RULES
OF
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
BUREAU OF ENVIRONMENT
DIVISION OF AIR POLLUTION CONTROL

CHAPTER 1200-03-09
CONSTRUCTION AND OPERATING PERMITS

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1200-03-09-.01 CONSTRUCTION PERMITS.

(1) Application for Construction Permit

(a) Except as specifically exempted in Rule 1200-03-09-.04, no person shall begin the construction of a new air contaminant source or the modification of an air contaminant source which may result in the discharge of air contaminants without first having applied for and received from the Technical Secretary a construction permit for the construction or modification of such air contaminant source.

(b) The application for a construction permit shall be made on forms available from the Technical Secretary not less than ninety (90) days prior to the estimated starting date of construction. Sources identified in paragraph 1200-03-09-.01(4) shall make application for a construction permit not less than one hundred twenty (120) days prior to the estimated date of construction.

(c) In addition to the information provided in the construction permit application forms, the Technical Secretary may require submission, by the owner or operator of a source to be constructed or modified of such information on the nature and amounts of air contaminants to be emitted by the source or emitted by associated mobile sources, and any other information necessary to insure compliance with the regulations of this Division, 1200-03, and the Board approved control strategy.

(d) Construction of a new air contaminant source or the modification of an air contaminant source which may result in the discharge of air contaminants must be in accordance with the approved construction permit application, the provisions and stipulations set forth in the construction permit, all provisions of the regulations of this Division 1200-03, any applicable measures of the control strategy, and all provisions of the Tennessee Air Quality Act.

(e) No construction permit shall be issued by the Technical Secretary if the approval to construct or modify an air contaminant source would result in a violation of the ambient air quality standards specified in Chapter 1200-03-03, would cause a violation of any other regulatory requirement under this Division, 1200-03, would result in a violation of applicable portions of the control strategy, or would interfere with attainment or maintenance of a national ambient air quality standard in a neighboring state. In the case where a source or modification was constructed without first obtaining a construction permit, a construction permit may be issued to the source or modification to establish as conditions of the permit, the necessary emission limits and requirements to assure that these regulatory requirements are met. The appropriate enforcement action shall be pursued to insure that ambient air quality standards and other regulatory

(Rule 1200-03-09-.01, continued)

requirements will be met. All emission limits and requirements of the construction permit must be met prior to issuance of an operating permit for the source or modification.

(f) In the issuance of construction permits for new air contaminant sources, or modifications, source impact analysis shall demonstrate that allowable emission increases would not cause or contribute to air pollution in violation of any ambient air quality standard in Chapter 1200-03-03, of any national ambient air quality standard, or any applicable maximum allowable increase as defined in paragraph 1200-03-09-.01(4). As required, all estimates of ambient concentrations shall be based on applicable air quality models, and data bases acceptable to the Technical Secretary, and meeting the requirements in the EPA publication No. 450/2-78-027R, "Guidelines on Air Quality Models (revised)" (1986), Supplement A (1987), and Supplement C (1995) which are incorporated by reference. The Technical Secretary may approve use of a modified or another model on a case-by-case basis after consultation with and upon written approval from the EPA Administrator.

(g) In the issuance of construction permits for new air contaminant sources or modifications, the degree of emission limitation required of any source for control of any air contaminant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique except as provided for in Chapter 1200-03-24 of these regulations.

(h) The Department shall on a monthly basis notify the public, by advertisement in a newspaper of general circulation in each air quality control region in which the proposed source or modification would be constructed, of the applicants seeking to obtain a permit to construct or modify an air contaminant source. The notice shall specify the general vicinity or location of the proposed source or modification, the type of source or modification, and opportunity for public comment. Comments shall be in writing and delivered to the Technical Secretary within thirty (30) days after the publication of the public notice. The requirements of this subparagraph are considered to be met for notices of intent for general permits by monthly publication on the Department's website of a list of facilities requesting to be covered by a general permit.

(i) Reserved.

(2) Definitions. As used in this chapter all terms not defined herein or in subsequent parts of this chapter shall have the meaning given them in Chapter 1200-03-02.

(a) Reserved.

(b) "Control Strategy" means a combination of measures, approved by the Board, designated to achieve the aggregate reduction of emissions necessary for attainment and maintenance of the ambient air quality standards specified in the regulations under this Division 1200-03, or of the national ambient air quality standards including, but not limited to measures such as:

1. Emission limitations.

2. State emission charges or other economic incentives or disincentives.

3. Closing or relocation of residential, commercial, or industrial facilities.

4. Changes in schedules or methods of operation of commercial or industrial facilities or transportation systems, including, but not limited to, short term changes made in accordance with standby plans.

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5. Periodic inspection and testing of motor vehicle emission control systems, at such time it is determined that such programs are feasible and practicable.

6. Emission control measures applicable to in-use motor vehicles, including, but not limited to, measures such as mandatory maintenance, installation of emission control devices, and conversion of gaseous fuels.

7. Any transportation control measures considered feasible and practicable.

8. Any variation of, or alternative to any measure delineated herein.

9. Control or prohibition of a fuel or fuel additive used in motor vehicles, if such control or prohibition is necessary to achieve a primary or secondary air quality standard, or national primary or secondary standard, and is approved by the Technical Secretary.

(c) "National Ambient Air Quality Standard" means any ambient standard for an air contaminant promulgated by the Administrator of the Environmental Protection Agency and published in the Code of Federal Regulations.

(d) "Best available control technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under these rules which would be emitted from any proposed new or modified air contaminant source which the Technical Secretary, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under Chapters 1200-03-11 and 1200-03-16 of these rules. If the Technical Secretary determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, a design, equipment, work practice, or operational standard, or combination thereof, may be prescribed instead to require the application of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results. This definition does not apply to major sources and major modifications, as defined in subparagraph (4)(b) of this rule, which are subject to the provisions of paragraph (4) of this rule.

(e) "Lowest achievable emission rate" (LAER) means, for any stationary source the more stringent rate of emissions based on the following:

1. The most stringent emissions limitation which is contained in the applicable standards under this Division 1200-03, or in any State Implementation Plan for such class or category of stationary source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

2. The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any air

(Rule 1200-03-09-.01, continued)

contaminant in excess of the amount allowable under applicable new source standards of performance.

3. This definition does not apply to major sources and major modifications, as defined in part (5)(b)1. of this rule, which are subject to the provisions of subparagraph (5)(b) of this rule. The definition at subpart (5)(b)1.(xviii) of this rule applies to major sources and major modifications in non-attainment areas~~The definition at subparagraph (2)(d) of this rule applies to major sources and major modifications.~~

(3) Reserved.

(4) Prevention of Significant Air Quality Deterioration

(a) General Provisions

1. No new major stationary source or major modification, as defined in parts (b) 1. and (b) 2. of this paragraph, shall begin actual construction unless the requirements of this paragraph, as applicable, have been met.

2. The requirements of this paragraph shall only apply to a proposed major stationary source, or major modification with respect to any pollutant which is emitted in significant amounts, or would result in a significant net emissions increase of the pollutant respectively. Also, the requirements of this paragraph do not apply to proposed pollutant emission sources or modifications in a nonattainment area as defined in Chapter 1200-03-02 for any pollutant to be emitted by the proposed source or modification for which the area is classified nonattainment.

3. Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this paragraph or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this paragraph who commences construction after June 3, 1981 without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

4. Approval to construct shall become invalid if construction is not commenced within 18 months after issuance of an approved permit, if construction is discontinued for a period of 18 months or more, or if construction is not completed within 18 months of the completion date specified on the construction permit application. The Tennessee Air Pollution Control Board may grant an extension to complete construction of the source provided adequate justification is presented. An extension shall not exceed 18 months in time. The provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

5. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with the applicable provisions under this Division 1200-03 and any other requirements under local, State, or Federal law.

6. If a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this paragraph shall apply to the source or

(Rule 1200-03-09-.01, continued)

modification as though construction had not yet commenced on the source or modification.

7. Permit Rescission

(i) Any permit for a prevention of significant air quality deterioration (PSD) source or modification that was issued prior to June 2, l990, will remain in effect and binding until such time as the permittee files a completed application to obtain rescission. This application for rescission may be filed at any time by the permittee.

(ii) The Technical Secretary shall approve any application for rescission if the application shows that this paragraph 1200-03-09-.01(4), would not apply to the source or modification.

(iii) If requested by the permittee, the Technical Secretary may rescind only certain elements required in a PSD permit issued on or before June 3, 1981.

(iv) Those sources subject to PSD review before August 7, 1977 shall not be allowed to apply for a PSD permit rescission if construction had "commenced" by August 7, 1977.

(v) If a source or modification whose permit is rescinded were later found to be causing or contributing to an increment violation, additional control may be required if determined necessary by the Technical Secretary.

(vi) If the Technical Secretary rescinds a permit under this paragraph, the public shall be given adequate notice of the rescission. Publication of an announcement of rescission in a newspaper of general circulation in the affected region within 60 days of the rescission shall be considered adequate notice.

8. Reserved.

9. Reserved.

10. Reserved.

11. The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a plantwide applicability limitation [PAL]) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in items (b)38.(i)(I) through (III) of this paragraph for calculating projected actual emissions.

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

(I) A description of the project;

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

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(III) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under item (b)38.(i)(III) of this paragraph and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(ii) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in sub-part (a)11.(i) of this paragraph to the Technical Secretary. Nothing in this sub-part (a)11.(ii) shall be construed to require the owner or operator of such a unit to obtain any determination from the Technical Secretary before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in item (a)11.(i)(II) of this paragraph; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(iv) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Technical Secretary within 60 days after the end of each year during which records must be generated under sub-part (a)11.(ii) of this paragraph setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(v) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Technical Secretary if the annual emissions, in tons per year, from the project identified in sub-part (a)11.(i) of this paragraph, exceed the baseline actual emissions (as documented and maintained pursuant to item (a)11.(i)(III) of this paragraph) by a significant amount (as defined in part (b)24. of this paragraph) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to item (a)11.(i)(III) of this paragraph. Such report shall be submitted to the Technical Secretary within 60 days after the end of such year. The report shall contain the following:

(I) The name, address and telephone number of the major stationary source;

(II) The annual emissions as calculated pursuant to sub-part (a)11.(iii) of this paragraph; and

(III) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

12. The owner or operator of the source shall make the information required to be documented and maintained pursuant to part (a)11. of this paragraph available for review upon request for inspection by the Technical Secretary or the general public.

(Rule 1200-03-09-.01, continued)

(b) Definitions. As used in this paragraph, all terms not defined herein shall have the meaning given them in Chapter 1200-03-02.

1. "Major stationary source" means:

(i) Any of the following stationary sources, which emit or have the potential to emit, 100 tons per year or more of ~~any air~~a regulated NSR pollutant ~~regulated under this Division 1200-3~~.

(I) Fossil-fuel fired steam electric plants of more than 250 million BTU per hour heat input.

(II) Municipal incinerators (or combinations thereof) capable of charging more than 250 tons of refuse per day.

(III) Fossil-fuel boilers (or combinations thereof) totaling more than 250 million BTU per hour heat input.

(IV) Petroleum storage and transfer facilities with a total storage capacity exceeding 300,000 barrels.

(V) Coal cleaning plants (with thermal dryers)

(VI) Kraft pulp mills

(VII) Portland cement plants

(VIII) Primary zinc smelters

(IX) Iron and steel mill plants

(X) Primary aluminum ore reduction plants

(XI) Primary copper smelters

(XII) Hydrofluoric acid plants

(XIII) Sulfuric acid plants

(XIV) Nitric acid plants

(XV) Petroleum refineries

(XVI) Lime plants

(XVII) Phosphate rock processing plants

(XVIII) Coke oven batteries

(XIX) Sulfur recovery plants

(XX) Carbon black plants (furnace process)

(XXI) Primary lead smelters

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(XXII) Fuel conversion plants

(XXIII) Sintering plants

(XXIV) Secondary metal production plants

(XXV) Chemical process plants

(XXVI) Taconite ore processing plants

(XXVII) Glass fiber processing plants

(XXVIII) Charcoal production plants

(ii) Notwithstanding the stationary source size specified in subpart (b)1.(i) of this paragraph, any stationary source which emits or has the potential to emit, 250 tons per year or more of ~~any air~~a regulated NSR pollutant ~~subject to regulation under this Division 1200-3~~.

(iii) Any physical change that would occur at a stationary source not otherwise qualifying under part (b)1. as a major stationary source if the change would constitute a major stationary source by itself.

2. "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant ~~net~~ emissions increase (as defined in part (b)34. of this paragraph) of ~~any~~ a regulated NSR pollutant (as defined in part (b)47. of this paragraph)~~subject to regulation under this Division 1200-3~~; and a significant net emissions increase of that pollutant from the major stationary source.

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

(I) Routine maintenance, repair, or replacement;

(II) Use of an alternative fuel or raw material by reason of any order under section 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 an applicable federal statute;

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

(IV) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste as determined by the Tennessee Division of Solid Waste Management.

(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 a legally enforceable permit condition which was established after January 6, 1975, or under regulations of this Division 1200-03, or under regulations approved by the Environmental Protection Agency pursuant to 40 CFR 51.160-51.166;

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(VI) An increase in the hours of operation or in the production rate, unless such change would be prohibited under a legally enforceable permit condition which was established after January 6, 1975, or under regulations of this Division 1200-03.

(VII) Any change in ownership at a stationary source.

(VIII) Reserved.

(IX) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

I. The State Implementation Plan for the State in which the project is located, and

II. Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(X) The installation or operation of a permanent clean coal technology demonstration project that constitutes re-powering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(ii) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under subparagraph (s) of this paragraph for a PAL for that pollutant. Instead, the definition at sub-part (s)2.(viii) of this paragraph shall apply.

3. Major sources and modifications for ozone

(i) A source that is major for either volatile organic compounds or nitrogen oxides shall be considered major for ozone.

(ii) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for either volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

4. Net emission increases

(i) "Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(I) ~~Any~~The increase in ~~actual~~ emissions from a particular physical change or change in the method of operation at a stationary source, as calculated pursuant to part (c)4. of this paragraph; 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 this item (b)4.(i)(II) shall

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be determined as provided in part (b)45., except that items (b)45.(i)(III) and (b)45.(ii)(IV) of this paragraph shall not apply.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(I) The date five years before a completed application for the particular change is submitted; and

(II) The date that the increase from the particular change occurs.

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

(I) It occurs within the five years prior to the date a completed application for the particular change is submitted; ~~It occurs within a reasonable period (to be specified by the Technical Secretary);~~ and

(II) The Technical Secretary has not relied on it in issuing a permit for the source under regulations approved pursuant to this rule, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(III) Reserved.

(iv) 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.

~~(iii) An increase or decrease in actual emissions is creditable only if the Technical Secretary has not relied on it in issuing a permit for the source under regulations approved pursuant to this rule, which permit is in effect when the increase in actual emissions from the particular change occurs.~~

~~(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which 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 incremental increases remaining available.~~

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

(vi) 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 ~~legally~~ enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

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

(Rule 1200-03-09-.01, continued)

(IV) Reserved.

(vii) 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 as determined by the Technical Secretary, not to exceed 180 days.

(viii) Sub-part (b)22.(i) of this paragraph shall not apply for determining creditable increases and decreases.

5. "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 legally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

6. "Stationary source" means any building, structure, facility, or installation which emits or may emit ~~any air~~a regulated NSR pollutant ~~subject to regulation under this Division 1200-3~~ except the activities of any vessel.

7. "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., described by the first two digits in the code which is specified in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively)).

8. "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in part (b)52. of this paragraph. For purposes of this paragraph, there are two types of emissions units as described in sub-parts (b)8.(i) and (ii) of this paragraph.

(i) 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.

(ii) An existing emissions unit is any emissions unit that does not meet the requirements in sub-part (b)8.(i) of this paragraph. A replacement unit, as defined in part (b)33. of this paragraph, is an existing emissions unit.~~means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under this Division 1200-3~~.

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

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

    (i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within the time frame as allowed in part 1200-03-09-.01(4)(a)4, or

    (ii) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within the time frame as allowed in part 1200-03-09-.01(4)(a)4.

11. "Necessary preconstruction approvals or permits" means all permits or approvals required under air quality control laws and regulations.

12. "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. 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.

13. "Pollutant" means those air contaminants which fall under the categories of criteria and non-criteria pollutants. Criteria pollutants are those for which an ambient air quality standard has been established. The non-criteria pollutants are air contaminants that are not criteria pollutants.

14. "Baseline area" means any intrastate area (and every part thereof) not designated as a nonattainment area in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: Equal to or greater than 1 $\mu g/m^3$ (annual average) for SO_2, NO_2, or PM_{10}; or equal to or greater than 0.3 $\mu g/m^3$ (annual average) for $PM_{2.5}$.

    (i) Area redesignations under this Division, 1200-03, cannot intersect or be smaller than the area of impact of any major stationary source or major modification which establishes a minor source baseline date or is subject to the regulations in this paragraph.

15. "Baseline date":

    (i) "Major source baseline date" means in the case of PM_{10} and sulfur dioxide, January 6, 1975; in the case of nitrogen dioxide, February 8, 1988; and in the case of $PM_{2.5}$, October 20, 2010.

    (ii) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification submits a complete application to the Technical Secretary or to the EPA administrator. The trigger date is:

        (I) In the case of PM_{10} and sulfur dioxide, August 7, 1977;

        (II) In the case of nitrogen dioxide, February 8, 1988; and

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(III) In the case of $PM_{2.5}$, October 20, 2011.

(iii) 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 not designated as a nonattainment area for the pollutant on the date of its complete application.

(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.

16. "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. 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 subpart (b)1~~4~~6.(iii); and

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

(iii) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increment 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.

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

(i) The applicable standards under this Division 1200-03 or in the State Implementation Plan, including those with a future compliance date; or

(ii) The emissions rate specified as a legally enforceable permit condition established pursuant to this Rule 1200-03-09-.01, including those with a future compliance date.

18. "Legally enforceable" means all limitations and conditions which are enforceable by the Technical Secretary and the EPA Administrator, including those under this Division 1200-033 and the State Implementation Plan, and any permit requirements established pursuant to this Rule 1200-03-09-.01.

19. "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but

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

20. "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.

21. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, roof monitor, or other functionally equivalent opening.

22. "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subparts (i) through (iii) below, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under subparagraph (s) of this paragraph. Instead, parts (b)38. and (b)45. of this paragraph shall apply for those purposes.

    (i) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a ~~two-year~~consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Technical Secretary may 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.

    (ii) The Technical Secretary may presume that source-~~-~~specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

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

23. "Complete" means, in reference to an application for a permit, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Technical Secretary from requesting or accepting any additional information.

24. "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

    (i) Pollutant and Emissions Rate

(Rule 1200-03-09-.01, continued)

(I) Carbon monoxide: 100 tons per year (tpy)

(II) Nitrogen oxides: 40 tpy

(III) Sulfur dioxide: 40 tpy

(IV) Particulate matter: 25 tpy of particulate matter emissions; 15 tpy of PM10 emissions.

(V) Ozone: 40 tpy of either volatile organic compounds or nitrogen oxides.

(VI) Lead (elemental): 0.6 tpy

(VII) Fluorides ~~(excluding HF)~~: 3 tpy

(VIII) Sulfuric acid mist: 7 tpy

(IX) Total reduced sulfur (including H2S): 10 tpy

(X) Reduced sulfur compounds (including H2S): 10 tpy

(XI) Municipal waste combustor organics (measured as total tetra- through octa- chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2 x 10-6 megagrams per year (3.5 x 10-6 tpy).

(XII) Municipal waste combustor metals (measured as particulate matter): 15 tpy

(XIII) Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tpy)

(XIV) Ozone depleting substances (listed under Section 602 of the federal Clean Air Act): 40 tpy

(XV) Hydrogen sulfide: 10 tpy

(XVI) Municipal solid waste landfill emissions (measured as non-methane organic compounds): 50 tpy

(XVII) PM2.5: 10 tpy of direct PM2.5 emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM2.5 precursor under item 47(i)(III) of this subparagraph.

(ii) "Significant" means, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant subject to regulations of EPA under the Clean Air Act and that subpart (b)24.(i) does not list, any emissions rate.

(iii) Notwithstanding subpart (b)24.(i), "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area and have an impact on such area equal to or greater than 1 ug/m3 (24-hour average).

(Rule 1200-03-09-.01, continued)

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

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

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

28. "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitors visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with the times of visitor use of the Federal Class I area, and with the frequency and timing of natural conditions that reduce visibility.

29. Reserved

30. "Dispersion technique" shall have the meaning as provided in Chapter 1200-03-24.

31. "Good engineering practice" (GEP) shall have the meaning as provided in Chapter 1200-03-24.

32. "Welfare" all language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.

33. "Replacement unit" means an emissions unit for which all the criteria listed in sub-parts (b)33.(i) through (iv) of this paragraph are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(i) The emissions unit is a reconstructed unit within the meaning of part 54. of this subparagraph~~sub-part 16-.01(9)(b)2.(i) of this division~~, or the emissions unit completely takes the place of an existing emissions unit.

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

(iii) The replacement does not change the basic design parameter(s) of the process unit.

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

34. "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in part (b)24. of this paragraph) for that pollutant.

(Rule 1200-03-09-.01, continued)

35. Reserved.

36. "Pollution prevention" means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

37. Reserved.

38. "Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit 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.

(i) In determining the projected actual emissions under part (b)38. of this paragraph (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 startups, 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 under part (b)45. of this paragraph 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 items (b)(38.(i)(I) through (III) of this paragraph, may elect to use the emissions unit's potential to emit, in tons per year, as defined under part (b)5. of this paragraph.

39. Reserved.

40. "Prevention of Significant Deterioration Program" (PSD) program means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the State Implementation Plan (SIP) to implement the requirements of 40 CFR 51.166. Any permit issued under such a program is a major NSR permit.

(Rule 1200-03-09-.01, continued)

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

42. "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O 2 or CO 2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

43. "Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of this paragraph, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O 2 or CO 2 concentrations), and to record average operational parameter value(s) on a continuous basis.

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

45. "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with sub-parts (b)45.(i) through (iv) of this paragraph.

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

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

(III) For a regulated NSR pollutant, when a project involves multiple emissions units, one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. However, the Technical Secretary is authorized to allow the use of multiple, pollutant specific consecutive 24-month baselines in determining the magnitude of a significant net emissions increase and the applicability of major new source review requirements if all of the following conditions are met:

(Rule 1200-03-09-.01, continued)

I. Construction of a new source or modification would become subject to major new source review if a single 2-year baseline is used for all pollutants.

II. One or more pollutants were emitted during such 2-year period in amounts that were less than otherwise permitted for reasons other than operations at a lower production or utilization rate. Qualifying examples include, but are not limited to, the voluntary use of:

A. a cleaner fuel than otherwise permitted in a fuel burning operation (e.g., natural gas instead of coal in a multi-fuel boiler),

B. a coating with a lower VOC content than otherwise permitted in a coating operation,

C. a voluntary improvement in the control efficiency of an air pollution control device or the voluntary addition of a control device where one did not exist before, and

D. alternate production methods, raw materials, or products that result in lower emissions of one or more pollutants.

III. Use of alternate 2-year baselines for the pollutants described in subitem II above would result in the construction of the new source or modification not being subject to major new source review.

IV. The use of the multiple baselines is not prohibited by any applicable provision of the USEPA's new source review regulations.

The burden for demonstrating that these conditions are met is upon the permit applicant. The demonstration and the Technical Secretary's approval will be made a part of the permit record.

(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 tons per year, and for adjusting this amount if required by item (b)45.(i)(II) of this paragraph.

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

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

(Rule 1200-03-09-.01, continued)

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

(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 maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan.

(IV) For a regulated NSR pollutant, when a project involves multiple emissions units, one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. However, the Technical Secretary is authorized to allow the use of multiple, pollutant specific consecutive 24-month baselines in determining the magnitude of a significant net emissions increase and the applicability of major new source review requirements if all of the following conditions are met:

I. Construction of a new source or modification would become subject to major new source review if a single 2-year baseline is used for all pollutants.

II. One or more pollutants were emitted during such 2-year period in amounts that were less than otherwise permitted for reasons other than operations at a lower production or utilization rate. Qualifying examples include, but are not limited to, the voluntary use of:

A. a cleaner fuel than otherwise permitted in a fuel burning operation (e.g., natural gas instead of coal in a multi-fuel boiler),

B. a coating with a lower VOC content than otherwise permitted in a coating operation,

C. a voluntary improvement in the control efficiency of an air pollution control device or the voluntary addition of a control device where one did not exist before, and

D. alternate production methods, raw materials, or products that result in lower emissions of one or more pollutants.

III. Use of alternate 2-year baselines for the pollutants described in Subitem II above would result in the construction of the new source or modification not being subject to major new source review.

(Rule 1200-03-09-.01, continued)

IV. The use of the multiple baselines is not prohibited by any applicable provision of the USEPA's new source review regulations.

The burden for demonstrating that these conditions are met is upon the permit applicant. The demonstration and the Technical Secretary's approval will be made a part of the permit record.

(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 tons per year, and for adjusting this amount if required by items (b)45.(ii)(II) and (III) of this paragraph.

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

(iv) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in sub-part (b)45.(i) of this paragraph, for other existing emissions units in accordance with the procedures contained in sub-part (b)45.(ii) of this paragraph, and for a new emissions unit in accordance with the procedures contained in sub-part (b)45.(iii) of this paragraph.

46. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of Chapter I of Title 40 of the Code of Federal Regulations, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(i) Greenhouse gases (GHGs), the air pollutant defined in part 86.1818–12(a) of Chapter I of Title 40 of the Code of Federal Regulations as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in subparts (iv) through (v) of this part.

(I) In the event that the U.S. Court of Appeals for the D.C. Circuit or the U.S. Supreme Court issues an order which would render GHG emissions not subject to regulation under the Prevention of Significant Deterioration, New Source Review provisions and/or the Title V operating permit program of the Federal Act, then GHGs shall not be subject to regulation, nor shall GHG emissions be required to be included in any construction or operating permit under this regulation 1200-03, as of the effective date of the Federal Register notice of vacatur.

(II) In the event that there is a change to Federal law that supersedes regulation of GHGs under the Prevention of Significant Deterioration, New Source Review provisions and/or the Title V operating permit program of the Federal Act, then GHGs shall not be subject to regulation, nor shall GHG emissions be required to be included in

(Rule 1200-03-09-.01, continued)

any construction or operating permit under this regulation 1200-03, as of the effective date of the change in Federal law.

(ii) For purposes of subparts (iii) through (v) of this part, the term tpy CO2 equivalent emissions (CO2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(I) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of part 98 of Chapter I of Title 40 of the Code of Federal Regulations - Global Warming Potentials.

(II) Sum the resultant value from item (ii)(I) of this part for each gas to compute a tpy CO2e.

(iii) The term emissions increase as used in subparts (iv) through (v) of this part shall mean that both a significant emissions increase (as calculated using the procedures in part (c)4 of this paragraph) and a significant net emissions increase (as defined in parts (b)4 and (b)24 of this paragraph) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in subpart (b)24(ii) of this paragraph.

(iv) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(I) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO2e or more; or

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

(v) Beginning July 1, 2011, in addition to the provisions in subpart (iv) of this part, the pollutant GHGs shall also be subject to regulation:

(I) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(II) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

47. "Regulated NSR pollutant," for purposes of this paragraph, means the following:

(i) Any pollutant for which a national ambient air quality standard has been promulgated and any pollutant identified under this part as a constituent or precursor to such pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(I) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(Rule 1200-03-09-.01, continued)

(II) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

(III) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the State has demonstrated to the satisfaction of the EPA Administrator or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(IV) Volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the State has demonstrated to the satisfaction of the EPA Administrator or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(ii) Any pollutant that is subject to any standard promulgated under section 111 of the Federal Clean Air Act;

(iii) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Federal Clean Air Act; or

(iv) Any pollutant that otherwise is subject to regulation under the Federal Clean Air Act as defined in part (b)46 of this paragraph.

(v) Notwithstanding subparts (b)47(i) through (iv) of this paragraph, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in section 112 of the Federal Clean Air Act or added to the list pursuant to section 112(b)(2) of the Federal Clean Air Act, and which have not been delisted pursuant to section 112(b)(3) of the Federal Clean Air Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Federal Clean Air Act.

(vi) PM2.5 emissions and PM10 emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM2.5 and PM10 in PSD permits. Compliance with emissions limitations for PM2.5, and PM10 issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this paragraph unless the applicable implementation plan required condensable particulate matter to be included.

48. "Reviewing authority" means the State air pollution control agency, local agency, other State agency, Indian tribe, or other agency authorized by the Administrator to carry out a permit program under 40 CFR 51.165, or the Administrator in the case of EPA-implemented permit programs under 40 CFR 52.21.

(Rule 1200-03-09-.01, continued)

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

50. "Lowest achievable emission rate (LAER)" is as defined in sub-part (5)(b)1.(xviii) of this rule.

51. Reserved.

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

53. "Best available control technology" (BACT) means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Technical Secretary, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR part 60 or 61. If the Technical Secretary 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.

54. "Reconstruction" means the replacement of components of an existing facility to such an extent that:

(i) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, and

(ii) It is technologically and economically feasible to meet the applicable standards set forth in this chapter.

(iii) This part applies only in this chapter 1200-03-09 unless specified otherwise.

55. "Clean coal technology" means any technology, including technologies applied at the pre-combustion, 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.

(Rule 1200-03-09-.01, continued)

56. "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 Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

57. "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 State implementation plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated.

