TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 79 PERMITS - NONATTAINMENT AREAS

20.2.79.1 ISSUING AGENCY: Environmental Improvement Board.
[11/30/95; 20.2.79.1 NMAC - Rn, 20 NMAC 2.79.100, 10/31/02]

20.2.79.2 SCOPE: All persons who intend to construct or modify a source, except as otherwise provided by this Part.
[11/30/95; 20.2.79.2 NMAC - Rn, 20 NMAC 2.79.101, 10/31/02]

20.2.79.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, sections 74-2-5(C)(1) and 74-2-7(A)(1), (B), (C) and (D).
[11/30/95; 20.2.79.3 NMAC - Rn, 20 NMAC 2.79.102, 10/31/02]

20.2.79.4 DURATION: Permanent.
[11/30/95; 20.2.79.4 NMAC - Rn, 20 NMAC 2.79.103, 10/31/02]

20.2.79.5 EFFECTIVE DATE: November 30, 1995 except where a later date is cited at the end of a section or paragraph.
[11/30/95; A, 10/01/97; 20.2.79.5 NMAC - Rn, 20 NMAC 2.79.104, 10/31/02]
[The latest effective date of any section in this Part is 6/3/11.]

20.2.79.6 OBJECTIVE: The objective of this Part is to establish the requirements for obtaining a nonattainment area permit.
[11/30/95; 20.2.79.6 NMAC - Rn, 20 NMAC 2.79.105, 10/31/02]

20.2.79.7 DEFINITIONS. In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this part, the following terms apply.

A. "Actual emissions" means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with the following, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plantwide applicability limit under 20.2.79.120 NMAC. Instead, Subsections E and AI of this section shall apply for those purposes.

(1) 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 consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

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

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

B. "Administrator" means the administrator of the U.S. environmental protection agency (EPA) or an authorized representative.

C. "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the mandatory 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 the visibility impairments and how these factors correlate with: 1) times of visitor use of the mandatory federal class I area; and 2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 Definitions.

D. "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 federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) the applicable standard set forth in 40 CFR Part 60 or 61;

(2) any applicable state implementation plan emissions limitation including those with a future compliance date; or

(3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

E. **"Baseline actual emissions"** means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined in accordance with the following.

(1) 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 department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

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

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

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

(d) 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 Subparagraph (b) of Paragraph (1) of this subsection.

(2) 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 department 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.

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

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

(c) 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 Part 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 Subsection D of 20.2.79.115 NMAC.

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

(e) 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 Subparagraphs (b) and (c) of Paragraph (2) of this subsection.

(3) 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.

(4) For a plantwide applicability limit for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of this subsection, for other existing emissions units in accordance with the procedures contained in

Paragraph (2) of this subsection, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of this subsection.

F. **"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 support and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

G. **"Best available control technology (BACT)** means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated new source review pollutant which would be emitted from any proposed major stationary source or major modification which the department, 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, clean fuels, 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 department 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.

H. **"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). Pollutant-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) as described 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).

I. **"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:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

J. **"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.

K. **"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.

L. **"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).

M. **"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, oxygen or carbon dioxide concentrations), and to record average operational parameter value(s) on a continuous basis.

N. **"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 megawatts 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.

O. **"Emissions unit"** means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric steam generating unit as defined in Subsection N of this section. For purposes of this section, there are two types of emissions units.

(1) 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.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of this subsection. A replacement unit, as defined in this section, is an existing unit.

P. **"Federal class I area"** means any Federal land that is classified or reclassified "class I".

Q. **"Federal land manager"** means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

R. **"Federally enforceable"** means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

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

T. **"Lowest achievable emission rate"** means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary 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 pollutant in excess of the amount allowable under an applicable new source standard of performance.

U. **"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 emissions increase of a regulated new source review pollutant (as defined in this section); and a significant net emissions increase of that pollutant from the major stationary source. Any significant emissions increase (as defined in this section) from any emissions units or net emissions increase (as defined in this section) at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

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

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an 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 the federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under Section 125 of the federal Clean Air Act;

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

(e) use of an alternative fuel or raw material by a stationary source which:

(i) the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or

(ii) the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(g) any change in ownership at a stationary source; or

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the state implementation plan for the state in which is 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.

(2) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.2.79.120 NMAC for a plantwide applicability limit for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.2.79.120 NMAC shall apply.

(3) For the purpose of applying the requirements of Subsection H of 20.2.79.109 NMAC to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to subpart 2, part D, title I of the federal Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

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

V. **"Major stationary source"** means the following.

(1) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated new source review 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 federal Clean Air Act, according to Subparagraphs (a) through (f) of Paragraph (1) of Subsection V of 20.2.79.7 NMAC.

(a) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.

(b) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

(c) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area.

(d) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.

(e) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the United States environmental protection agency administrator).

(f) 70 tons per year of PM10 in any serious nonattainment area for PM10.

(2) For the purposes of applying the requirements of Subsection H of 20.2.79.109 NMAC to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the emission thresholds in Subparagraphs (a) through (f) of Paragraph (1) of Subsection V of 20.2.79.7 NMAC shall apply in areas subject to subpart 2 of part D, title I of the federal Clean Air Act.

(a) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(b) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(c) 100 tons per year or more of nitrogen oxides in any area designated under section 107(D) if the federal Clean Air Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(d) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(e) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(f) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or

(3) Any physical change that would occur at a stationary source not qualifying under Paragraph (1) or (2) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

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

(5) A stationary source shall not be a major stationary source due to fugitive emissions, to the extent they are quantifiable, unless the source belongs to:

(a) any category in Subsection B of 20.2.79.119 NMAC; or

(b) any other stationary source category which as of August 7, 1980 is being regulated under Section 111 or 112 of the federal Clean Air Act.

(6) A stationary source shall not be a major stationary source due to secondary emissions.

