

STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD



IN THE MATTER OF PROPOSED REVISIONS
TO 20.2.74 NMAC – *PERMITS – PREVENTION
OF SIGNIFICANT DETERIORATION* AND TO
20.2.79 NMAC – *PERMITS – NONATTAINMENT
AREAS*

No. EIB 10-14 (R)

PETITION FOR REGULATORY CHANGE

The New Mexico Environment Department ("Department"), pursuant to 20.1.1 NMAC - Rulemaking Procedures, petitions the Environmental Improvement Board ("Board") to revise 20.2.74 NMAC, *Permits – Prevention Of Significant Deterioration* and 20.2.79 NMAC, *Permits – Nonattainment Areas*. The revisions and a statement of reasons are attached. The Board is authorized to adopt these regulations by the Air Quality Control Act , NMSA 1978 § 74-2-5.

The Department requests that the Board schedule the hearing for April or May, 2011, in conjunction with a regular meeting. The Department anticipates that its testimony regarding the proposed revisions will require approximately one hour.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL

A handwritten signature in blue ink, appearing to read "Bill Grantham".

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TO 20.2.74 NMAC – PERMITS – PREVENTION
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AREAS**

No. EIB 10-14 (R)

STATEMENT OF REASONS

In October 2006, EPA promulgated a revised National Ambient Air Quality Standard (NAAQS) for particulate matter 2.5 microns in size and less (PM_{2.5})¹. In May of 2008, EPA promulgated a rule to implement the New Source Review (NSR) program with respect to the 2006 PM_{2.5} NAAQS.² In October 2010, EPA promulgated amendments to that NSR Implementation Rule.³ The amendments included provisions under the Prevention of Significant Deterioration (PSD) program establishing maximum allowable increases in ambient pollutant concentrations for pollutants related to PM_{2.5}. The amendments also added two screening tools for PM_{2.5}, known as the Significant Impact Levels and a Significant Monitoring Concentration. Apart from these amendments to the NSR PM_{2.5} implementation rule, other parts of the rule are under reconsideration by EPA due to litigation.

Section 110(a)(1) of the federal Clean Air Act requires states to submit to the EPA a plan within 3 years after the promulgation of a federal NAAQS revision, which provides for the implementation, maintenance and enforcement of the NAAQS. To meet this requirement, the Department must adopt those portions PM_{2.5} NSR implementation rule not that are not under reconsideration. The Department proposes to do so through amendments to Parts 20.2.74 NMAC - Permits - Prevention of Significant Deterioration and 20.2.70 NMAC - Permits - Nonattainment Areas.

In addition, in December 2007, EPA promulgated changes to the NSR rule not related to the 2006 PM_{2.5} NAAQS.⁴ These changes clarify the “reasonable possibility” recordkeeping and reporting standard that was added to the NSR rule in 2002. The “reasonable possibility” standard identifies for sources and reviewing authorities the criteria under which an owner or operator of a major stationary source undergoing a physical change or change in the method of operation that does not trigger major NSR permitting requirements must keep records. The Department proposes to adopt the clarifications to the reasonable possibility rule within 20.2.74 and 20.2.79 NMAC.

¹ See 71 Fed. Reg. 61236 (Oct. 17, 2006).

² See 73 Fed. Reg. 28321 (May 16, 2008).

³ See 75 Fed. Reg. 64864 (Oct. 20, 2010).

⁴ See 72 Fed. Reg. 72607 (Dec. 21, 2007).

Below follow excerpts of each proposed revision to Parts 74 and 79 of 20.2 NMAC, followed by a brief explanation (in *italics*) of the impetus for the revision in the federal regulations. Following these excerpts and explanations, the entire text of Parts 74 and 79 as proposed for amendment are presented in redline/strikeout format.

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 74 PERMITS - PREVENTION OF SIGNIFICANT DETERIORATION (PSD)

20.2.74.7 DEFINITIONS: Terms used but not defined in this part shall have the meaning given them by 20.2.2 NMAC (Definitions) (formerly AQCR 100). As used in this part the following definitions shall apply

* * *

H. "Baseline area" means all lands designated as attainment or unclassifiable in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than one microgram per cubic meter (annual average) ~~[of the pollutant for which the minor source baseline date is established]~~ for sulfur dioxide, nitrogen dioxide, or PM₁₀; or equal or greater than 0.3 microgram per cubic meter (annual average) for PM_{2.5}. The major source or major modification establishes the minor source baseline date (see the definition "minor source baseline date" in this part). Lands are designated as attainment or unclassifiable under Section 107(d)(1)~~(D) or (E)~~(A)(ii) or (iii) of the act within each federal air quality control region in the state of New Mexico. Any baseline area established originally for TSP (total suspended particulates) increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments. A TSP baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date (see "minor source baseline date" in this part).