58. "Re-powering" means 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. Re-powering shall also include any oil and/or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the U.S. Department of Energy. The Technical Secretary shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Clean Air Act.

(c) ~~Major stationary sources and major modifications of sources are subject to the provisions of this paragraph.~~Applicability.

1. The requirements of this paragraph apply to the construction of any new major stationary source (as defined in part (b)1. of this paragraph) or any project 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 Federal Clean Air Act.

2. The requirements of subparagraphs (j), (k), (l), and (n); parts (e)1. 2., and 7.; and parts (a)5., 6., 8., 9., and 10. of this paragraph apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this rule otherwise provides.

3. No new major stationary source or major modification to which the requirements of subparagraphs (j), (k), (l), and (n); parts (e)1. 2., and 7.; and parts (a)5., 6., 8., 9., and 10. of this rule apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

4. (i) Except as otherwise provided in sub-parts (c)5. and 6. ~~4.(v) and (vi)~~ of this paragraph, and consistent with the definition of major modification contained in part (b)2. of this paragraph, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in part (b)34. of this paragraph), and a significant net emissions increase (as defined in

(Rule 1200-03-09-.01, continued)

parts (b)4. and 24.of this paragraph). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(ii) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.,* the first step of the process) will occur depends upon the type of emissions units being modified, according to sub-parts (c)4.(iii) through (vi) of this paragraph. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.,* the second step of the process) is contained in the definition in part (b)4. of this paragraph. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(iii) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in part (b)38. of this paragraph) and the baseline actual emissions (as defined in sub-parts (b)45.(i) and (ii) of this paragraph) for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in part (b)24. of this paragraph).

(iv) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in part (b)5. of this paragraph) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in sub-part (b)45.(iii) of this paragraph) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in part (b)24. of this paragraph).

(v) Reserved.

(vi) 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 subparts (c)4(iii) through (iv) of this paragraph as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in part (b)24 of this paragraph).

5. For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under subparagraph (s) of this paragraph.

6. Reserved.

(d) Major stationary sources and major modifications are exempt from certain provisions of this paragraph in accordance with the following:

(Rule 1200-03-09-.01, continued)

1. Major stationary sources or major modifications as defined in this paragraph shall not be subject to the requirements of this paragraph (except as provided in part (4)(a)7. of this paragraph) if:

(i) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and such source does not belong to any of the categories listed under subpart (b)1.(i), or any other stationary source category which, as of the (effective date of this rule) is being regulated under Chapters 1200-03-11 and 1200-03-16.

(ii) The source or modification was subject to the new construction rules and regulations as in effect before June 3, 1981, and the owner or operator:

(I) Obtained all final Federal, State, and local preconstruction approvals or permits necessary before June 3, 1981.

(II) Commenced construction within 18 months of receipt of all necessary Federal, State, and local preconstruction approvals or permits; and

(III) Did not discontinue construction for a period of 18 months or more and completed construction within the time frame as allowed in part 1200-03-09-.01(4)(a)4.

(iii) The source or modification was subject to the prevention of significant deterioration rules and regulations as in effect before June 3, 1981, and the owner or operator:

(I) Submitted a completed application before June 3, 1981.

(II) Commenced construction within 18 months of receipt of all necessary Federal, State, and local preconstruction approvals or permits; and

(III) Did not discontinue construction for a period of 18 months or more and completed construction within the time frame as allowed in part 1200-03-09-.01(4)(a)4.

(iv) The source or modification was not subject to this paragraph, with respect to particulate matter, as in effect before June 2, 1990 and the owner or operator:

(I) Obtained all final Federal, State, and local preconstruction approvals or permits necessary before June 2, 1990.

(II) Commenced construction within 18 months of receipt of all necessary Federal, State, and local preconstruction approvals or permits; and

(III) Did not discontinue construction for a period of 18 months or more and completed construction within the time frame as allowed in part 1200-03-09-.01(4)(a)4.

(Rule 1200-03-09-.01, continued)

2. A major stationary source or modification as defined in this paragraph that was subject to the prevention of significant deterioration rules and regulations, with respect to particulate matter, as in effect before June 2, 1990 does not have to meet the PM10 requirements effective on June 2, 1990 if the owner or operator:

   (i) Submitted a completed application (as determined by the Technical Secretary) before June 2, 1990.

   (ii) Commenced construction within 18 months of receipt of all necessary Federal, State, and local preconstruction approvals or permits; and

   (iii) Did not discontinue construction for a period of 18 months or more and completed construction within the time frame as allowed in part 1200-03-09-.01(4)(a)4.

3. No major stationary source or major modification as defined in this paragraph shall be subject to the requirements of this paragraph with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment as defined in Rule 1200-03-02-.01.

4. Source impact and air quality analysis as required in parts (e)1., (e)3., and (e)7. of this paragraph shall not apply to a proposed major stationary source or major modification 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.

5. Source impact and air quality analysis as required in parts (e)1.,(e)3., and (e)7. of this paragraph as they relate to any maximum allowable increase for a Class II area do not apply to a major modification of a 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 best available control technology would be less than 50 tons per year.

6. Air quality analysis as required in this paragraph may be exempted with respect to preconstruction monitoring for a particular pollutant by the Technical Secretary if:

   (i) The emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts:

      (I) Carbon monoxide - 575 ug/m3, 8-hour average;

      (II) Nitrogen dioxide - 14 ug/m3, annual average;

      (III) Particulate matter:

         10 µg/m3 of TSP, 24-hour average
         10 µg/m3 of PM10, 24-hour average;

      (IV) Sulfur dioxide - 13 ug/m^3, 24-hour average;

      (V) Ozone - no de minimis air quality level has been established. However, any net increase of 100 tons per year or more of either

(Rule 1200-03-09-.01, continued)

volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.

(VI) Lead (elemental) - 0.1 ug/m^3, 3-month average;

(VII) Fluorides ~~(excluding HF)~~ - 0.25 ug/m^3, 24-hour average;

(VIII) Total reduced sulfur - 10 ug/ m^3, 1-hour average;

(IX) Reduced sulfur compounds - 10 ug/ m^3, 1-hour average; ~~or~~

(X) Hydrogen sulfide—0.2 µg/m^3, 1-hour average; or

(ii) The pollutants are not listed in sub-part (d)6.(i); or

(iii) Representative existing ambient air quality data, consistent with the requirements of the Ambient Monitoring Guideline for Prevention of Significant Deterioration (PSD), EPA-450/4-87-007, are available for any pollutant as emitted by a major stationary source, or major modification; or

(iv) The existing air pollutant levels are conservatively estimated to be less than the concentrations listed in subpart (i) of this part, and a monitoring network may not reliably measure the predicted background concentrations; or

(v) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subpart (d)6(i) of this paragraph.

7. A portable stationary source which has previously received construction approval under the requirements of this paragraph may relocate if:

(i) Emissions from the source would be temporary and would not exceed its allowable emissions; and

(ii) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(iii) Notice shall be given to the Technical Secretary 30 days prior to the relocation, giving the new temporary location and the probable length of operation at the new location.

8. Exclusions from Increment Consumption

(i) Maximum allowable increases (ambient air increments) as specified in subparagraph 1200-03-09-.01(4)(f) shall not apply to concentrations as described below.

(I) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

(Rule 1200-03-09-.01, continued)

(II) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to an applicable Federal law over the emissions from such sources before the effective date of such plan;

(III) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emissions-related activities of new or modified sources;

(IV) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by plan revisions approved as meeting the criteria specified in subpart 7.(iii).

(ii) No exclusion of such concentrations shall apply more than five years after the effective date of the order to which item 7.(i)(I) refers or of the plan to which item 7.(i)(II) refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(iii) For purposes of excluding concentrations pursuant to item 7.(i)(IV), the proposed plan revision shall:

(I) Specify the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed two years in duration.

(II) Specify that the time period for excluding certain contributions in accordance with item 7.(iii)(I) is not renewable.

(III) Allow no emission increase from a stationary source which would:

I. Impact a Class I area or an area where an applicable increment is known to be violated; or

II. Cause or contribute to the violation of a national ambient air quality standard;

(IV) Require limitations to be in effect at the end of the time period specified in accordance with item 7.(iii)(I) which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

9. With the approval of the Technical Secretary, the requirements for air quality monitoring of PM10 in part (e)7. of this paragraph may not apply to a particular major stationary source or major modification if the owner or operator submitted an application for a permit on or before June 1, l988 and the Technical Secretary determines that the application as submitted before that date was complete, except with respect to the particulate matter monitoring requirements in part (e)7. of this paragraph.

10. Preapplication air quality analysis for ozone as required in part (e)7. of this paragraph will not be necessary if the source owner or operator chooses to meet

(Rule 1200-03-09-.01, continued)

the lowest achievable emission rate (LAER) in lieu of meeting the requirements to apply best available control technology (BACT) for emissions of volatile organic compounds or nitrogen oxides and is required to conduct post-construction monitoring for ozone.

(e) The owner or operator of the proposed major stationary source or major modification:

1. Shall demonstrate by performing source impact analysis that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reduction (including secondary emissions) would not cause or contribute to air pollution in violation of:

(i) Any Tennessee ambient air quality standard in the source impact area.

(ii) Any applicable maximum allowable increase over the baseline concentration in any area.

2. Shall submit all data necessary to make the analyses and determinations required under this paragraph.

(i) The data shall include:

(I) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings needed for the review showing its design and plant layout.

(II) A detailed proposed schedule for construction of the source or modification.

(III) A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology (BACT) would be applied where required by this paragraph.

(IV) Additional impact analysis

I. The impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and the associated general commercial, residential, industrial, and other growth. Vegetation having no significant commercial or recreational value may be excluded from the analysis.

II. The air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

III. The Technical Secretary may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification, for such purposes and by such means as the Technical Secretary deems necessary and appropriate.

(ii) Upon request by the Technical Secretary, the owner or operator shall also provide information on:

(Rule 1200-03-09-.01, continued)

(I) The air quality impact of the source or modification, including meteorological and topographical data.

(II) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since the PSD baseline date in the area the source or modification would affect. Such data in the possession of the Division shall be made available to the owner or operator.

3. Shall, after construction of the stationary source or modification, conduct such post-construction monitoring as the Technical Secretary determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having on air quality in any area.

4. Shall meet the quality assurance requirements as specified in the Code of Federal Regulations, Title 40, Part 58, Appendix B, as published July 1, 1991, during the operation of monitoring stations for purposes of satisfying parts (e)3. and (e)7. of this paragraph.

5. Shall insure that the major stationary source or the major modification be in compliance with all applicable emission limitations of this Division 1200-03.

6. Shall pay the cost of all publications required under this paragraph.

7. Shall perform the preapplication air quality analysis as outlined below:

(i) Any application for a construction permit pursuant to the regulations of this paragraph shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

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

(II) For the modification, each pollutant for which it would result in a significant net emissions increase.

(ii) For a pollutant for which an ambient air quality standard exists in these regulations (other than non-methane hydrocarbons), the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase unless specifically exempted in subparagraph 1200-03-09-.01(4)(d).

(iii) In general, the continuous air monitoring data that is required shall have been gathered over a period of one year and shall represent the year preceding receipt of the application, except that, if the Technical Secretary determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

(iv) (Reserved)

(Rule 1200-03-09-.01, continued)

(v) With respect to any pollutant for which no Tennessee Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as is determined by the Technical Secretary and EPA to be necessary to assess ambient air quality for that pollutant in any area that the emissions of the pollutant would affect.

(vi) The requirements for air quality monitoring of PM10 in subparts (ii) and (iii) of this part shall apply to a particular source or modification if the owner or operator of the source or modification submits an application for a permit after June 1, 1988 and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988 to the date the application becomes otherwise complete in accordance with the provisions set forth under (i through v) of this part, except that if the Technical Secretary 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 in (i through v) shall have been gathered over that shorter period.

(vii) For any application that becomes complete, except as to the requirements of subparts (ii) and (iii) of this part pertaining to PM10, after December 1, 1988 and no later than August 1, 1989 the data that subpart (ii) requires shall have been gathered over at least the period from August 1, 1988 to the date the application becomes otherwise complete, except that if the Technical Secretary determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that subpart (ii) of this part requires shall have been gathered over that shorter period.

(f) Ambient Air Increments. In areas designated as class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

MAXIMUM ALLOWABLE INCREASE
(Micrograms per cubic meter)

Class I

Pollutant	$\mu g/m^3$
$PM_{2.5}$:	
Annual arithmetic mean	1
24-hour maximum	2
PM_{10}:	
$PM\text{-}_{10}$, Annual arithmetic mean	4
$PM\text{-}_{10}$, 24-hour maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hour maximum	5

(Rule 1200-03-09-.01, continued)

3-hour maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5

(Rule 1200-03-09-.01, continued)

Class II

$PM_{2.5}$:	
Annual arithmetic mean	4
24-hour maximum	9
PM_{10}:	
Annual arithmetic mean	17
24-hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25

Class III

$PM_{2.5}$:	
Annual arithmetic mean	8
24-hour maximum	18
PM_{10}:	
Annual arithmetic mean	34
24-hour maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hour maximum	182
3-hour maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

(Rule 1200-03-09-.01, continued)

(g) Area classifications - For the purpose of this paragraph, the following classifications shall apply:

1. Class I Areas - Great Smoky Mountains National Park, Joyce Kilmer Slickrock National Wilderness Area, and the Cohutta Wilderness Area.

2. Class III Areas - None

3. Class II Areas - Remainder of the state

Areas in surrounding states are classified as specified in the EPA approved implementation plan for each adjoining state.

(h) Restrictions on area classifications.

1. All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:

(i) International parks,

(ii) National wilderness areas which exceed 5,000 acres in size,

(iii) National memorial parks which exceed 5,000 acres in size, and

(iv) National parks which exceed 6,000 acres in size.

2. Areas which were redesignated as Class I before August 7, 1977, shall remain Class I, but may be redesignated as provided in this section.

3. Any other area, unless otherwise specified in the legislation creating such as area, is initially designated Class II, but may be redesignated as provided in this section.

4. The following areas may be redesignated only as Class I or II:

(i) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(ii) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

5. In redesignation, the procedures specified in 40 CFR 51.166(g) as of July 1, 1992, shall be applied.

(i) Ambient air ceilings

1. No concentration of a pollutant shall exceed the concentration permitted under the Tennessee secondary ambient air quality standard (Chapter 1200-03-03, Table 1), or the concentration permitted under the Tennessee primary ambient air quality standard (Chapter 1200-03-03, Table 1), whichever concentration is lowest for the pollutant for a period of exposure.

2. Except as permitted by Section 123 of the Clean Air Act Amendments of 1977, dispersion techniques which exceed good engineering practice, and which were

(Rule 1200-03-09-.01, continued)

implemented after December 31, 1970, will not be considered when determining the emission limitations required for control of any pollutant.

(j) Control Technology Review

1. A major stationary source or major modification shall meet each applicable emissions limitation under this Division 1200-03 and the State Implementation Plan, and each applicable emission standard and standard of performance under 40 CFR parts 60 and 61.

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

3. A major modification shall apply best available control technology for ~~any~~ each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

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

(k) Air Quality Models.

All estimates of ambient concentrations required under this paragraph shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51 Appendix W, which is incorporated by reference~~the "Guideline on Air Quality Models (Revised)" (1986) and Supplement A (1987) which are incorporated by reference~~. Where an air quality impact model specified in 40 CFR Part 51 Appendix W is ~~the "Guideline on Air Quality Models (Revised)" (1986) and Supplement A (1987) are~~ inappropriate, the model may be modified or another model substituted by the Technical Secretary after consultation with the EPA Administrator. The use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with subparagraph (l) of this paragraph.

(l) Public Participation

1. Within 30 days after receipt of an application to construct, or any addition to such application, the Technical Secretary shall advise the applicant of any deficiency in the application or in the information submitted. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this section, the date on which the Technical Secretary received all required information.

2. The Technical Secretary shall make a final determination on the application no later than 6 months after receipt of a complete application. If there is a need for a longer period of time for review, it shall be agreed upon by mutual consent. In no case may this review period be longer than 1 year. The review process involves performing the following actions:

(Rule 1200-03-09-.01, continued)

(i) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(ii) Make available in at least one location in each air quality control region in which the proposed source or modification would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(iii) Notify the public, by advertisement in a newspaper of general circulation in each air quality control region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment.

(iv) Send a copy of the notice of public comment to the applicant and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: State or local air pollution control agencies, the chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency, the EPA Administrator, and any State or Federal Land Manager whose lands may be affected by emissions from the source or modification.

(v) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to it, the control technology required, and other appropriate considerations.

(vi) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public or request an extension for this purpose. The Technical Secretary shall consider the applicant's response in making a final decision. The Technical Secretary shall make all comments available for public inspection in the same locations where the Technical Secretary made available preconstruction information relating to the proposed source or modification.

(vii) Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this paragraph.

(viii) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Technical Secretary made available preconstruction information and public comments relating to the source or modification.

(ix) All public comments and written comments prepared by the Technical Secretary will be maintained in the public depositories for one year from the date of issuance of the final determination.

(m) Violations of Ambient Air Quality Increments or Standards

(Rule 1200-03-09-.01, continued)

The Technical Secretary shall not issue a construction permit to a source or facility to construct in an area where the increment is known to be violated or the air quality review predicts a violation of the increment or the ambient air quality standards except in accordance with the following:

1. All new or modified facilities shall utilize good engineering practice as determined by the Technical Secretary in designing stacks. In no event shall that part of a stack which exceeds good engineering practice stack height be taken into account for the purpose of determining the degree of emission limitation required for the control of any pollutant for which there is an ambient air quality standard established in Chapter 1200-03-03, Table 1.

2. A major source or modification which would normally be required to meet BACT shall be required to meet the Lowest Achievable Emission Rate (LAER) for that type of source as determined at the time of the permit application. The term "lowest achievable emission rate" shall be defined as found in partparagraph 1200-03-09-.01(54)(b)50. of this rule.

3. If requirements of parts 1200-03-09-.01(4)(m)1. and 2. are not adequate to protect the increment or the ambient air quality standards, the source shall obtain emission offsets, legally enforceable at or before the time of PSD permit issuance, sufficient to predict that the increment or air quality standard will no longer be violated. The offsets shall be accomplished on or before the time of the new source operation and demonstrated through a source test or through another method acceptable to the Technical Secretary.

4. A major stationary source or major modification will be considered to cause or contribute to a violation of an ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable ambient air quality standard:

Pollutant	Annual	24 hour	8 hour	3 hour	1 hour
PM_{10}	1	5			
Sulfur Dioxide	1	5		25	
Carbon Monoxide			500		2000
Nitrogen Dioxide	1				

(Levels are in units of micrograms per cubic meter.)

5. This rule does not exempt the source from meeting the requirements of paragraph 1200-03-09-.01(5).

(n) Sources Impacting Class I Areas - Additional Requirements

1. Notice to Federal Land Managers and the EPA Administrator

The Technical Secretary shall promptly provide written notice of receipt of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area or which may have an adverse impact on visibility in any Class I area to the EPA Administrator, the

(Rule 1200-03-09-.01, continued)

Federal Land Manager, and the Federal official charged with direct responsibility for management of any lands within any such area. The Technical Secretary shall transmit to the EPA Administrator and the Federal Land Manager a copy of each permit application relating to a major stationary source or major modification which would affect a Class I area. This application shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt of the permit application, and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area. The Technical Secretary shall also provide the EPA Administrator, the Federal Land Manager and such Federal officials with a copy of the preliminary determination and shall make available to them any materials used in making that determination promptly after the Technical Secretary makes it. In addition, notification of public hearings, final determinations, and permits issued shall be provided. Finally, the Technical Secretary shall also notify all affected Federal Land Managers within 30 days of receipt of any advance notification of any such permit application.

2. Denial - Impact on Air Quality Related Values

The Federal Land Manager of any such lands may demonstrate to the Technical Secretary that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Technical Secretary concurs with such demonstration, then he shall not issue the permit.

3. Class I Variances

The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and he so certifies, the Technical Secretary, provided that the applicable requirements of this paragraph are otherwise met, may issue the permit with such emission limitations as may be necessary as approved by the Tennessee Air Pollution Control Board to assure that emissions of sulfur dioxide, $PM_{2.5}$, PM_{10}, and nitrogen oxides would not exceed the following maximum allowable increases over baseline concentration for such pollutants:

Pollutant	Maximum Allowable Increase $\mu g/m^3$
$PM_{2.5}$:	
Annual arithmetic mean	4
24-hr maximum	9
PM_{10}:	
Annual arithmetic mean	17
24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91

(Rule 1200-03-09-.01, continued)

3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

4. Visibility Analysis

The Technical Secretary shall consider any analysis performed by the Federal Land Manager, provided to the Technical Secretary within 30 days of the notification and analysis required in part 1. of this subparagraph, that a proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. If the Technical Secretary concurs with the analysis then he shall not issue the permit. Where the Technical Secretary finds that such an analysis does not demonstrate to the satisfaction of the Technical Secretary that an adverse impact on visibility will result in the Federal Class I area, the Technical Secretary must, in the notice of public hearing on the permit application, either explain his decision or give notice as to where the explanation can be obtained.

(o) Innovative Control Technology

1. The owner or operator of a proposed major stationary source or major modification may request that the Technical Secretary approve a system of innovative control technology.

2. The Technical Secretary, with the consent of the Governor(s) of the other affected State(s), may determine that the source or modification may employ a system of innovative control technology if:

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

(ii) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under part 1200-03-09-.01(4)(j)1. by a date specified by the Technical Secretary. Such date shall not be later than 4 years from the time of startup, or 7 years from permit issuance.

(iii) The source or modification would meet the requirements of parts (e)1. and (j)1. based on the emission rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Technical Secretary.

(iv) The source or modification shall not:

(I) Cause or contribute to a violation of an applicable ambient air quality standard; or

(II) Have an adverse impact on any Class I area; or

(III) Impact any area where an applicable increment is known to be violated; and

(v) All other applicable requirements including those for public participation have been met.

(Rule 1200-03-09-.01, continued)

3. The Technical Secretary shall withdraw any approval to employ a system of innovative control technology made under this subparagraph, if:

   (i) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

   (ii) The proposed system fails before the specified date so as to contribute to ambient air quality violations, or to an unreasonable risk to public health, welfare, or safety; or

   (iii) The Technical Secretary 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.

4. If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with part (o)3., the Technical Secretary may allow the source or modification up to an additional 3 years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

(p) Reserved.

(q) Reserved.

(r) Reserved.

(s) Actuals PALs.

1. Applicability.

   (i) The Technical Secretary may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in parts (s)1. through 15. of this paragraph. The term "PAL" shall mean "actuals PAL" throughout sub-paragraph (s) of this paragraph.

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

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

      (II) Does not have to be approved through the major NSR program; and

      (III) Is not subject to the provisions in part (a)6. of this paragraph (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

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

(Rule 1200-03-09-.01, continued)

2. Definitions. When a term is not defined in these sub-parts, it shall have the meaning given in subparagraph (b) of this rule or in the Federal Clean Air Act.

(i) "Actuals PAL" for a major stationary source means a PAL based on the baseline actual emissions (as defined in part (b)45. of this paragraph) of all emissions units (as defined in part (b)8. of this paragraph) at the source, that emit or have the potential to emit the PAL pollutant.

(ii) "Allowable emissions" means "allowable emissions" as defined in part (b)17. of this paragraph, except as this definition is modified according to items (s)2.(ii)(I) and (II) of this paragraph.

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

(II) An emissions unit's potential to emit shall be determined using the definition in part (b)5. of this paragraph, except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

(iii) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in part (b)24. of this paragraph or in the Federal Clean Air Act, whichever is lower.

(iv) "Major emissions unit" means:

(I) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

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

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

(vi) "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

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

(viii) "PAL major modification" means, notwithstanding parts (b)2., 3., and 4. of this paragraph (the definitions for major modification and net emissions

increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

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

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

(xi) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in part (b)24. of this paragraph or in the Federal Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in sub-part (s)2.(iv) of this paragraph.

3. Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information in sub-parts (s)3.(i) through (iii) of this paragraph to the Technical Secretary for approval.

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

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

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

4. General requirements for establishing PALs.

(i) The Technical Secretary may establish a PAL at a major stationary source, provided that at a minimum, the requirements in items (s)4.(i)(I) through (VII) of this paragraph are met.

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

PAL effective date for each emissions unit under the PAL is less than the PAL.

(II) The PAL shall be established in a PAL permit that meets the public participation requirements in part (s)5. of this paragraph.

(III) The PAL permit shall contain all the requirements of part (s)7. of this paragraph.

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

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

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

(VII) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in parts (s)12. through 14. of this paragraph for each emissions unit under the PAL through the PAL effective period.

(ii) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under sub-part (5)(b)2.(v) of this rule unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

5. Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or increased, through a procedure that is consistent with 40 CFR 51.160 and 51.161, subparagraph (l) of this paragraph, part (5)(b)3. of this rule, or 1200-03-09-.02(11)(f)8. ~~subparagraph (l) of this paragraph and part (5)(b)3. of this rule.~~ This includes the requirement that the Technical Secretary provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Technical Secretary must address all material comments before taking final action on the permit.

6. Setting the 10-year actuals PAL level.

(i) Except as provided in sub-part (s)6.(ii) of this paragraph, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in part (b)(45) of this paragraph) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under part (b)24. of this paragraph or under the Federal Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. ~~However, a different consecutive 24-month period may be used for each different PAL pollutant.~~ Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Technical Secretary shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any

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applicable Federal or State regulatory requirement(s) that the Technical Secretary is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NOX to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

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

7. Contents of the PAL permit. The PAL permit shall contain, at a minimum, the information in sub-parts (s)7.(i) through (x) of this paragraph.

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

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

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

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

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

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

(vii) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under part (s)13. of this paragraph.

(viii) A requirement to retain the records required under part (s)12. of this paragraph on site. Such records may be retained in an electronic format.

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

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

8. PAL effective period and reopening of the PAL permit.

(Rule 1200-03-09-.01, continued)

(i) PAL effective period. The Technical Secretary shall specify a PAL effective period of 10 years.

(ii) Reopening of the PAL permit.

(I) During the PAL effective period, the Technical Secretary shall reopen the PAL permit to:

I Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

II Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under sub-part (5)(b)2.(v) of this rule; and

III Revise the PAL to reflect an increase in the PAL as provided under part (s)11. of this paragraph.

(II) The Technical Secretary may reopen the PAL permit for the following:

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

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

III Reduce the PAL if the Technical Secretary determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an AQRV that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(III) Except for the permit reopening in sub-item (s)8.(ii)(I)I of this paragraph for the correction of typographical/calculation errors that do not increase the PAL level, all reopenings shall be carried out in accordance with the public participation requirements of part (s)5. of this paragraph.

9. Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in part (s)10. of this paragraph shall expire at the end of the PAL effective period, and the requirements in sub-part (s)9.(i) through (v) of this paragraph shall apply.

(i) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in items (s)9.(i)(I) and (II) of this paragraph.

(I) Within the time frame specified for PAL renewals in sub-part (s)10.(ii) of this paragraph, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or

each group of emissions units, if such a distribution is more appropriate as decided by the Technical Secretary) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under sub-part (s)10.(v) of this paragraph, such distribution shall be made as if the PAL had been adjusted.

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

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

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

(iv) Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in parts (b)2. and 3. of this paragraph.

(v) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to part (a)6. of this paragraph, but were eliminated by the PAL in accordance with the provisions in item (s)1.(ii)(III) of this paragraph.

10. Renewal of a PAL.

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

(ii) Application deadline. A major stationary source owner or operator shall submit a timely application to the Technical Secretary to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time

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period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(iii) Application requirements. The application to renew a PAL permit shall contain the information required in items (s)10.(iii)(I) through (IV) of this paragraph.

(I) The information required in sub-parts (s)3.(i) through (iii) of this paragraph.

(II) A proposed PAL level.

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

(IV) Any other information the owner or operator wishes the Technical Secretary to consider in determining the appropriate level for renewing the PAL.

(iv) PAL adjustment. In determining whether and how to adjust the PAL, the Technical Secretary shall consider the options outlined in items (s)10.(iv)(I) and (II) of this paragraph. However, in no case may any such adjustment fail to comply with item (s)10.(iv)(III) of this paragraph.

(I) If the emissions level calculated in accordance with part (s)6. of this paragraph is equal to or greater than 80 percent of the PAL level, the Technical Secretary may renew the PAL at the same level without considering the factors set forth in item (s)10.(iv)(II) of this paragraph; or

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

(III) Notwithstanding items (s)10.(iv)(I) and (II) of this paragraph:

I If the potential to emit of the major stationary source is less than the PAL, the Technical Secretary shall adjust the PAL to a level no greater than the potential to emit of the source; and

II The Technical Secretary shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of part (s)11. of this paragraph (increasing a PAL).

(v) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Technical Secretary has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

11. Increasing a PAL during the PAL effective period.

(Rule 1200-03-09-.01, continued)

(i) The Technical Secretary may increase a PAL emission limitation only if the major stationary source complies with the provisions in items (s)11.(i)(I) through (IV) of this paragraph.

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

(II) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s), exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

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

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

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

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

12. Monitoring requirements for PALs

(i) General requirements.

(I) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of

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

(II) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in items (s)12.(ii)(I) through (IV) of this paragraph and must be approved by the Technical Secretary.

(III) Notwithstanding item (s)12.(i)(II) of this paragraph, you may also employ an alternative monitoring approach that meets item (s)12.(i)(I) of this paragraph if approved by the Technical Secretary.