W. **"Mandatory federal class I area"** means those federal lands that are international parks, national wilderness areas which exceed five thousand (5,000) acres in size, national memorial parks which exceed five thousand (5,000) acres in size, and national parks which exceed six thousand (6,000) acres in size, and which were in existence on August 7, 1977. These areas may not be redesignated.

X. **"Natural conditions"** includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

Y. **"Necessary preconstruction approvals or permits"** means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable state implementation plan.

Z. "Net emissions increase".

(1) With respect to any regulated new source review pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(a) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection E of 20.2.79.109 NMAC; and

(b) 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 shall be determined as provided in Subsection E of this section, except that Subparagraphs (c) and (d) of Paragraph (2) of Subsection E of this section shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs.

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

(a) it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs; and

(b) either the department or the administrator has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs.

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

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

(a) the old level of actual emissions or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(b) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(c) the department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress; and

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

(6) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(7) Paragraph (1) of Subsection A of this section shall not apply for determining creditable increases and decreases or after a change.

AA. "Nonattainment area" means, for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the administrator to be reliable) to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under Subparagraphs (A) through (C) of Section 107(d)(1) of the federal Clean Air Act.

AB. "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 New Mexico state implementation plan to implement the requirements of 40 CFR 51.165, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI. Any permit issued under such a program is a major new source review permit.

AC. "Part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the board.

AD. "Portable stationary source" means a source which can be relocated to another operating site with limited dismantling and reassembly.

AE. "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 only if the limitation or the effect it would have on emissions is federally enforceable.

AF. "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, oxygen or carbon dioxide concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

AG. **"Prevention of significant deterioration (PSD) permit"** means any permit that is issued under 20.2.74 NMAC.

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

AI. **"Projected actual emissions"** means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review 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 new source review 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. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

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

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

(3) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection E of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(4) in lieu of using the method set out in Paragraphs (1) through (3) of this subsection, may elect to use the emissions unit's potential to emit, in tons per year, as defined under Subsection AE of this section.

AJ. **"Regulated new source review pollutant"**, for purposes of this section, means the following:

(1) nitrogen oxides or any volatile organic compounds;

(2) any pollutant for which a national ambient air quality standard has been promulgated;

(3) any pollutant that is identified under this paragraph (Paragraph (3) of Subsection AJ of 20.2.79.7 NMAC) as a constituent or precursor of a general pollutant listed in Paragraphs (1) or (2) of this subsection, provided that such constituent or precursor pollutant may only be regulated under new source review as part of regulation of the general pollutant; precursors identified by the administrator for purposes of NSR are the following:

(a) volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;

(b) sulfur dioxide is a precursor to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas;

(c) nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas, unless the state demonstrates to the administrator's satisfaction 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;

(d) 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 administrator's satisfaction 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

(4) $PM_{2.5}$ emissions and PM_{10} 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 $PM_{2.5}$ and PM_{10} in nonattainment major NSR permits; compliance with emissions limitations for $PM_{2.5}$ and PM_{10} 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 section unless the applicable implementation plan required condensable particulate matter to be included.

AK. **"Replacement Unit"** means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

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

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

(4) 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.

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

AM. **"Significant"** means:

(1) 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: carbon monoxide, 100 tons per year; nitrogen oxides, 40 tons per year; sulfur dioxide, 40 tons per year; PM_{10} emissions, 15 tons per year; ozone, 40 tons per year of volatile organic compounds or nitrogen oxides; lead, 0.6 tons per year, $PM_{2.5}$: 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 Subsection AJ of 20.2.79.7 NMAC.

(2) Notwithstanding the significant emissions rate for ozone in Paragraph (1) of Subsection AM of 20.2.79.7 NMAC, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to subpart 2, part D, title I of the federal Clean Air Act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

(3) For the purposes of applying the requirements of Subsection H of 20.2.79.109 NMAC to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in Paragraphs (1), (2), and (5) of Subsection AM of 20.2.79.7 NMAC shall apply to nitrogen oxides emissions.

(4) Notwithstanding the significant emissions rate for carbon monoxide under Paragraph (1) of Subsection AM of 20.2.79.7 NMAC significant means, in reference to an 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 nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the U.S. environmental protection agency administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(5) Notwithstanding the significant emissions rates for ozone under Paragraphs (1) and (2) of Subsection AM of 20.2.79.7 NMAC, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the federal Clean Air Act shall be considered a significant net emissions increase.

AN. **"Significant emissions increase"** means, for a regulated new source review pollutant, an increase in emissions that is significant (as defined in Subsection AM of this section) for that pollutant.

AO. **"Stationary source"** means any building, structure, facility, or installation which emits or may emit any regulated new source review pollutant.

AP. **"Temporary source"** means a stationary source which changes its location or ceases to exist within one year from the date of initial start of operations.

AQ. **"Visibility impairment"** means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

[11/30/95; 20.2.79.7 NMAC - Rn, 20 NMAC 2.79.107, 10/31/02; A, 1/22/06; A, 08/31/09; A, 6/3/11]

20.2.79.8 **AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:** This Part amends and supersedes Air Quality Control Regulation ("AQCR") 709 -- Permits -- Nonattainment Areas last filed June 25, 1992, as amended ("AQCR 709").

