start-ups, shutdowns, and malfunctions; and

(iii) 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 and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(iv) in lieu of using the method set out in (B)(i) through (iii) of this definition, may elect to use the emissions unit's potential to emit, in TPY.

"Reactivation of a very clean coal-fired electric utility steam generating unit" means any

physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

- (A) has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the Department's emissions inventory at the time of enactment;
- (B) was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;
- (C) is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and
- (D) is otherwise in compliance with the requirements of the Act.

"Regulated NSR pollutant" means

- (A) A regulated NSR pollutant is:
 - (i) any pollutant for which a NAAQS has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (*e.g.*, VOC and NO_x are precursors for ozone);
 - (ii) any pollutant that is subject to any standard promulgated under section 111 of the Act;
 - (iii) any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or
 - (iv) any pollutant that otherwise is subject to regulation under the Act.
- (B) Regulated NSR pollutant does not include:
 - (i) any or all HAP either listed in section 112 of the Act or added to the list pursuant to section 112(b)(2) of the Act, which have not been delisted pursuant to section 112(b)(3) of the Act, unless the listed HAP is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act; or
 - (ii) any pollutant that is regulated under section 112(r) of the Act, provided that such pollutant is not otherwise regulated under the Act.

"Replacement unit" means an emissions unit for which all the criteria listed in paragraphs (A) through (D) of this definition are met. No creditable emission reduction shall be generated from shutting down the existing emissions unit that is replaced.

- (A) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.
- (B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
- (C) The replacement unit does not alter the basic design parameter(s) of the process unit.
- (D) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operating 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.

"Repowering" means

- (A) Repowering shall mean the replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies,

and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(B) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(C) The Director shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Act.

"Significant" means:

(A) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, significant means a rate of emissions that would equal or exceed any of the following rates:

(i) carbon monoxide: 100TPY,

(ii) nitrogen oxides: 40 TPY,

(iii) sulfur dioxide: 40 TPY,

(iv) particulate matter: 25 TPY of particulate matter emissions or 15 TPY of PM-10 emissions,

(v) ozone: 40 TPY of VOC or NO_x,

(vi) lead: 0.6 TPY,

(vii) fluorides: 3 TPY,

(viii) sulfuric acid mist: 7 TPY,

(ix) hydrogen sulfide (H₂S): 10 TPY,

(x) total reduced sulfur (including H₂S): 10 TPY,

(xi) reduced sulfur compounds (including H₂S): 10 TPY,

(xii) municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.5×10^{-6} TPY,

(xiii) municipal waste combustor metals (measured as particulate matter): 15 TPY,

(xiv) municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 40 TPY,

(xv) municipal solid waste landfill emissions (measured as nonmethane organic compounds): 50 TPY.

(B) Notwithstanding (A) of this definition, "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct within 6 miles of a Class I area, and have an impact on such area equal to or greater than 1 $\mu\text{g}/\text{m}^3$ (24-hour average).

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant net emissions increase" means a significant emissions increase and a net increase.

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

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Oklahoma Air Pollution Control Rules in OAC 252:100 and other requirements necessary to attain and/or maintain the NAAQS during and after the project is terminated.

252:100-8-33. Exemptions

(a) Exemptions from the requirements of OAC 252:100-8-34 through 252:100-8-36.2.

(1) The requirements of OAC 252:100-8-34 through 252:100-8-36.2 do not apply to a particular major stationary source or major modification if the source or modification is:

- (A) a nonprofit health or nonprofit educational institution; or
- (B) major only if fugitive emissions, to the extent quantifiable, are included in calculating the potential to emit and such source is not one of the categories listed in paragraph (C) of the definition of "Major stationary source"; or
- (C) a portable stationary source which has previously received a permit under the requirements contained in OAC 252:100-8-34 through 252:100-8-36.2 and proposes to relocate to a temporary new location from which its emissions would not impact a Class I area or an area where an applicable increment is known to be violated.

(2) The requirements in OAC 252:100-8-34 through 252:100-8-36.2 do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source or modification is located in an area designated as nonattainment for that pollutant under section 107 of the Act.