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

(ii) Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in sub-parts (s)12.(iii) through (ix) of this paragraph:

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

(II) CEMS;

(III) CPMS or PEMS; and

(IV) Emission factors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(viii) Notwithstanding the requirements in sub-parts (s)12.(iii) through (vii) of this paragraph, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Technical Secretary shall, at the time of permit issuance:

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

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

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

13. Recordkeeping requirements.

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

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

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

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

14. Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Technical Secretary in accordance with the applicable title V operating permit program. The reports shall meet the requirements in sub-parts (s)14.(i) through (iii) of this paragraph.

(i) Semi-annual report. The semi-annual report shall be submitted to the Technical Secretary within 30 days of the end of each reporting period. This report shall contain the information required in items (s)14.(i)(I) through (VII) of this paragraph.

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

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

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

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

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

(VI) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the

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pollutant or the number determined by method included in the permit, as provided by sub-part (s)12.(vii) of this paragraph.

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

(ii) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to item .02(11)(e)1.(iii)(III) of this chapter shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by item .02(11)(e)1.(iii)(III) of this chapter. The reports shall contain the following information:

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

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

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

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

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

15. Transition requirements.

(i) The Technical Secretary may not issue a PAL that does not comply with the requirements in parts (s)1. through 15. of this paragraph after the Administrator has approved regulations incorporating these requirements into the State Implementation Plan (SIP).

(ii) The Technical Secretary may supersede any PAL which was established prior to the date of approval of the plan by the Administrator with a PAL that complies with the requirements of parts (s)1. through 15. of this paragraph.

(t) If any provision of this section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(5) Growth Policy

(a) Attainment and Unclassified Areas

The Technical Secretary shall not grant a permit for the construction or modification of any air contaminant source in an attainment or unclassified area if such construction or modification will interfere with the maintenance of an air quality standard –or PSD

(Rule 1200-03-09-.01, continued)

increment where applicable, or will violate any provisions of the Tennessee Air Quality Act, or section 165 (a)(3) of the Clean Air Act, Amendments of 1990.

(b) Nonattainment Areas

1. Definitions as used in this subparagraph are not alphabetized. All terms not defined herein shall have the meaning given them in Chapter 1200-3-2.

(i) "Stationary source" means any building, structure, facility, or installation which emits or may emit ~~any air contaminant subject to regulation under this Division 1200-3.~~a regulated NSR pollutant.

(ii) "Building, structure, facility, or installation" means all of the air contaminant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Air contaminant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two digit code) which is specified in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively)).

(iii) "Potential to emit" means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit an air contaminant, including air contaminant 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 only if the limitation or the effect it would have on emissions is "legally enforceable." Secondary emissions do not count in determining the "potential to emit" of a stationary source.

(iv) "Major stationary source" means:

(I) Any stationary source of air contaminants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the Clean Air Act, according to sub-items I through VI of this item.

I. 50 tons per year of either volatile organic compounds or nitrogen oxides in any serious ozone non-attainment area.

II. 50 tons per year of either volatile organic compounds or nitrogen oxides in an area within an ozone transport region, except for any severe or extreme ozone non-attainment area.

III. 25 tons per year of either volatile organic compounds or nitrogen oxides in any severe ozone non-attainment area.

IV. 10 tons per year of either volatile organic compounds or nitrogen oxides in any extreme ozone non-attainment area.

V. 50 tons per year of carbon monoxide in any serious non-attainment area for carbon monoxide, where stationary

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sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the Administrator of the U.S. EPA).

VI. 70 tons per year of PM–10 in any serious non-attainment area for PM–10; or

(II) Any physical change that would occur at a stationary source not qualifying under item (iv)(I) as a major stationary source, if the change would constitute a major stationary source by itself.

(III) A major stationary source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone.

(IV) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Item, whether it is a major stationary source, 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 (or combination thereof) 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;

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XIX Secondary metal production plants;

XX Chemical process plants;

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; and

XXVII Any other stationary source category which, as of August 7, 1980, is being regulated under Chapter 1200-03-16, New Source Performance Standards or Chapter 1200-03-11, Hazardous Air Contaminants or Chapter 1200-03-31, Standards For Hazardous Air Contaminants For Source Categories.

(v) Major modification:

(I) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in:

I -A~~a~~ significant ~~net~~ emissions increase of a regulated NSR pollutant (as defined in sub-part 1.(xlix) of this subparagraph)~~for any pollutant subject to regulations under Subpart 1200-3-9-.01(5)(b)1.(x)~~.

II. A significant net emissions increase of that pollutant from the major stationary source.

(II) Any significant emissions increase (as defined in sub-part 1.(xxxix) of this subparagraph) from any emissions units or net emissions increase (as defined in sub-part 1(vi) of this subparagraph) at a major stationary source that is significant for volatile organic compounds and/or nitrogen oxides shall be considered significant for ozone.

~~Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.~~

(III) 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 section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding

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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 Clean Air Act Amendments, August 7, 1977;

IV Use of an alternative fuel at a steam generating unit (burning equipment of 250 million BTU's per hour or larger) to the extent that the fuel is generated from municipal solid waste as determined by the Tennessee Division of Solid Waste Management.

V Use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before December 12, 1976, unless such change would be prohibited under a legally enforceable permit condition which was established after December 12, 1976, pursuant to 40 CFR Part 52.21 (July 1, 1993), or under regulations approved pursuant to 40 CFR Part 51 Subpart I or 51.166 (July 1, 1993), or the source is approved to use under any permit issued pursuant to this paragraph;

VI An increase in the hours of operation or in the production rate, unless such change would be prohibited under a legally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR Part 52.21 (July 1, 1993) or regulations approved pursuant to 40 CFR Part 51 Subpart I or 40 CFR Part 51.166 (July 1, 1993).

VII Any change in ownership at a stationary source.

VIII Reserved.

IX. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

A. The State Implementation Plan for the State in which the project is located, and

B. Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(IV) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under part 10 of this subparagraph for a PAL for that pollutant. Instead, the definition at item 10.(ii)(VIII) of this subparagraph shall apply.

(V) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions

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increase and a major modification for ozone, if the major stationary source is located in an extreme ozone non-attainment area that is subject to subpart 2, part D, title I of the Clean Air Act.

(VI) Any physical change in, or change in the method of operation of, a major stationary source of nitrogen oxides that results in any increase in emissions of nitrogen oxides 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 non-attainment area that is subject to subpart 2, part D, title I of the Clean Air Act.

(vi) Net emission increases

(I) "Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

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 sub-parts 2.(xii) through (xvii) of this subparagraph; and~~Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; 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 this sub-item II shall be determined as provided in sub-part 1.(xlvii) of this subparagraph, except that sub-items 1.(xlvii)(I)III and IV of this subparagraph shall not apply.~~Any other increases and decreases in actual emissions at the stationary source that are contemporaneous with the particular change and are otherwise creditable.~~

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

(III) An increase or decrease in actual emissions is creditable only if;

I It occurs within a reasonable period to be specified by the Technical Secretary; and~~It occurs within a 5 year period or shorter time as specified by the Technical Secretary; and~~

II The Technical Secretary has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 CFR Part 51 Subpart I~~.(July 1, 1993)~~, which permit is in effect when the increase in actual emissions from the particular change occurs~~.~~; and

III Reserved.

(Rule 1200-03-09-.01, continued)

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

(V) A decrease in actual emissions is creditable only to the extent that:

I The old level of actual emission or the old level of allowable emissions which ever is the lower, exceeds the new level of actual emissions; and

II It is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and~~It is legally enforceable at and after the time that actual construction on the particular change begins; and~~

III The Technical Secretary has not relied on it in issuing any permit under regulation approved pursuant to 40 CFR Part 51 Subpart I ~~(July 1, 1993)~~ or the Technical Secretary has not relied on it in demonstrating attainment or reasonable further progress; and

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

V Reserved.

(VI) An increase that results from a physical change at a stationary source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular air contaminant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period as determined by the Technical Secretary, not to exceed 180 days.

(VII) Item 1.(xiii)(I) of this subparagraph shall not apply for determining creditable increases and decreases or after a change.

(vii) "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant. This definition includes an electric steam generating unit as defined in sub-part 1.(lvi) of this subparagraph. For purposes of this section, there are two types of emissions units as described in items 1.(vii)(I) and (II) of this subparagraph.

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

(II) An existing emissions unit is any emissions unit that does not meet the requirements in item 1.(vii)(I) of this subparagraph. A replacement unit, as defined in sub-part 1.(xxxvi) of this subparagraph, is an existing emissions unit.~~"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any air contaminant subject to regulation under this Division 1200-3.~~

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

(ix) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

(x) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following air contaminants, a rate of emissions that would equal or exceed any of the following rates:

(I) Air Contaminant and Emissions Rate

I Carbon monoxide: 100 tons per year (tpy)

II Nitrogen Oxides: 40 tpy

III Sulfur dioxide: 40 tpy

IV Ozone: 40 tpy of an ozone precursor

V Lead: 0.6 tpy

VI PM_{10}: 15 tpy

VII. $PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$ precursor under subitem 1(xlix)(III)III of this subparagraph.

(II) Notwithstanding the significant emissions rate for ozone in item (I) of this subpart, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of either volatile organic compounds or nitrogen oxides that would result from any physical change in, or change in the method of operation of, a major stationary source located in a serious or severe ozone non-attainment area that is subject to subpart 2, part D, title I of the Clean Air Act, if such emissions increase of either volatile organic compounds or nitrogen oxides exceeds 25 tons per year.

(III) Reserved

(IV) Notwithstanding the significant emissions rate for carbon monoxide under item (I) of this subpart, significant means, in reference to an

(Rule 1200-03-09-.01, continued)

emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious non-attainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the Administrator of the U.S. EPA has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(V) Notwithstanding the significant emissions rates for ozone under items (I) and (II) of this subpart, any increase in actual emissions of either volatile organic compounds or nitrogen oxides from any emissions unit at a major stationary source of either volatile organic compounds or nitrogen oxides located in an extreme ozone non-attainment area that is subject to subpart 2, part D, title I of the Clean Air Act shall be considered a significant net emissions increase.

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

(I) The applicable standards set forth in:

I The New Source Performance Standards (NSPS) or;

II The National Emission Standards for Hazardous Air Pollutants (NESHAP) contained in Chapter 1200-03-11 and Chapter 1200-03-31 or;

III Limits established pursuant to the applicable standards under Division 1200-03 or;

IV In the State Implementation Plan, emissions rates, specified as a legally enforceable permit condition established pursuant to this rule 1200-03-09-.01 including those with a future compliance date

(xii) "Legally enforceable" means all limitations and conditions which are enforceable by the Technical Secretary and the EPA Administrator and are included under this Division 1200-03 and the State Implementation Plan. All orders issued by the Tennessee Air Pollution Control Board, operating permits and their respective special conditions issued in accordance with the Act and Regulations, and any certificate authorized by the Act or the Regulations shall be taken to public hearing and made part of the State Implementation Plan by the Board to be legally enforceable.

(xiii) "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with items 1.(xiii)(I) through (III) of this subparagraph, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under part 10. of this subparagraph. Instead, sub-parts 1.(xxxix) and (xlvii) of this subparagraph shall apply for those purposes.~~"Actual emissions" means the actual rate of emissions of an air contaminant from an emissions unit, as determined in accordance with items (I) through (III) below.~~

(Rule 1200-03-09-.01, continued)

(I) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions unit actually emitted the air contaminant during a ~~two-year~~consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Technical Secretary may 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.

(II) In the absence of reliable data, the Technical Secretary may presume that permitted-specific allowable emissions for the emissions unit are equivalent to the actual emissions of the emissions unit.

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

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

(xv) "Commence Construction"

"Commence construction" as applied to a major stationary source or major modification means that the owner or operator has all necessary construction permits and either has begun, or caused to begin, a continuous program of actual on-site construction of the stationary source, to be completed within a reasonable time; or entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the stationary source to be completed within a reasonable time.

(xvi) "Necessary Preconstruction permits" means those permits required under the Federal air quality control laws and regulations which are part of the approved SIP under Division 1200-03.

(xvii) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipe work, and construction of permanent storage structures. 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.

(xviii) "Lowest achievable emission rate" (LAER) means, for any ~~major stationary~~ source ~~or major modifications~~, the more stringent rate of emissions based on the following:

(I) The most stringent emissions limitation which is contained in the applicable standards under this Division 1200-03, or in any State

(Rule 1200-03-09-.01, continued)

Implementation Plan for such class or category of stationary source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(II) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any ~~air contaminant~~pollutant in excess of the amount allowable under applicable New Source Standards of Performance.

(xix) "Significantly impact" means the contribution by a new stationary source or modification to the air quality in a nonattainment area in concentrations equal to or greater than the amount as follows:

Pollutant	Annual	Averaging Time (hours)			
		24	8	3	1
SO_2	1.0 µg/m^3	5 µg/m^3		25 µg/m^3	
PM_{10}	1.0 µg/m^3	5 µg/m^3			
$PM_{2.5}$	0.3 µg/m^3	1.2 µg/m^3			
NO_2	1.0 µg/m^3				
CO			0.5 mg/m^3		2 mg/m^3

(xx) "Minor stationary source" means any source which is not a major stationary source

(xxi) "Minor modification" means

(I) Any modification which is not a major modification; or

(II) Any modification which is a physical change in or a change in the method of operation of a minor stationary source provided the change would not constitute a major stationary source by itself.

(xxii) "Reasonable stack heights" means a stack height which will minimize air quality impact, not to exceed the Tennessee ambient air quality standards in any case. The Technical Secretary shall on a case-by-case basis, taking into account the existing air quality in the area and the economic costs to the stationary source, determine the achievable stack height to be used by the stationary source or modification. In no circumstance shall the stack height be less than 20 feet above ground level, or be required to exceed stack height procedure. Stacks not emitting the nonattainment pollutants are not required to meet the minimum stack height requirement. Stationary sources which emit volatile organic compounds and nitrogen oxide and are located in ozone nonattainment areas will not be required to meet the minimum stack height requirement.

(xxiii) "Reasonable Further Progress" (RFP) means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Technical Secretary or the EPA Administrator for the purpose of ensuring attainment of the applicable ambient air quality standard by the applicable date.

(Rule 1200-03-09-.01, continued)

(xxiv) "Reasonable available control technology" (RACT) means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

(I) The necessity of imposing such controls in order to attain and maintain an ambient air quality standard,

(II) The social, environmental and economic impact of such controls, and

(III) Alternative means of providing for attainment and maintenance of such standard.

(xxv) "Compliance schedule" means a chronology of actions to be taken by a noncomplying source to bring it into full compliance with Division 1200-03 or permits issued thereto. Generally speaking, compliance schedule increments will be divided into (1) engineering evaluation for problem solution, (2) procurement of the equipment and/or services necessary to solve the problem, (3) on-site delivery of the equipment, (4) completion of the equipment's installation including startup of said equipment and (5) source testing to establish the air contaminant emission levels of the completed installation if required by the Technical Secretary.

(xxvi) "Air contaminant" is particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combinations thereof, total suspended particulates, PM10, sulfur dioxide, carbon monoxide, ozone, nitrogen oxides, lead, and gaseous fluorides expressed as HF.

(xxvii) "Good Engineering Practice" (GEP)

(GEP) Stack height means the greater of:

(I) 65 meters, measured from the ground-level elevation at the base of the stack or,

(II) I For a stack in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required under 40 CFR part 51 and 52 (July 1, 1993)

$Hg = 2.5 H$,

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

II For all other stacks,

$Hg = H + 1.5L$

where

Hg = good engineering practice stack height, measured from the ground-level elevation at the base of the stack. This

(Rule 1200-03-09-.01, continued)

is the height at which structural downwash no longer influences computer modeled ambient impacts.

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack.

L = lesser dimension, height or projected width, of nearby structure(s)

provided that the Technical Secretary may require the use of a field study or fluid model to verify GEP stack height for the source; or

(III) The height demonstrated by a fluid model or a field study approved by the Technical Secretary, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(xxviii) "Nonattainment Area" means any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) any ambient air quality standard for the pollutant. As used in this chapter "nonattainment area" includes all the areas as defined by 1200-03-02-.01(1)(ffff) plus any areas determined as not meeting any ambient air quality standards as a result of required monitoring as part of a construction permit application. The demonstration required under section 165(a)(3) of the 1990 Clean Air Act, shall not apply to maximum allowable increases for Class II areas in the case of an expansion or modification of a major emitting facility which was in existence on the date of enactment of the Clean Air Act, Amendments of 1977, and whose allowable emissions of air pollutants is established as required in sub section 165(a)(4) of the 1990 Clean Air Act.

(xxix) (Reserved)

(xxx) "Volatile Organic Compounds" and "exempt compounds" have the same meaning as defined in Division 1200-3-18-.01 Definitions.

(xxxi) "Ambient Air Quality Standard" (AAQS) means any Primary Ambient Air Quality Standard or Secondary Ambient Air Quality Standard or Tennessee Ambient Air Quality Standard as defined in Chapter 1200-03-03.

(xxxii) "Class I, Class II, or Class III" areas means areas of the state as defined by Division 1200-03-09-.01(4)(g).

(xxxiii) "Ozone precursor" means volatile organic compounds and/or nitrogen oxides. A proposed new source or a net emissions increase at an existing source in an ozone transport region (or an ozone nonattainment area) can be classified as major based on either VOC or NO_x emissions or both (but not in combination). That is, the determination of major must be made individually for each pollutant, since VOC and NO_x emissions cannot be added to meet the minimum level required for such a demonstration.

(I) Notwithstanding sub-part (xxxiii) of this part, NOx shall not be considered an ozone precursor when:

(Rule 1200-03-09-.01, continued)

I Additional NO_x emissions reductions would not be expected to decrease ozone;

II The Administrator of EPA determines, for certain classes or categories of sources (when the Administrator approves the Tennessee State Implementation Plan or Plan revision), that net air quality benefits would be greater in the absence of further nitrogen oxides reductions from sources concerned; and

III. The Administrator of the U.S. EPA has granted a NO_X waiver applying the standards set forth under section 182(f) of the Clean Air Act and the waiver continues to apply.

(xxxiv) "Stack height procedures" means those procedures that must provide that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceed good engineering practice or by any other dispersion technique, except as provided in 40 CFR Part 51.118(b) (July 1, 1993). Such procedures must provide that before the Technical Secretary issues a permit to a source based on a good engineering practice stack height that exceeds the height allowed by 40 CFR Part 51.100(ii) (1) or (2)(July 1, 1993), the Technical Secretary must notify the public of the availability of the demonstration study and must provide opportunity for public hearing on it. This subpart does not require such procedures to restrict in any manner the actual stack height of any source.

(xxxv) "Portable Stationary Source" means any source that is mounted on any chassis or skids and may be moved by the application of a lifting or pulling force. In addition, there shall be no cable, chain, turnbuckle, bolt or other means (except electrical connections) by which any piece of equipment is attached or clamped to any anchor, slab, or structure, including bedrock that must be removed prior to the application of a lifting or pulling force for the purpose of transporting the unit, except that such connection as deemed appropriate by the Technical Secretary may be exempted for safety considerations from the specified restrictions on a qualifying source.

(xxxvi) Replacement unit means an emissions unit for which all the criteria listed in items 1.(xxxvi)(I) through (IV) of this subparagraph are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(I) The emissions unit is a reconstructed unit within the meaning of part (4)(b)54. of this rule~~sub-part 16-.01(9)(b)2.(i) of this division~~, or the emissions unit completely takes the place of an existing emissions unit.

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

(III) The replacement does not alter the basic design parameters of the process unit.

(IV) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical

matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(xxxvii) Reserved.

(xxxviii) "Pollution prevention" means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(xxxix) "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in sub-part 1.(x) of this subparagraph) for that pollutant.

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

(I) In determining the projected actual emissions under sub-part 1.(xl) of this subparagraph 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 startups, 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 under sub-part 1.(xlvii) of this subparagraph and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(II) In lieu of using the method set out in sub-items 1.(xl)(I)I through III of this subparagraph, may elect to use the emissions unit's potential to emit, in tons per year, as defined under sub-part 1.(iii) of this subparagraph.

(Rule 1200-03-09-.01, continued)

(xli) Reserved.

(xlii) "Nonattainment major new source review (NSR) program" means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the SIP to implement the requirements of this subparagraph, or a program that implements 40 CFR 51, appendix S, Sections I through VI. Any permit issued under such a program is a major NSR permit.

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

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

(xlv) "Continuous parameter monitoring system" (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, 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.

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

(xlvii) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with items 1.(xlvii)(I) through (IV) of this subparagraph.

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

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

(Rule 1200-03-09-.01, continued)

III. For a regulated NSR pollutant, when a project involves multiple emissions units, one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. However, the Technical Secretary is authorized to allow the use of multiple, pollutant specific consecutive 24-month baselines in determining the magnitude of a significant net emissions increase and the applicability of major new source review requirements if all of the following conditions are met:

A. Construction of a new source or modification would become subject to major new source review if a single 2-year baseline is used for all pollutants.

B. One or more pollutants were emitted during such 2-year period in amounts that were less than otherwise permitted for reasons other than operations at a lower production or utilization rate. Qualifying examples include, but are not limited to, the voluntary use of:

(A) a cleaner fuel than otherwise permitted in a fuel burning operation (e.g., natural gas instead of coal in a multi-fuel boiler),

(B) a coating with a lower VOC content than otherwise permitted in a coating operation,

(C) a voluntary improvement in the control efficiency of an air pollution control device or the voluntary addition of a control device where one did not exist before, and

(D) alternate production methods, raw materials, or products that result in lower emissions of one or more pollutants.

C. Use of alternate 2-year baselines for the pollutants described in Subitem II above would result in the construction of the new source or modification not being subject to major new source review.

D. The use of the multiple baselines is not prohibited by any applicable provision of the USEPA's new source review regulations.

The burden for demonstrating that these conditions are met is upon the permit applicant. The demonstration and the Technical Secretary's approval will be made a part of the permit record.

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 tons per year, and for adjusting this amount if required by sub-item 1.(xlvii)(I)II of this subparagraph.

(Rule 1200-03-09-.01, continued)

(II) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Technical Secretary for a permit required either under this subparagraph 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 non-compliant 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 maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of item 2.(v)(VII) of this subparagraph.

IV. For a regulated NSR pollutant, when a project involves multiple emissions units, one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. However, the Technical Secretary is authorized to allow the use of multiple, pollutant specific consecutive 24-month baselines in determining the magnitude of a significant net emissions increase and the applicability of major new source review requirements if all of the following conditions are met:

A. Construction of a new source or modification would become subject to major new source review if a single 2-year baseline is used for all pollutants.

B. One or more pollutants were emitted during such 2-year period in amounts that were less than otherwise permitted for reasons other than operations at a lower production or utilization rate. Qualifying examples include, but are not limited to, the voluntary use of:

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(A) a cleaner fuel than otherwise permitted in a fuel burning operation (e.g., natural gas instead of coal in a multi-fuel boiler),

(B) a coating with a lower VOC content than otherwise permitted in a coating operation,

(C) A voluntary improvement in the control efficiency of an air pollution control device or the voluntary addition of a control device where one did not exist before, and

(D) alternate production methods, raw materials, or products that result in lower emissions of one or more pollutants.

C. Use of alternate 2-year baselines for the pollutants described in section B above would result in the construction of the new source or modification not being subject to major new source review.

D. The use of the multiple baselines is not prohibited by any applicable provision of the USEPA's new source review regulations.

The burden for demonstrating that these conditions are met is upon the permit applicant. The demonstration and the Technical Secretary's approval will be made a part of the permit record.

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 tons per year, and for adjusting this amount if required by sub-items 1.(xlvii)(II)II and III of this subparagraph.

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

(IV) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in item 1.(xlvii)(I) of this subparagraph, for other existing emissions units in accordance with the procedures contained in item 1.(xlvii)(II) of this subparagraph, and for a new emissions unit in accordance with the procedures contained in item 1.(xlvii)(III) of this subparagraph.

(xlviii) Reserved

(xlix) "Regulated NSR pollutant," for purposes of this subparagraph, means the following:

(I) Nitrogen oxides or any volatile organic compounds;

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

(III) Any pollutant that is a constituent or precursor of a general pollutant listed under items 1(xlix)(I) or (II) of this subparagraph, provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors for purposes of NSR are the following:

I. Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

II. Sulfur dioxide is a precursor to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas.

III. Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas, unless the State demonstrates to the satisfaction of the EPA Administrator or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

IV. Volatile organic compounds and ammonia are presumed not to be precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area, unless the State demonstrates to the satisfaction of the EPA Administrator or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations; or

(IV) PM2.5 emissions and PM10 emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM2.5 and PM10 in nonattainment major NSR permits. Compliance with emissions limitations for PM2.5 and PM10 issued prior to this date shall not shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the (Tennessee) State Implementation Plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this rule unless the State Implementation Plan required condensable particulate matter to be included.

(l) "Reviewing authority" means the State air pollution control agency, local agency, other State agency, Indian tribe, or other agency authorized by the Administrator to carry out a permit program under this subparagraph and 40 CFR 51.166, or the Administrator in the case of EPA-implemented permit programs under 40 CFR 52.21.

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

(lii) "Best available control technology" (BACT) means an emissions limitation (including a visible emissions standard) based on the maximum degree of

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reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Technical Secretary, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR part 60 or 61. If the Technical Secretary 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. This definition does not apply to minor stationary sources and minor modifications proposing to construct in a nonattainment area. For these sources, the definition in subparagraph (2)(d) of this rule applies.

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

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

(lv) Reserved

(lvi) "Electric utility steam generating unit" (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.

(lvii) "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 State Implementation Plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(lviii) "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.

(lix) 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 Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

2. No major stationary source or major modification to which the requirements of this subparagraph apply shall begin actual construction without a permit ~~which~~that states that the stationary source or modifications will meet the requirements of this Paragraph.

The requirements of this subparagraph shall apply to any new stationary source or major modification that is major for a regulated NSR pollutant, or precursor to a regulated NSR pollutant as applicable, if the stationary source or modification would be constructed anywhere in an area designated nonattainment (as of the date of the permit issued in accordance with this subparagraph) for such pollutant pursuant to the Clean Air Act Title I Part A Section 107(d) ~~(As amended November 15,1990)~~.

The requirements of this subparagraph shall apply to each nonattainment pollutant (and in some cases each precursor to the nonattainment pollutant) that the source will emit, or will have the potential to emit, in major amounts. In the case of a modification, the requirements shall apply to the significant net emissions increase of each nonattainment pollutant (and each precursor to the nonattainment pollutant, as applicable) for which the source is major.

(i) All new stationary sources or modifications shall utilize "stack height procedures."

(ii) All minor stationary sources, and minor modifications proposing to construct in a nonattainment area shall utilize best available control technology (BACT), as defined in subparagraph (2)(d) of this rule, for the nonattainment pollutant as specified by the Technical Secretary at the time of the completed permit application, but all major stationary sources and major modifications are required to install LAER in nonattainment areas for the nonattainment pollutant.

(iii) Major stationary sources or major modifications shall meet the following criteria:

(I) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable requirement for sources subject to the New Source Performance Standards, and the National Emission Standards for Hazardous Air Pollutants.

(II) A new major stationary source shall apply the lowest achievable emission rate for each contaminant for which the area is designated nonattainment that it would have the potential to emit in an amount sufficient to make the source or modification a major stationary source or modification. This provision applies to each new emissions unit at which emissions would occur.

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(III) A major modification shall apply the lowest achievable emission rate for each air contaminant for which the area is designated nonattainment and for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the air contaminant would occur as the result of a physical change or change in the method of operation in the unit.

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

(V) The Technical Secretary shall, for each new major source and major modification, submit to the RACT/BACT/LAER Clearinghouse within 60 days of issuance of the permit, all information on the emissions prevention or control technology for the new major source or major modification.

(iv) Reasonable Further Progress (RFP)

(I) Timing and exemptions:

I By the time that the proposed source or modification is to commence operation, sufficient offsetting emissions reductions shall be in effect such that the total emissions from existing sources in the area, from new or modified sources which are not major stationary sources, and from the proposed source will be sufficiently less than total emissions from existing sources prior to the application for such permit to construct or modify so as to represent (when considered together with the plan provisions required under the Clean Air Act Title I Part D Subpart 1 Section 172 (as amended November 15,1990) reasonable further progress; or

II In the case of a new major stationary source or major modification which is located in a zone (within the nonattainment area) identified by the Administrator of EPA, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, the emissions of such air contaminant resulting from the proposed new or modified major stationary source will not cause or contribute to emissions levels which exceed the allowance permitted as contained in the State's approved Implementation Plan pursuant to the Clean Air Act Title I Part D Subpart 1 Section 172(c)(4) (as amended November 15,1990).

(II) For the purposes of satisfying the requirements of sub-item (iv)(I)I. of this sub-part, the determination of total emissions at both the time prior to the application for a permit subject to the requirements of this sub-part and the time such permitted source or modification would

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commence operation, shall be made by the Technical Secretary in a manner consistent with the assumptions in the applicable implementation plan approved by the Administrator of EPA concerning baseline emissions for the demonstration of reasonable further progress and attainment of the ambient air quality standards for the particular air contaminant subject to review under this subpart.

(v) Emissions Offsets. In meeting the emission offset requirements of this paragraph, the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in items (III), (IV) and (XIV) of this subpart.

(I) Prior to the issuance of a permit under this subpart, legally enforceable emission offsets shall be obtained from the same source or other sources in the same non-attainment area, except that such emissions reduction may be obtained from a source in another non-attainment area if:

I. The other area has an equal or higher non-attainment classification than the area in which the source is located; and,

II. Emissions from such other area contribute to a violation of an air quality standard in the non-attainment area in which the proposed new or modified source would construct.