A. All references to AQCR 709 in any other rule shall be construed as a reference to this Part.

B. The amendment and supersession of AQCR 709 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 709.
[11/30/95; 20.2.79.8 NMAC - Rn, 20 NMAC 2.79.106, 10/31/02]

20.2.79.9 DOCUMENTS: Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].
[11/30/95; 20.2.79.9 NMAC - Rn, 20 NMAC 2.79.108, 10/31/02]

20.2.79.10 SEVERABILITY. If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, 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.
[20.2.79.10 NMAC - N, 1/22/06]

20.2.79.11 CONSTRUCTION. This part shall be liberally construed to carry out its purpose.
[20.2.79.11 NMAC - N, 1/22/06]

20.2.79.12 SAVINGS CLAUSE. Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.
[20.2.79.12 NMAC - N, 1/22/06]

20.2.79.13 COMPLIANCE WITH OTHER REGULATIONS. Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.
[20.2.79.13 NMAC - N, 1/22/06]

20.2.79.14 LIMITATION OF DEFENSE. The existence of a valid permit under this part shall not constitute a defense to a violation of any section of this part, except the requirement for obtaining a permit.
[20.2.79.14 NMAC - N, 1/22/06]

20.2.79.15 to 20.2.79.108 [RESERVED]

20.2.79.109 APPLICABILITY.

A. Any person constructing any new major stationary source or major modification shall obtain a permit from the department in accordance with the requirements of this part prior to the start of construction or modification if either of the following conditions apply:

(1) the major stationary source or major modification will be located within a nonattainment area so designated pursuant to Section 107 of the federal Clean Air Act and will emit a regulated pollutant for which it is major and which the area is designated nonattainment for; or

(2) the major stationary source or major modification will be located within an area designated attainment or unclassifiable pursuant to Section 107 of the federal Clean Air Act and will emit a regulated pollutant for which it is major and the ambient impact of such pollutant would exceed any of the significance levels in Subsection A of 20.2.79.119 NMAC at any location that does not meet any national ambient air quality standard for the same pollutant. (See Subsection D of 20.2.79.109 NMAC.)

B. The requirements of this part apply to each regulated pollutant meeting the criteria of either Paragraph (1) or Paragraph (2) of Subsection A of 20.2.79.109 NMAC.

C. For an area which is nonattainment for ozone, volatile organic compounds and oxides of nitrogen are the regulated pollutants which may make this part applicable under the provisions of Paragraph (1) of Subsection A of 20.2.79.109 NMAC.

D. Other requirements.

(1) A new major stationary source or major modification which meets the criteria of Paragraph (2) of Subsection A of 20.2.79.109 NMAC shall demonstrate that the source or modification will not cause or contribute to a violation of any national ambient air quality standard by meeting the following requirements and no others of this part:

(a) Paragraph (2) of Subsection C of 20.2.79.112 NMAC regarding emission offsets;

(b) Subsection D of 20.2.79.112 NMAC regarding a net air quality benefit;

(c) 20.2.79.114 NMAC - Emission Offset Baseline;

(d) 20.2.79.115 NMAC - Emission Offset; and

(e) 20.2.79.117 NMAC - Air Quality Benefit.

(2) In addition , a new source or modification which meets the criteria of Paragraph (2) of Subsection A of 20.2.79.109 NMAC and is also a major stationary source or major modification as defined in 20.2.74 NMAC (prevention of significant deterioration (PSD)), shall obtain a PSD permit under the provisions of 20.2.74 NMAC.

E. Applicability procedures.

(1) Except as otherwise provided in Paragraphs (3) and (4) of this subsection, and consistent with the definition of major modification, a project is a major modification for a regulated new source review pollutant if it causes two types of emissions increases - a significant emissions increase (as defined in Subsection AM of 20.2.79.7 NMAC), and a significant net emissions increase (as defined in Subsections Z and AM of 20.2.79.7 NMAC). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3) and (4) of this subsection. 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 of net emissions increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that involve existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions (as defined in Paragraphs (1) and (2) of Subsection E of 20.2.79.7 NMAC, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in Subsection AM of 20.2.79.7 NMAC).

(4) Actual-to-potential test for projects that involve construction of a new emissions unit(s). A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions (as defined in Paragraph (3) of Subsection E of 20.2.79.7 NMAC) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in Subsection AM of 20.2.79.7 NMAC).

(5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant. For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in Paragraph (3) of this subsection for the existing unit and determined using the method specified in Paragraph (4) of this subsection for the new unit.

(6) For any major stationary source for a PAL for a regulated new source review pollutant, the major stationary source shall comply with requirements under 20.2.79.120 NMAC.

F. Except as otherwise provided in Paragraph (6) under this subsection (Subsection F of 20.2.79.109 NMAC), the following specific provisions apply with respect to any regulated NSR pollutant emitted from 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, within the meaning of Paragraph (6) under this subsection (Subsection F of 20.2.79.109 NMAC), that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection AI of 20.2.79.7 NMAC for calculating projected actual emissions.

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

(a) a description of the project;

(b) identification of the emissions unit(s) whose emissions of a regulated new source review pollutant could be affected by the project; and

(c) a description of the applicability test used to determine that the project is not a major modification for any regulated new source review pollutant, including the baseline actual emissions, the projected

actual emissions, the amount of emissions excluded under Paragraph (3) of Subsection AI of 20.2.79.7 NMAC and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Paragraph (1) of this subsection to the department. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the department; however, necessary preconstruction approvals and/or permits must be obtained before beginning actual construction.

(3) The owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions units identified in Subparagraph (b) of Paragraph (1) of this subsection; 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 new source review pollutant at such emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under Paragraph (3) of this subsection setting out the unit's annual emissions during the year that preceded submission of the report.

(5) 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 department if the annual emissions, in tons per year, from the project identified in Paragraph (1) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection, by a significant amount (as defined in Subsection AM of 20.2.79.7 NMAC) for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection. Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

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

(b) the annual emissions as calculated pursuant to Paragraph (3) of this subsection; and

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

(6) A ‘‘reasonable possibility’’ under this subsection (Subsection F of 20.2.79.109 NMAC) occurs when the owner or operator calculates the project to result in either:

(a) a projected actual emissions increase of at least 50 percent of the amount that is a ‘‘significant emissions increase,’’ as defined under Subsection AN of 20.2.79.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) a projected actual emissions increase that, added to the amount of emissions excluded under Subparagraph (3) of Subsection AI of 20.2.79.7 NMAC, sums to at least 50 percent of the amount that is a ‘‘significant emissions increase,’’ as defined under Subsection AN of 20.2.79.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; for a project for which a reasonable possibility occurs only within the meaning of Subparagraph (b) of Paragraph (6) of Subsection F of 20.2.79.109 NMAC, and not also within the meaning of Subparagraph (a) of Paragraph (6) of Subsection F of 20.2.79.109 NMAC, then provisions Paragraphs (2) through (5) under this subsection (Subsection F of 20.2.79.109 NMAC) do not apply to the project.