* * *

This proposed modification of the definition of "baseline area" would incorporate EPA's newly promulgated significant impact level for PM_{2.5}, in accordance with 40 CFR 51.166 (k)(2). See 75 Fed. Reg. at 64904.

AF. "Major source baseline date" means:

- (1) In the case of ~~[particulate matter]~~ PM₁₀ and sulfur dioxide, January 6, 1975; ~~[and]~~
- (2) In the case of nitrogen dioxide, February 8, 1988~~[-];~~ and
- (3) In the case of PM_{2.5}, October 20, 2010.

* * *

This proposed modification to the definition of "Major source baseline date" would add a baseline date for PM_{2.5}, in accordance with 40 CFR 51.166(b)(14)(i)(c). See 75. Fed. Reg. at 64903.

AI. "Minor source baseline date" means the earliest date after the trigger date on which the owner or operator of a major stationary source or major modification subject to 40 CFR 52.21 or to this part submits a complete application under the relevant regulations.

(1) The trigger date is:

(a) in the case of [~~particulate matter~~] PM₁₀ and sulfur dioxide, August 7, 1977; [~~and~~]

(b) in the case of nitrogen dioxide, February 8, 1988[-]; and

(c) in the case of PM_{2.5}, October 20, 2010.

* * *

This proposed modification to the definition of "Minor source baseline date" would add a baseline date for PM_{2.5}, in accordance with 40 CFR 51.166(b)(14)(ii)(c). See 75 Fed. Reg. at 64903.

AS. "Regulated new source review pollutant", for purposes of this part, means the following:

(1) any pollutant for which a national ambient air quality standard has been promulgated and any pollutant identified under this paragraph (Paragraph (1) of Subsection AS of 20.2.74.7 NMAC) as a constituents or precursors [for] to such pollutants [identified by the administrator (e.g., volatile organic compounds and nitrogen oxides are precursors for ozone);]. 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 attainment and unclassifiable areas.

(b) sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas.

(c) nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable 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 are presumed not to be precursors to PM_{2.5} in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations;

(2) Any pollutant that is subject to any standard promulgated under Section 111 of the act;

(3) Any class I or II substance subject to a standard promulgated under or established by title VI of the act; [~~or~~]

(4) Any pollutant that otherwise is subject to regulation under the Act as defined in paragraph AZ of this section.

(5) Notwithstanding paragraphs AS (1) through (4) of this section, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in section 112 of the act, or added to the list pursuant to section 112(b)(2) of the act, and which have not been delisted pursuant to section 112(b)(3) of the act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the act.

This proposed modification to the definition of "regulated new source review pollutant" would define the pollutants to be regulated as precursors to PM_{2.5}, in accordance with 40 CFR 51.166(b)(49). See 73 Fed. Reg. at 28348.

20.2.74.300 OBLIGATIONS OF OWNERS OR OPERATORS OF SOURCES:

* * *

E. Except as otherwise provided in Paragraph (6) under this subsection (Subsection E of 20.2.74.300 NMAC), [The] the following specific provisions apply with respect to any regulated NSR pollutant emitted from to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of Paragraph (6) under this subsection (Subsection E of 20.2.74.300 NMAC), that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, [where] and the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection AR of 20.2.74.7 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 AR of 20.2.74.7 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 unit 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 Subparagraph (c) of Paragraph (1) of this subsection setting out the unit's annual emissions during the calendar 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 20.2.74.7 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 E of 20.2.74.300 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 AX of 20.2.74.7 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 Paragraph (3) of Subsection AR of 20.2.74.7 NMAC, sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection AX of 20.2.74.7 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 under this subparagraph (Subparagraph (b) of Paragraph (6) of Subsection E of 20.2.74.300 NMAC), and not also within the meaning of Subparagraph (a) under this paragraph (Paragraph (6) of Subsection E of 20.2.74.300 NMAC), then the provisions in Paragraphs (2) through (5) under this subsection (Subsection E of 20.2.74.300 NMAC) do not apply to the project.