(b) Exemption from air quality impact analyses in OAC 252:100-8-35(a) and (c) and 252:100-8-35.2.

(1) The requirements of OAC 252:100-8-35(a) and (c) and 252:100-8-35.2 are not applicable with respect to a particular pollutant, if the allowable emissions of that pollutant from a new source, or the net emissions increase of that pollutant from a modification, would be temporary and impact no Class I area and no area where an applicable increment is known to be violated.

(2) The requirements of OAC 252:100-8-35(a) and (c) and 252:100-8-35.2 as they relate to any PSD increment for a Class II area do not apply to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT, would be less than 50 TPY.

(c) Exemption from air quality analysis requirements in OAC 252:100-8-35(c).

(1) The monitoring requirements of OAC 252:100-8-35(c) regarding air quality analysis are not applicable for a particular pollutant if the emission increase of the pollutant from a proposed major stationary source or the net emissions increase of the pollutant from a major modification would cause, in any area, air quality impacts less than the following amounts:

- (A) Carbon monoxide - 575 $\mu\text{g}/\text{m}^3$, 8-hour average,
- (B) Nitrogen dioxide - 14 $\mu\text{g}/\text{m}^3$, annual average,
- (C) Particulate matter - 10 $\mu\text{g}/\text{m}^3$, TSP——_or PM-10, 24-hour average,
- (D) Sulfur dioxide -13 $\mu\text{g}/\text{m}^3$, 24-hour average,
- (E) Ozone - no de minimis air quality level is provided for ozone, however any net increase of 100 TPY or more of VOC or NO_x subject to PSD would require an ambient impact analysis, including the gathering of ambient air quality data,
- (F) Lead - 0.1 $\mu\text{g}/\text{m}^3$, 24-hour 3-month average,
- (G) Fluorides - 0.25 $\mu\text{g}/\text{m}^3$, 24-hour average,
- (H) Total reduced sulfur - 10 $\mu\text{g}/\text{m}^3$, 1-hour average,
- (I) Hydrogen sulfide - 0.2 $\mu\text{g}/\text{m}^3$, 1-hour average, or
- (J) Reduced sulfur compounds - 10 $\mu\text{g}/\text{m}^3$, 1-hour average.

(2) The pollutant is not listed in preceding OAC 252:100-8-33(c)(1).

(d) Exemption from monitoring requirements in OAC 252:100-8-35(c)(1)(B) and (D).

(1) The requirements for air quality monitoring in OAC 252:100-8-35(c)(1)(B) and (D) 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 a permit application was submitted on or before June 8, 1981, and the Director subsequently determined that the application was complete except for the requirements in OAC 252:100-8-35(c)(1)(B) and (D). Instead, the requirements in 40 CFR 52.21(m)(2) as in effect on June 19, 1978, shall apply to any such source or modification.

(2) The requirements for air quality monitoring in OAC 252:100-8-35(c)(1)(B) and (D) 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 a permit application was submitted on or before June 8, 1981, and the Director subsequently determined that the application as submitted was complete, except for the requirements in OAC 252:100-8-35(c)(1)(B) and (D).

(e) Exemption from the preapplication analysis required by OAC 252:100-8-35(c)(1)(A), (B), and (D).

(1) The Director shall determine if the requirements for air quality monitoring of PM-10 in OAC 252:100-8-35(c)(1)(A), (B), and (D) may be waived for a particular source or modification when an application for a PSD permit was submitted on or before June 1, 1988, and the Director subsequently determined that the application, except for the requirements for monitoring particulate matter under OAC 252:100-8-35(c)(1)(A), (B), and (D), was complete before that date.

(2) The requirements for air quality monitoring of PM-10 in OAC 252:100-8-35(c)(1)(B)(i), 252:100-8-35(c)(1)(D), and 252:100-8-35(c)(3) shall apply to a particular source or modification if an application for a permit was submitted 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 became otherwise complete in accordance with the provisions of OAC 252:100-8-35(c)(1)(C), except that if the Director 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 required by OAC 252:100-8-35(c)(1)(B)(ii) shall have been gathered over that shorter period.