G. The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection F of this section (20.2.79.109 NMAC) available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

H. The requirements of this section (20.2.79.109 NMAC) applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the U.S. environmental protection agency administrator has granted a NO_X waiver applying the standards set forth under section 182(f) of the federal Clean Air Act and the waiver continues to apply.

I. In meeting the emissions offset requirements of 20.2.79.115 NMAC, 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 Subsections J through N of 20.2.79.109 NMAC.

J. In meeting the emissions offset requirements of 20.2.79.115 NMAC for ozone nonattainment areas that are subject to subpart 2, part D, title I of the Clean Air Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(1) in any marginal nonattainment area for ozone, at least 1.1:1;

(2) in any moderate nonattainment area for ozone, at least 1.15:1;

(3) in any serious nonattainment area for ozone, at least 1.2:1;

(4) in any severe nonattainment area for ozone, at least 1.3:1 (except that the ratio may be at least 1.2:1 if the approved state implementation plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

(5) in any extreme nonattainment area for ozone, at least 1.5:1 (except that the ratio may be at least 1.2:1 if the approved state implementation plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC.

K. Notwithstanding the requirements of Paragraph (1) of Subsection J of 20.2.79.109 NMAC for meeting the requirements of 20.2.79.115 NMAC, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to subpart 2, part D title I of the federal Clean Air Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to subpart 2, part D, title I of the federal Clean Air Act.

L. Meeting the emissions offset requirements of 20.2.79.115 NMAC for ozone nonattainment areas that are subject to subpart 1, part D, title I of the clean air act, including 8-hour ozone nonattainment areas subject to 40 CFR 51.902(b), the ratio of total actual emissions increase of VOC shall be at least 1:1.

M. The requirements of 20.2.79.109 NMAC applicable to major stationary sources and major modifications of PM10 shall also apply to major stationary sources and major modifications of PM10 precursors except where the US. environmental protection agency administrator determines that such sources do not contribute significantly to PM10 levels that exceed the PM_{10} ambient standards in the area.

N. In meeting the emissions offset requirements of 20.2.79.115 NMAC, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph. The department may allow the offset requirements in 20.2.79.115 NMAC for direct $PM_{2.5}$ emissions or emissions of precursors of $PM_{2.5}$ to be satisfied by offsetting reductions in direct $PM_{2.5}$ emissions or emissions of any $PM_{2.5}$ precursor identified under Subsection AJ of 20.2.79.7 NMAC if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

[11/30/95; 20.2.79.109 NMAC - Rn, 20 NMAC 2.79.109, 10/31/02; A, 1/22/06; A, 08/31/09; A, 6/3/11]

20.2.79.110 SOURCE OBLIGATION:

A. The requirements of this Part shall apply as though construction had not yet commenced at the time that a source or modification becomes a major source or major modification solely due to a relaxation in any enforceable limitation established after August 7, 1980.

B. The issuance of a permit by the Department shall not relieve any owner or operator of the responsibility to comply with the provisions of the Air Quality Control Act, sections 74-2-1 to 74-2-17, NMSA 1978, any applicable regulations of the Board, and any other requirements under local, state, or federal law.

C. Any owner or operator who commences construction or operates a major stationary source or major modification without, or not in accordance with, a permit issued under the requirements of this Part shall be subject to enforcement action.

D. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. For a phased construction project, each phase must commence construction within 18 months of the projected and approved commencement date. The Secretary may extend the 18-month period upon a satisfactory showing that an extension is justified.

E. For phased construction projects, the determination of the lowest achievable emission rate shall be reviewed and modified as appropriate at the latest reasonable time but 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 lowest achievable emission rate.

F. If the owner or operator previously issued a permit under this Part applies for an extension as provided for under subsection D of 20.2.79.110 NMAC, and the new proposed date of construction is greater than 18 months from the date the permit would become invalid, the determination of lowest achievable emission rate shall be reviewed and modified as appropriate before such an extension is granted. At such time, the owner or operator may be required to demonstrate the adequacy of any previous determination of lowest achievable emission rate.

[11/30/95; 20.2.79.110 NMAC - Rn, 20 NMAC 2.79.110, 10/31/02]

20.2.79.111 APPLICATION CONTENTS: The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to perform any analysis or make any determination required under this Part. The items of this section are required before the Department may deem an application administratively complete. All applications shall include:

A. All information required by subsection A of 20.2.72.203 NMAC; and

B. A detailed schedule for construction of the major stationary source or major modification; and

C. A detailed description of the planned system of continuous emission reduction to be implemented, emission estimates, and other information necessary to demonstrate that the lowest achievable emission rate or any other applicable emission limitation will be maintained.

[11/30/95; A, 01/01/00; 20.2.79.111 NMAC - Rn, 20 NMAC 2.79.111, 10/31/02]

20.2.79.112 SOURCE REQUIREMENTS: In order for a permit to be granted, all of the following conditions shall be met:

A. The major stationary source or major modification shall be designed such that the lowest achievable emission rate (LAER) will be met and maintained for each pollutant emitted which is subject to this Part;

B. The owner or operator of the proposed new or modified source has demonstrated that all existing major stationary sources owned or operated by such person (or any entity controlling, controlled by, or under common control with such person) in this state are in compliance with, or on a schedule for compliance, with all applicable emission limitations and standards, under the Federal Act, and all conditions in a federally enforceable permit;

C. Emission Reductions:

(1) Emission reductions (offsets) at existing sources shall occur prior to or concurrent with the start of operation of the proposed major stationary source or major modification for each pollutant emitted which is subject to this Part. As a general rule, such offsets shall be at least twenty percent (20%) greater than the allowable emissions of the proposed new major stationary source or major modification, and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction in the actual emissions of such air pollutant from the same or other sources in the area. An offset less than twenty percent (20%) but at least ten percent (10%, or 1:1.1 ratio), may be allowed if reasonable progress toward the attainment of the applicable NAAQS will be achieved. A higher level of offset reduction may be required in order to demonstrate that a net air quality benefit will occur; or

(2) A new major stationary source or major modification which is subject to the requirements of subsection D of 20.2.79.109 NMAC shall obtain sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major stationary source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard.