* * *

These proposed amendments to 20.2.74.300 NMAC would implement EPA's revised policy on recordkeeping by facilities to document whether there exists a reasonable possibility of triggering NSR Permit requirement, in accordance with 40 CFR 51.166(r)(6). See 72 Fed. Reg. at 72616. This revision responds to a vacature of EPA's prior "reasonable possibility"

rule by the U.S. Court of Appeals for the D.C. Circuit in New York v. EPA, 413 F.3d. 3 (2005).

20.2.74.303 AMBIENT IMPACT REQUIREMENTS:

A. The requirements of this section shall apply to each pollutant emitted by a new major stationary source or major modification in amounts equal to or greater than those in Table 2 of this Part (20.2.74.502 NMAC). For ~~[particulate matter]~~ PM_{10} , the source will only be required to perform ambient impact analysis for PM_{10} when the source has the potential to emit significant amounts of PM_{10} (Table 2, 20.2.74.502 NMAC). For $PM_{2.5}$, the demonstration required in Subsection B of 20.2.74.303 NMAC is deemed to have been made if the emissions increase from the new stationary source alone or from the modification alone would cause, in all areas, air quality impacts less than 0.06 micrograms per cubic meter (annual average) or 0.07 micrograms per cubic meters (24-hour average) for Class I federal areas or 0.3 micrograms per cubic meters (annual average) or 1.2 micrograms per cubic meters (24 hour average) for Class II and Class III federal areas.

B. The allowable emission increases from the proposed source or modification, including secondary emissions, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, shall not cause or contribute to air pollution in violation of:

- (1) Any National Ambient Air Quality Standard in any location; or
- (2) Any applicable maximum allowable increase as shown in Table 4 of this Part (20.2.74.504 NMAC) over the baseline concentrations in any area.
- (3) The owner or operator of the proposed major stationary source or major modification shall demonstrate that neither paragraph (1) nor paragraph (2) of 20.2.74.303 NMAC will occur.

[07/20/95; 20.2.74.303 NMAC - Rn, 20 NMAC 2.74.303, 10/31/02; A, XX/XX/XX]

* * *

This proposed revision to the Ambient Impact Requirements at 20.2.74.303 NMAC would adopt the Significant Impact Levels for $PM_{2.5}$ promulgated by the EPA at 40 CFR 51.166 (k)(2). See 75 Fed. Reg. at 64904.

20.2.74.306 MONITORING REQUIREMENTS:

* * *

I. The Department shall exempt a stationary source or modification from the requirements of this section with respect to preconstruction monitoring for a particular pollutant if:

- (1) For ozone, volatile organic compound emissions are less than one hundred (100) tons per year; or
- (2) The air pollutant is not a regulated pollutant; or
- (3) The ~~[existing ambient]~~ concentrations of the pollutant in the area ~~[affected by]~~ that the source or modification would affect are less than the concentrations listed in Table 3 of this Part (20.2.74.503 NMAC)~~[-]; or~~

(4) The pollutant is not listed in Table 3 of this Part (20.2.74.503 NMAC).
[07/20/95; 20.2.74.306 NMAC - Rn, 20 NMAC 2.74.306, 10/31/02; A, XX/XX/XX]

These proposed revisions to 20.2.74.306 NMAC, in conjunction with the proposed amendments to Table 3 (20.2.74.503 NMAC), would adopt EPA's Significant Monitoring Concentration for the purpose of exempting sources from monitoring requirements, in accordance with 40 CFR 51.166(i)(5)(i).

20.2.74.502 TABLE 2 - SIGNIFICANT EMISSION RATES:

POLLUTANT	EMISSION RATE (TONS/YR)
Carbon monoxide	100
Fluorides	3
Lead	0.6
Municipal waste combustor	
Acid gases (measured as sulfur dioxide and hydrogen chloride)	40 (36 megagrams/year)
Metals (measured as particulate matter)	15 (14 megagrams/year)
Organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035 (0.0000032 megagrams/yr)
Nitrogen oxides	40
Ozone (Volatile Organic Compounds or nitrogen oxides)	40
Particulate Matter	
Particulate matter emissions	25
PM ₁₀ emissions	15
<u>Particulate Matter _{2.5}</u>	
<u>PM_{2.5} emissions</u>	<u>10</u>
<u>Sulfur dioxide emissions</u>	<u>40</u>
<u>Nitrogen oxide emissions (unless demonstrated not to be a PM_{2.5} precursor under Subsection AS of 20.2.74.7 NMAC)</u>	<u>40</u>
Sulfur compounds	
Hydrogen sulfide (H ₂ S)	10
Reduced sulfur compounds (incl. H ₂ S)	10
Sulfur dioxide	40
Sulfuric acid mist	7
Total reduced sulfur (incl. H ₂ S)	10
Any other pollutant regulated under the act that is not listed in this table	Any emission rate