(II) By the time that the new or modified source commences operation, such reductions shall be in place such that the total tonnage of emissions of any applicable non-attainment air contaminant allowed from the proposed new source, or net emissions increase from the modification, shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air contaminant from the same or other sources.

(III) In meeting the requirements of item (v)(II) of the subpart for ozone non-attainment areas that are subject to subpart 2, part D, title I of the Clean Air Act, the ratio of total actual emission reductions of Volatile Organic Compounds and/or Nitrogen Oxides to the net emissions increase of Volatile Organic Compounds and/or Nitrogen Oxides shall be as follows:

I. In any Marginal non-attainment area for ozone - at least 1.1 to 1;

II. In any Moderate non-attainment area for ozone - at least 1.15 to 1;

III. In any Serious non-attainment area for ozone - at least 1.2 to 1;

IV. In any Severe non-attainment area for ozone - at least 1.3 to 1;

V. In any Extreme non-attainment area for ozone - at least 1.5 to 1.

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(IV) Within an ozone transport region that is subject to subpart 2, part D, title I of the Clean Air Act, for any area designated for ozone attainment, unclassified, or Marginal non-attainment, the ratio of total actual emission reductions of Volatile Organic Compounds and/or Nitrogen Oxides to net emissions increase of Volatile Organic Compounds and/or Nitrogen Oxides shall be at least 1.15 to 1.

(V) I. Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if they meet the requirements in sections IA and B of this item.

A. Such reductions are surplus, permanent, quantifiable, and federally enforceable.

B. The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, the Technical Secretary may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

II. Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in section IB of this item may be generally credited only if:

A. The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

B. The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of section IA of this item.

(VI) With respect to a proposed increase in VOC emissions, no emissions credit shall be allowed for reductions in any organic compound specifically excluded from the definitions of “VOC” in this Division 1200-03.

(VII) Credit for an emissions reduction may be claimed to the extent that the reduction has not been relied on in any permit already issued under regulations approved pursuant to 40 CFR Parts 51, 52, and 70, (July 1, 1993) or the State has not relied on it in demonstrating attainment or reasonable further progress. Incidental emissions reductions which are not otherwise required under the federal Clean Air Act (As amended November 15, 1990) may be credible as emissions reductions for such purposes if such emissions reductions meet the applicable requirements of this part.

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(VIII) Procedures relating to the permissible locations of offsetting emissions shall be followed which are at least as stringent as those set out in 40 CFR Part 51, Appendix S, Section IV.D. (July 1, 1993).

(IX) Reserved.

(X) Reserved.

(XI) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with section 173 of the Federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification (as defined by subpart 1(xi) of this subparagraph) and the actual emissions before the modification (as defined in subpart 1(xiii) of this subparagraph) for each emissions unit.

(XII) Where the emissions limit under this division 1200-03 allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.

(XIII) For an existing fuel combustion source, credit shall be based on the allowable emissions under this division 1200-03 for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The Technical Secretary shall ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

(XIV) Within an ozone non-attainment area that is subject to subpart 1, part D, title I of the Clean Air Act (but is not subject to subpart 2, part D, title I of the Act, including 8-hour ozone non-attainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of either volatile organic compound or nitrogen oxides to the emissions increase of either volatile organic compounds or nitrogen oxides shall be at least 1:1.

(XV) In meeting the emissions offset requirements of this subpart for fine particulate matter ($PM_{2.5}$), the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor trading is allowed in the approved State Implementation Plan (SIP) for the affected $PM_{2.5}$ nonattainment area. For those nonattainment areas in which interprecursor trading is allowed by the approved SIP, the offset requirements for direct $PM_{2.5}$ emissions or emissions of precursors of $PM_{2.5}$ may be satisfied by offsetting reductions in direct $PM_{2.5}$ emissions or emissions of any $PM_{2.5}$ precursor identified under item (b)1(xlix)(III) of this paragraph if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved SIP for the affected nonattainment area.

(vi) In a nonattainment area, prior to the issuance of a permit to a new major stationary source or major modification an analysis of alternate sites, sizes,

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production processes, and environmental control techniques for the proposed source shall be made. A permit shall only be issued if the benefits of the proposed source significantly outweigh the environmental and social costs imposed on the public as a result of the sources location, construction, or modification in the nonattainment area. The Technical Secretary shall require the submittal of such information as he deems necessary for this analysis.

(vii) The Technical Secretary shall not issue a permit to any major stationary source or major modification locating in or significantly impacting a nonattainment area unless all other sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) anywhere in the State are in compliance or on an approved compliance schedule.

(viii) If the nonattainment area is designated as attainment by the EPA Administrator between the date construction is approved under this subparagraph and before the new source start up date, the source has the option of applying for a new construction permit and relief from the requirements of this subparagraph.

(I) Any permit issued under this part shall remain in effect, unless it expires under subpart (xi) of this part or is rescinded.

(II) The Technical Secretary shall grant an application for rescission if the application shows that this part would not apply to the source or modification.

(III) If the Technical Secretary rescinds a permit under this sub-paragraph, the public shall be given adequate notice of the rescission. Publication by the Technical Secretary of an announcement of rescission in a newspaper of general circulation in the affected region within 60 days of the rescission shall be considered adequate notice.

(ix) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any “legally enforceable limitation” which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Subparagraph 1200-03-09-.01(5)(b) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(x) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, state or federal law.

(xi) Approval to construct shall become invalid if construction is not commenced within 18 months after issuance of an approved construction permit, if construction is discontinued for a period of 18 months or more, or if construction is not completed within 18 months of the completion date specified on the construction permit application unless an extension has been granted from the Tennessee Air Pollution Control Board. Also, each phase of a phased construction project must meet the requirements stated above. An extension of time for a phased construction project may be

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requested for each phase or for the whole project. The above requirements do not apply to the time period between the construction of the approved phases of a phased construction project. The Tennessee Air Pollution Control Board may issue a variance granting an extension to complete construction of a source provided adequate justification is presented. Each extension shall not exceed 12 months in time.

(xii) Except as otherwise provided in sub-parts 2.(xviii) and 2.(xix) of this subparagraph, and consistent with the definition of major modification contained in item 1.(v)(I) of this subparagraph, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in sub-part 1.(xxxix) of this subparagraph), and a significant net emissions increase (as defined in sub-parts 1.(vi) and 1.(x) of this subparagraph). 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.

(xiii) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.,* the first step of the process) will occur depends upon the type of emissions units being modified, according to sub-parts 2.(xiv) and 2.(xvii) of this subparagraph. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.,* the second step of the process) is contained in the definition in sub-part 1.(vi) of this subparagraph. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(xiv) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in sub-part 1.(xl) of this subparagraph) and the baseline actual emissions (as defined in items 1.(xlvii)(I) and (II) of this subparagraph, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in sub-part 1.(x) of this subparagraph).

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

(xvi) Reserved.

(xvii) 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 subparts 2(xiv) through (xv) of this subparagraph as applicable with respect to each emissions unit, for each type of

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emissions unit equals or exceeds the significant amount for that pollutant (as defined in subpart 1(x) of this subparagraph).

(xviii) Any major stationary source with a PAL for a regulated NSR pollutant shall comply with the requirements under part 10. of this subparagraph.

(xix) Reserved.

3. Public Participation

(i) The Technical Secretary shall provide opportunity for public comment on information submitted by owners and operators. The public information must include the agency's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval. The opportunity for public comment shall include, as a minimum -

(I) Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the Technical Secretary's analysis of the effect on air quality;

(II) A 30-day period for submittal of public comment; and

(III) A notice by prominent advertisement in the area affected of the location of the source information and analysis specified in Item (I) of the Sub-part. This notice shall be provided by the source owner or operator.

(ii) Where the 30-day comment period required in Item II of Sub-part (i) would conflict with existing requirements for acting on requests for permission to construct or modify, the Technical Secretary may submit for approval a comment period which is consistent with such existing requirements.

(iii) The Technical Secretary shall provide a copy of the notice required by Sub-part (i) of this part to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in the region in which such new or modified installation will be located. The notice also must be sent to any other agency in the region having responsibility for implementing the procedures required under this part. For lead, a copy of the notice is required for all point sources. The definition of point source for lead is given in 40 CFR Part 51.100(k)(2). (July 1, 1993).

4. Emissions banking for an air contaminant for which an area is designated nonattainment must be conducted in accordance with the EPA Part III, Emissions Trading Policy Statement..., Federal Register / Vol. 51, No. 233 / Thursday, December 4, 1986.

5. The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in subitems 1(xl)(I)I through III of this subparagraph for calculating projected actual emissions.

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6. The owner or operator of the source shall make the information required to be documented and maintained pursuant to part 5. of this subparagraph available for review upon a request for inspection by the Technical Secretary or the general public pursuant to the requirements contained in sub-part .02(11)(e)1.(iii)of this chapter.

7. Reserved.

8. Reserved.

9. Reserved.

10. Actuals PALs.

(i) Applicability.

(I) The Technical Secretary may approve the use of an actuals PAL for any existing major stationary source (except as provided in item 10.(i)(II) of this subparagraph) if the PAL meets the requirements in sub-parts 10.(i) through (xv) of this subparagraph. The term "PAL" shall mean "actuals PAL" throughout part 10. of this subparagraph.

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

(III) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in sub-parts 10.(i) through (xv) of this subparagraph, and complies with the PAL permit:

I Is not a major modification for the PAL pollutant;

II Does not have to be approved through the nonattainment major NSR program; and

III Is not subject to the provisions in sub-part 2.(ix) of this subparagraph (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major NSR program).

(IV) Except as provided under sub-item 10.(i)(III)III of this subparagraph, a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(ii) Definitions. When a term is not defined in these paragraphs, it shall have the meaning given in part 1. of this subparagraph or in the Federal Clean Air Act.

(I) Actuals PAL for a major stationary source means a PAL based on the baseline actual emissions (as defined in sub-part 1.(xlvii) of this subparagraph) of all emissions units (as defined in sub-part 1.(vii) of

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this subparagraph) at the source, that emit or have the potential to emit the PAL pollutant.

(II) Allowable emissions means "allowable emissions" as defined in sub-part 1.(xi) of this subparagraph, except as this definition is modified according to sub-items 10.(ii)(II)I through II of this subparagraph.

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

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

(III) Small emissions unit means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in sub-part 1.(x) of this subparagraph or in the Federal Clean Air Act, whichever is lower.

(IV) Major emissions unit means:

I Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

II Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Federal Clean Air Act for nonattainment areas.

(V) Plantwide applicability limitation (PAL) means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with sub-parts 10.(i) through (xv) of this subparagraph.

(VI) PAL effective date generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

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

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

(IX) PAL permit means the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the

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plan, or the title V permit issued by the Technical Secretary that establishes a PAL for a major stationary source.

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

(XI) Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in sub-part 1.(x) of this subparagraph or in the Federal Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in item 10.(ii)(IV) of this subparagraph.

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

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

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

(III) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by item 10.(xiii)(I) of this subparagraph.

(iv) General requirements for establishing PALs.

(I) The Technical Secretary may establish a PAL at a major stationary source, provided that at a minimum, the requirements in sub-items 10.(iv)(I)I through VII of this subparagraph are met.

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

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II The PAL shall be established in a PAL permit that meets the public participation requirements in sub-part 10.(v) of this subparagraph.

III The PAL permit shall contain all the requirements of sub-part 10.(vii) of this subparagraph.

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

V Each PAL shall regulate emissions of only one pollutant.

VI Each PAL shall have a PAL effective period of 10 years.

VII The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in sub-parts 10.(xii) through (xiv) of this subparagraph for each emissions unit under the PAL through the PAL effective period.

(II) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under sub-part 2.(v) of this subparagraph unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(v) Public participation requirement for PALs. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 40 CFR 51.160 and 51.161, part 3. of this subparagraph, subparagraph (4)(l) of this rule, or 1200-03-09-.02(11)(f)8. This includes the requirement that the Technical Secretary provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Technical Secretary must address all material comments before taking final action on the permit.

(vi) Setting the 10-year actuals PAL level.

(I) Except as provided in item 10.(vi)(II) of this subparagraph, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in sub-part 1.(xlvii) of this subparagraph) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under sub-part 1.(x) of this subparagraph or under the Federal Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. ~~However, a different consecutive 24-month period may be used for each different PAL pollutant.~~ Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Technical Secretary shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become

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effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Technical Secretary is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NOX to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(II) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in item 10.(vi)(I) of this subparagraph, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(vii) Contents of the PAL permit.

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

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

(III) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with sub-part 10.(x) of this subparagraph before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Technical Secretary.

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

(V) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of sub-part 10.(ix) of this subparagraph.

(VI) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by item 10.(xiii)(I) of this subparagraph.

(VII) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under sub-part 10.(xii) of this subparagraph.

(VIII) A requirement to retain the records required under sub-part 10.(xiii) of this subparagraph on site. Such records may be retained in an electronic format.

(IX) A requirement to submit the reports required under sub-part 10.(xiv) of this subparagraph by the required deadlines.

(X) Any other requirements that the Technical Secretary deems necessary to implement and enforce the PAL.

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(viii) PAL effective period and reopening of the PAL permit.

(I) PAL effective period. The Technical Secretary shall specify a PAL effective period of 10 years.

(II) Reopening of the PAL permit.

I During the PAL effective period, the Technical Secretary shall reopen the PAL permit to:

A Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.

B Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under sub-part 2.(v) of this subparagraph.

C Revise the PAL to reflect an increase in the PAL as provided under sub-part 10.(xi) of this subparagraph.

II The Technical Secretary may reopen the PAL permit for the following:

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

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

C Reduce the PAL if the Technical Secretary determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

III Except for the permit reopening in section~~b~~ 10.(viii)(II)IA of this subparagraph for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of sub-part 10.(v) of this subparagraph.

(ix) Expiration of a PAL. Any PAL which is not renewed in accordance with the procedures in sub-part 10.(x) of this subparagraph shall expire at the end of the PAL effective period, and the requirements in items 10.(ix)(I) through (V) of this subparagraph shall apply.

(I) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation

under a revised permit established according to the procedures in sub-items 10.(ix)(I)I through II of this subparagraph.

I Within the time frame specified for PAL renewals in item 10.(x)(II) of this subparagraph, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Technical Secretary) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under item 10.(x)(V) of this subparagraph, such distribution shall be made as if the PAL had been adjusted.

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

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

(III) Until the Technical Secretary issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under sub-item 10.(ix)(I)I of this subparagraph, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(IV) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if such change meets the definition of major modification in sub-part 1.(v) of this subparagraph.

(V) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to sub-part 2.(ix) of this subparagraph, but were eliminated by the PAL in accordance with the provisions in sub-item 10.(i)(III)III of this subparagraph.

(x) Renewal of a PAL.

(I) The Technical Secretary shall follow the procedures specified in sub-part 10.(v) of this subparagraph in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public

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review, any person may propose a PAL level for the source for consideration by the Technical Secretary.

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

(III) Application requirements. The application to renew a PAL permit shall contain the information required in sub-items 10.(x)(III)I through IV of this subparagraph.

I The information required in items 10.(iii)(I) through (III) of this subparagraph.

II A proposed PAL level.

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

IV Any other information the owner or operator wishes the Technical Secretary to consider in determining the appropriate level for renewing the PAL.

(IV) PAL adjustment. In determining whether and how to adjust the PAL, the Technical Secretary shall consider the options outlined in sub-items 10.(x)(IV)I and II of this subparagraph. However, in no case may any such adjustment fail to comply with sub-item 10.(x)(IV)III of this subparagraph.

I If the emissions level calculated in accordance with sub-part 10.(vi) of this subparagraph is equal to or greater than 80 percent of the PAL level, the Technical Secretary may renew the PAL at the same level without considering the factors set forth in sub-item 10.(x)(IV)II of this subparagraph; or

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

III Notwithstanding sub-items 10.(x)(IV)I and II of this subparagraph,

A If the potential to emit of the major stationary source is less than the PAL, the Technical Secretary shall adjust

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the PAL to a level no greater than the potential to emit of the source; and

B The Technical Secretary shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of sub-part 10.(xi) of this subparagraph (increasing a PAL).

(V) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Technical Secretary has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

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

(I) The Technical Secretary may increase a PAL emission limitation only if the major stationary source complies with the provisions in sub-items 10.(xi)(I)I through IV of this subparagraph.

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

II As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

III The owner or operator obtains a major NSR permit for all emissions unit(s) identified in sub-item 10.(xi)(I)I of this subparagraph, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

IV The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the

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PAL major modification becomes operational and begins to emit the PAL pollutant.

(II) The Technical Secretary shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with sub-item 10.(xi)(I)I), plus the sum of the baseline actual emissions of the small emissions units.

(III) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of sub-part 10.(v) of this subparagraph.

(xii) Monitoring requirements for PALs

(I) General requirements.

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

II The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in sub-items 10.(xii)(II)I through IV of this subparagraph and must be approved by the Technical Secretary.

III Notwithstanding sub-item 10.(xii)(I)II of this subparagraph, you may also employ an alternative monitoring approach that meets sub-item 10.(xii)(I)I of this subparagraph if approved by the Technical Secretary.

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

(II) Minimum Performance Requirements for Approved Monitoring Approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in items 10.(xii)(III) through (IX) of this subparagraph:

I Mass balance calculations for activities using coatings or solvents;

II CEMS;

III CPMS or PEMS; and

IV Emission Factors.

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

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

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

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

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

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

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

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

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

II Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Technical Secretary, while the emissions unit is operating.

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

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

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

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

(VII) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(VIII) Notwithstanding the requirements in items 10.(xii)(III) through (VII) of this subparagraph, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Technical Secretary shall, at the time of permit issuance:

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

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

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

(xiii) Recordkeeping requirements.

(I) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of part 10. of this subparagraph and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

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

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

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

(xiv) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the

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Technical Secretary in accordance with the applicable title V operating permit program. The reports shall meet the requirements in items 10.(xiv)(I) through (III).

(I) Semi-Annual Report. The semi-annual report shall be submitted to the Technical Secretary within 30 days of the end of each reporting period. This report shall contain the information required in sub-items 10.(xiv)(I)I through VII of this subparagraph.

I The identification of owner and operator and the permit number.

II Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to item 10.(xiii)(I) of this subparagraph.

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

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

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

VI A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by item 10.(xii)(VII) of this subparagraph.

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

(II) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to item .02(11)(e)1.(iii)(III) of this chapter shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by item .02(11)(e)1.(iii)(III) of this chapter. The reports shall contain the following information:

I The identification of owner and operator and the permit number;

II The PAL requirement that experienced the deviation or that was exceeded;

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III Emissions resulting from the deviation or the exceedance; and

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

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

(xv) Transition requirements.

(I) The Technical Secretary may not issue a PAL that does not comply with the requirements in sub-parts 10.(i) through (xv) of this subparagraph after the Administrator has approved regulations incorporating these requirements into the SIP.

(II) The Technical Secretary may supersede any PAL which was established prior to the date of approval of the plan by the Administrator with a PAL that complies with the requirements of sub-parts 10.(i) through (xv) of this subparagraph.

11. If any provision of this section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

12. The requirements of this subparagraph 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 of the U.S. EPA determines that such sources do not contribute significantly to PM_{10} levels that exceed the PM_{10} ambient standards in the area.

(6) Construction permits issued under this rule are based on the control of air contaminants only and do not in any way affect the applicant's obligation to obtain necessary permits from other governmental agencies.

(7) The applicant for a construction permit (or its equivalent by Board order) shall pay the cost of publication of any notices required by state or federal law or regulations to effectuate the rights applied for.

(8) Visibility Protection

(a) Definitions - Unless specifically defined in this part, all terms shall have the meaning given them in Chapter 1200-03-02, paragraph 1200-03-09-.01(4) and Chapter 1200-03-23.

1. "Visibility protection area" means any of the mandatory Federal Class I areas listed below. These areas are those mandatory Federal Class I areas where visibility values may be impacted by sources in Tennessee:

(i) Great Smoky Mountains National Park(NP), TN-NC.

(ii) Joyce Kilmer-Slickrock National Wilderness Area(NWA), TN-NC.

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(iii) Cohutta National Wilderness Area, TN-GA.

(iv) Linville Gorge National Wilderness Area, NC.

(v) Shining Rock National Wilderness Area, NC.

(vi) Sipsey National Wilderness Area, AL.

(vii) Mammoth Cave National Park, KY.

(viii) Mingo National Wilderness Area, MO.

2. (Reserved)

3. Class II areas in Tennessee are those areas not already designated as mandatory Federal Class I areas. This corresponds to all areas of the State which are not part of Cohutta NWA or Great Smoky Mountains N.P., or Joyce Kilmer-Slickrock National Wilderness Area(NWA).

(b) Review of major stationary sources and major modifications - source applicability and exemptions.

1. No stationary source or modification to which the requirements of this part apply shall begin actual construction without a permit which states that the stationary source or modification would meet the applicable requirements.

2. The requirements of this part shall apply to construction of any new major stationary source or major modification that would be constructed in an area classified as nonattainment and potentially have an impact on visibility in any visibility protection area.

3. The requirements of this part shall apply to any major stationary source and any major modification with respect to each air contaminant that it would emit, except as this part otherwise provides.

4. The requirements of this part shall not apply to a particular major stationary source or major modification, if:

(i) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor of the State in which the source or modification would be located requests that it be exempt from those requirements; or

(ii) The source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(I) Coal cleaning plants (with thermal dryers);

(II) Kraft pulp mills;

(III) Portland cement plants;

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(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;

(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 hear input;

(XXVII) Any other stationary source category which, as of August 7, 1980, is being regulated under Chapter 1200-03-16, New Source Performance Standards, or Chapter 1200-03-11, Hazardous Air Contaminants. or Chapter 1200-03-31, Standards For Hazardous Air

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Contaminants For Source Categories, or 40 CFR Part 60 and 61 (July 1, 1993).

(iii) The source is a portable stationary source which has previously received a permit under this part; and

(I) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary (a two year period); and

(II) The emissions from the source would not exceed its allowable emissions; and

(III) The emissions from the source would impact no visibility protection area and no area where an applicable increment is known to be violated; and

(IV) Reasonable notice is given to the Technical Secretary prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Technical Secretary not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the Technical Secretary.

5. The requirements of this part shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as attainment.

6. The requirements of this part shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(i) Would impact no visibility protection area and no area where an applicable increment is known to be violated, and

(ii) Would be temporary.

(c) Visibility impact analyses.

The owner or operator of a source shall provide an analysis of the impairment to visibility that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification.

(d) Federal land manager notification.

1. The Federal Land Manager (FLM) and the Federal official charged with direct responsibility for management of Federal Class I areas have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Technical Secretary whether a proposed source or modification will have an adverse impact on such values.

2. The Technical Secretary shall provide written notification to all affected Federal Land Managers of any permit application for any proposed new major stationary

(Rule 1200-03-09-.01, continued)

source or major modification that may affect visibility in any visibility protection area. The Technical Secretary shall also provide such notification to the Federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in any visibility protection area. The Technical Secretary shall also notify all affected FLM's within 30 days of receipt of any advance notification of any such permit application.

3. The Technical Secretary shall consider any analysis performed by the Federal Land Manager provided within 30 days of the notification and analysis required by part 2. of this subparagraph, that such proposed new major stationary source or major modification may have an adverse impact on visibility in any visibility protection area. Where the Technical Secretary finds that such an analysis does not demonstrate to the satisfaction of the Technical Secretary that an adverse impact on visibility will result in the visibility protection area, the Technical Secretary must, in the notice of public hearing, either explain his decision or give notice as to where the explanation can be obtained.

(e) National visibility goal.

The Technical Secretary shall only issue permits to those sources whose emissions will be consistent with making reasonable further progress toward the national goal of preventing any future, and remedying any existing, impairment of visibility in visibility protection areas in which impairment results from man-made air pollution. In making the decision to issue a permit the Technical Secretary may take into account the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the useful life of the source.

(f) Monitoring.

The Technical Secretary may require monitoring of visibility in any visibility protection area near the proposed new stationary source or major modification for such purposes and by such means as the Technical Secretary deems necessary and appropriate.

Authority: *T.C.A. §§ 4-5-201 et seq., 4-5-202 et seq., 68-201-101 et seq., and 68-201-105.* ***Administrative History:*** *Original rule certified June 4, 1974. Amendment filed and effective February 9, 1977. Amendment filed and effective April 12, 1978. Amendment filed and effective June 16, 1978. Amendment filed and effective March 21, 1979. Amendment filed and effective June 21, 1979. Amendment filed and effective November 16, 1979. Emergency rule effective June 3, 1981 through October 1, 1981. Revised effective July 31, 1981. Amendment filed and effective October 2, 1981. Amendment filed and effective January 22, 1982. Amendment filed and effective March 2, 1983. Amendment filed and effective August 22, 1983. Amendment filed and effective November 6, 1988. Amendment filed April 19, 1990; effective June 2, 1990. Amendment filed May 17, 1990; effective July 1, 1990. Amendment filed May 12, 1993; effective June 26, 1993. Amendment filed September 7, 1993; effective November 21, 1993. Amendment filed April 18, 1994; effective July 2, 1994. Amendment filed June 2, 1994; effective August 15, 1994. Amendment filed March 29, 1995; effective June 14, 1995. Amendment filed June 3, 1996; effective August 14, 1996. Amendment filed June 7, 1996, effective August 18, 1996. Amendment filed October 14, 1996; effective December 28, 1996. Amendment filed November 12, 1998; effective January 26, 1999. Amendment filed June 8, 1999; effective August 22, 1999. Amendment filed December 30, 1999; effective March 14, 2000. Repeal and new rule filed December 1, 2005; effective February 14, 2006. Amendment filed February 24, 2009; effective May 10, 2009. Amendment filed February 24, 2009; effective May 10, 2009. Amendments filed February 24, 2009; effective May 10, 2009. Amendment filed May 12, 2010; effective August 10, 2010. Amendments filed*

(Rule 1200-03-09-.01, continued)

November 10, 2010; effective February 8, 2011. Amendments filed March 29, 2011; effective June 27, 2011. Amendment filed August 29, 2011; effective November 27, 2011. Amendment filed November 5, 2012; effective February 3, 2013. Amendments filed January 24, 2013; effective April 24, 2013. Amendment filed April 1, 2015; effective June 30, 2015.

1200-03-09-.02 OPERATING PERMITS.

(1) Any person planning to operate an air contaminant source constructed or modified in accordance with a construction permit issued by the Technical Secretary in rule 1200-03-09-.01 of this chapter shall apply for and receive an operating permit from the Technical Secretary after initial start-up of this said air contaminant source. Ninety (90) days shall be allowed for this, provided paragraph (3) of this rule is complied with. This time period is extended from ninety (90) to one hundred twenty (120) days if stack sampling has been required as a condition on the construction permit, which is further extended to sixty (60) days after the stack sampling report is required on the construction if a certain time is specified, provided the stack sampling report is filed with the Division within sixty (60) days of initial start-up or the time specified on the construction permit as that paragraph (3) of this rule is complied with.

(2) No person shall operate an air contaminant source in Tennessee without first obtaining an operating permit from the Technical Secretary except as specifically exempted in rule 1200-03-09-.04 of this chapter. New sources operating with a valid construction permit may operate with the construction permit for the time period specified in paragraph (1) above.

(3) Application for an operating permit shall be made on forms available from the Technical Secretary and signed by the applicant. Such application for an operating permit shall be filed with the Technical Secretary.

(a) Not less than sixty (60) days prior to the expiration of an existing operating permit.

(b) 1. Not more than thirty (30) days after initial start-up of an air contaminant source constructed or modified in accordance with a construction permit issued by the Technical Secretary.

2. If stack sampling or other test data has been required as a condition on the construction permit, this time period is extended to the time specified on the construction permit for submittal of the test report(s). In no case shall this period exceed the period allowed in the applicable regulation.

(4) Sources that do not comply with the requirements of Division 1200-03 or any permit issued thereunder shall have their operating permit applications processed in the following manner:

(a) Sources subject to the requirements of paragraph 1200-03-09-.02(11) shall be subject to a compliance schedule in their permit in accordance with the provisions of that paragraph.

(b) Sources that are not subject to the requirements of paragraph 1200-03-09-.02(11) shall be issued temporary operating permits containing a schedule of corrective action for returning to compliance that is acceptable to the Technical Secretary. The schedule shall require the permittee to file a written report or their progress toward compliance with the Technical Secretary no later than 10 days after the passage of each increment in the schedule.

(5) Any person in possession of an operating permit shall maintain said operating permit readily available for inspection by the Technical Secretary or his designated representative on the operating premises. A person required by these regulations to have one or more operating

permits shall keep at least one operating permit prominently and conspicuously displayed on the operating premises.

(6) Operation of each air contaminant source shall be in accordance with the provisions and stipulations set forth in the operating permit, all provisions of these regulations, and all provisions of the Tennessee Air Quality Act. However, some excursions, as defined under part 1200-03-09-.02(11)(b)31., or as defined in the operating permit, which occur during periodic monitoring for compliance assurance at an air contaminant source subject to paragraph 1200-03-09-.02(11), may be excused by the Technical Secretary, and this authority is not extended to excursions that demonstrate noncompliance with an applicable emission limitation.