D. Emission offsets shall provide a net air quality benefit in the area where the national ambient air quality standard for that pollutant is violated; and

E. The owner or operator of the proposed major stationary source or major modification has conducted an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

F. The proposed major stationary source or major modification will meet all applicable emission requirements in the New Mexico State Implementation Plan, any applicable new source performance standard in 40 CFR Part 60, and any national emission standard for hazardous air pollutants in 40 CFR Part 61.

[11/30/95; A, 10/01/97; 20.2.79.112 NMAC - Rn, 20 NMAC 2.79.112, 10/31/02]

20.2.79.113 ADDITIONAL REQUIREMENTS FOR SOURCES IMPACTING MANDATORY FEDERAL CLASS I AREAS:

A. The requirements of this section apply only to proposed major stationary sources or major modifications that meet the criteria of paragraph (1) of subsection A of 20.2.79.109 NMAC and that also are major stationary sources or major modifications as defined in 20.2.74 NMAC. A major stationary source or major modification which meets the criteria of paragraph (2) of subsection A of 20.2.79.109 NMAC may be subject to requirements for Federal Class I Areas in 20.2.74 NMAC if that Part applies.

B. The Department shall transmit to the Administrator and any affected Federal Land Manager a copy of each permit application and any information relevant to any proposed major stationary source or major modification which may have an impact on visibility in any mandatory Federal Class I area. Relevant information will include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area. The application shall be transmitted within thirty (30) days of receipt by the Department and at least sixty (60) days prior to any public hearing on the application. Additionally, the Department shall notify any affected Federal Land Manager within thirty (30) days from the date the Department receives a request for a pre-application meeting from a proposed source subject to this Part. The Department shall consult with the affected Federal Land Manager prior to making a determination of completeness for any such permit application. The Department shall also provide the Federal Land Manager and the Administrator with a copy of the preliminary determination on the permit application and shall make available to them any materials used in making that determination.

C. The owner or operator of any proposed major stationary source or major modification which may have an impact on visibility in a mandatory Federal Class I area shall include in the permit application an analysis of the anticipated impacts on visibility in such areas.

D. The Department may require monitoring of visibility in any mandatory Federal Class I area where the Department determines an adverse impact on visibility may occur due to the operations of the proposed new source or modification. Such monitoring shall be conducted following procedures approved by the Department and subject to the following conditions:

(1) Visibility monitoring methods specified by the Department shall be reasonably available and not require any research and development; and

(2) Both preconstruction and post construction visibility monitoring may be required. In each case, the duration of such monitoring shall not exceed one year.

E. The Department shall consider any analysis with respect to visibility impacts provided by the Federal Land Manager if it is received within thirty (30) days from the date a complete application is given to the Federal Land Manager. In any case where the Department disagrees with the Federal Land Manager's analysis, the Department shall either explain its decision to the Federal Land Manager or give notice as to where the explanation can be obtained. In the case where the Department disagrees with the Federal Land Manager's analysis, the Department will also explain its decision or give notice to the public by means of an advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed as to where the decision can be obtained.

F. In making its determination as to whether or not to issue a permit, the Department shall ensure that the source's emissions will be consistent with making reasonable progress toward the national visibility goal of preventing any future impairment of visibility in mandatory Federal Class I areas. The Department 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.

[11/30/95; 20.2.79.113 NMAC - Rn, 20 NMAC 2.79.113, 10/31/02]

20.2.79.114 EMISSION OFFSET BASELINE: The baseline for determining credit for emission offsets shall be the most stringent emissions limitation pursuant to a New Mexico air quality regulation or federally enforceable permit which is applicable and in effect at the time the application to construct is filed. If neither a state air quality regulation nor a federally enforceable permit contains an emissions limitation for the source, the baseline shall be the actual emissions of the source from which offset credit is obtained. Where a source is subject to an emission standard established in a New Source Performance Standard (NSPS) or a National Emission Standard for Hazardous Air Pollutants (NESHAPS) and a different State Implementation Plan or permit limitation, including any emission limitation used in demonstrating reasonable further progress, the more stringent emission standard shall be used as the baseline for determining credit for emission offsets.

[11/30/95; 20.2.79.114 NMAC - Rn, 20 NMAC 2.79.114, 10/31/02]

20.2.79.115 EMISSION OFFSETS. All emission offsets approved by the department shall meet the following criteria.

A. All emission reductions claimed as offset credit shall be from decreases of the same pollutant for which the offset is required.

B. All emission reductions claimed as offset credit shall occur prior to or concurrent with the start of operation of the proposed source. In addition, past reductions must have occurred later than the date upon which the area became nonattainment in order to be creditable.

C. For the case where emission reductions claimed as offset credit occur at the source subject to this part, such reductions shall be a condition required by a federally enforceable permit. For the case where emission reductions claimed as offset credit occur at a neighboring source, such reductions shall be incorporated as modifications to pertinent federally enforceable permits held by the neighboring source. If the neighboring source has no relevant permits, the reductions shall be approved as a revision to the state implementation plan by the board.

D. Offset credit for any emissions reduction can be claimed only to the extent that the department or U.S. EPA has not relied on it in previously issuing any permit or in demonstrating attainment or reasonable further progress.