Each regulated pollutant	Emission rate or net emissions increase associated with a major stationary source or major modification that causes an air quality impact of one microgram per cubic meter or greater (24-hr average) in any class I federal area located within 10 km of the source.
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[07/20/95; 20.2.74.502 NMAC - Rn, 20 NMAC 2.74 Table 2, 10/31/02; A, 1/22/06; A, 8/31/09; A, XX/XX/XX]

These proposed amendments to Table 2 (20.2.74.502 NMAC) would adopt the definition of "significant," with respect to a net increase in emissions, as promulgated by the EPA at 40 CFR 51.166(b)(23)(i). See 73 Fed. Reg. at 28348.

20.2.74.503 TABLE 3 - SIGNIFICANT MONITORING CONCENTRATIONS.

POLLUTANT	AIR QUALITY CONCENTRATION micrograms per cubic meter	AVERAGING TIME
Carbon monoxide	575	8 hours
Fluorides	0.25	24 hours
Lead	0.1	3 months
Nitrogen dioxide	14	Annual
Ozone	b	
[Particulate matter (PM-10)] PM ₁₀	10	24 hours
PM _{2.5}	4	24 hours
Sulfur compounds		
Hydrogen sulfide (H ₂ S)	0.20	1 hour
Reduced sulfur compounds (incl. H ₂ S)	10	1 hour
Sulfur dioxide	13	24 hours
Sulfuric acid mist	a	
Total reduced sulfur (incl. H ₂ S)	10	1 hour
a - No acceptable monitoring techniques available at this time. Therefore, monitoring is not required until acceptable techniques are available.		
b - No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.		

[07/20/95; 20.2.74.503 NMAC - Rn, 20 NMAC 2.74 Table 3, 10/31/02; A, 1/22/06; A, 8/31/09; A, XX,XX,XX]

These proposed revisions to Table 3 (20.2.74.503 NMAC), in conjunction with the proposed amendments to 20.2.74.306 NMAC, would adopt EPA's Significant Monitoring Concentration for the purpose of exempting sources from monitoring requirements, in accordance with 40 CFR 51.166(i)(5)(i).

20.2.74.504 TABLE 4 - ALLOWABLE PSD INCREMENTS:

	Micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)		
	Class I	Class II	Class III
Nitrogen Dioxide annual arithmetic mean	2.5	25	50
Particulate Matter PM ₁₀ , annual arithmetic mean	4	17	34
PM ₁₀ , 24-hour maximum	8 ^a	30 ^a	60 ^a
<u>PM_{2.5} annual arithmetic mean</u>	<u>1</u>	<u>4</u>	<u>8</u>
<u>PM_{2.5} 24-hour maximum</u>	<u>2^a</u>	<u>9^a</u>	<u>18^a</u>
Sulfur Dioxide annual arithmetic mean	2	20	40
24-hour maximum	5 ^a	91 ^a	182 ^a
3-hour maximum	25 ^a	512 ^a	700 ^a
a - Not to be exceeded more than once a year.			

[07/20/95; 20.2.74.504 NMAC - Rn, 20 NMAC 2.74 Table 4, 10/31/02; A, XX/XX/XX]

These proposed amendments to Table 4 (20.2.74.504 NMAC) would adopt the allowable PSD increments (i.e., increases over baseline concentrations) as revised by the EPA to add increments for PM_{2.5} at 40 CFR 51.166(c)(1). See 75 Fed. Reg. at 64903.

20.2.74.505 TABLE 5 - MAXIMUM ALLOWABLE INCREASES FOR CLASS I WAIVERS:

	Micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)
Nitrogen Dioxide annual arithmetic mean	25
Particulate Matter PM ₁₀ , annual arithmetic mean	17
PM ₁₀ , 24-hour maximum	30
<u>PM_{2.5}, annual arithmetic mean</u>	<u>4</u>
<u>PM_{2.5}, 24-hour maximum</u>	<u>9</u>

Sulfur Dioxide	
annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325

These proposed amendments to Table 5 (20.2.74.505 NMAC) would adopt the maximum increases allowable under a Class I variance, as amended by the EPA to include values for PM_{2.5}, promulgated at 40 CFR 51.166(p)(4). See 75 Fed. Reg. 64904.