(f) Exemption from BACT requirements and air quality analyses requirements. If a complete permit application for a source or modification was submitted before August 7, 1980 the requirements for BACT in OAC 252:100-8-34 and the requirements for air quality analyses in OAC 252:100-8-35(c)(1) are not applicable to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978. Instead, the federal requirements at 40 CFR 52.21 (j) and (n) as in effect on June 19, 1978, are applicable to any such source or modification.

(g) Exemption from OAC 252:100-8-35(a)(2). The permitting requirements of OAC 252:100-8-35(a)(2) do not apply to a stationary source or modification with respect to any PSD increment for nitrogen oxides if the owner or operator of the source or modification submitted a complete application for a permit before February 8, 1988.

252:100-8-37. Innovative control technology

(a) An applicant for a permit for a proposed major stationary source or major modification may request the Director in writing to approve a system of innovative control technology.

(b) The Director may determine that the innovative control technology is permissible if:

(1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare or safety in its operation or function.

(2) The applicant agrees to achieve a level of continuous emissions reductions equivalent to that which would have been required for BACT under OAC 252:100-8-34(b)(1) by a date specified by the Director. Such date shall not be later than 4 years from the time of start-up or 7 years from permit issuance.

- (3) The source or modification would meet the requirements equivalent to those in OAC 252:100-8-34 and 252:100-8-35(a) based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Director.
 - (4) The source or modification would not, before the date specified, cause or contribute to any violation of the applicable NAAQS, or impact any Class I area or area where an applicable increment is known to be violated.
 - (5) All other applicable requirements including those for public participation have been met.
 - (6) The provisions of OAC 252:100-8-36 (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.
- (c) The Director shall withdraw approval to employ a system of innovative control technology made under OAC 252:100-8-37, if:
- (1) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or,
 - (2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare or safety; or,
 - (3) The Director decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare or safety.
- (d) If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with OAC 252:100-8-37(c), the Director may allow the source or modification up to an additional 3 years to meet the requirement for application of BACT through the use of a demonstrated system of control.

252:100-8-38. Actuals PAL

- (a) **Incorporation by reference.** With the exception of the definitions in OAC 252:100-8-38(c), 40 CFR 51.166(w), Actuals PALs, is hereby incorporated by reference, as it exists on ~~January 2, 2006~~ July 2, 2007, and does not include any subsequent amendments or editions to the referenced material.
- (b) **Inclusion of CFR citations and definitions.** When a provision of Title 40 of the Code of Federal Regulations (40 CFR) is incorporated by reference, all citations contained therein are also incorporated by reference.
- (c) **Terminology related to 40 CFR 51.166(w).** For purposes of interfacing with 40 CFR, the following terms apply.
- (1) "Baseline actual emissions" is synonymous with the definition of "baseline actual emissions" in OAC 252:100-8-31.
 - (2) "Building, structure, facility, or installation" is synonymous with the definition of "building, structure, facility, or installation" in OAC 252:100-1-3.
 - (3) "EPA" is synonymous with Department of Environmental Quality (DEQ) unless the context clearly indicates otherwise.
 - (4) "Major modification" is synonymous with the definition of "major modification" in OAC 252:100-8-31.
 - (5) "Net emissions increase" is synonymous with the definition of "net emissions increase" in OAC 252:100-8-31.
 - (6) "Reviewing authority" is synonymous with "Director".
 - (7) "State implementation plan" is synonymous with OAC 252:100.
 - (8) "Volatile organic compound (VOC)" is synonymous with the definition of "volatile organic compound" or "VOC" in OAC 252:100-1-3.

PART 9. MAJOR SOURCES AFFECTING NONATTAINMENT AREAS

252:100-8-50. Applicability

(a) General applicability.

(1) The requirements of this Part shall apply to the construction of any new major stationary source or major modification which would locate in or affect a nonattainment area located in Oklahoma, designated under section 107(d)(1)(A)(i) of the Act, if the stationary source or modification is major for the pollutant for which the area is designated nonattainment.

(2) The requirements of OAC 252:100-8, Parts 1, 3, and 5 also apply to the construction of any new major stationary source or major modification.