E. No emissions reduction credit shall be allowed for replacing one volatile organic compound with another of lesser reactivity, except as approved by the U.S. EPA reactivity guidance found at 42 *federal register* 35314, (1977), and any amendments thereto.

F. Emission reduction credit may be allowed for a source permanently curtailing production or operating hours below baseline levels provided that the work force to be affected has been notified of the curtailment.

(1) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours below baseline levels may be generally credited for offsets if such reductions are permanent, quantifiable, and federally enforceable. In addition, the shutdown or curtailment is creditable only if it occurred after the date of the most recent emissions inventory used in the state implementation plan's demonstration of attainment. However, in no event may credit be given for shutdowns which occurred prior to August 7, 1977. For purposes of this paragraph, a permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the date of the base year inventory, if the projected inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units.

(2) Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new emission unit is a replacement for the shutdown or curtailed emission unit, and the provisions of Paragraph (1) of Subsection F of 20.2.79.7 NMAC are observed.

G. Where the most stringent emissions limit which is applicable allows greater emissions than the potential to emit of the offsetting source, emission offset credit will be allowed only for control below the potential to emit of the source.

H. The emission limit for determining emission offset credit involving an existing fuel combustion source shall be the most stringent emission standard which is applicable for this source for the type of fuel being burned at the time the permit application is filed. If the existing source commits to switch to a cleaner fuel, emission offset credit based on the difference between the allowable emissions of the fuels involved shall be acceptable only if an alternative control measure, which would achieve the same degree of emission reduction should the source switch back to a fuel which produces more pollution, is specified in a permit issued by the department.

I. The owner or operator desiring to utilize an emission reduction as an offset shall submit to the department the following information:

(1) a detailed description of the process to be controlled and the control technology to be used; and

(2) emission calculations showing the types and amounts of actual emissions to be reduced; and

(3) the effective date of the reduction.

J. Source shutdowns and curtailments in production or operating hours may be used for emission offset credit only if they occur after August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier, and the proposed new source for which the offset is to apply is a replacement for the shutdown or curtailment.

K. 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 and the actual emissions before the modification for each emissions unit.

[11/30/95; 20.2.79.115 NMAC - Rn, 20 NMAC 2.79.115, 10/31/02; A, 1/22/06; A, 08/31/09]

20.2.79.116 BANKING OF EMISSION REDUCTION:

A. Any stationary source which decreases actual emissions of a regulated pollutant in excess of the requirements of this Part or any other applicable air quality regulation or permit emission limitation may preserve or bank such excess emission reductions for sale or future use.

B. The owner or operator desiring to preserve such reductions shall submit a written request prior to the actual emission reduction to the Department which contains the following information:

(1) A detailed description of the process(es) to be controlled and the control technology to be used; and

(2) Emission calculations showing the types and amounts of actual emissions to be reduced; and

(3) The effective date(s) of such reductions.

C. The Department shall:

(1) Verify the amount of emission reduction claimed in the written request; and

(2) Approve or deny the request for banking of the emission reduction and notify the applicant in writing of the decision; and

(3) Keep appropriate records of any emission reduction accepted for banking; and

(4) For the case where emission reductions are approved in excess of those required for obtaining a permit under this Part, the Department shall make such reductions a condition of the permit; and

(5) For the case where emission reductions are approved not in conjunction with granting a permit, the Department shall preserve such reductions as a State Implementation Plan revision which must be approved by the Environmental Improvement Board.

D. Use and Sale of Emission Reductions.

(1) The use of any preserved emission reduction is confined to meeting the emission offset requirements of this Part or 20.2.72 NMAC.

(2) The provisions of this Part apply to the future use of any preserved emission reduction as if such reductions were obtained concurrently with the commencement of operations of the new or modified source.

(3) Before the use or sale of any preserved emission reduction occurs, written notification must be given to the Department. Such notice shall be in writing and shall identify the permit(s) and State Implementation Plan revision(s) in which such reductions are preserved. The Department must verify the availability of the preserved reduction before any use or sale occurs.

(4) The use of preserved emission reduction credits is subject to the criteria of 20.2.79.115 NMAC - Emission Offsets.

[11/30/95; 20.2.79.116 NMAC - Rn, 20 NMAC 2.79.116, 10/31/02]

20.2.79.117 AIR QUALITY BENEFIT: All demonstrations of the occurrence of a net air quality benefit shall meet the following criteria:

A. Emission offsets for volatile organic compounds or nitrogen oxides emissions impacting an ozone nonattainment area may be obtained from sources located in the broad vicinity of the proposed new source or modification, subject to approval by the Department. Atmospheric dispersion modeling will not be required to demonstrate the net air quality benefit that occurs due to reductions in volatile organic compound emissions.

B. An applicant which proposes emission offsets for sulfur dioxide, particulate matter, carbon monoxide, nitrogen oxides, or any other pollutant may be required by the Department to submit atmospheric dispersion modeling to demonstrate a net air quality benefit will occur. For any case involving these pollutants where stack emissions and fugitive or ground level emissions are offsetting, atmospheric dispersion modeling shall be required to demonstrate a net air quality benefit will occur.

[11/30/95; 20.2.79.117 NMAC - Rn, 20 NMAC 2.79.117, 10/31/02]

20.2.79.118 PUBLIC PARTICIPATION AND NOTIFICATION:

A. The Department shall, within thirty (30) days after its receipt of an application for a permit or significant permit revision subject to this Part, review such application and determine whether it is administratively complete. If the application is deemed:

(1) administratively complete, a letter to that effect shall be sent by certified mail to the applicant.

(2) administratively incomplete, a letter shall be sent by certified mail to the applicant stating what additional information or points of clarification are necessary to deem the application administratively complete. Upon receipt of the additional information or clarification, the Department shall promptly review such information and determine whether the application is administratively complete.

(3) administratively complete but no permit is required, a letter shall be sent by certified mail to the applicant informing the applicant of the determination.

B. The Department shall:

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

(2) Make available at the Department, district and local office nearest to the proposed source 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.