(7) The owner or operator of any air contaminant source to which any of the following changes are made, but would not be a modification requiring a construction permit, must notify the Technical Secretary thirty (30) days before the change is commenced. These changes are:

(a) Change in air pollution control equipment,

(b) Change in stack height or diameter,

(c) Change in exit velocity (of more than twenty five percent (25%) or exit temperature of more than fifteen percent (15%) (absolute temperature basis).

(8) Any stack sampling report required on a construction permit is part of the operating permit application. Any stack sampling report required on an operating permit is a part of the application for renewal of that operating permit.

(9) The owner or operator of any air contaminant source subject to an order or variance issued so as to allow the source by its terms to operate while exceeding an emission standard, shall pay the cost of publication of any notices (including, but not limited to, a copy of the order) required by state or federal law or regulations to effectuate the right of continued operation.

(10) Those sources possessing a valid permit on the data chapter 1200-03-19 becomes effective and subject to a specified compliance schedule in chapter 1200-03-19 must comply with all the requirements contained in the permit and the requirements of rule 1200-03-09-.02 of this chapter. All permits shall expire on the date the emission standard specified in chapter 1200-03-19 becomes effective. If a source possessing a valid operating permit and subject to a specified compliance schedule contained in chapter 1200-03-19 fails to comply with the specified schedule, such permit will be revoked upon notification that the source has not complied with the schedule and opportunity for hearing by the Technical Secretary.

(11) Major Stationary Source Operating Permits

(a) Statement of Purpose and General Intent

The requirements of paragraph 1200-03-09-.02(11) are promulgated in order to fulfill the requirements of Title V of the federal Clean Air Act (42 U.S.C. 7661a - 7661e) and the federal regulations promulgated thereunder at 40 C.F.R. Part 70. (FR Vol. 57, No. 140, Tuesday, July 21, 1992 p.32295-32312). The federal law and regulations require unique approaches pertaining to federal involvement in the permitting activities specified in this paragraph. The federal government, acting by and through the United States Environmental Protection Agency (EPA), is a key party in the review, issuance, and revisions of permits issued under the provisions of this paragraph. It is the intent of the Board to comply with these federal requirements to the full extent allowed under the laws of the State of Tennessee. In the event that the federal law or regulations

should require something that the Board has not yet promulgated as a rule, the permit applicant and the Technical Secretary may mutually agree to be governed by whatever emission limitations and/or procedural requirements that the federal rules require and that shall become a binding condition of the applicant's permit to operate. In addition, sources that are subject to this paragraph 1200-03-09-.02(11) may opt out of being subject to the provisions of paragraph 1200-03-09-.02(11) by limiting their potential to emit such that they are below the applicability threshold. In order to exercise this option, the source must agree to be bound by a permit which specifies the more restrictive limit and to be subject to detailed monitoring, reporting and recordkeeping requirements that prove the source is abiding by its more restrictive emission and/or production limits. The permit shall have a term not to exceed 10 years and shall be subjected to the opportunity for comment and hearing by EPA, affected states and the public consistent with the provisions of this paragraph. The permit shall contain a statement of basis comparing the source's potential to emit with the synthetic limit to emit and the procedures to be followed that will insure that the more restrictive limit is not exceeded. If the source later decides to increase its potential to emit, the new source review permit procedures of rule 1200-03-09-.01 shall apply.

1. Initial Start-Up of the Major Stationary Source Operating Permit Program

   Consistent with the provisions of subparagraph 1200-03-09-.02(11)(d), all operating permits in the possession of sources subject to the requirements of paragraph 1200-03-09-.02(11) are subject to permit revocation proceedings if the source does not file a timely, complete major source operating permit application within 120 days after the Technical Secretary files his written notification to the source that their major stationary source operating permit applications are due, regardless of the expiration date on the permit. Anything in this paragraph 1200-03-09-.02(11) to the contrary not withstanding, the current permit(s) in the possession of the source shall be effective until superseded by the issuance of major source operating permits under the provisions of this paragraph 1200-03-09-.02(11), except that if a complete application or additional information requested by the Technical Secretary is not timely filed, then (i) the effectiveness of the current operating permits shall be suspended until such application or information is filed, and (ii), the current operating permits shall be subject to revocation proceedings at the discretion of the Technical Secretary. The preceding sentence shall also apply to renewals of major source operating permits. In addition, any operating permit application that does not seek to amend an existing operating permit without first undergoing construction permit review being processed by the Technical Secretary for such a source will be canceled upon such notification and the source shall abide by the terms of their most recent permit until it is superseded by the major source operating permit.

2. Once an operating permit has been issued to a source pursuant to the provisions of paragraph 1200-03-09-.02(11), the permit, its shield, (if one was granted) and its respective conditions will be extended and effective after its expiration date provided that the source has submitted a timely, complete renewal application to the Technical Secretary consistent with the provisions of item 1200-03-09-.02(11)(d)1.(i)(III) and section 1200-03-09-.02(11)(d)1.(ii)(I)III. The extension shall cease upon final permit action by the Technical Secretary. If the Technical Secretary's final permit action is contested, the provisions of TCA 4-5-320(b) shall rule as to the continued validity of the previous permit.

3. Judicial review of a permit issued pursuant to paragraph 1200-03-09-.02(11)

(Rule 1200-03-09-.02, continued)

A person aggrieved by an action of the Technical Secretary on a permit processed pursuant to paragraph 1200-03-09-.02(11) may initially seek administrative review of the permit before the Board and later, judicial review in Chancery Court by following the procedures detailed below:

(i) The person seeking administrative/judicial review shall be:

(I) The applicant for the permit request under dispute; or

(II) A person who participated in the public participation process provided pursuant to part 1200-03-09-.02(11)(f)8; or

(III) Any other person who can obtain judicial review of the permit under State law.

(ii) The Technical Secretary's failure to take timely final action on an application filed under the provisions of paragraph 1200-03-09-.02(11) is grounds for seeking administrative/judicial review. Timely, final action shall be determined according to the schedules for action established in paragraph 1200-03-09-.02(11).

(iii) The procedures specified in part 1200-03-09-.02(11)(a)3 are the exclusive means for obtaining administrative/judicial review of the terms and conditions of permits issued pursuant to paragraph 1200-03-09-.02(11). Petitions for administrative review of a permit term or action of the Technical Secretary on a permit shall be filed by a person identified in subpart 1200-03-09-.02(11)(a)3(i) in accordance with the procedures specified in Rule 1200-03-09-.05. A person aggrieved by the final action of the Board on their petition may seek judicial review within 60 days of the entry of the Board's final action consistent with the provisions of T.C.A. 4-5-322. A person conforming to the criteria of subpart 1200-03-09-.02(11)(a)3(i) may petition for administrative/judicial review later than the deadlines of Rule 1200-03-09-.05 or T.C.A. 4-5-322 only if the petition is based solely on grounds arising after the deadlines for administrative/judicial review. Petitions in this category must be filed within sixty days after the occurrence of the new grounds for administrative review. Petitions for review of the Technical Secretary's failure to take a final permit action may be filed at any time prior to his issuance or denial of the permit, but only after the permit processing deadlines of paragraph 1200-03-09-.02(11) have not been met by the Technical Secretary.

4. Operational Flexibility

The owner or operator of a source subject to paragraph 1200-03-09-.02(11) may make certain changes at their facility that are contrary to or not addressed by the permit as provided in part 1200-03-09-.02(11)(a)4.

(i) The following changes can be made by the permittee without requiring a permit revision, if the changes are not modifications under Title I of the federal Act or Division 1200-03 and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in the terms of total emissions): Provided, that the facility provides the Administrator and Technical Secretary with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days. The Technical Secretary may waive the 7 day

advance notice in instances where the source demonstrates in writing that an emergency necessitates the change. Emergency shall be demonstrated by the criteria of part 1200-03-09-.02(11)(e)7 and in no way shall it include changes solely to take advantages of an unforeseen business opportunity. The source, Technical Secretary and EPA shall attach each such notice to their copy of the relevant permit:

(I) The source may make a Section 502(b)(10) change if their written notification:

I. Contains a brief description of the change within the permitted facility;

II. Specifies the date on which the change will occur;

III. Declares any change in emissions; and

IV. Declares any permit term or condition that is no longer applicable as a result of the change.

A. The permit shield provisions of part 1200-03-09-.02(11)(e)6 shall not apply to Section 502(b)(10) changes.

(II) [Reserved]

(III) The source may trade emissions increases and decreases at their facility solely for the purpose of complying with a federally enforceable emissions cap. In order to exercise such an option, the permit applicant must ask the Technical Secretary to issue such a permit. The permit must contain all terms required under part 1200-03-09-.02(11)(e)1 and part 1200-03-09-.02(11)(e)3 to determine compliance, allowing for the trading of such emissions increases and decreases with the emissions cap specified in the permit, independent of otherwise applicable requirements.

I. The applicant for a permit under item 1200-03-09-.02(11)(a)4(i)(III) shall include in its application, proposed replicable procedures and permit terms that ensure the emission trades are quantifiable and enforceable. The Technical Secretary shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades.

II. The permit shall require compliance with all applicable requirements.

III. The written notification required under subpart 1200-03-09-.02(11)(a)4(i) shall state:

A. When the change will occur;

B. Describe the changes in emissions that will result; and

(Rule 1200-03-09-.02, continued)

C. How these increases and decreases will comply with the terms and conditions of the permit.

IV. The permit shield described in part 1200-03-09-.02(11)(e)6 may be extended to the terms and conditions which allow such increases and decreases in emissions.

(ii) The source may make operational flexibility changes that are not addressed or prohibited by the permit without a permit revision subject to the following requirements:

(I) The change cannot be subject to a requirement of Title IV of the Federal Act or Chapter 1200-03-30.

(II) The change cannot be a modification under any provision of Title I of the federal Act or Division 1200-03.

(III) Each change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(IV) The source must provide contemporaneous written notice to the Technical Secretary and EPA of each such change, except for changes that are below the threshold of insignificant activities and emission levels that are specified in Rule 1200-03-09-.04.

(V) Each change shall be described in the notice including the date, any change in emissions, pollutants emitted, and any applicable requirements that would apply as a result of the change.

(VI) The change shall not qualify for a permit shield under the provisions of part 1200-03-09-.02(11)(e)6.

(VII) The permittee shall keep a record describing the changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes. The records shall be retained until the changes are incorporated into subsequently issued permits.

5. Opt -In Opportunity

Any source that is not subject to the provisions of paragraph 1200-03-09-.02(11) may opt into being subject to paragraph 1200-03-09-.02(11) by filing a written request to be so bound with the Technical Secretary. Upon execution of a mutual, signed letter of agreement binding the person to the provisions of paragraph 1200-03-09-.02(11), the Technical Secretary shall issue a major stationary source operating permit to the source that subjects them to all of the requirements of paragraph 1200-03-09-.02(11).

(b) Definitions - The following terms are defined as they uniquely apply to this paragraph. All other terms shall have the meaning given to them in Chapter 1200-03-02, Chapter 1200-03-11, Chapter 1200-03-30 Chapter 1200-03-31, Chapter 1200-03-32 and Chapter 1200-03-20.

-NOTICE-

(Rule 1200-03-09-.02, continued)

THE READER IS CAUTIONED THAT ADDITIONAL DEFINITIONS HAVE BEEN ADDED TO SUBPARAGRAPH 1200-03-09-.02(11)(B) DURING RULEMAKING. AS A RESULT, NOT ALL DEFINITIONS ARE ALPHABETIZED.

1. "Federal Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et. seq. as amended by Public Law No. 101-549 (November 15, 1990)

2. "Affected source" shall have the meaning given to it in the federal regulations promulgated under title IV of the Federal Act and Chapter 1200-03-30.

3. "Affected States" may be Illinois, Kentucky, Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, West Virginia, Arkansas or Missouri if either of the following criteria are met:

   (i) the State's air quality may be affected by the issuance of a permit pursuant to the provisions of paragraph 1200-03-09-.02(11); or

   (ii) the State noted above is within 50 miles of the source's site or proposed site.

4. "Affected unit" shall have the meaning given it in the regulations promulgated under title IV of the Federal Act and Chapter 1200-03-30.

5. "Applicable requirement" means all of the following as they apply to emissions units in a source subject to paragraph 1200-03-09-.02(11) (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates):

   (i) Any standard or other requirement provided for in the Tennessee implementation plan approved or promulgated by EPA through rulemaking under title I of the Federal Act that implements the relevant requirements of the Federal Act, including any revisions to that plan promulgated in, 40 C.F.R. part 52, but not including any standard or other requirement provided for in the Tennessee implementation plan that does not implement relevant requirements of the Federal Act;

   (ii) Any terms or conditions of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Federal Act, but not any terms or conditions that do not implement relevant requirements of the Federal Act;

   (iii) Any standard or other requirement under Section 111 of the Federal Act, including section 111(d);

   (iv) Any standard or other requirement under section 112 of the Federal Act, including any requirement concerning accident prevention under section 112(r)(7) of the Federal Act;

   (v) Any standard or other requirements of the acid rain program under title IV of the Federal Act or the Federal regulations promulgated thereunder;

   (vi) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Federal Act;

(Rule 1200-03-09-.02, continued)

(vii) Any standard or other requirement governing solid waste incineration, under section 129 of the Federal Act;

(viii) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Federal Act;

(ix) Any standard or other requirement for tank vessels, under section 183(f) of the Federal Act;

(x) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Federal Act;

(xi) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Federal Act, unless the Administrator has determined that such requirements need not be contained in a title V permit; and

(xii) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Federal Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Federal Act.

6. “Designated representative” shall have the meaning given to it in section 402(26) of the Federal Act, the Federal regulations promulgated thereunder and Chapter 1200-03-30.

7. “Draft permit” means the version of a permit for which the Technical Secretary offers public participation under part 1200-03-09-.02(11)(f)8 or affected State review under subparagraph 1200-03-09-.02(11)(g).

8. “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 emission 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.

9. “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 Federal Act. This term is not meant to alter or affect the definition of the term “unit” for purposes of title IV of the Federal Act or Chapter 1200-03-30.

10. “EPA” or the “Administrator” means the Administrator of the EPA or his designee.

11. “Final permit” means the version of a permit issued by the Technical Secretary that has completed all review procedures required by subparagraph 1200-03-09-.02(11)(f) and subparagraph 1200-03-09-.02(11)(g).

12. “Fugitive emissions” are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

13. “General permit” means a permit issued pursuant to paragraph 1200-03-09-.02(11) that meets the requirements of part 1200-03-09-.02(11)(e)4.

(Rule 1200-03-09-.02, continued)

14. "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 are described in subparts (i), (ii), (iii) or (iv) 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 code) as described in the Standard Industrial Classification Manual, 1987.

(i) A major source under section 112 of the Federal 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) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Federal Act, 25 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.

(ii) A major stationary source of air pollutants, as defined in section 302 of the Federal Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant subject to regulation (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 Federal 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;

(Rule 1200-03-09-.02, continued)

(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;

(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 or more than 250 million British thermal units per hour heat input; or

(XXVII) All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category;

(iii) A major stationary source as defined in part D of title I of the Federal Act, including:

(I) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as “marginal” or “moderate,” 50 tpy or more in areas classified as “serious,” 25 tpy or more in areas classified as “severe,” and 10 tpy or more in areas classified as “extreme”; except

(Rule 1200-03-09-.02, continued)

that the references in this paragraph to 100, 50, 25, and 10 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 Federal Act, that requirements under section 182(f) of the Federal Act do not apply;

(II) For ozone transport regions established pursuant to section 184 of the Federal Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(III) For carbon monoxide nonattainment areas (1) that are classified as "serious," and (2) 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 or more of carbon monoxide; and

(IV) For particulate matter (PM-10) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM-10.

(iv) For purposes of these regulations, a research and development facility may be treated as a separate source from other stationary sources that are located on a contiguous or adjacent property and are under common control. However, all activities claimed by an applicant to be research and development at the contiguous or adjacent property shall have their emissions aggregated as a single source for the purposes of determining whether or not the research and development activities constitute a major source.

15. "Permit modification" means a revision to a permit issued pursuant to paragraph 1200-03-09-.02(11) that meets the requirements of part 1200-03-09-.02(11)(f)5.

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

17. "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 Federal Act, or the term "capacity factor" as used in title IV of the Federal Act or the Federal regulations promulgated thereunder or chapter 1200-03-30.

18. "Proposed permit" means the version of a permit that the Technical Secretary proposes to issue and forwards to the Administrator for review in compliance with subparagraph 1200-03-09-.02(11)(g).

19. "Regulated air pollutant" means the following:

(i) Nitrogen oxides or any volatile organic compounds;

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

(iii) Any pollutant that is subjected to any standard promulgated under section 111 of the Federal Act;

(iv) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Federal Act; or

(v) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Federal Act, including sections 112(g), (j), and (r) of the Act, including the following:

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

(II) Any pollutant for which the requirements of section 112(g)(2) of the Federal Act have been met, but only with respect to the individual source subject to section 112(g)(2) requirement.

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

21. “Responsible official” means one of the following:

(i) 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 representative is approved in advance by the Technical Secretary;

(ii) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(iii) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer 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

(iv) For affected sources:

(Rule 1200-03-09-.02, continued)

(I) The designated representative in so far as actions, standards, requirements, or prohibitions under title IV of the Federal Act or the regulations promulgated thereunder are concerned; and

(II) The designated representative for any other purposes under paragraph 1200-03-09-.02(11). However, a person other than the designated representative may serve as the responsible official for non title IV activities.

22. "Section 502(b)(10) changes" are 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.

23. "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 Federal Act.

24. "Research and Development Facility" means any stationary source whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

25. "Final Permit Action" means the action by the Technical Secretary to grant or deny an application, petition or objection submitted under the provisions of paragraph 1200-03-09-.02(11) pursuant to the following classifications:

(i) An initial operating permit application

(ii) A renewal operating permit application

(iii) A modification - administrative amendment, minor modification, group processed minor modification or significant modification.

(iv) A reopening for cause as determined by the Technical Secretary

(v) A reopening of a permit in response to EPA's request - on their own or in response to a citizen's petition.

If the Technical Secretary's actions are contested and brought to the Board for a hearing on the matter, "final permit action", means any of the above actions taken by the Board.

26. "Final Permit" means the permit arising from any final permit action.

27. "Federally enforceable" means any emission standard and/or procedural requirement that can be enforced against an air contaminant source by EPA or citizens under authority granted them by the Federal Act.

28. "Title I Modification" or "modification under any provision of Title I of the federal Act" means any modification under Section 111 and Section 112 of the Federal Act and any physical change or change in method of operations that is subject to

the preconstruction regulations promulgated under Parts C and D of the Federal Act.

29. "Timely" when used with respect to a submittal, means that the application was delivered to the Technical Secretary or deposited in the United States mail (evidenced by postmark) or recognized delivery service (evidenced by receipt) addressed to the Technical Secretary on or before the date it is due. However, the definition of "timely" with respect to timelines for action placed upon the Technical Secretary and/or Division shall not commence until receipt of the submittal in the office of the Technical Secretary.

30. "Exceedance" shall mean a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring.

31. "Excursion" shall mean a departure from an indicator range established for monitoring under this paragraph, consistent with any averaging period specified for averaging the results of the monitoring.

32. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of Chapter I of Title 40 of the Code of Federal Regulations, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

    (i) Greenhouse gases (GHGs), the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO_2equivalent emissions.

    (ii) The term tpy CO_2equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR 98 - Global Warming Potentials, and summing the resultant value for each to compute a tpy CO_2e.

    (iii) In the event that the U.S. Court of Appeals for the D.C. Circuit or the U.S. Supreme Court issues an order which would render GHG emissions not subject to regulation under the Prevention of Significant Deterioration, New Source Review provisions and/or the Title V operating permit program of the Federal Act, then GHGs shall not be subject to regulation, nor shall GHG emissions be required to be included in any construction or operating permit under this regulation 1200-03, as of the effective date of the Federal Register notice of vacatur.

    (iv) In the event that there is a change to Federal law that supersedes regulation of GHGs under the Prevention of Significant Deterioration, New

(Rule 1200-03-09-.02, continued)

Source Review provisions and/or the Title V operating permit program of the Federal Act, then GHGs shall not be subject to regulation, nor shall GHG emissions be required to be included in any construction or operating permit under this regulation 1200-03, as of the effective date of the change in Federal law.

(c) Applicability -

1. The following air contaminant sources are subject to the requirements of paragraph 1200-03-09-.02(11):

   (i) Any major source;

   (ii) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Federal Act, Part 1200-03-07-.07(4), part 1200-03-07-.07(5) or Chapter 1200-03-16;

   (iii) Any source, including an area source, subject to a standard or other requirement under section 112 of the Federal Act, chapter 1200-03-11, or chapter 1200-03-31 except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Federal Act or Chapter 1200-03-32;

   (iv) Any affected source; and

   (v) Any source in a source category designated by the Administrator or Technical Secretary pursuant to the federal 40 C.F.R. Part 70 rules (FR Vol 57, No. 140, Tuesday, July 21, 1992 p 32295-32312) or this paragraph respectively.

2. The following air contaminant sources are exempt from the requirements of paragraph 1200-03-09-.02(11):

   (i) All non-major sources including those subject to Section 112 of the Federal Act or chapter 1200-03-11 or Chapter 1200-03-31 and section 111 of the Federal Act or chapter 1200-03-16. If the Administrator promulgates future regulations which prohibit the exemption of a non-major source from the requirements of paragraph 1200-03-09-.02(11), such source will be so permitted by the Technical Secretary. Upon the Administrator's written notification to the Technical Secretary that such sources must be permitted according to the provisions of this paragraph 1200-03-09-.02(11), the Technical Secretary shall notify the sources that the applications are due within 180 days of his written notice. The Technical Secretary shall have up to 90 days to accomplish the notification commencing upon his notification from the Administrator.

   (ii) An affected source does not qualify for exemption from the provisions of paragraph 1200-03-09-.02(11) even if it is a non-major source.

   (iii) A solid waste incinerator unit that is required to obtain a permit pursuant to section 129(e) of the Federal Act does not qualify for exemption from the provisions of paragraph 1200-03-09-.02(11) even if it is a non-major source.

(Rule 1200-03-09-.02, continued)

(iv) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 C.F.R. part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters are exempt from the provision of paragraph 1200-03-09-.02(11).

(v) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 C.F.R. part 61, Subpart M - National Emissions Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation are exempt from the provision of paragraph 1200-03-09-.02(11).

3. Sources subject to paragraph 1200-03-09-.02(11) shall have all applicable requirements specified in their permit for all relevant emission units in the major source except those emission units which are exempted from permitting in rule 1200-03-09-.04.

4. Sources subject to paragraph 1200-03-09-.02(11) must declare their fugitive emissions in their permit application and the Technical Secretary must regulate the fugitive emissions as terms of their permit.

5. Unless specifically exempted elsewhere in this paragraph 1200-03-09-.02(11), research and development facilities shall be considered as a separate and discrete stationary source in determining whether such facilities constitute a major source subject to the operating permit requirements. Except where research and development facilities by themselves constitute a major source, such facilities shall be exempt from the permit requirements of paragraph 1200-03-09-.02(11), but not from any other permitting requirements of Chapter 1200-03-09.

(d) Permit Applications -

1. The owner or operator of a source subject to paragraph 1200-03-09-.02(11) has a duty to submit a timely and complete permit application in accordance with this part. The timelines for application under the provision of paragraph 1200-03-09-.02(11) supersede the application deadlines specified in paragraphs 1200-03-09-.02(1), (3) and (10).

(i) Timely application.

(I) A timely initial application for a source subject to the provisions of paragraph 1200-03-09-.02(11) is one that is submitted within 120 days of the Technical Secretary's written notification to the source that such application must be filed or as stipulated on their construction permit. The Technical Secretary will not require an application to be filed, either by written notification or imposition of a construction permit condition until the Administrator approves the Governor's Part 70 program submittal, filed in accordance with 40 C.F.R. Part 70.4. Application notices shall be served over a period of time in accordance with the Board's approved schedule. The Technical Secretary shall submit a proposed schedule for Board approval and incorporation into the State Major Source Fee Workload Analysis as a Board Order no later than March 1, 1994.

(II) Sources subject to the provisions of paragraph 1200-03-09-.01(4), paragraph 1200-03-09-.01(5) and/or rule 1200-03-31-.05 apply for

(Rule 1200-03-09-.02, continued)

an operating permit according to the schedule prescribed on their construction permit. The Technical Secretary shall allow sufficient time to prepare the application, but in no case shall the time allotted to file an application exceed 360 days commencing upon startup of the constructed source.

(III) A timely renewal application for a source subject to the provisions of paragraph 1200-03-09-.02(11) is one that is submitted at least 180 days, but no more than 270 days prior to the expiration of an existing major source operating permit.

(IV) Applications for initial phase II acid rain permits shall be submitted to the Technical Secretary by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(V) Construction occurring under the provisions of rule 1200-03-09-.01 at a source already in possession of a major source operating permit issued pursuant to the provisions of paragraph 1200-03-09-.02(11) shall be governed by the following:

I. Sources shall designate in their construction permit application the route that they desire to follow for the purposes of incorporating the newly constructed sources into their existing operating permit. The Technical Secretary shall use that information to prepare the operating permit application submittal deadlines in their construction permit.

II. Sources desiring the permit shield shall choose the administrative amendment route of subpart 1200-03-09-.02(11)(f)(4)(iv) or the significant modification route of subpart 1200-03-09-.02(11)(f)5(iv).

III. Sources desiring expediency instead of the permit shield shall choose the minor permit modification procedure route of Subpart 1200-03-09-.02(f)5(ii) or group processing of minor modifications under the provisions of subpart 1200-03-09-.02(11)(f)5(iii) as applicable to the magnitude of their construction.

(VI) Existing sources making the transition from an existing operating permit to an initial major source operating permit consistent with the provisions of part 1200-03-09-.02(11)(a)1 shall continue to construct under the provision of rule 1200-03-09-.01 and supplement their major source operating permit application in accordance with the provisions of part 1200-03-09-.02(11)(d)2.

(VII) Existing sources that were not initially subject to the provisions of paragraph 1200-03-09-.02(11), but later became subject through a change in operations such that their potential to emit crosses the applicability threshold of paragraph 1200-03-09-.02(11), shall file their major source operating permit application within 360 days of their start up of such operations that caused them to cross the major source operating permit applicability provisions of paragraph 1200-03-09-.02(11).

(Rule 1200-03-09-.02, continued)

(ii) Complete Application

(I) The owner or operator of a source that is subject to the provisions of paragraph 1200-03-09-.02(11) shall file a complete application for a major source operating permit. Applications shall be made on forms approved by the Board and available from the Technical Secretary. The applications shall be evaluated for completeness by using the Board's approved checklist. The checklist list shall be made available to applicants to assist them in preparing a complete application. "Insignificant Activities" designated as those activities or emission / production thresholds listed at rule 1200-03-09-.04 and their listing, if required under rule 1200-03-09-.04, in the permit application shall be governed by the Board's approved forms, instruction sheets and check lists. In addition to the information requested on the application forms, the applicant shall provide sufficient information to determine which applicable requirements will apply to the source and whether or not the source is in compliance with the applicable requirements. The application must be signed and dated by a responsible official attesting to its accuracy in accordance with part 1200-03-09-.02(11)(d)4.

I. The application shall be dated and stamped as to its date of receipt in the Office of the Technical Secretary.

II. Sixty (60) days will be allotted to the Technical Secretary from his receipt of the application for the purpose of determining whether or not the application is complete according to the Board-approved completeness checklist. This timeline is not applicable to minor modifications conducted under the provisions of subparts 1200-09-.02(11)(f) 5.(ii) & (iii).

III. The applicant must file an application for the entire source upon initial application and for renewal applications. Applications for a permit revision need only address the portions of the source impacted by the revision.

IV. The Technical Secretary shall have up to 60 days from his receipt of the application to review an application for completeness. At the conclusion of that period, the Technical Secretary shall notify the applicant of his findings in writing. In the absence of his timely notification that an application is incomplete, an application will be considered to be complete. Such status is limited to only provide enforcement immunity for the applicant for failing to have filed a complete application and to place them in an application shield status. Should the Technical Secretary find that additional information is necessary to properly evaluate the application, the applicant must provide the additional information in accordance with the Technical Secretary's written request which will set a reasonable deadline to provide the information. The source may operate under the authority of their most recent permit consistent with the application shield provisions of part 1200-03-09-.02(11)(f)2, provided that the application is determined or deemed to be complete and further provided that the applicant submits any requested additional information by the

deadline specified by the Technical Secretary. However, the source shall abide by the terms of its most recently issued permit until final action is taken upon their application.

(iii) Confidential Information:

A source which claims that its information is confidential is subject to a review of confidentiality. If the Technical Secretary determines that the information should not be protected as confidential, he shall notify the source in writing and hold the information in protected status until such time that the Board can resolve the dispute via a contested case hearing. During this time of dispute, the applicant will be required to make a direct submittal of the information to the Administrator if the EPA desires to review the disputed information being used to prepare the permit. The following information shall not be considered confidential:

(I) The composition and quantity of air contaminants emitted from the facility.

(II) The applicable requirements that a source must fulfill and the source's compliance status with each applicable requirement.

(III) The business name, address, and location of the source and the name of the source's responsible official.

(IV) Any other information which the Board may determine through a hearing of the matter.

2. The owner or operator of a source subject to paragraph 1200-03-09-.02(11) has a duty to supplement or correct their application upon discovery that their application was incorrect or failed otherwise to address any facts relevant to permitting at the source. The applicant must also provide additional information as necessary to address any requirements that become applicable to the source after the date that it has filed a complete application but prior to the release of a draft permit.