(3) In addition, the requirements of a PSD review (OAC 252:100-8, Part 7) would be applicable if any regulated NSR pollutant other than the nonattainment pollutant is emitted in significant amounts by that source or modification.

(b) Major modification.

(1) Major modification applicability determination.

(A) Except as otherwise provided in OAC 252:100-8-50(c), and consistent with the definition of "major modification" contained in OAC 252:100-8-51, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases:

- (i) a significant emissions increase, and
- (ii) a significant net emissions increase.

(B) 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.

(2) **Calculating significant emissions increase and significant net emissions increase.** The procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions unit(s) being modified, according to OAC 252:100-8-50(b)(3) through (5). This is the first step in determining if a proposed modification would be considered a major modification. The procedure for calculating whether a significant net emissions increase will occur at the major stationary source is contained in the definition of "net emissions increase" in OAC 252:100-8-50.1 and 252:100-8-51. This is the second step in the process of determining if a proposed modification is a major modification. Both steps occur prior to the beginning of actual construction. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) **Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, as applicable, for each existing emissions unit, equals or exceeds the amount that is significant for that pollutant.

(4) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the amount that is significant for that pollutant.

(5) **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 OAC 252:100-8-50(b)(3) and (4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the amount that is significant for that pollutant. ~~For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in OAC 252:100-8-50(b)(3) for the existing unit and determined using the method specified in 252:100-8-50(b)(4) for the new emissions unit.~~

(c) **Plantwide applicability limitation (PAL).** Major stationary sources seeking to obtain or maintain a PAL shall comply with requirements under OAC 252:100-8-56.

252:100-8-50.1. Incorporation by reference

(a) **Inclusion of CFR citations and definitions.** When a provision of Title 40 of the Code of Federal Regulations (40 CFR) is incorporated by reference, all citations contained therein are also incorporated by reference.

(b) **Terminology related to 40 CFR.** When these terms are used in rules incorporated by reference from 40 CFR, the following terms or definitions shall apply.

(1) "Baseline actual emissions" is synonymous with the definition of "baseline actual emissions" in OAC 252:100-8-31.

(2) "Building, structure, facility, or installation" is synonymous with the definition of "building, structure, facility, or installation" in OAC 252:100-1-3.

(3) "EPA" is synonymous with Department of Environmental Quality (DEQ) unless the context clearly indicates otherwise.

(4) "Major modification" is synonymous with the definition of "major modification" in OAC 252:100-8-51.

(5) "Net emissions increase" is synonymous with the definition of "net emissions increase" in OAC 252:100-8-51.

(6) "Reviewing authority" is synonymous with "Director".

(7) "Secondary emissions" is synonymous with the definition of "secondary emissions" in OAC 252:100-8-1.1.

(8) "State implementation plan" is synonymous with OAC 252:100.

(9) "Volatile organic compound (VOC)" is synonymous with the definition of "volatile organic compound" or "VOC" in OAC 252:100-1-3.

252:100-8-51. Definitions

The definitions in 40 CFR 51.165(a)(1) are hereby incorporated by reference as they exist on ~~January 2, 2006~~ July 2, 2007, except for the definitions found at 40 CFR 51.165(a)(1)(xxxv) "baseline actual emissions"; (ii) "building, structure, facility, or installation"; ~~(xxix) "Clean Unit";~~ (xlv) "fixed capital cost"; (xlv) "functionally equivalent component"; (v) "major modification"; (vi) "net emissions increase"; ~~(xxv) "pollution control project (PCP)";~~ (xliii) "process unit"; (xxxviii) "reviewing authority"; (viii) "secondary emissions"; (xlvi) "total capital investment"; and (xix) "volatile organic compound (VOC)". With the exception of ~~"pollution control project (PCP)", "Clean Unit", and "reviewing authority",~~ "fixed capital cost", "functionally equivalent component", "process unit", and "total capital investment", these terms are defined in OAC 252:100-8-31, 252:100-8-51, or 252:100-1-3. The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise.

"Major modification" means:

(A) Any physical change in, or change in the method of operation of, a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source is a major modification.

(i) Any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for VOC and/or oxides of nitrogen (NO_x) shall be considered significant for ozone.