(3) Notify the public by advertisement in a newspaper of general circulation in the area in which the proposed major stationary source or major modification would be constructed, of the application, the preliminary determination, and of the opportunity for comment at a public hearing as well as written public comment. The public comment period shall be for forty-five days from the date of such advertisement.

(4) Send a copy of the notice of public comment to the applicant, the Administrator, and to officials and agencies having jurisdiction over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies, the chief executives of the city and county where the source would be located, any regional comprehensive land use planning agency, and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) 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 and other appropriate considerations. Public hearings shall be held in the geographic area likely to be impacted by the source.

(6) 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. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the source.

(7) Within ninety (90) days after the application is deemed administratively complete, unless the Secretary grants an extension, as specified in 20.2.72.207 NMAC, not to exceed ninety (90) days for good cause:

(a) make a final determination whether construction should be approved, approved with conditions, or disapproved, or whether no permit is required; and

(b) notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Department made available preconstruction information and public comments relating to the source.

[11/30/95; A, 01/01/00; 20.2.79.118 NMAC - Rn, 20 NMAC 2.79.118, 10/31/02]

20.2.79.119 TABLES:

A. Significant ambient concentrations:

[Concentration in micrograms per cubic meter ($\mu g/m^3$) or milligrams per cubic meter (mg/m^3)]

Pollutant	Averaging Time				
	Annual	24-hr	8-hr	3-hr	1-hr
Sulfur dioxide	1.0 $\mu g/m^3$	5 $\mu g/m^3$	--	25 $\mu g/m^3$	--
PM_{10}	1.0 $\mu g/m^3$	5 $\mu g/m^3$	--	--	--
$PM_{2.5}$	0.3 $\mu g/m^3$	1.2 $\mu g/m^3$			
Nitrogen dioxide	1.0 $\mu g/m^3$	--	--	--	--
Carbon monoxide	--	--	0.5 mg/m^3	--	2 mg/m^3

B. Fugitive emissions source categories:

(1) carbon black plants (furnace process);
(2) charcoal production plants;
(3) chemical process plants;
(4) coal cleaning plants (with thermal dryers);
(5) coke oven batteries;
(6) fossil fuel-fired steam electric plants of more than 250 million Btu/hr heat input;
(7) fossil fuel boiler (or combination thereof) totaling more than 50 million Btu/hr heat input;
(8) fuel conversion plants;
(9) glass fiber processing plants;
(10) hydrofluoric acid plants;
(11) iron and steel mill plants;
(12) kraft pulp mills;
(13) lime plants;
(14) municipal incinerators capable of charging more than 250 tons of refuse per day;
(15) nitric acid plants;
(16) petroleum refineries;
(17) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(18) phosphate rock processing plants;
(19) portland cement plant;
(20) primary lead smelters;
(21) primary zinc smelters;
(22) primary aluminum ore reduction plants;
(23) primary copper smelters;
(24) secondary metal production plants;
(25) sintering plants;
(26) sulfur recovery plants;
(27) sulfuric acid plants;
(28) taconite ore processing plants.

[11/30/95; 20.2.79.119 NMAC - Rn, 20 NMAC 2.79.119, 10/31/02; A, 6/3/11]

20.2.79.120 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALs).

A. Applicability.

(1) The department may approve the use of an actuals PAL for any existing major stationary source (except as provided in Paragraph (2) of this subsection) if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.

(2) Actuals PALs shall not be allowed for VOC or NOx for any major stationary source located in an extreme ozone nonattainment area.

(3) 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 of this section, and complies with the PAL permit:

(a) is not a major modification for the PAL pollutant;
(b) does not have to be approved through the requirements of this part; and
(c) is not subject to the provisions in 20.2.79.110 NMAC (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major new source review program).

(4) Except as provided under Subparagraph (c) of Paragraph (3) of this subsection, 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.

B. Definitions. When a term is not defined in this subsection, it shall have the meaning given in 20.2.79.7 NMAC or in 20.2.2 NMAC.

(1) Actuals PAL for a major stationary source means a PAL based on the baseline actual emissions of all emissions units at the source, that emit or have the potential to emit the PAL pollutant.

(2) Allowable emissions means "allowable emissions" as defined in 20.2.79.7 NMAC, except as this definition is modified according to the following.

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

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

(3) 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 Subsection AM of 20.2.79.7 NMAC or in the federal Clean Air Act, whichever is lower.

(4) Major emissions unit means:

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

(b) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the 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.

(5) 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 this section.

(6) 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.

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

(8) PAL major modification means, notwithstanding the definitions for major modification and net emissions increase in 20.2.79.7 NMAC, 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.

(9) PAL permit means the major new source review permit, the minor NSR permit, or the state operating permit under the requirements of 20.2.72 NMAC, 20.2.74 NMAC, 20.2.79 NMAC, or the title V permit under the requirements of 20.2.70 NMAC issued by the department that establishes a PAL for a major stationary source.

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

(11) 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 Subsection AM of 20.2.79.7 NMAC 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 Paragraph (4) of Subsection B of this section.

C. 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 department for approval.

(1) 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.

(2) 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.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection M of this section.

D. General requirements for establishing PALs.

(1) A PAL at a major stationary source may be allowed by the department, provided that at a minimum, the following requirements are met.

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

the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in Subsection E of this section.

(c) The PAL permit shall contain all the requirements of Subsection G of this section.

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

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

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

(g) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Subsections L through N of this section for each emissions unit under the PAL through the PAL effective period.

(2) 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 20.2.79.115 NMAC 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.

E. 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 161. This includes the requirement that the department 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 department shall address all material comments before taking final action on the permit.

F. Setting the 10-year actuals PAL level.

(1) Except as provided in Paragraph (2) of this subsection, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in 20.2.79.7 NMAC) 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 20.2.79.7 NMAC or under the act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department 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 NO_X 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).