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

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.

* * *

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; or
- (3) any pollutant that is identified under this paragraph (Paragraph (3) of Subsection AJ of 20.2.74.7 NMAC) as a constituent or precursor of a general pollutant listed in Paragraphs (1) or (2) of this subsection, provided that such a 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 PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in nonattainment major NSR permits. Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

* * *

This proposed modification to the definition of "regulated new source review pollutant" would define the pollutants to be regulated as precursors to PM_{2.5}, in accordance with 40 CFR 51.165(a)(1)(xxxvii)(C). See 73 Fed. Reg. at 28347.

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; PM₁₀ 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 20.2.74.7 NMAC.

* * *

This proposed revision to the definition of "Significant" would adopt the definition of "significant," with respect to a net increase in emissions, as promulgated by the EPA at 40 CFR 51.165(a)(1)(x)(A). See 73 Fed. Reg. at 28347.

20.2.79.109 APPLICABILITY

* * *

F. Except as otherwise provided in Paragraph (6) under this subsection (Subsection F of 20.2.79.109 NMAC), [The] the following specific provisions apply with respect to any regulated NSR pollutant emitted from [tø] 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.

These proposed amendments to 20.2.79.109 NMAC would implement EPA's revised policy on recordkeeping by facilities to document whether there exists a reasonable possibility of triggering NSR Permit requirement, in accordance with 40 CFR 51.165(a)(6). See 72 Fed. Reg. at 72616. This revision responds to a vacature of EPA's prior "reasonable possibility" rule by the U.S. Court of Appeals for the D.C. Circuit in New York v. EPA, 413 F.3d. 3 (2005).

* * *

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

* * *

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, XX/XX/XX]

* * *

Subsections I & N of Section 20.2.79.109 NMAC would be added to govern the use of offsets in non-attainment areas with respect to PM_{2.5}, in accordance with Subsections IV.G 1. & 5. of Appendix S to 40 CFR Part 51. See 73 Fed. Reg. at 28349.

20.2.79.119 TABLES:

A. Significant Ambient Concentrations:

Pollutant	[Concentration in micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) or milligrams per cubic meter (mg/m^3)]				
	Averaging Time				
	Annual	24-hr	8-hr	3-hr	1-hr
Sulfur Dioxide	1.0 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	--	25 $\mu\text{g}/\text{m}^3$	--
PM ₁₀	1.0 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	--	--	--
<u>PM_{2.5}</u>	<u>0.3 $\mu\text{g}/\text{m}^3$</u>	<u>1.2 $\mu\text{g}/\text{m}^3$</u>			
Nitrogen Dioxide	1.0 $\mu\text{g}/\text{m}^3$	--	--	--	--
Carbon Monoxide	--	--	0.5 mg/m^3	--	2 mg/m^3

These revisions to 20.2.79.119.A NMAC would revise the Significant Ambient Concentrations (defining "cause or contribute" to a violation of a national ambient air quality standards for purposes of determining whether an NSR permit is required) to add values for PM_{2.5} in accordance with EPA's amendments to 40 CFR 51.165(b)(2). See 75 Fed. Reg. 64902.

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 2 AIR QUALITY (STATEWIDE)**
3 **PART 79 PERMITS - NONATTAINMENT AREAS**
4

5 **20.2.79.1 ISSUING AGENCY:** Environmental Improvement Board.
6 [11/30/95; 20.2.79.1 NMAC - Rn, 20 NMAC 2.79.100, 10/31/02]
7

8 **20.2.79.2 SCOPE:** All persons who intend to construct or modify a source, except as otherwise provided by
9 this Part.
10 [11/30/95; 20.2.79.2 NMAC - Rn, 20 NMAC 2.79.101, 10/31/02]
11

12 **20.2.79.3 STATUTORY AUTHORITY:** Environmental Improvement Act, NMSA 1978, section 74-1-
13 8(A)(4), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, sections 74-2-
14 5(C)(1) and 74-2-7(A)(1), (B), (C) and (D).
15 [11/30/95; 20.2.79.3 NMAC - Rn, 20 NMAC 2.79.102, 10/31/02]
16