(ii) A physical change or change in the method of operation shall not include:

(I) routine maintenance, repair and replacement;

(II) use of an alternative fuel or raw material by reason of any 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 pursuant to the Federal Power Act;

(III) use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(IV) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(V) use of an alternative fuel or raw material by a source which 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, or the source is approved to use under any permit issued under 40 CFR 52.21 or OAC 252:100-7 or 8;

(VI) 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 December 21, 1976;

(VII) any change in source ownership;

(VIII) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with OAC 252:100 and other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated.

(B) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under OAC 252:100-8-56 for a PAL for that pollutant. Instead the definition at 40 CFR 51.165(f)(2)(viii) shall apply.

(C) For the purpose of applying the requirements of OAC 252:100-8-54.1(a) to modifications at major stationary sources of NO_x located in ozone nonattainment areas or in ozone transport regions, whether or not subject to subpart 2, part D, title I of the Act, any significant net emissions increase of NO_x is considered significant for ozone.

(D) Any physical change in, or change in the method of operation of, a major stationary source of VOCs that results in any increase in emissions of VOCs from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the Act.

"Net emissions increase" means:

(A) With respect to any regulated NSR pollutant emitted by a major stationary source, net emissions increase shall mean the amount by which the sum of the following exceeds zero:

- (i) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to OAC 252:100-8-50(b); and,
 - (ii) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under (A)(ii) of this definition shall be determined as provided in the definition of "baseline actual emissions", except that (B)(iii) and (C)(iv) of that definition shall not apply.
- (B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within 3 years before the date that the increase from the particular change occurs.
- (C) An increase or decrease in actual emissions is creditable only if:
- (i) it is contemporaneous; and
 - (ii) the Director has not relied on it in issuing a permit under OAC 252:100-8, Part 9, which permit is in effect when the increase in actual emissions from the particular change occurs.
- (D) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
- (E) A decrease in actual emissions is creditable only to the extent that:
- (i) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
 - (ii) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins;
 - (iii) the Director has not relied on it in issuing any permit under OAC 252:100; and,
 - (iv) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
- (F) An increase that results from a physical change at a source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational after a reasonable shakedown period, not to exceed 180 days.
- (G) Paragraph 40 CFR 51.165(a)(1)(xii)(B) of the definition of "actual emissions" shall not apply for determining creditable increases and decreases or after a change.

252:100-8-51.1. Emissions reductions and offsets

(a) The requirements in 40 CFR 51.165(a)(3) regarding emissions reductions and offsets, ~~except for 40 CFR 51.165(a)(3)(ii)(H) and (I)~~, are hereby incorporated by reference as they exist on ~~January 2, 2006~~ July 2, 2007.

(b) Meeting the emissions offset requirements in subsection OAC 252:100-8-51.1(a) for ozone nonattainment areas that are subject to subpart 2, part D, title I of the Act shall be in accordance with the requirements in 40 CFR 51.165(a)(9) which is hereby incorporated by reference as it exists on July 2, 2007.

252:100-8-52. Applicability determination for sources in attainment areas causing or contributing to NAAQS violation

(a) The requirements in 40 CFR 51.165(b) regarding a source located in an attainment or unclassifiable area but causing or contributing to a NAAQS violation are hereby incorporated by reference as they exist on ~~January 2, 2006~~ July 2, 2007.

(b) Sources of VOC located outside a designated ozone nonattainment area will be presumed to have no significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, then the source may be granted its permit since the area has not yet been designated nonattainment.

(c) Sources locating in an attainment area but impacting on a nonattainment area above the significant levels listed in ~~OAC 252:100-8-52(1)~~ 252:100-8-52(a) are exempted from the condition of OAC 252:100-8-54(4)(A).

(d) The determination whether a source or modification will cause or contribute to a violation of an applicable ambient air quality standard for sulfur dioxide, particulate matter or carbon monoxide will be made on a case-by-case basis as of the proposed new source's start-up date by an atmospheric simulation model. For sources of nitrogen oxides the model can be used for an initial determination assuming all the nitric oxide emitted is oxidized to nitrogen dioxide by the time the plume reaches ground level, and the initial concentration estimates will be adjusted if adequate data are available to account for the expected oxidation rate.