3. The Board has approved and mandated the use of permit applications, instruction sheets and a completeness checklist which should facilitate the applicant's duty to provide all of the information required by 40 C.F.R. Part 70.5(c) and (d). Those requirements are printed on the completeness checklist and that information is the primary basis by which an application shall be judged for completeness. Application must be made using the forms available from the Technical Secretary. The Technical Secretary may request a refilling of applications that are illegible, vague or ambiguous. In such cases, the timelines for action on the application will restart when the clarified application is received.

4. Any application form, report, or compliance certification submitted pursuant to the requirements of paragraph 1200-03-09-.02(11) shall contain certification by a responsible official of truth, accuracy and completeness. This certification and any other certification required under paragraph 1200-03-09-.02(11) shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

(e) Permit Content -

(Rule 1200-03-09-.02, continued)

1. The applicant shall propose the number of permits that they want and the Technical Secretary shall determine the number of permits that a facility is to receive. In determining the number of permits, consideration shall be given to the ease of evaluating compliance at a complex facility. To the extent possible, a complex facility should be divided into major operating divisions with one permit per division. Each permit issued by the Technical Secretary pursuant to the provisions of paragraph 1200-03-09-.02(11) shall include the following elements:

(i) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(I) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(II) The permit shall state that, where an applicable requirement of the Federal Act is more stringent than the Federal regulations promulgated under title IV of the Federal Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

(III) Sources that qualify and choose an alternate emission standard pursuant to the provisions of chapter 1200-03-21 shall be issued a permit that contains the alternate standard with sufficient provisions to ensure that any resulting emission limit has been demonstrated to be quantifiable, accountable, enforceable and based upon replicable procedures.

(ii) Permit Duration - The Technical Secretary shall issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources. Notwithstanding this requirement, the Technical Secretary shall issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Federal Act for a period not to exceed 12 years and shall review such permits at least every 5 years.

(iii) Monitoring and related recordkeeping and reporting requirements:

(I) Monitoring Requirements

I. The Technical Secretary shall prescribe monitoring and related recordkeeping and reporting requirements in accordance with the powers granted to him at chapter 1200-03-10.

II. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring shall be required sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as required pursuant to item 1200-03-09-.02(11)(e)1(iii)(III). Such monitoring requirements shall assure use of such terms, test methods, units, averaging periods, and other statistical

conventions consistent with the applicable requirements. Recordkeeping provisions shall be sufficient to meet the requirements of this sub-item 1200-03-09-.02(11)(e)(1)(iii)(I)II if it is the judgment of the Technical Secretary that recordkeeping alone is sufficient to prove compliance; and

III. As necessary, the Technical Secretary may impose requirements concerning the use, maintenance, and where appropriate, installation of monitoring equipment or methods.

(II) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

I. Records of required monitoring information that include the following:

A. The date, place as defined in the permit, and time of sampling or measurements;

B. The date(s) analyses were performed;

C. The company or entity that performed the analysis;

D. The analytical techniques or methods used;

E. The results of such analyses; and

F. The operating conditions as existing at the time of sampling or measurement.

II. Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(III) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

I. Submittal of reports of any required monitoring at least every 180 days. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with part 1200-03-09-.02(11)(d)4.

II. Prompt reporting of deviations from permit requirements, including those attributable to upset, malfunction or emergency conditions as defined in the permit and/or chapter 1200-03-20. The provisions of Rule 1200-03-20-.03 shall define “prompt reporting” for periods in between the 180 day reports in sub item 1200-03-09-.02(11)(e)1(iii)(III)I.

(Rule 1200-03-09-.02, continued)

III. Digital data accumulation which utilizes valid data compression techniques shall be acceptable for compliance determination as long as such compression does not violate an applicable requirement and its use has been approved in advance by the Technical Secretary.

(iv) Permits issued to affected sources shall contain a permit condition that prohibits emissions exceeding any allowances that the source lawfully holds under title IV of the Federal Act of the Federal regulations promulgated thereunder and chapter 1200-03-30.

(I) The permittee shall not be subject to the permit revision requirements of subparagraph 1200-03-09-.02(11)(f) for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(II) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(III) Any such allowance shall be accounted for according to the procedures established in the Federal regulations promulgated under title IV of the Federal Act and in State rules promulgated in chapter 1200-03-30.

(v) The permit requirements of a permit issued pursuant to paragraph 1200-03-09-.02(11) are severable. A dispute regarding one or more permit requirements in such a permit does not invalidate or otherwise excuse a permittee from their duty to comply with the remaining portion of the permit.

(vi) The following general provisions shall appear on each permit issued pursuant to paragraph 1200-03-09-.02(11):

(I) The permittee shall comply with all conditions of its permit. Except for requirements specifically designated herein as not being federally enforceable, non-compliance with the permit requirements is a violation of the Federal Act and the Tennessee Air Quality Act and is grounds for enforcement action; for a permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. Non-compliance with permit conditions specifically designated herein as not being federally enforceable is a violation of the Tennessee Air Quality Act and may be grounds for these actions.

(II) The need to halt or reduce activity is not a defense for noncompliance. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit. However, nothing in this item shall be construed as precluding consideration of a need to halt or reduce activity as a mitigating factor in assessing penalties for noncompliance if the health, safety or environmental impacts of halting or reducing operations would be more serious than the impacts of continuing operations.

(Rule 1200-03-09-.02, continued)

(III) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(IV) The permit does not convey any property rights of any sort, or any exclusive privilege.

(V) The permittee shall furnish to the Technical Secretary, within a reasonable time, any information that the Technical Secretary may request in writing to determine whether cause exists for modifying, revoking and reissuing, or termination of the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Technical Secretary copies of records required to be kept by the permit. If the permittee claims that such information is confidential, the Technical Secretary may review that claim and hold the information in protected status until such time that the Board can hear any contested proceedings regarding confidentiality disputes. If the information is desired by EPA, the permittee may mail the information directly to EPA.

(vii) A permittee must pay fees in accordance with rule 1200-03-26.02 as a condition of its permit.

(viii) A permit revision will not be required under any approved economic incentives, marketable permits, emissions trading and other similar programs or process for changes that are provided for in the permit.

(ix) Reasonable anticipated operating scenarios may be established in the permit to address variable operating modes at a source provided that each scenario is fully addressed in the source's application. Such scenarios are permissible only if:

(I) The source, contemporaneously with making a change from one operating scenario to another, shall record in a log at the permitted facility the scenario under which it is operating;

(II) The terms and conditions of each such alternate scenario shall meet all applicable requirements and the rules of Division 1200-03. The Technical Secretary is authorized to extend the permit shield described under part 1200-03-09-.02(11)(e)6 to all terms and conditions under each operating scenario.

(x) An applicant in possession of a certificate of alternate emission control issued pursuant to the provisions of chapter 1200-03-21 may trade emissions increases and decreases in the permitted facility to the extent that said certificate allows for such trading. The certificate and its terms shall be made part of the permit and must conform to the following requirements:

(I) The certificate's terms shall include all terms required under part 1200-03-09-.02(11)(e)1 and part 1200-03-09-.02(11)(e)3 to determine compliance; and

(Rule 1200-03-09-.02, continued)

(II) The certificate terms must meet all other applicable requirements and the rules of Division 1200-03 that were not altered by the certificate. The Technical Secretary is authorized to extend the permit shield described in part 1200-03-09-.02(11)(e)6 to all terms and conditions that allow such increase and decreases in emissions.

2. A permit issued under the provisions of paragraph 1200-03-09-.02(11) is a permit issued pursuant to the requirements of title V of the Federal Act and its implementing Federal regulations promulgated at 40 C.F.R. part 70. As such, the permittee is advised that:

(i) All terms and conditions in a permit issued pursuant to paragraph 1200-03-09-.02(11) including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Federal Act.

(ii) Notwithstanding subpart 1200-03-09-.02(11)(e)2(i), the Technical Secretary shall specifically designate as not being federally enforceable under the Federal Act any terms and conditions included in the permit that are not required under the Federal Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of subparagraphs 1200-03-09-.02(11)(f) and 1200-03-09-.02(11)(g), other than those contained in this part 1200-03-09-.02(11)(e)2.

3. All permits issued pursuant to paragraph 1200-03-09-.02(11) shall contain the following elements with respect to compliance:

(i) Consistent with subpart 1200-03-09-.02(11)(e)1(iii), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a permit issued pursuant to paragraph 1200-03-09-.02(11) shall contain a certification by a responsible official that meets the requirements of part 1200-03-09-.02(11)(d)4.

(ii) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Technical Secretary or his authorized representative to perform the following for the purposes of determining compliance with the permit applicable requirements:

(I) Enter upon the permittee's at reasonable times premises where a source subject to paragraph 1200-03-09-.02(11) is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(II) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(III) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(IV) As authorized by chapter 1200-03-10, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(V) "Reasonable times" shall be considered to be customary business hours unless reasonable cause exists to suspect noncompliance with the Act, Division 1200-03 or any permit issued pursuant thereto and the Technical Secretary specifically authorizes an inspector to inspect a facility at any other time.

(iii) A schedule of compliance consistent with that declared by the applicant or as otherwise modified by the Technical Secretary utilizing the Board approved application forms in part 1200-03-09-.02(11)(d)3.

(iv) The requirement that the permittee submit progress reports consistent with an applicable schedule of compliance and part 1200-03-09-.02(11)(d)3. The reports shall be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Technical Secretary. Such progress reports shall contain the following:

(I) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(II) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventative or corrective measures adopted.

(v) The permit shall include requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Specifically, the permits shall include each of the following:

(I) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the Technical Secretary) of submissions of compliance certifications;

(II) A means of monitoring the compliance of the source with its emission limitations, standards and work practices. The means of monitoring shall conform to subpart 1200-03-09-.02(11)(e)1(iii).

(III) A requirement that compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

I. The identification of each term or condition of the permit that is the basis of the certification;

II. The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under subpart 1200-03-09-.02(11)(e)1(iii). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Federal Act (see subitem V), which prohibits knowingly making a false certification or omitting material information;

(Rule 1200-03-09-.02, continued)

III. The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in subitem 1200-03-09-.02(11)(e)3(v)(III)II. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under subparagraph 1200-03-09-.02(11)(b) occurred; and

IV. Such other facts as the permitting authority may require to determine the compliance status of the source.

V. SECTION 113(c)(2) of the Federal Act SEC. 113. FEDERAL ENFORCEMENT.

A. Criminal Penalties.-

B. Any person who knowingly -

(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this Act to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);

(B) fails to notify or report as required under this Act; or

(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this Act shall, upon conviction, be punished by a fine pursuant to title 18 of the United States Code, or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(IV) A requirement that all compliance certifications be submitted to the Administrator as well as to the Technical Secretary; and

(V) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Federal Act.

(vi) Any other compliance requirement deemed necessary by the Technical Secretary may be imposed in the permit.

(Rule 1200-03-09-.02, continued)

4. General Permits

(i) The Air Pollution Control Board may issue general permits for the purpose of covering numerous similar sources that are owned or operated by different persons at different facilities. A general permit satisfies the definition of a rule pursuant to the Uniform Administrative Procedures Act, *T.C.A. §4-5-101 et seq.* As such, general permits must be promulgated as rules. The general permit must be subjected to the notice and an opportunity for public participation, as specified in part 1200-03-09-.02(11)(f)8. Further, the general permit must comply with the other requirements applicable to permits issued pursuant to paragraph 1200-03-09-.02(11). The permit must specify the eligibility criteria by which sources may qualify for the general permit. The general permits shall state the process by which a source notifies the Technical Secretary that it intends to be authorized under the general permit. The general permit shall state the means by which the Technical Secretary confirms that the source is covered by the general permit or that the source requires an individual permit. Notwithstanding the shield provisions of part 1200-03-09-.02(11)(e)6, the source operating under the provisions of a general permit shall be subject to enforcement action for operation without the permit required by paragraph 1200-03-09-.02(11) if the source requested coverage under a general permit by representing themselves to be eligible for a general permit in their notice of intent and it is later determined that the source does not qualify for the eligibility terms and conditions of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under title IV of the federal Act or chapter 1200-03-30.

(ii) Sources subject to the provisions of paragraph 1200-03-09-.02(11) that would qualify for a general permit must submit a notice of intent to the Technical Secretary for coverage under the terms of the general permit or must apply for the standard major stationary source operating permit consistent with subparagraph 1200-03-09-.02(11)(d) according to their choice of permitting routes as detailed in this part 1200-03-09-.02(11)(e)4. The Board may, in the general permit, provide for the requirements for the notice of intent which may deviate from the requirements of subparagraph 1200-03-09-.02(11)(d), provided that they meet the requirements of title V of the federal Act, and include all information necessary to determine qualifications for and to assure compliance with, the general permit. When the Technical Secretary confirms that a source may operate under the terms of a general permit, that action is not subject to public participation under part 1200-03-09-.02(11)(f)8 and shall not be a final permit action for purposes of judicial review.

5. Temporary Sources

The Technical Secretary may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(Rule 1200-03-09-.02, continued)

(i) Conditions that will assure compliance with all applicable requirements at all authorized locations:

(ii) Requirements that the owner or operator notify the Technical Secretary at least 10 days in advance of each change in location; and

(iii) Conditions that assure compliance with all other provisions of this paragraph 1200-03-09-.02(11).

6. Permit Shield

(i) Except as provided in paragraph 1200-03-09-.02(11), the Technical Secretary shall if requested by the applicant, expressly include in a permit issued pursuant to paragraph 1200-03-09-.02(11) a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issue, provided that:

(I) Such applicable requirements are included and are specifically identified in the permit; or

(II) The Technical Secretary, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(ii) A permit issued pursuant to paragraph 1200-03-09-.02(11) that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(iii) Nothing in this part or in any permit issued pursuant to paragraph 1200-03-09-.02(11) shall alter or affect the following:

(I) The provisions of section 303 of the federal Act (emergency orders), including the authority of the Administrator under that section. Similarly, the provisions of T.C.A. 68-201-109 (emergency orders) including the authority of the Governor under the section;

(II) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(III) The applicable requirements of the acid rain program, consistent with section 408(a) of the federal Act; or

(IV) The ability of EPA to obtain information from a source pursuant to section 114 of the federal Act.

7. Emergency Provisions

(i) Definition An “emergency” means 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 issued pursuant to paragraph 1200-03-09-.02(11), 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 preventative maintenance, careless or improper operation, or operator error. For the purposes of this definition, "permit issued pursuant to paragraph 1200-03-09-.02(11)" shall also include any construction permit issued under the provisions of rule 1200-03-09-.01 to a source subject to the permitting requirements of paragraph 1200-03-09-.02(11).

(ii) An emergency constitutes an affirmative defense to an enforcement action brought against a source for noncompliance with such technology based emission limitations if the conditions of subpart 1200-03-09-.02(II)(e)7(iii) are met.

(iii) The affirmative defense of the emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(I) An emergency occurred and that the permittee can identify the probable cause(s) of the emergency. "Probable" must be supported by a credible investigation into the incident that seeks to identify the causes and results in an explanation supported by generally accepted engineering or scientific principles.

(II) The permitted facility was at the time being properly operated. In determining whether or not a facility was being properly operated, the Technical Secretary shall examine the source's written standard operating procedures which were in effect at the time of the noncompliance and any other code as detailed below that would be relevant to preventing the noncompliance. Adherence to the source's standard operating procedures will be the test of adequate preventative maintenance, careless operation, improper operation or operator error to the extent that such adherence would prevent noncompliance. The source's failure to follow recognized standards of practice to the extent that adherence to such a standard would have prevented noncompliance will disqualify the source from any claim of an emergency and an affirmative defense. The Board will specifically recognize the National Fire Protection Association codes, the codes of the American National Standards Institute, the codes of the American Society of Testing Materials, the codes of the United States Department of Transportation, the codes of the United States Occupational Safety and Health Administration and any State of Tennessee statute or regulation if applicable. Recognition of these codes, statutes, regulations and standards of practice is limited to the test of determining whether or not a facility was operated properly for the purposes of preventing actual (<u>not potential</u>) noncompliance and in no way should it be viewed as the Board's imposition of the standards administered by other agencies, Boards, or organizations.

(III) During the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.

(IV) The permittee submitted notice of the emergency to the Technical Secretary according to the notification criteria for malfunctions in rule

1200-03-20-.03. For the purposes of this item 1200-03-09-.02(11)(e)7(iii)(IV), "emergency" shall be substituted for "malfunctions(s)" in rule 1200-03-20-.03 to determine the relevant notification threshold. The notice shall include a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(iv) In any enforcement proceeding the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(v) The provisions of this part 1200-03-09-.02(11)(e)7 are in addition to any emergency, malfunction or upset requirement contained in Division 1200-3 or other applicable requirement.

(f) Permit Issuance, Renewal, Reopening and Revision

1. Action on an Application

(i) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(I) The Technical Secretary has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under part 1200-03-09-.02(11)(e)4;

(II) Except for modifications qualifying for the minor permit modification procedures under subpart 1200-03-09-.02(11)(f)5(ii) or subpart 1200-03-09-.02(11)(f)5(iii), the Technical Secretary has complied with the requirements for public participation under part 1200-03-09-.02(11)(f)8;

(III) The Technical Secretary has complied with the requirements for notifying and responding to affected States under part 1200-03-09-.02(11)(g)2;

(IV) The conditions of the permit provide for compliance with all applicable requirements and the requirements of paragraph 1200-03-09-.02(11);

(V) The Administrator has received a copy of the proposed permit and any notices required under part 1200-03-09-.02(11)(g)1 and part 1200-03-09-.02(11)(g)2, and has not objected to the issuance of the permit under part 1200-03-09-.02(11)(g)3 within the time period specified therein.

(ii) Except as otherwise required by subparagraph 1200-3-30-.06(4)(d) affected sources shall have final action taken on permit applications filed with the

Technical Secretary within 18 months of the date that they file their complete permit application. The Technical Secretary is authorized to set the due date of their initial applications to mesh with their Phase II acid rain permit applications such that their initial permit will contain both acid rain requirements and standard emission/procedural requirements. The

Technical Secretary is instructed to consider any guidance promulgated by the Administrator relative to meshing Title V and Title IV at affected facilities when setting such application submittal dates.

(iii) To the extent practicable, the Technical Secretary shall give priority to the processing of operating permit applications to sources which are subject to either paragraph 1200-03-09-.01(4) or paragraph 1200-03-09-.01(5). Sources subject to paragraph 1200-03-09-.02(11) shall have final action taken on permit applications filed with the Technical Secretary within 18 months of the date that their application is deemed complete.

(iv) The Technical Secretary shall provide notice to the applicant of whether the application is complete within 60 days of receipt of an application in his office. Unless the Technical Secretary requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. For modifications processed through minor permit modification procedures, such as those in subpart 1200-03-09-.02(11)(f)5(ii) or subpart 1200-03-09-.02(11)(f)5(iii) a completeness determination shall not be required of the Technical Secretary. An application that defaults to complete status through the Technical Secretary's failure to notify the applicant of its incompleteness within 60 days of his receipt, does not relieve the applicant of the duty to provide such supplemental information that the Technical Secretary must have in order to process the permit application.

(v) The Technical Secretary shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The Technical Secretary shall send this statement to EPA and to any other person provided that such person requests the statement in writing and pays a fee sufficient to pay for postage, copying costs and staff time to respond to the request.

(vi) The submittal of a complete operating permit application shall not affect the requirement that any source have a construction permit as required under rule 1200-03-09-.01.

2. Requirement for a Permit

Except as provided in the following sentence, item 1200-03-09-.02(11)(a)4(i)(I) Section 502(b)(10) changes, and item 1200-03-09-.02(11)(f)5(ii)(V) and item 1200-03-09-.02(11)(f)5(iii)(V), no source subject to paragraph 1200-03-09-.02(11) may operate after the time that it is required to submit a timely and complete application as provided for in subpart 1200-03-09-.02(11)(d)1(i), except in compliance with a permit issued pursuant to paragraph 1200-03-09-.02(11). Consistent with the provisions of parts 1200-03-09-.02(11)(a)1 and 2, a source subject to paragraph 1200-03-09-.02(11) that submits a timely and complete application for permit issuance (including for renewal) will not be considered in violation of paragraph 1200-03-09-.02(11) until the Technical Secretary takes final action on the permit application, except as otherwise noted in paragraph 1200-03-09-.02(11). If the final action on a permit by the Technical Secretary has been appealed to the Board as a contested case, the application shield will remain in effect until final action of the Board. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to subpart 1200-03-09-.02(11)(f)1(iv), and as required by subpart 1200-03-09-.02(11)(d)1(ii), the applicant fails to submit by the deadline specified in writing by

the Technical Secretary any additional information identified as being needed to process the application.

3. Permit Renewal and Expiration

(i) Permits that are being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance; and

(ii) Consistent with the provisions of part 1200-03-09-.02(11)(a)2 permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with part 1200-03-09-.02(11)(f)2 and item 1200-03-09-.02(11)(d)1(i)(III).

4. Administrative Permit Amendments

(i) An "administrative permit amendment" is a permit revision that:

(I) Corrects typographical errors;

(II) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(III) Requires more frequent monitoring or reporting by the permittee;

(IV) Allows for a change of ownership or operational control of a source where the Technical Secretary determines that no other change in the permit is necessary, provided that a transfer of ownership permit application is filed consistent with the provisions of paragraph 1200-03-09-.03(6) and further provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Technical Secretary;

(V) Incorporates into the operating permit issued pursuant to paragraph 1200-03-09-.02(11) the requirements of a construction permit issued pursuant to rule 1200-03-09-.01 provided that the construction permit meets the requirements of subparagraph 1200-03-09-.02(11)(f), subparagraph 1200-03-09-.02(11)(g) and the compliance requirements of subparagraph 1200-03-09-.02(11)(e).

(ii) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the federal Act and corresponding regulations in chapter 1200-03-30.

(iii) Administrative permit amendment procedures shall be made according to the following criteria:

(I) The Technical Secretary shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that he designates any such permit revisions as having been made pursuant to part 1200-03-09-.02(11)(f)4.

(II) After making an administrative permit amendment, the Technical Secretary shall submit a copy of the revised permit to the Administrator.

(III) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(iv) The Technical Secretary may extend the permit shield as part of an administrative permit amendment revision consistent with the provisions of part 1200-03-09-.02(11)(e)6 for such revisions made pursuant to item 1200-03-09-.02(11)(f)4(i)(V) which meet the relevant requirements of subparagraph 1200-03-09-.02(11)(e), subparagraph 1200-03-09-.02(11)(f) and subparagraph 1200-03-09-.02(11)(g) for significant permit modifications.

(v) Proceedings to review and grant administrative permit amendments shall be limited to only those parts of the permit for which cause to amend exists, and not the entire permit.

5. Permit Modifications

(i) A permit modification is any revision to a permit issued pursuant to paragraph 1200-03-09-.02(11) that cannot be accomplished as an administrative permit amendment. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the federal Act and corresponding regulations at chapter 1200-03-30. Proceedings to review and modify permits shall be limited to only those parts of the permit for which cause to modify the permit exists, and not the entire permit.

(ii) Minor permit modification procedures:

(I) Minor permit modification procedures may be used only for those permit modifications that:

I. Do not violate any applicable requirement;

II. Do not involve significant changes to existing monitoring, reporting or recordkeeping requirements in the permit;

III. Do not require or change a case-by-case determination of an emission limitation or other standard required by the federal Act, or a source-specific determination for temporary sources of ambient impacts as required by the federal Act, or a visibility or increment analysis as required by the federal Act;

IV. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(Rule 1200-03-09-.02, continued)

A. A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the federal Act. Further, federally enforceable emission caps assumed to avoid classification as a modification under chapter 1200-03-11, chapter 1200-30-16, Chapter 1200-03-31, paragraph 1200-03-09-.01(4) or paragraph 1200-03-09-.01(5) are included in the criteria of this section 1200-03-09-.02(11)(f)5(ii)(I)IV A.

B. An alternate emission limit approved pursuant to section 112(i)(5) of the federal Act or rule 1200-03-31-.06;

V. Are not modifications under Title I of the federal Act or the federal regulations promulgated pursuant thereto. Further, the minor permit modification process may be used only for changes that are not modifications under chapter 1200-03-11, Chapter 1200-03-31, chapter 1200-03-16, paragraph 1200-03-09-.01(4) or paragraph 1200-03-09-.01(5); and

VI. Are not otherwise required in paragraph 1200-03-09-.02(11) to be processed as a significant modification.

(II) Application

An application requesting the use of minor permit modification procedures shall meet the requirements of part 1200-03-09-.02(11)(d)3 and shall include the following:

I. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

II. The source's suggested draft permit;

III. Certification by a responsible official, consistent with part 1200-03-09-.02(11)(d)4, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

IV. Completed forms for the Technical Secretary to use to notify the Administrator and affected States as required under subparagraph 1200-03-09-.02(11)(g).

(III) EPA and affected State notification.

Within 5 working days of receipt of a complete permit modification application the Technical Secretary shall notify the Administrator and affected States of the requested permit modification consistent with the provisions of subpart 1200-03-09-.02(11)(g)1(i) and subpart 1200-03-09-.02(11)(g)2(i). The Technical Secretary shall promptly send any notice required under subpart 1200-03-09-.02(11)(g)2(ii) to the Administrator.

(Rule 1200-03-09-.02, continued)

(IV) The Technical Secretary shall not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the Technical Secretary that EPA will not object to the issuance of the permit modification, whichever is first, although the Technical Secretary can approve the permit modification prior to that time. Within 90 days of the Technical Secretary's receipt of an application under minor permit modification procedures or 15 days after the end of the Administrator's 45-day review period under the provisions of subpart 1200-03-09-.02(11)(g)3, whichever is later, the Technical Secretary shall:

I. Issue the permit modifications as proposed; or

II. Deny the permit modification application; or

III. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

IV. Revise the draft permit modification and transmit to the Administrator the new proposed permit modification as required by part 1200-03-09-.02(11)(g)1.

(V) The source may make the change proposed in its minor permit modification immediately after it files such application. After the source makes the change allowed by the preceding sentence, and until the Technical Secretary takes any of the actions specified in sub items 1200-03-09-.02(11)(f)5(ii)(IV)I-III the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(VI) Permit Shield - The permit shield under part 1200-03-09-.02(11)(e)6 may not extend to minor permit modifications.

(VII) [Reserved]

(iii) Group processing of minor permit modifications:

A source may group its applications for certain modifications eligible for minor permit modification processing according to the following requirements:

(I) Criteria - Group processing of modifications may be used only for those permit modifications:

I. That meet the criteria for minor permit modification procedures under item 1200-03-09-.02(11)(f)5(ii)(I); and

II. That are collectively below the <u>least</u> of the following threshold criteria levels:

A. 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested;

B. 20 percent of the applicable definition of “major source” in part 1200-03-09-.02(11)(b)14; or

C. 5 tons per year.

(II) Application

An application requesting the use of the group processing of minor permit modifications procedure shall meet the requirements of part 1200-03-09-.02(11)(d)3 and shall include the following:

I. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

II. The source’s suggested draft permit;

III. Certification by a responsible official consistent with part 1200-03-09-.02(11)(d)4, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

IV. A list of the source’s other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under sub item 1200-03-09-.02(11)(f)5(iii)(I)II.

V. Certification, consistent with the provisions of part 1200-03-09-.02(11)(d)4, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

VI. Completed forms for the Technical Secretary to use to notify the Administrator and affected States as required under subparagraph 1200-03-09-.02(11)(g).

(III) EPA and affected State Notification;

On a quarterly basis or within 5 business days of receipt of an application demonstrating that the aggregate of a source’s pending applications equals or exceeds the threshold level set under sub item 1200-03-09-.02(11)(f)5(iii)(I)II, whichever is earlier, the Technical Secretary promptly shall meet his obligation under subpart 1200-03-09-.02(11)(g)1(i) and subpart 1200-03-09-.02(11)(g)2(i) to notify the Administrator and affected States of the requested permit modifications. The Technical Secretary shall send any notice required under subpart 1200-03-09-.02(11)(g)2(ii) to the Administrator.

(IV) Timetable for issuance;

The provisions of item 1200-03-09-.02(11)(f)5(ii)(IV) shall apply to modifications eligible for group processing except that the Technical Secretary shall take one of the actions specified in subitems 1200-03-09-.02(11)(f)5(ii)(IV) I through IV within 180 days of receipt of the application or 15 days after the end of the Administrator's 45 day review period under part 1200-03-09-.02(11)(g)3, whichever is later.

(V) Source's ability to make change;

The provisions of item 1200-03-09-.02(11)(f)5(ii)(V) shall apply to modifications eligible for group processing.

(VI) Permit Shield

The provisions of item 1200-03-09-.02(11)(f)5(ii)(VI) shall apply to modifications eligible for group processing.

(iv) Significant modification procedures

(I) Criteria

Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. In addition to the criteria of the preceding sentence, a relaxation of monitoring, reporting or recordkeeping requirements shall be considered significant. In the event that the Technical Secretary issues a statement of clarification to clarify a permit requirement that is ambiguous or otherwise unclear, such clarification will not be considered a significant modification if it results in the less restrictive interpretation, provided however, that the less restrictive interpretation was the intent of the Technical Secretary in issuing the original permit requirement. Nothing herein shall be construed to preclude the permittee from making changes consistent with paragraph 1200-03-09-.02(11) that would render existing permit compliance terms and conditions irrelevant.

(II) Significant modifications shall meet all requirements of paragraph 1200-03-09-.02(11) including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The Technical Secretary shall endeavor to process all significant permit modification requests within 9 months after receipt of a complete application. The Technical Secretary is directed to program the resources of the Department's Division of Air Pollution Control such that at least 51 percent of the significant modification requests are processed within the 9 month period on a calendar year basis.