(2) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Paragraph (1) of this subsection, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

G. Contents of the PAL permit. The PAL permit shall contain, at a minimum, all of the following information.

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

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

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

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

(5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of Subsection I of this section.

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection M of this section.

(7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Subsection L of this section.

(8) A requirement to retain the records required under Subsection M of this section on site. Such records may be retained in an electronic format.

(9) A requirement to submit the reports required under Subsection N of this section by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

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

(1) PAL effective period. The permit shall specify a PAL effective period of 10 years.

(2) Reopening of the PAL permit.

(a) During the PAL effective period, the department 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 20.2.79.115 NMAC; or

(iii) revise the PAL to reflect an increase in the PAL as provided under Subsection K of this section.

(b) The department may reopen the PAL permit for the following:

(i) to reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(ii) to reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source under this part; or

(iii) to reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(c) Except for the permit reopening in Item (i) of Subparagraph (a) of this paragraph 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 Subsection E of this section.

I. Expiration of a PAL. Any PAL which is not renewed in accordance with the procedures in Subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply.

(1) 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 following procedures.

(a) Within the time frame specified for PAL renewals in Paragraph (2) of Subsection J of this section, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Paragraph (5) of Subsection J of this section, such distribution shall be made as if the PAL had been adjusted.

(b) The department 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 department determines is appropriate.

(2) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department 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.

(3) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Subparagraph (a) of Paragraph (1) of this subsection, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(4) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major new source review requirements if such change meets the definition of major modification in 20.2.79.7 NMAC.

(5) The major stationary source owner or operator shall continue to comply with any New Mexico 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 20.2.79.109 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (3) of Subsection A of this section.

J. Renewal of a PAL.

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

(2) Application deadline. A major stationary source owner or operator shall submit a timely application to the department 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.

(3) Application requirements. The application to renew a PAL permit shall contain the following information.

(a) The information required in Paragraphs (1) through (3) of Subsection C of this section.

(b) A proposed PAL level.

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

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

(4) PAL adjustment. In determining whether and how to adjust the PAL, the department shall consider the options outlined in Subparagraph (a) of this paragraph. However, in no case may any such adjustment fail to comply with Subparagraph (b) of this paragraph.

(a) If the emissions level calculated in accordance with Subsection F of this section is equal to or greater than 80 percent of the PAL level, the department may:

(i) renew the PAL at the same level without considering the factors set forth in Item (ii) of this subparagraph; or

(ii) 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 department in its written rationale.

(b) Notwithstanding Subparagraph (a) of this paragraph:

(i) if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(ii) the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Subsection K of this section (increasing a PAL).

(5) If the compliance date for a New Mexico or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department 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.

K. Increasing a PAL during the PAL effective period.

(1) The department may increase a PAL emission limitation only if the major stationary source complies with the following provisions.

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

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

case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(c) The owner or operator shall obtain a major new source review permit for all emissions unit(s) identified in Subparagraph (a) of Paragraph (1) of Subsection K of this section, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

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

(2) The department 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 Subparagraph (b) of Paragraph (1) of Subsection K of this section), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Subsection E of this section.

L. Monitoring requirements for PALs.

(1) General Requirements.

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

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Subparagraphs (a) through (d) of Paragraph (2) of this subsection and must be approved by the department.

(c) Notwithstanding Subparagraph (b) of this paragraph, the owner or operator may also employ an alternative monitoring approach that meets Subparagraph (a) of this paragraph if approved by the department.

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

(2) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of this subsection:

(a) mass balance calculations for activities using coatings or solvents;

(b) CEMS;

(c) CPMS or PEMS; and

(d) emission factors.

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

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

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

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

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

(a) CEMS must comply with applicable performance specifications found in 40 CFR part 60, appendix B; and

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

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

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

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

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

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

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

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

(7) 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.

(8) Notwithstanding the requirements in Paragraphs (3) through (7) of this subsection, 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 department shall, at the time of permit issuance:

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

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

(9) Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every 5 years after issuance of the PAL.

M. Recordkeeping requirements.

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

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

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

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

N. Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with the requirements of 20.2.70 NMAC. The reports shall meet the following requirements.

(1) Semi-Annual Report. The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the following information.

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

(b) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of this section.

(c) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

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

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

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

monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Paragraph (7) of Subsection L of this section.

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

(2) 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 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

(a) the identification of owner and operator and the permit number;

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

(c) emissions resulting from the deviation or the exceedance; and

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

(3) Revalidation results. The owner or operator shall submit to the department the results of any revalidation test or method within 3 months after completion of such test or method.

O. Transition requirements.

(1) The department shall not issue a PAL that does not comply with the requirements of this section after the administrator has approved these regulations.

(2) The department may supersede any PAL which was established prior to the date of approval of this part by the administrator with a PAL that complies with the requirements of this section.

[20.2.79.120 NMAC - N, 1/22/06]

HISTORY OF 20.2.79 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records-state records center and archives:

EIB/AQCR 709, Air Quality Control Regulation 709 - Permits - Nonattainment Areas, 07/26/85;
EIB/AQCR 709, Air Quality Control Regulation 709 - Permits - Nonattainment Areas, 07/16/86;
EIB/AQCR 709, Air Quality Control Regulation 709 - Permits - Nonattainment Areas, 08/01/88;
EIB/AQCR 709, Air Quality Control Regulation 709 - Permits - Nonattainment Areas, 05/29/90;
EIB/AQCR 709, Air Quality Control Regulation 709 - Permits - Nonattainment Areas, 06/25/92.

History of Repealed Material: [RESERVED]

Other History:

EIB/AQCR 709, Air Quality Control Regulation 709 - Permits - Nonattainment Areas, filed 06/25/92 was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.79, Permits - Nonattainment Areas, filed 10/30/95.

20 NMAC 2.79, Permits - Nonattainment Areas, filed 10/30/95 was **renumbered, reformatted and replaced** by 20.2.79 NMAC, Permits - Nonattainment Areas, effective 10/31/02.