(e) The determination as to whether a source would cause or contribute to a violation of applicable ambient air quality standards will be made on a case-by-case basis as of the new source's start-up date. Therefore, if a designated nonattainment area is projected to be attainment as part of the state implementation plan control strategy by the new source start-up date, offsets would not be required if the new source would not cause a new violation.

252:100-8-53. Exemptions

(a) The ~~requirement~~ requirements in 40 CFR 51.165(a)(4) regarding exemption of fugitive emissions in determining if a source or modification is major are hereby incorporated by reference as they exist on ~~January 2, 2006~~ July 2, 2007.

(b) Nonattainment area requirements do not apply to a particular source or modification locating in or impacting on a nonattainment area if the source or modification was not subject to 40 CFR Part 51, Appendix S (emission offset interpretative ruling) as it existed on January 16, 1979, and the source:

- (1) obtained all final federal and state construction permits before August 7, 1980;
- (2) commenced construction within 18 months from August 7, 1980, or any earlier time required by the State Implementation Plan; and,
- (3) did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time.

(c) Secondary emissions are excluded in determining the potential to emit. However, upon determination of the Director, if a source is subject to the requirements on the basis of its direct emissions, the applicable requirements must also be met for secondary emissions but the source would be exempt from the conditions of ~~OAC 252:100-8-52(4)~~ 252:100-8-52(d) and 252:100-8-54(1) through 252:100-8-54(3). Also, the indirect impacts of mobile sources are excluded.

(d) As specified in the applicable definitions, the requirements of Part 7 for PSD and Part 9 for nonattainment areas of this Subchapter are not applicable to a modification if the existing source was not major on August 7, 1980, unless the proposed addition to the existing minor source is major in its own right.

252:100-8-54.1 Ozone and PM-10 precursors

(a) Ozone. The requirements of Part 9 of OAC 252:100-8 applicable to major stationary sources and major modifications of VOCs shall apply to NO_x emissions from major stationary sources and major

modifications of NO_x in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region 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.

(b) **PM-10 precursors.** The requirements of Part 9 of OAC 252:100-8 applicable to major stationary sources and major modifications of PM-10 shall also apply to major stationary sources and major modifications of PM-10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM-10 levels that exceed the PM-10 ambient standards in the area.

252:100-8-55. Source obligation

(a) **Construction permits required.** An owner or operator shall obtain a construction permit prior to commencing construction of a new major stationary source or major modification.

(b) **Responsibility to comply and the consequences of relaxation of permit conditions.** The requirements in 40 CFR 51.165(a)(5) regarding the responsibility to comply with applicable local State or Federal law and the consequences of becoming a major source by virtue of a relaxation in any enforcement limitation are hereby incorporated by reference as they exist on ~~January 2, 2006~~ July 2, 2007.

(c) **Requirements when using projected actual emissions.**

(1) The specific provisions in 40 CFR 51.165(a)(6)(i) through (v) (as they exist on July 2, 2007) shall apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) when the owner or operator elects to use the methods specified in the definition of "projected actual emissions" ~~at 40 CFR 51.165(a)(xxviii)(B)(1) through (3)~~ 40 CFR 51.165(a)(1)(xxviii)(B)(1) through (3) ~~(as they existed on January 2, 2006)~~ for calculating projected actual emissions.

(2) The requirements in 40 CFR 51.165(a)(6)(i) through (v) are hereby incorporated by reference as they existed on ~~January 2, 2006~~ July 2, 2007.

(d) **Availability of information.** The requirements in 40 CFR 51.165(a)(7) regarding availability of information required to document the use of projected actual emissions for determining if a project is a major modification are hereby incorporated by reference as they existed on ~~January 2, 2006~~ July 2, 2007.

252:100-8-56. Actuals PAL

The requirements in 40 CFR 51.165(f) regarding actuals PAL except for the terminology contained in OAC 252:100-8-50.1(b), are hereby incorporated by reference as they existed on ~~January 2, 2006~~ July 2, 2007.