17 **20.2.79.4 DURATION:** Permanent.
18 [11/30/95; 20.2.79.4 NMAC - Rn, 20 NMAC 2.79.103, 10/31/02]
19

20 **20.2.79.5 EFFECTIVE DATE:** November 30, 1995 except where a later date is cited at the end of a
21 section or paragraph.
22 [11/30/95; A, 10/01/97; 20.2.79.5 NMAC - Rn, 20 NMAC 2.79.104, 10/31/02]
23 [The latest effective date of any section in this Part is 08/31/09.]
24

25 **20.2.79.6 OBJECTIVE:** The objective of this Part is to establish the requirements for obtaining a
26 nonattainment area permit.
27 [11/30/95; 20.2.79.6 NMAC - Rn, 20 NMAC 2.79.105, 10/31/02]
28

29 **20.2.79.7 DEFINITIONS.** In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this
30 part, the following terms apply.

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

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

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

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

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

47 **C. "Adverse impact on visibility"** means visibility impairment which interferes with the
48 management, protection, preservation, or enjoyment of the visitor's visual experience of the mandatory federal class
49 I area. This determination must be made on a case-by-case basis taking into account the geographic extent,
50 intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with: 1) times
51 of visitor use of the mandatory federal class I area; and 2) the frequency and timing of natural conditions that reduce
52 visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 Definitions.

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

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

- 1 (2) any applicable state implementation plan emissions limitation including those with a future
2 compliance date; or
3 (3) the emissions rate specified as a federally enforceable permit condition, including those with a
4 future compliance date.

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

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

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

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

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

21 (d) The average rate shall not be based on any consecutive 24-month period for which there is
22 inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required
23 by Subparagraph (b) of Paragraph (1) of this subsection.

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

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

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

36 (c) The average rate shall be adjusted downward to exclude any emissions that would have
37 exceeded an emission limitation with which the major stationary source must currently comply, had such major
38 stationary source been required to comply with such limitations during the consecutive 24-month period. However,
39 if an emission limitation is part of a maximum achievable control technology standard that the administrator
40 proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has
41 taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the
42 requirements of Subsection D of 20.2.79.115 NMAC.

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

47 (e) The average rate shall not be based on any consecutive 24-month period for which there is
48 inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required
49 by Subparagraphs (b) and (c) of Paragraph (2) of this subsection.

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

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

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

3 **F. "Begin actual construction"** means in general, initiation of physical on-site construction
4 activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to,
5 installation of building support and foundations, laying of underground pipework, and construction of permanent
6 storage structures. With respect to a change in method of operating this term refers to those on-site activities other
7 than preparatory activities which mark the initiation of the change.

8 **G. "Best available control technology (BACT)"** means an emissions limitation (including a visible
9 emissions standard) based on the maximum degree of reduction for each regulated new source review pollutant
10 which would be emitted from any proposed major stationary source or major modification which the department, on
11 a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines
12 is achievable for such source or modification through application of production processes or available methods,
13 systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques
14 for control of such pollutant. In no event shall application of best available control technology result in emissions of
15 any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 or 61. If
16 the department determines that technological or economic limitations on the application of measurement
17 methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design,
18 equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the
19 requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions
20 reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for
21 compliance by means which achieve equivalent results.

22 **H. "Building, structure, facility, or installation"** means all of the pollutant-emitting activities
23 which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are
24 under the control of the same person (or persons under common control). Pollutant-emitting activities shall be
25 considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the
26 same two-digit code) as described in the standard industrial classification manual, 1972, as amended by the 1977
27 supplement (U.S. government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively).

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

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

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

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

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

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

43 **M. "Continuous parameter monitoring system" (CPMS)** means all of the equipment necessary to
44 meet the data acquisition and availability requirements of this section, to monitor process and control device
45 operational parameters (for example, control device secondary voltages and electric currents) and other information
46 (for example, gas flow rate, oxygen or carbon dioxide concentrations), and to record average operational parameter
47 value(s) on a continuous basis.

48 **N. "Electric utility steam generating unit"** means any steam electric generating unit that is
49 constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than
50 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam
51 distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical
52 energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

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

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

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

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

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

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

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

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

16 (1) the most stringent emissions limitation which is contained in the implementation plan of any state
17 for such class or category of stationary source, unless the owner or operator of the proposed stationary source
18 demonstrates that such limitations are not achievable; or

19 (2) the most stringent emissions limitation which is achieved in practice by such class or category of
20 stationary source; this limitation, when applied to a modification, means the lowest achievable emissions rate for the
21 new or modified emissions units within the stationary source; in no event shall the application of this term permit a
22 proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an
23 applicable new source standard of performance.