6. Reopening for Cause

(i) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(I) Additional applicable requirements under the federal Act become applicable to a major source subject to paragraph 1200-03-09-.02(11) with a remaining permit term of 3 or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original has been extended pursuant to part 1200-03-09-.02(11)(a)2.

(II) Additional requirements (including excess emission requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(III) The Technical Secretary or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(IV) The Technical Secretary or EPA determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(ii) Proceedings to reopen and issue a permit shall follow the same proceedings as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists, and not the entire permit. Such reopening shall be made as expeditiously as practicable.

(iii) Reopening under subpart 1200-03-09-.02(11)(f)6(i) shall not be initiated before a notice of such intent is provided to the permittee by the Technical Secretary at least 30 days in advance of the date that the permit is to be reopened except that the Technical Secretary may provide a shorter time period in the case of an emergency. An emergency shall be established by the criteria of T.C.A. 68-201-109 or other compelling reasons that public welfare is being adversely effected by the operation of a source that is in compliance with its permit requirements.

7. Reopenings for Cause by EPA

(i) If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to part 1200-03-09-.02(11)(f)6, he is required under federal rules to notify the Technical Secretary and the permittee of such findings in writing. Upon receipt of such notification, the Technical Secretary shall investigate the matter in order to determine if he agrees or disagrees with the Administrator's findings. If he agrees with the Administrator's findings, the Technical Secretary shall conduct the reopening in the following manner:

(ii) The Technical Secretary shall within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. If the Administrator grants additional time to secure permit applications or additional information from the permittee, the Technical Secretary shall have the additional time period added to the standard 90 day time period.

(iii) EPA will evaluate the Technical Secretary's proposed revisions and respond as to their evaluation.

(iv) If EPA agrees with the proposed revisions, the Technical Secretary shall proceed with the reopening in the same manner prescribed under subparts 1200-03-09-.02(11)(f)6(ii) and (iii).

(v) If the Technical Secretary disagrees with either the findings of the Administrator that a permit should be reopened or an objection of the Administrator to a proposed revision to a permit submitted pursuant to subpart 1200-03-09-.02(11)(f)7(ii), he shall bring the matter to the Board at its next regularly scheduled meeting for instructions as to how he should proceed. The permittee shall be required to file a written brief expressing their position relative to the Administrator's objection and have a responsible official present at the meeting to answer questions of the Board. If the Board agrees that EPA is wrong in their demand for a permit revision, they shall instruct the Technical Secretary to conform to EPA's demand, but to issue the permit under protest preserving all rights available for litigation against EPA.

8. Public Participation

(i) Except for modifications qualifying for minor permit modifications procedures, all permit proceedings, including initial permit issuance, significant modifications and renewals, shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. These procedures shall include the following:

(I) Notice shall be given by the applicant by publication in a newspaper of general circulation in the area where the source is located or by other means designated by the Technical Secretary if necessary to assure adequate notice to the affected public. The applicant shall bear the expense of the newspaper notice. Notice shall also be given by the Technical Secretary to persons on a mailing list who meet the following criteria:

I. Such persons shall request to be on the list in writing on an annual basis.

II. Such persons shall pay a fee of $10.00 per year to the Department to defray the cost of postage and handling and list management.

(II) The notice shall identify the facility to be permitted; the name and address of the permittee; the Technical Secretary and his address; the activity or activities involved in the permit action; the emission change involved in any permit modification; the name, address and telephone number of a person from whom interested parties may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials including the source's compliance plan and monitoring reports, and all other materials available to the Technical Secretary that are relevant to the permit decision. These materials will be placed in a public depository for public inspection. Those persons unwilling to view these materials at

the public depositories may request copies to be mailed to them at a cost of $0.50 (50 cents) per page. The notice shall also include a brief description of the comment procedure specified in part 1200-03-09-.02(11)(f)8; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled);

(III) The Technical Secretary shall provide such notice and opportunity for participation by affected States as is provided for by subparagraph 1200-03-09-.02(11)(g);

(IV) The Technical Secretary shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(V) The Technical Secretary shall keep a record of the commentors and also of the issues raised during the public participation process so that the Administrator may fulfill his obligation under Section 505(b)(2) of the federal Act to determine whether a citizen petition may be granted, and such records shall be available to both the public and the applicant.

(g) Permit Review by EPA and Affected States

1. Transmission of Information to the Administrator

(i) The Technical Secretary shall provide a copy of each permit application submitted pursuant to the provisions of paragraph 1200-03-09-.02(11) to the Administrator. Upon agreement with the Administrator the Technical Secretary is permitted to send less than a complete copy to the Administrator as long as the Administrator is satisfied with the level of detail in the partial submittal. Additionally, the Technical Secretary shall provide the Administrator a copy of each proposed permit and each final permit that will be issued to a source subject to the provisions of paragraph 1200-03-09-.02(11).

(ii) The Technical Secretary shall keep for 5 years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether or not the provisions of paragraph 1200-03-09-.02(11) are being followed.

2. Review by affected States

(i) The Technical Secretary shall give notice of each draft permit prepared pursuant to the provisions of paragraph 1200-03-09-.02(11) to any affected State on or before the time that he provides this notice to the public under part 1200-03-09-.02(11)(f)8, except to the extent that subpart 1200-03-09-.02(11)(f)5(ii) or subpart 1200-03-09-.02(11)(f)5(iii) requires the timing of the notice to be different. The affected State review and comment period shall close simultaneously with the closure of the public review and comment period. The affected States will have thirty days to review and comment upon minor modifications.

(ii) The Technical Secretary shall notify the Administrator and any affected State in writing of his refusal to accept all recommendations for the

(Rule 1200-03-09-.02, continued)

proposed permit that the affected State submitted during the public or affected State review period. Said notice shall be filed when the proposed permit is sent to the Administrator or as soon as possible after the submittal for minor permit modification procedures allowed under subpart 1200-03-09-.02(11)(f)5(ii) or subpart 1200-03-09-.02(11)(f)5(iii). The notice shall include the Technical Secretary's reasons for not accepting any such recommendation. The Technical Secretary is not required to accept recommendations that are not based upon applicable requirements or the requirements of 40 C.F.R. Part 70.

3. EPA Objection

(i) No permit for which an application must be transmitted to the Administrator under part 1200-03-09-.02(11)(g)1 shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and its level of supporting information as prescribed in subpart 1200-03-09-.02(11)(g)1(i).

(ii) The Technical Secretary shall respond to the objections of the Administrator and restructure the permit consistent with the provisions of the federal Act, federal regulations promulgated thereunder or any lawfully promulgated federal policy and the provisions of the State Act, the regulations comprising division 1200-03 and any policies of the Board.

4. Public Petitions to the Administrator

Any person can petition the Administrator to object to a permit according to the criteria of 40 C.F.R. 70.8(d). An objection to a permit by the Administrator that is filed in response to a public petition under the provisions of paragraph 40 C.F.R. 70.8(d) shall be answered by the Technical Secretary in the same manner prescribed by subpart 1200-03-09-.02(11)(g)3(ii). If the Technical Secretary has issued the permit prior to the Administrator's objection in response to a public petition, the Administrator's modification, revocation or termination of the issued permit shall not cause the source to be in violation of the requirement to have submitted a timely and complete application as specified in part 1200-03-09-.02(11)(d)1 and in keeping with the application shield provisions of part 1200-03-09-.02(11)(f)2. If the Technical Secretary disagrees with the Administrator's objections and demand for revision of the permit, the provisions of subpart 1200-03-09-.02(11)(f)7(v) shall apply.

Authority: *T.C.A. §§ 68-201-101, et. seq., 68-201-105, 4-5-201, et. seq., and 4-5-202, et. seq.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed and effective February 9, 1977. Amendment filed and effective March 21, 1979. Amendment filed May 17, 1990; effective July 1, 1990. Amendment filed July 8, 1994; effective September 20, 1994. Amendment filed May 11, 1998; effective July 25, 1998. Amendment filed October 15, 1998; effective December 28, 1998. Amendment filed November 12, 1998; effective January 26, 1999. Amendment filed December 14, 1999; effective February 27, 2000. Amendment filed December 30, 1999; effective March 14, 2000. Amendments filed February 24, 2009; effective May 10, 2009. Amendments filed November 10, 2010; effective February 8, 2011. Amendment filed August 29, 2011; effective November 27, 2011.*

1200-03-09-.03 GENERAL PROVISIONS.

(1) Irrespective of the provisions of the preceding paragraphs of this chapter, the owner or operator of any air contaminant source shall be responsible for complying with emission regulations as contained in other chapters of these regulations at the earliest practicable time

(Rule 1200-03-09-.03, continued)

and for this purpose the Board shall have the authority and responsibility to require compliance with these regulations at an earlier date than indicated where such earlier compliance may reasonably be accomplished.

(2) No person shall use any plan, activity, device, or contrivance which the Technical Secretary determines will, without resulting in an actual reduction of air contaminants, conceal or appear to minimize the effects of an emission which would otherwise constitute a violation of these regulations. Methods considered circumvention of the regulations include but are not limited to the following:

(a) Air (or other gases) introduced for dilution purposes only.

(b) The staggered installation and operation of a facility to avoid coverage by a standard that applies only to operations larger than a specified size.

(3) No person shall discharge from any source whatsoever such quantities of air contaminant, uncombined water, or other materials which cause a traffic hazard.

(4) Any person affected by any of these regulations shall file emissions data with the Technical Secretary on forms available from the Secretary. If any changes are made that invalidate this data, the owner or operator shall file within thirty (30) days new forms with the appropriate revisions to the data.

(5) Any source operating under a variance or Board Order (whether effective under *T.C.A. §§68-25-116 or 68-25-118)* shall prominently and conspicuously display a copy of said variance or Board Order on the operating premises.

(6) An operation and/or construction permit is not transferable from one person to another person, nor from one air contaminant source to another air contaminant source, nor from one location to another location. Applications for construction permits by the new owner or operator of the new air contaminant source, or by the owner or operator of the air contaminant source at the new location shall be required as if there had been no previous construction permit issued. The new construction permit will address only rules in effect at the time of its issuance.

(7) The Technical Secretary may suspend or revoke any construction or operating permit if the permit holder fails to comply with the provisions, stipulations, or compliance schedules specified in the permit; all provisions of these regulations; and all provisions of the Tennessee Air Quality Act. Upon permit suspension or revocation, if the permit holder fails to take remedial action, he shall become immediately subject to enforcement actions prescribed by law.

(8) The Technical Secretary may include on all permits issued under the Tennessee Air Quality Act conditions to directly impose all provisions applicable to sources that are necessary under the federal Clean Air Act and effective federal regulations pursuant to this act, e.g., National Emission Standards for Hazardous Air Pollutants, as well as provisions necessary under Tenn. Code Ann. 68-201-101 et. seq. and rules of this Division 1200-03. Issuance of a permit containing conditions imposing such applicable provisions necessary under the federal Clean Air Act and effective federal regulations pursuant to this act shall not be treated as a repeal by implication of any otherwise applicable provisions of Division 1200-03. That is, simply the inclusion of such conditions containing federal standards or requirements that are less restrictive than standards or requirements in Division 1200-03 concerning the same matter shall not thereby effect a relaxation of the more restrictive provisions of Division 1200-03.

(Rule 1200-03-09-.03, continued)

Authority: *T.C.A. §§ 68-25-105, 68-201-105, and 4-5-202. et. seq.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed and effective February 9, 1977. Amendment filed and effective November 6, 1988. Amendment filed May 17, 1990; effective July 1, 1990. Amendment filed July 20, 1999; effective October 2, 1999. Amendment filed July 22, 2003; effective October 5, 2003. Amendment filed February 24, 2009; effective May 10, 2009.*

1200-03-09-.04 EXEMPTIONS.

(1) The exemptions listed in paragraph (4) of this rule, do not apply if an air contaminant source is subject to a standard or requirement contained in the following except where specifically stated:

Chapter 1200-03-11 (Hazardous air contaminants)
Chapter 1200-03-18 (Volatile organic compounds)
Chapter 1200-03-19 (Emission standards and monitoring requirements for additional control areas)
Chapter 1200-03-22 (Lead emission standards)
Chapter 1200-03-27 (Nitrogen oxides)
Paragraph 1200-03-31-.05(2) (Case by case determinations of hazardous air pollutant requirements)

In addition, the exemption provided for the air contaminant sources in paragraph (4) of this rule does not exempt them from inclusion in determining if a major stationary source or major modification construction permit is required under paragraph 1200-03-09-.01(4) and paragraph 1200-03-09-.01(5).

(2) (a) Definitions.

As used in paragraphs (1), (2), (3), and (4) of this Rule, all terms not defined herein shall have the meaning given them in Paragraph 1200-03-09-.02(11) and Chapter 1200-03-02 with the terms in Paragraph 1200-03-09-.02(11) taking precedence over Chapter 1200-03-02.

1. "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 in paragraph 1200-03-31-.02(6). Emissions unit includes within its meaning the smallest discrete or identifiable structure, device, item, equipment, or enclosure or group of discrete or identifiable structures, devices, items, equipment, or enclosures that emit or have the potential to emit any regulated air pollutant or any pollutant listed in paragraph 1200-03-31-.02(6). A point of origin of fugitive emissions resulting from equipment leaks of individual pieces of equipment, e.g., valves, flanges, pumps, and compressors, shall not be considered an individual emissions unit. Such equipment leaks shall be collectively considered an emissions unit based on their relationship to the associated process unit and shall be considered separately from other emissions from the process unit when defining insignificant emissions.

2. "Fugitive emissions" are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

3. "Insignificant activity" or "insignificant emissions unit" means any activity or emissions unit at a stationary source for which the emissions unit or activity has a potential to emit less than 5 tons per year of each air contaminant and each regulated air pollutant that is not a hazardous air pollutant, and less than 1,000 pounds per year of each hazardous air pollutant.

(Rule 1200-03-09-.04, continued)

4. "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 federally enforceable.

5. "Process unit" means equipment assembled and connected by pipes or ducts to manufacture an intended product. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product.

6. "Regulated air pollutant" has the same definition as found in subparagraph 1200-03-09-.02(11)(b)19.

7. "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under paragraph 1200-03-31-.02(6).

8. "Applicable requirement" has the same definition as in part 1200-03-09-.02 (11)(b)5.

9. "Federally enforceable" means any emission standard and/or procedural requirement that can be enforced against an air contaminant source by EPA or citizens under authority granted them by the Federal Act.

10. "Hazardous air pollutant" means any air contaminant regulated in Chapter 1200-03-11, or listed in Chapter 1200-03-31-.02(6).

(b) Notwithstanding the exemptions granted in paragraph 1200-03-09-.04(4), no person shall discharge, from any source whatsoever, such quantities of air contaminants or other materials which cause or have a tendency to cause injury, detriment, annoyance, or adverse effect to the public.

(c) Notwithstanding any other provision of Division 1200-3, no emissions unit or activity subject to a federally enforceable applicable requirement (other than generally applicable requirements of the state implementation plan) shall qualify as an insignificant emissions unit or activity. For purposes of this paragraph, generally applicable requirements of the state implementation plan are those federally enforceable requirements that apply universally to all emission units or activities without reference to specific types of emission units or activities except for the sulfur dioxide standards for those categories and classes included in Chapter 1200-03-14.

(d) Designation of an emissions unit or activity as insignificant for purposes of this rule does not exempt the unit or activity from any applicable requirement.

(e) The emissions from any exempt air contaminant source shall comply with all applicable rules and regulations of the Tennessee Air Pollution Control Board.

(3) Any person may request that a federally enforceable permit be issued for any of the air contaminant sources that are exempted in paragraph 1200-03-09-.04(4). "Federally enforceable" shall have the meaning as provided in paragraph 1200-03-09-.02(11).

(4) The list of exempted air contaminant sources contained in this paragraph shall not be used as "insignificant activities" or "insignificant emission units" when applying for a major source operating permit under paragraph 1200-03-09-.02(11). These exemptions shall not be used

(Rule 1200-03-09-.04, continued)

to lower the source's potential to emit below "major source" applicability thresholds or to avoid any "applicable requirement". Otherwise, no person shall be required to obtain or file a request for a permit due to ownership, operation, construction, or modification of the following types of air contaminant sources unless specifically required to do so by the Board or as provided for in paragraph (3) of this rule:

(a) Any "insignificant activity" or "insignificant emissions unit":

In order to receive designation as an "insignificant activity" or "insignificant emissions unit", a written notification must be submitted to the Technical Secretary. The notification for designation shall include calculations and sufficient documentation to substantiate the applicant's claim. Upon receipt of the notification, the Technical Secretary will respond with a determination of agreement or disagreement with the applicant's claim. In issuance of determination as "insignificant", the Technical Secretary may base the determination upon any criteria that are relevant to the determination. For new sources, the request for designation must be made at least 30 days prior to the estimated starting date of construction. For new sources, if it is determined that the emissions unit does not qualify as an "insignificant emissions unit", the source must apply for a construction permit. The request for designation as an "insignificant emissions unit" may be made at any time for an existing source. In the absence of being designated as an "insignificant emissions unit" by the Technical Secretary under subparagraph 1200-03-09-.04 (4)(a) or in the absence of being exempt under subparagraphs 1200-03-09-.04 (4)(b) or 1200-03-09-.04 (4)(c), any emission unit or activity must have a valid construction and / or operating permit.

(b) The categorical emission units or activities listed in subparagraph 1200-03-09-.04(5)(f), excluding parts 1. and 2.

To be categorically insignificant, with the exception of parts 19. and 84., the emissions unit or activity must have a potential to emit less than 5 tons per year of each air contaminant and each regulated air pollutant that is not a hazardous air pollutant, and less than 1,000 pounds per year of each hazardous air pollutant. Such emission units or activities, with the exception of parts 19. and 84., are not required to be listed in the construction or operating permit applications for the facility.

(c) The emission units or activities listed in subparagraph 1200-03-09-.04(5)(g). Such emission units or activities are not required to be listed in the construction or operating permit applications for the facility.

(d) Any one of the following emission units or activities:

Such emission units or activities are not required to be listed in the construction or operating permit applications for the facility.

1. Fuel burning equipment of less than 500,000 Btu per hour capacity. This exemption shall not apply where the total capacity of such equipment operated by one person exceeds 2.00 million Btu per hour.

2. Single stack of an air contaminant source that emits no hazardous air contaminants or pollutants, and which does not have the potential for emitting more than 0.50 pounds per hour of nonhazardous particulates and 0.5 pounds per hour of any regulated nonhazardous gas (particulates and gases not defined as hazardous air contaminants or pollutants), provided that the total potential particulate emissions from the air contaminant source amounts to less than two (2) pounds per hour, and the total regulated gaseous emissions from the air contaminant source amounts to less than two (2) pounds per hour. For the

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purpose of this part, an air contaminant source includes all sources located within a contiguous area, and under common control.

3. Any air contaminant source constructed and operated at a domestic residence solely for domestic use.

4. Equipment used exclusively to store, hold, or distribute natural gas or propane excluding all associated fuel burning equipment not specifically exempted.

5. Brazing, soldering, or welding equipment which does not emit lead in amounts equal to or greater than 0.6 tons per year.

6. Sources within the counties of Shelby, Davidson, Hamilton, and Knox until such time as the Board shall determine that air pollution is not being controlled in such county to a degree at least as stringent as the substantive provisions of the Tennessee Air Quality Act and regulations adopted pursuant thereto. This exemption does not apply to any air contaminant source in those counties if the local regulation is less stringent than the applicable state regulation.

7. Automobile body shops - including paint spraying, grinding and polishing operations. This exemption does not apply to sources in ozone nonattainment areas which emit more than 15 pounds per day of volatile organic compounds.

8. Any process emission source emitting less than 0.1 pounds per hour of a pollutant.

9. Any emission unit with the potential to emit radionuclides which will result in a dose to the most exposed member of the public of less than 0.1 millirem per year. Even though radionuclide air contaminant sources are regulated under Chapter 1200-03-11, this exemption is still valid except that recordkeeping and reporting requirements must be met.

10. Any modification (as defined in Rule 1200-03-02-.01) to an existing process emission source, incinerator, or fuel-burning installation to add sources of equipment leaks (e.g. valves, flanges, pumps, compressors, etc.) as long as the estimated increase in annual emissions attributable to the modification does not exceed 5 tons per year. However, such emissions increases shall be considered when making major modification determinations pursuant to paragraphs 1200-03-09-.01(4) and (5).

11. All livestock (including poultry) operations and associated fuel burning and incineration equipment. This exemption from permitting requirements does not extend to:

    (i) An incineration unit which has a manufacturer's rated capacity greater than 500 pounds per hour or has a total burner rated capacity greater than 400,000 Btu per hour.

    (ii) An incineration unit into which is charged materials or wastes other than livestock and poultry carcasses; or

    (iii) A commercial incineration unit.

12. All storage tanks with a capacity less than 10,000 gallons and all process tanks with a capacity less than 3,000 gallons.

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13. Mobile sources such as: automobiles, trucks, buses, locomotives, planes, boats, and ships. This exemption only applies to the emissions from the internal combustion engines used exclusively to propel such vehicles.

14. Diesel fuel or fuel oil storage tanks with a capacity of forty thousand (40,000) gallons or less.

15. Surface coating and degreasing operations which do not exceed a combined total usage of more than 60 gallons/month of coatings, thinners, clean-up solvents, and degreasing solvents at any one plant location, and does not exceed 1,000 pounds per year of each hazardous air pollutant.

16. Repair and maintenance, cleaning and degreasing operations which do not exceed more than 145 gallons in any twelve (12) month period, and does not exceed 1,000 pounds per year of each hazardous air pollutant.

17. Fuel burning sources that are either gas fired or #2 oil fired with a heat input rate under 10 million Btu/hour, where the combined total heat input rate at each location does not exceed 10 million Btu/hour.

18. Machining of metals where total solvent usage does not exceed more than 60 gallons/month at any one plant location, and does not exceed 1,000 pounds per year of each hazardous air pollutant.

19. Equipment used exclusively for steam or dry cleaning of fabrics, plastics, rubber, wood, or vehicle engines or drive trains, provided the total solvent usage on all equipment of this type at the same plant location is less than 60.0 gallons per month, and does not exceed 1,000 pounds per year of each hazardous air pollutant.

20. Heat treating, soaking, case-hardening, or surface conditioning of metal objects, such as carbonizing, nitriding, carbonnitriding, siliconizing, or diffusion treating using sweet natural gas or liquid petroleum gas as in process fuel and where the heat input rate is under 10 million Btu per hour.

21. Natural gas fired and #2 oil fired ovens which have no emissions other than products of combustion which have a heat input rate under 10 million Btu per hour.

22. Degreasing operations with solvent usage less than 30 gallons/month, and where hazardous air pollutant emissions are less than 1,000 pounds per year.

23. Silk screen operations with solvent usage less than 30 gallons per month, and where hazardous air pollutant emissions are less than 1,000 pounds per year.

24. The procedures for the on-site remediation of soil or water contaminated with organic compounds as follows:

    (i) Landspreading, aeration or bioremediation of contaminated soil.

    (ii) Negative pressure venting of contaminated soil, provided the remediation is completed within 18 months and volatile organic compound emissions do not exceed one (1) pound per hour.

    (iii) Installation and use of air strippers for treatment of contaminated water, provided the remediation is completed within 18 months, and the

(Rule 1200-03-09-.04, continued)

emissions are no more than 5 tons per year of any regulated pollutant that is not a hazardous air pollutant, and less than 1,000 pounds per year of each hazardous air pollutant.

25. Temporary-use air curtain destructors or temporary-use air curtain incinerators used in disaster recovery solely for disposal of materials resulting from a natural disaster, and when conducted in conformity with the following conditions:

(i) Fires disposing of structural and household materials and vegetation are allowed only when those structures or materials are destroyed or severely damaged by natural disaster. The air curtain destructor or air curtain incinerator shall only be used to combust debris in an area declared a State of Emergency by a local or State government, or the President, under the authority of the Stafford Act, has declared that an emergency or a major disaster exists in the area. Input from Emergency Management personnel may be requested in determining qualification with this criterion.

(ii) The maximum rated capacity for each temporary-use air curtain destructor or temporary-use air curtain incinerator shall not exceed 35 tons per day per unit.

(iii) The persons using temporary-use air curtain destructors or temporary-use air curtain incinerators under this provision must make a reasonable effort to remove all tires and other rubber products, vinyl shingles and siding, vinyl flooring, carpet, other plastics, asphalt shingles and other asphalt roofing materials, and/or asbestos containing materials from the materials to be burned before ignition. The Technical Secretary reserves the right to inspect the proposed materials to be burned before ignition. The alternative use of chippers and grinders, landfilling, or on-site burial of waste in lieu of burning, if lawful, is encouraged.

(iv) The person responsible for such burning must notify the Division of Air Pollution Control of the proposed location. The notification must be delivered to the Division of Air Pollution Control at the appropriate regional Environmental Field Office at least three (3) days prior to commencing the burn. The Division may request that alternate sites be identified to minimize impact to air quality. The alternative use of chippers and grinders in lieu of burning is encouraged.

(v) No fire shall be ignited while any air pollution emergency episode is in effect in the area of the burn.

(vi) The air curtain destructor or air curtain incinerator shall only be used during a period that begins on the date the unit started operation and lasts 8 weeks or less within the boundaries of the same emergency or disaster declaration area.

(vii) Disposal via temporary-use air curtain destructors or temporary-use air curtain incinerators conducted under this exception is only allowed where no other safe and/or practical means of disposal is available.

(viii) The Technical Secretary reserves the right to require a person to cease or limit burning if emissions from the air curtain destructor or air curtain incinerator are deemed by the Technical Secretary or his designee to jeopardize public health or welfare, create a public nuisance or safety

(Rule 1200-03-09-.04, continued)

hazard, create a potential safety hazard, or interfere with the attainment or maintenance of the air quality standards.

(5) Major Source Operating Permits Insignificant Emission Units

(a) Definitions.

As used in this Rule, all terms not defined herein shall have the meaning given them in Paragraph 1200-03-09-.02(11) and Chapter 1200-03-02 with the terms in Paragraph 1200-03-09-.02(11) taking precedence over Chapter 1200-03-02.

1. "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 in paragraph 1200-03-31-.02(6). Emissions unit includes within its meaning the smallest discrete or identifiable structure, device, item, equipment, or enclosure or group of discrete or identifiable structures, devices, items, equipment, or enclosures that emit or have the potential to emit any regulated air pollutant or any pollutant listed in paragraph 1200-03-31-.02(6). A point of origin of fugitive emissions resulting from equipment leaks of individual pieces of equipment, e.g., valves, flanges, pumps, and compressors, shall not be considered an individual emissions unit. Such equipment leaks shall be collectively considered an emissions unit based on their relationship to the associated process unit and shall be considered separately from other emissions from the process unit when defining insignificant emissions.

2. "Federal Act" has the same definition as found in subparagraph 1200-03-09-.02(11)(b).

3. "Fugitive emissions" are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

4. "Insignificant activity" or "insignificant emissions unit" means any activity or emissions unit which qualifies as insignificant based on any one of the following:

(i) Any air emissions from an air emissions unit or activity at a stationary source for which the emissions unit or activity has a potential to emit less than 5 tons per year of each regulated air pollutant that is not a hazardous air pollutant, and less than 1,000 pounds per year of each hazardous air pollutant. Such emission units and activities or types of emission units and activities must be listed in the permit application.

(ii) The emission unit or activity, with the exception of parts 19. and 84., is listed in subparagraph (5)(f) as not having to be included in a Title V application. For an activity listed in subparagraph (5) (f), with the exception of parts 1., 2., 19., and 84., the emissions unit or activity must have a potential to emit less than 5 tons per year of each regulated air pollutant that is not a hazardous air pollutant, and less than 1,000 pounds per year of each hazardous air pollutant.

(iii) The emission unit or activity is listed in subparagraph (5)(g) as not having to be included in a Title V application.

(iv) Any emission unit with the potential to emit radionuclides which will result in a dose to the most exposed member of the public of less than 0.1 millirem per year. Such emission unit must be listed in the permit application.

(Rule 1200-03-09-.04, continued)

(v) Any emission units or activities considered by the Division to be insignificant and approved by EPA. The Division shall maintain a list of emission units or activities which are considered to be insignificant by the Division and EPA. Such emission units or activities must be listed in the permit application.

5. "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 Federal Act, or the term "capacity factor" as used in title IV of the Federal Act or the Federal regulations promulgated thereunder or chapter 1200-03-30.

6. "Process unit" means equipment assembled and connected by pipes or ducts to manufacture an intended product. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product.

7. "Regulated air pollutant" has the same definition as found in subparagraph 1200-03-09-.02(11)(b).

8. "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under paragraph 1200-03-31-.02(6).

9. "Major source" has the same definition as in part 1200-03-09-.02(11)(b)14.

10. "Applicable requirement" has the same definition as in part 1200-03-09-.02 (11)(b)5.

11. "EPA" or the "Administrator" means the Administrator of the EPA or his designee.

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

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

14. "Federally enforceable" means any emission standard and/or procedural requirement that can be enforced against an air contaminant source by EPA or citizens under authority granted them by the Federal Act.

15. "Hazardous air pollutant" means any air contaminant regulated in Chapter 1200-03-11, or listed in Chapter 1200-03-31-.02(6).

(b) General

1. This paragraph contains criteria for identifying insignificant emission units or activities for purposes of issuance of major stationary source operating permits, Paragraph 1200-03-09-.02(11).

(Rule 1200-03-09-.04, continued)

2. Notwithstanding the classifications as insignificant emissions units or activities granted in this paragraph, no person shall discharge, from any source whatsoever, such quantities of air contaminants or other materials which cause or have a tendency to cause injury, detriment, annoyance, or adverse effect to the public.

3. Designation of an emission unit or activity as insignificant for purposes of this paragraph and paragraph 1200-03-09-.02(11) does not exempt the unit or activity from any applicable requirement.

4. No insignificant activities or emission units shall be exempt from inclusion in the permit application if the information omitted is needed to:

(i) Determine or impose any applicable requirement, or the requirement to obtain a permit under paragraph 1200-03-09-.02(11).

(ii) Determine if a source is major.

(c) Applicable Requirements

1. Notwithstanding any other provision of paragraph 1200-03-09-.02(11), no emissions unit or activity subject to a federally enforceable applicable requirement (other than generally applicable requirements of the state implementation plan) shall qualify as an insignificant emissions unit or activity. For purposes of this paragraph, generally applicable requirements of the state implementation plan are those federally enforceable requirements that apply universally to all emission units or activities without reference to specific types of emission units or activities except for the sulfur dioxide standards for those categories and classes included in Chapter 1200-03-14.

2. The permit application shall list and the permit shall contain all generally applicable requirements that apply to insignificant emission units or activities at the major source. For compliance purposes, the Technical Secretary may require monitoring, recordkeeping, and reporting for insignificant emission units or activities.

3. Any emission unit or activity which is a subset of a process emission source, fuel burning installation, or incinerator, and which has a potential to emit less than 5 tons per year of a regulated air pollutant , by annual certification of compliance as required in item 1200-03-09-.02(11)(d)1.(ii)(I), may, at the discretion of the Technical Secretary, be considered to meet the monitoring and related recordkeeping and reporting requirements of subpart 1200-03-09-.02(11)(e)1.(iii) and 1200-03-10-.04(2)(b)(1), and the compliance requirements of subpart 1200-03-09-.02(11)(e)3.(i) for that regulated air pollutant except where generally applicable requirements of the state implementation plan specifically impose monitoring and related record keeping and reporting requirements, or except where any applicable procedures and methods are required pursuant to rule 1200-03-10-.04. This provision shall not relieve any emissions unit or activity from any applicable standard or requirement under Chapters 1200-03-11 and 1200-03-31, and subparagraph 1200-03-02-.01(1)(dd).

(d) (Reserved)

(e) Documentation

(Rule 1200-03-09-.04, continued)

1. Upon request from the Technical Secretary the applicant must provide sufficient documentation to enable the Technical Secretary to determine that the emission unit or activity has been appropriately listed on the permit application as insignificant.

2. Upon request from the Technical Secretary, at any time during the term of the permit, an applicant who lists an activity or emissions unit as insignificant under subpart 1200-03-09-.04(5)(a)4.(i) of this paragraph shall demonstrate to the Technical Secretary that the actual emissions of the unit or activity are below the emission thresholds listed in that subpart.

(f) Unless specifically required under part 1200-03-09-.04(5)(b)4., the following emission units or activities, or stationary sources that qualify as 'insignificant activities', with the exception of parts 19. and 84. of this subparagraph, are not required to be included in a permit application under paragraph 1200-03-09-.02(11). For the following listed activities to be considered insignificant, with the exception of parts 1., 2., 19., and 84 of this subparagraph, the emissions unit or activity must have a potential to emit less than 5 tons per year of each regulated air pollutant that is not a hazardous air pollutant and less than 1000 pounds per year of each hazardous air pollutant. No emissions unit or activity subject to a federally enforceable applicable requirement (other than generally applicable requirements of the state implementation plan) shall qualify as an insignificant emissions unit or activity.

1. Unpaved roadways and parking areas unless permits have specific conditions limiting fugitive emissions. This activity is not insignificant if it is subject to new source performance standards for nonmetallic mineral processing plants under Chapter 1200-03-16 or under 40 CFR part 60.

2. Paved roadways and parking areas unless permits have specific conditions limiting fugitive emissions. This activity is not insignificant if it is subject to new source performance standards for nonmetallic mineral processing plants under Chapter 1200-03-16 or under 40 CFR part 60.

3. Equipment used on farms for soil preparation, tending or harvesting of crops, or for preparation of feed to be used on the farm where prepared. This activity is not insignificant if it is subject to new source performance standards under Chapter 1200-03-16 or under 40 CFR part 60.

4. Barbecue pits and cookers; if the products are edible (intended for human consumption), and are sold on site, or at one location.

5. Vacuum pump exhausts when evacuating air conditioning units. This activity is not insignificant if emissions exhausted are subject to any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Federal Act.

6. Wood smoking operations to cure tobacco in barns.

7. Operations regulated under Chapter 1200-03-04 (Open Burning) of these Regulations.

8. Sewer vents. This activity is not insignificant if it is subject to the new source performance standards for petroleum refinery wastewater systems under Chapter 1200-03-16 or under 40 CFR part 60.

(Rule 1200-03-09-.04, continued)

9. Natural gas mixing and treatment operations including sampling and testing. This activity is not insignificant if it is subject to the new source performance standards for onshore natural gas processing plants under Chapter 1200-03-16 or under 40 CFR part 60.

10. Wire drawing including drawing coolants and lubricants provided that they are water based.

11. Air drying of wood.

12. Washing of trucks and vehicles where no solvent cleaners are used.

13. Sealing or cutting plastic film or foam with heat or hot wires provided no chlorofluorocarbons (CFCs)~~s~~ are emitted.

14. Combustion units designed and used exclusively for comfort heating purposes employing liquid petroleum gas, or propane or natural gas as fuel.

15. Water cooling towers (except for those at nuclear power plants), water treating systems for process cooling water or boiler feedwater, and water tanks, reservoirs, or other water containers designed to cool, store, or otherwise handle water (including rainwater) that has not been used in direct contact with gaseous or liquid process streams containing carbon compounds, sulfur compounds, halogens or halogen compounds, cyanide compounds, inorganic acids, or acid gases. This activity is not insignificant if chromium-based water treatment chemicals are used.

16. Equipment used exclusively to store, hold, or distribute natural gas. This activity is not insignificant if it is subject to the new source performance standards for onshore natural gas processing plants under Chapter 1200-03-16 or under 40 CFR part 60.

17. Gasoline, diesel fuel, and fuel oil handling facilities, equipment, and storage tanks, except those subject to new source performance standards and those subject to standards in Chapter 1200-03-18. However, facilities, equipment, and storage tanks which are subject only to Chapter 1200-03-18 requirements for submerged fill and for maintenance of records documenting quantities of gasoline, diesel fuel, and fuel oil dispensed are entitled to the exemption provided by this paragraph, despite the qualification of exemption specified in the first sentence of this subparagraph. This activity is not insignificant if it is subject to the new source performance standards for bulk gasoline terminals under Chapter 1200-03-16 or under 40 CFR part 60 and the Stage I gasoline distribution MACT standard under Chapter 1200-03-31.

18. Blast cleaning equipment using a suspension of abrasives in water.

19. Laboratory equipment, used for research and development or for chemical and physical analyses, including ventilating and exhaust systems for laboratory hoods used for air contaminants.

20. Equipment used for inspection of metal products.

21. Portable, hand operated brazing, soldering, or welding equipment. Portable means as being able to be moved by hand from one location to another by an individual without the assistance of any motorized or non-motorized vehicle, conveyance, or device.

(Rule 1200-03-09-.04, continued)

22. Equipment used for washing or drying products fabricated from metal or glass, provided no volatile organic compounds (solvents) are used in the process and that no oil or solid fuel is burned.

23. Foundry sand mold forming equipment to which no heat is applied, and from which no organics are emitted.

24. Equipment used for compression molding and injection molding of plastics which emit no hazardous air pollutants.

25. Mixers, blenders, roll mills, or calendars for rubber or plastics where no materials in powder form are added and in which no organic solvents, dilluents, or thinners are used.

26. Equipment used exclusively to package pharmaceuticals and cosmetics or to coat pharmaceutical tablets where no hazardous air pollutants are emitted. Any associated fuel burning is not included.

27. Electrically heated equipment used exclusively for heat treating, soaking, case hardening, or surface conditioning of metal objects, such as carbonizing, nitriding, carbonitriding, siliconizing, or diffusion treating.

28. Vacuum cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes, except those systems used to collect hazardous air contaminants regulated by Chapter 1200-03-11.

29. Sewage treatment facilities (excluding combustion or incineration equipment, land farms, storage silos for dry material, or grease trap waste handling or treatment facilities). This activity is not insignificant if it is subject to new source performance standards for volatile organic compounds emissions under Chapter 1200-03-16 or under 40 CFR part 60, MACT standard under Chapter 1200-03-31, and hazardous organic NESHAP under 40 CFR part 63.

30. Emergency smoke relief vents that activate only in the event of fire.

31. Alkaline/phosphate washers and associated burners.

32. Outdoor kerosene heaters.

33. Livestock and poultry feedlots.

34. Wire insulation marking provided the marking materials are water based.

35. Portable equipment used for the on-site painting of buildings, towers, bridges, and roads.

36. Powder coating operations.

37. The following equipment, when used exclusively for emergency replacement or standby service:

    Internal combustion engines burning natural gas, gasoline, or diesel fuel including stationary reciprocating engines, internal combustion (IC) engine driven compressors, IC engine driven electric generator sets and IC driven water pumps, and equipment components for gas dehydration units, gas-oil separators,

(Rule 1200-03-09-.04, continued)

free water knockouts, iron sponge units, production tank batteries, and natural gas liquids separation plants.

38. Equipment used exclusively to mill or grind coatings and holding compounds where all materials charged are in paste form.

39. Stenciling of cartons or boxes for purposes of shipment and content identification provided the inks are water based.

40. Firefighting equipment and the equipment used for training of firefighting.

41. Clean steam condensate and steam relief vents where steam has not contacted any process organics or other production materials.

42. End paper labeling of books or other reading material provided no organic or solvent based materials are used.

43. Pressurized vessels designed to operate in excess of 30 psig storing a petroleum fuel. This activity is not insignificant if it is subject to new source performance standards for petroleum liquid storage vessels under Chapter 1200-03-16 or under 40 CFR part 60.

44. Herbicide and pesticide mixing, application, and storage activities for on site use.

45. Maintenance activities, such as: machining of metals and plastic curing for non-production related operations, vehicle repair shops, carpenter shops, spraying, grinding and polishing operations, maintenance shop vents, and miscellaneous non-production surface cleaning, preparation, and painting operations. Repairs not involving structural changes where no new or permanent stationary source is installed. Internal combustion (IC) engine driven welders not part of a production process. Any maintenance activity is not insignificant if it is part of a manufacturing process.

46. Miscellaneous activities and equipment, such as: aerosol spray cans, cafeteria vents, locker room vents, photo copying, photographic processes, blue print machines, decommissioned equipment, solid waste dumpsters, fire training, and space heaters. Miscellaneous means as being unrelated to the primary business activity of the source.

47. Cold storage refrigerator equipment powered by electric motors and that do not use Class I or Class II ozone depleting substances.

48. Sampling systems used to withdraw materials for testing and analysis, and vents from process instrumentation systems, including area monitors.

49. Laboratories in primary and secondary schools and in schools of higher education used for instructional purposes.

50. Hydrovactor air separator tanks.

51. Equipment used exclusively for rolling, forging, pressing, stamping, spinning, or extruding either hot or cold plastics provided hazardous air pollutants are not emitted.

(Rule 1200-03-09-.04, continued)

52. Grain, metal or mineral extrusion process. This activity is not insignificant if it is subject to new source performance standards for metallic mineral processing plants under Chapter 1200-03-16 or under 40 CFR part 60.

53. Bioremediation operations.

54. Equipment used exclusively for rolling, forging, pressing, stamping, spinning, drawing, or extruding either hot or cold metals.

55. Equipment used exclusively for sintering of ceramics, glass or metals, but not exempting equipment used for sintering metal-bearing ores, metal scale, clay, fly ash, or metal compounds. This activity is not insignificant if it is subject to new source performance standards for primary zinc smelters and glass manufacturing operations under Chapter 1200-03-16 or under 40 CFR part 60.

56. Equipment for the mining and screening of uncrushed native sand and gravel. This activity is not insignificant if it is subject to new source performance standards for nonmetallic mineral processing plants under Chapter 1200-03-16 or under 40 CFR part 60.

57. Equipment used exclusively for mixing and blending water-based adhesives and coatings at ambient temperatures. Materials containing less than 5 percent volatile organic compounds qualify as water-based for purposes of this exemption.

58. Pulp and paper industry, and cellulosic fiber industry insignificant activities: Any of the following activities is not insignificant if it is subject to new source performance standards for kraft pulp mills under Chapter 1200-03-16 or under 40 CFR part 60, and MACT standard under Chapter 1200-03-31.

    (i) Ash sluice tanks

    (ii) Black liquor mix boxes (e.g., for sulfur addition)

    (iii) Caustic tanks

    (iv) Chemical spills less than reportable quantity

    (v) Deinking cell

    (vi) Demineralized water tanks

    (vii) Dredging

    (viii) Dregs washer

    (ix) Dryer can steam/condensate blowdown

    (x) Electrical charging station

    (xi) Green liquor clarifiers

    (xii) Green liquor tanks

    (xiii) Grinding/blasting for nondestructive testing of metals

    (xiv) High density pulp storage tanks

    (xv) Hydrapulper

    (xvi) Hydroblasting (e.g., evaporators)

(Rule 1200-03-09-.04, continued)

(xvii) Instrument air dryers and distribution

(xviii) Lime mud filter filtrate tanks

(xix) Lime mud piles

(xx) Liquid sodium hydrosulfide storage tanks

(xxi) Log flumes

(xxii) Neutralized spent cooking acid tanks

(xxiii) Oilers on chain, etc.

(xxiv) Open containers

(xxv) Paper machine “blowdown” with air for cleanup

(xxvi) Pressure filters

(xxvii) Pressurized pulp washers

(xxviii) Process raw water treatment (e.g., phosphate)

(xxix) Pulp tanks and stock chests

(xxx) Railroad flares

(xxxi) Saltcake storage tanks vented to the recovery system

(xxxii) Slaker vents

(xxxiii) Smelt spout cooling water tanks

(xxxiv) Smelt spout covers (dog houses)

(xxxv) Starch or dye make-down tanks

(xxxvi) Strong black liquor tanks

(xxxvii) Tank interior coatings (epoxy resins)

(xxxviii) Turpentine loading

(xxxix) Weak wash tanks

(xl) Wheel barrows

(xli) White liquor clarifiers

(xlii) White liquor oxidizer

(xliii) White liquor tanks

(xliv) Winder

59. Steam heated wood drying kilns excluding chemically treated wood.

60. Warehouse storage of packaged raw materials and finished goods emitting no hazardous air pollutants.

61. Electric stations, including transformers, and substations. Any activity is not insignificant if it is subject to MACT standard under Chapter 1200-03-31.

(Rule 1200-03-09-.04, continued)

62. Groundwater monitoring wells.

63. Lubricants and waxes used for machinery lubrication.

64. Use of materials for marking and grading of lumber, and the storage of lumber.

65. Equipment used exclusively to package photographic chemicals, and food preservatives excluding any associated fuel burning.

66. Air purification systems. This activity is not insignificant if emissions exhausted are from any manufacturing or other industrial processes and subject to any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Federal Act.

67. Equipment used in the production of enteric food coatings.

68. Equipment used in the production of aqueous inks in which no organic solvents, dilutents, or thinners are used.

69. Equipment used to transport or store process wastewater streams to a wastewater treatment facility (i.e. floor drains, sumps, drain headers, manhole covers). This activity is not insignificant if it is subject to the new source performance standards for petroleum refinery wastewater systems under Chapter 1200-03-16 or under 40 CFR part 60.

70. Drum melter operations for low-volatility solid and semi-solid materials using steam or electrical heating. This activity is not insignificant if it is subject to the new source performance standards for electric arc furnaces under Chapter 1200-03-16 or under 40 CFR part 60.

71. Vacuum producing equipment including vacuum seal pots and vacuum pumps. Any associated internal combustion engines are excluded.

72. Presses used exclusively for extruding metals, minerals, plastics, rubber, or wood except where halogenated carbon compounds or hydrocarbon organic solvents are used as foaming agents. Presses used for extruding scrap materials or reclaiming scrap materials are not exempt.

73. Tank trucks, railcars, barges, and trailers excluding transfer operations at loading and unloading stations, and internal cleaning operations.

74. Portable dumpsters and other containers for liquids (excluding transfer operations), and solid waste dumpsters, including handling equipment and associated activities.

75. Environmental field sampling activities.

76. Parts washer where the vapor pressure of cleaners is less than 1.52 psia. Any activity is not insignificant if it is subject to the halogenated solvent cleaning MACT standard under Chapter 1200-03-31.

77. Instrument air dryers and distribution.

78. Automatic oiling operations (e.g., oiler on chains).

(Rule 1200-03-09-.04, continued)

79. Machine blowdown with air for cleanup.

80. Storage tanks of any size containing exclusively soaps, detergents, surfactants, waxes, glycerine, vegetable oils, greases, animal fats, sweeteners, corn syrup, aqueous salt solutions or aqueous caustic solutions provided an organic solvent has not been mixed with such materials. This activity is not insignificant if appropriate lids and / or covers are not utilized.

81. Loading and unloading systems for railcars, tank trucks, or watercraft that handle only the following liquid materials provided an organic solvent has not been mixed with such materials: soaps, detergents, surfactants, waxes, glycerine, vegetable oils, greases, animal fats, sweeteners, corn syrup, aqueous salt solutions, or aqueous caustic solutions. This activity is not insignificant if appropriate lids and / or covers are not utilized.

82. Sanitary sewer systems.

83. Treatment systems for potable water.

84. Any pilot plant provided that the following conditions are satisfied:

    (i) Pilot plant facilities which demonstrate to the satisfaction of the Technical Secretary, that such facilities do not significantly impact ambient air quality. Air quality modeling may be required by the Technical Secretary.

    (ii) The facility is constructed and operated only for the purpose of:

        (I) Testing the manufacturing or marketing potential of a proposed product, or

        (II) Defining the design of a larger plant or future processes, or

        (III) Studying the behavior of an existing plant through modeling in the pilot plant.

85. Sodium hypochlorite storage tanks.

86. Industrial-Commercial-Institutional Steam Generating Facility exemptions are as follows: Any of the following activities is not insignificant if it is subject to new source performance standards for steam-generating facilities under Chapter 1200-03-16 or under 40 CFR part 60.

    (i) Bunker room exhaust

    (ii) Coal sampling and weighing operations

    (iii) Alternative solid fuel handling

    (iv) Vents from ash transport systems not operating at positive pressure (e.g. ash hoppers)

    (v) Coal combustion by-product disposal (except for dry stacking and intermittent ash hauling and disposal)

    (vi) Building ventilation other than boiler room, coal handling, and

(Rule 1200-03-09-.04, continued)

ash loading (e.g. turbine room, battery room)

(vii) Lubrication of equipment

(viii) Hydrogen vents

(ix) Steam vents

(x) Air compressor and distribution systems

(xi) Emergency equipment

(xii) Fugitive dust from operation of a passenger automobile, station wagon, pickup truck, or van.

(xiii) Pressure relief valves

(xiv) Test gases and bottled gases

(xv) Emissions from a laboratory. If a facility manufactures or produces products for profit in any quantity, it may not be considered to be a laboratory under this item. Support part of the laboratory. Support activities do not include the provision of power to the laboratory from sources that provide power to multiple projects or from sources which would otherwise require permitting, such as boilers that provide power to an entire facility.

(xvi) Safety devices such as fire extinguishers

(xvii) Equipment used for hydraulic or hydrostatic testing

(xviii) Food preparation for onsite consumption

(xix) Oil vapor extractor (e.g. turbine seal oil, turbine lube oil)

87. Sulfuric acid tanks. This activity is not insignificant if it is subject to new source performance standards for sulfuric acid plants under Chapter 1200-03-16 or under 40 CFR part 60.

88. Soil “borrow” pits. This activity is not insignificant if it is subject to new source performance standards for nonmetallic mineral processing plants under Chapter 1200-03-16 or under 40 CFR part 60.

89. Phosphoric acid tanks. This activity is not insignificant if it is subject to new source performance standards for phosphate fertilizer industry under Chapter 1200-03-16 or under 40 CFR part 60.

90. Sodium carbonate tanks.

91. Firearms, firing ranges, and protective services facilities.

(Rule 1200-03-09-.04, continued)

92. Physical testing of air filtration. This activity is not insignificant if emissions exhausted are from any manufacturing or other industrial processes and subject to any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Federal Act.

93. Safe venting of compressed gas cylinders which have lost structural integrity.

94. Testing, inspection, cleaning or drying of personal protective equipment such as respirators, clothing, gloves, shoe scuffs, etc.

95. Equipment used to process or handle solid materials or solid wastes such as bottle smashers, bulb crushers, balers, compactors, and can puncturers.

(g) Unless specifically required under part 1200-03-09-.04(5)(b)4., the following emission units or activities, or stationary sources that qualify as 'insignificant activities' are not required to be included in a permit application under paragraph 1200-03-09-.02(11).

1. Combustion emissions from propulsion of mobile sources, except for vessel emissions from Outer Continental Shelf sources.

2. Air-conditioning units used for human comfort that do not have applicable requirements under title VI of the Act.

3. Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing/industrial or commercial process.

4. Non-commercial food preparation.

5. Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction.

6. Janitorial services and consumer use of janitorial products.

7. Internal combustion engines used for landscaping purposes.

8. Laundry activities, except for dry-cleaning and steam boilers.

9. Bathroom/toilet vent emissions.

10. Emergency (backup) electrical generators at residential locations.

11. Tobacco smoking rooms and areas.

12. Blacksmith forges.

13. Plant maintenance and upkeep activities (e.g., grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots) provided these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and not otherwise triggering a permit modification.

14. Repair or maintenance shop activities not related to the source's primary business activity, not including emissions from surface coating or de-greasing (solvent metal cleaning) activities, and not otherwise triggering a permit modification.

(Rule 1200-03-09-.04, continued)

15. Portable electrical generators that can be moved by hand from one location to another.

16. Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning or machining wood, metal or plastic.

17. Brazing, soldering and welding equipment, and cutting torches related to manufacturing and construction activities that do not result in emission of HAP metals.

18. Air compressors and pneumatically operated equipment, including hand tools.

19. Batteries and battery charging stations, except at battery manufacturing plants.

20. Storage tanks, vessels, and containers holding or storing liquid substances that will not emit any VOC or HAP.

21. Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.

22. Equipment used to mix and package, soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.

23. Drop hammers or hydraulic presses for forging or metalworking.

24. Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

25. Vents from continuous emissions monitors and other analyzers.

26. Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

27. Hand-held applicator equipment for hot melt adhesives with no VOC in the adhesive formulation.

28. Equipment used for surface coating, painting, dipping or spraying operations, except those that will emit VOC or HAP.

29. CO_2 lasers, used only on metals and other materials which do not emit HAP in the process.

30. Consumer use of paper trimmers/binders.

31. Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam.

32. Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants.

33. Laser trimmers using dust collection to prevent fugitive emissions.

(Rule 1200-03-09-.04, continued)

34. Bench-scale laboratory equipment used for physical or chemical analysis, but not lab fume hoods or vents.

35. Routine calibration and maintenance of laboratory equipment or other analytical instruments.

36. Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis.

37. Hydraulic and hydrostatic testing equipment.

38. Environmental chambers not using hazardous air pollutant (HAP) gasses.

39. Shock chambers.

40. Humidity chambers.

41. Solar simulators.

42. Fugitive emission related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted.

43. Process water filtration systems and demineralizes.

44. Demineralized water tanks and demineralizer vents.

45. Boiler water treatment operations, not including cooling towers.

46. Oxygen scavenging (de-aeration) of water.

47. Ozone generators.

48. Fire suppression systems.

49. Emergency road flares.

50. Steam vents and safety relief valves.

51. Steam leaks.

52. Steam cleaning operations.

53. Steam sterilizers.

Authority: *T.C.A. §§ 4-5-202, et. seq. and 68-201-105.* ***Administrative History:*** *Original Rule certified June 7, 1974. Amendment filed January 10, 1977; effective February 9, 1977. Amendment filed March 31, 1987; effective May 10, 1987. Amendment field September 27, 1989; effective November 11, 1989. Amendment filed May 17, 1990; effective July 1, 1990. Amendment filed April 22, 1993; effective June 5, 1993. Amendment filed September 7, 1993; effective November 21, 1993. Amendment filed June 12, 1995; effective August 26, 1995. Amendment filed July 25, 1996; effective October 6, 1996. Amendment filed November 30, 1999; effective February 6, 2000. Amendment filed November 29, 2001; effective February 12, 2002. Amendments filed September 9, 2005; effective November 23, 2005. Amendment filed June 1, 2009; effective August 15, 2009.*

1200-03-09-.05 APPEAL OF PERMIT APPLICATION DENIALS AND PERMIT CONDITIONS.

(1) In any case where the Technical Secretary or the Department denies a permit application, this denial is appealable to the Board if a petition of appeal is received by the Technical Secretary within thirty (30) days of receipt of the denial letter by the owner or operator.

(2) The letter of denial of the application shall include the basis for denial and notify the party of their right to appeal and of the right to legal counsel.

(3) The reasons the petitioner feels the permit should have been granted must be filed as part of the petition. Additionally a party may request prehearing discovery, as provided in T.C.A. §4-5-306, by filing and detailing the request with the petition.

(4) Within thirty (30) days of receipt of the petition for appeal of a permit denial, the Technical Secretary shall notify the petitioner of the time and place for the hearing.

(5) In any case where a condition is placed on a permit, the imposition of that permit condition may be appealed by filing a petition for reconsideration of the permit conditions. The petition for reconsideration of permit conditions shall specify which conditions and portions of conditions are objected to and specifying in detail the objections. The petition of appeal must be delivered to the Technical Secretary within thirty (30) days after the mailing date of the permit.

If the Technical Secretary is considering denying the petition he shall schedule a conference with the petitioner to discuss the matters under appeal within forty-five (45) days of receipt of the petition. If the Technical Secretary's resultant decision on the matter under appeal aggrieves the petitioner, the petitioner may request a hearing pursuant to T.C.A. §68-25-108.

(6) All applicable provisions of T.C.A. §4-5-301 et seq., on contested cases shall apply to the hearing before the Board on such appeals.

(7) The denial of a permit application by the Technical Secretary stands, unless the majority of a quorum of the Board votes to overturn the denial after the hearing.

(8) A permit condition specified by the Technical Secretary after the hearing provided for in paragraph (5) stands unless on appeal the Board votes to modify or delete the condition by a majority of a quorum of the Board.

Authority: *T.C.A. §§ 68-25-105 and 4-5-202, et. seq.* ***Administrative History:*** *Original rule filed October 1, 1979; effective November 16, 1979. Amendment filed May 17, 1990; effective July 1, 1990. Administrative History has been edited to delete a November 6, 1988 Amendment. No evidence of this filing exists, and this is an editorial mistake by the Secretary of State. June 30, 2001.*

1200-03-09-.06 GENERAL PERMITS.

(1) Applicability

(a) This rule does not apply to sources that are subject to the provisions of paragraph (11) of Rule 1200-03-09-.02.

(b) Sources located in a nonattainment area are not eligible for a general permit for construction of a new or modified air contaminant source if the source emits the pollutant and/or a precursor to the pollutant for which the area has been designated nonattainment by the United States Environmental Protection Agency or the Tennessee Air Pollution Control Board.

(Rule 1200-03-09-.06, continued)

(2) The Air Pollution Control Board may issue general permits for the purpose of covering numerous similar sources that are owned or operated by different persons at different facilities.

(3) Notwithstanding the provisions of the preceding rules of this chapter, a general permit may serve as both a construction permit and an operating permit.

(4) A general permit serving as a construction permit shall be subjected to public notice and an opportunity for public participation, as specified in subparagraph (1)(h) of Rule 1200-03-09-.01.

(5) The permit shall specify the eligibility criteria by which sources may qualify for the general permit and shall state both the process by which a source notifies the Technical Secretary that it requests to be authorized under the general permit and the means by which the Technical Secretary confirms that the source is either covered by the general permit or requires an individual permit. The source constructing and/or operating under the provisions of a general permit shall be subject to enforcement action for construction and/or operation without a permit required by this chapter if the source requested coverage under a general permit by representing itself to be eligible for a general permit in the source's notice of intent and it is later determined that the source does not qualify for the eligibility terms and conditions of the general permit.

(6) Sources subject to the provisions of this chapter that would qualify for a general permit shall submit a notice of intent to the Technical Secretary for coverage under the terms of the general permit. The Board may, in the general permit, provide for the requirements for the notice of intent which may deviate from the requirements of Rules 1200-03-09-.01 and 1200-03-09-.02, provided that they include all information necessary to determine qualifications for and to assure compliance with, the general permit.

(7) If either a source covered by a general permit or the Division determines that the source no longer qualifies for such permit, the source shall submit a Notice of Termination within thirty (30) days of such determination by the source or notification by the Division.

(8) Duration of Permits. General Permits shall be issued for a fixed term, not to exceed 10 years, which shall be stated in the permit.

Authority: *T.C.A. §§ 68-201-101 and 4-5-201, et. seq.* ***Administrative History:*** *Original rule filed September 11, 2015; effective December 10, 2015.*