24 U. "Major modification" means any physical change in or change in the method of operation of a
25 major stationary source that would result in a significant emissions increase of a regulated new source review
26 pollutant (as defined in this section); and a significant net emissions increase of that pollutant from the major
27 stationary source. Any significant emissions increase (as defined in this section) from any emissions units or net
28 emissions increase (as defined in this section) at a major stationary source that is significant for volatile organic
29 compounds or oxides of nitrogen shall be considered significant for ozone.

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

31 (a) routine maintenance, repair, and replacement;

32 (b) use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b)
33 of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of
34 a natural gas curtailment plan pursuant to the federal Power Act;

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

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

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

40 (i) the source was capable of accommodating before December 21, 1976, unless such
41 change would be prohibited under any federally enforceable permit condition which was established after December
42 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or

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

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

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

49 (h) the installation, operation, cessation, or removal of a temporary clean coal technology
50 demonstration project, provided that the project complies with the state implementation plan for the state in which is
51 project is located, and other requirements necessary to attain and maintain the national ambient air quality standards
52 during the project and after it is terminated.

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

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

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

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

11 (1) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year
12 or more of any regulated new source review pollutant, except that lower emissions thresholds shall apply in areas
13 subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the federal Clean Air Act, according to
14 Subparagraphs (a) through (f) of Paragraph (1) of Subsection V of 20.2.79.7 NMAC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **Z. "Net emissions increase".**

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

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

6 **(b)** any other increases and decreases in actual emissions at the major stationary source that are
7 contemporaneous with the particular change and are otherwise creditable; baseline actual emissions for calculating
8 increases and decreases shall be determined as provided in Subsection E of this section, except that Subparagraphs
9 (c) and (d) of Paragraph (2) of Subsection E of this section shall not apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

40 **AB. "Nonattainment major new source review (NSR) program"** means a major source
41 preconstruction permit program that has been approved by the administrator and incorporated into the New Mexico
42 state implementation plan to implement the requirements of 40 CFR 51.165, or a program that implements 40 CFR
43 Part 51, Appendix S, Sections I through VI. Any permit issued under such a program is a major new source review
44 permit.

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

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

49 **AE. "Potential to emit"** means the maximum capacity of a stationary source to emit a pollutant under
50 its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a
51 pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount
52 of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it
53 would have on emissions is federally enforceable.

54 **AF. "Predictive emissions monitoring system" (PEMS)** means all of the equipment necessary to
55 monitor process and control device operational parameters (for example, control device secondary voltages and

1 electric currents) and other information (for example, gas flow rate, oxygen or carbon dioxide concentrations), and
2 calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

3 **AG. "Prevention of significant deterioration (PSD) permit"** means any permit that is issued under
4 20.2.74 NMAC.

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

7 **AI. "Projected actual emissions"** means, the maximum annual rate, in tons per year, at which an
8 existing emissions unit is projected to emit a regulated new source review pollutant in any one of the 5 years (12-
9 month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years
10 following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of
11 that regulated new source review pollutant and full utilization of the unit would result in a significant emissions
12 increase or a significant net emissions increase at the major stationary source. In determining the projected actual
13 emissions before beginning actual construction, the owner or operator of the major stationary source:

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

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

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

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

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

28 (1) nitrogen oxides or any volatile organic compounds;

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

30 (3) any pollutant that is identified under this paragraph (Paragraph (3) of Subsection AJ of 20.2.74.7

31 NMAC) as a constituent or precursor of a general pollutant listed in Paragraphs (1) or (2) of this subsection,
32 provided that such a constituent or precursor pollutant may only be regulated under new source review as part of
33 regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the
34 following:

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

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

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

41 (d) volatile organic compounds and ammonia are presumed not to be precursors to PM_{2.5} in any
42 PM_{2.5} nonattainment area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that
43 emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to
44 that area's ambient PM_{2.5} concentrations; or

45 (4) PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity
46 which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date
47 established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be
48 accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in
49 nonattainment major NSR permits. Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to this
50 date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit
51 or the applicable implementation plan. Applicability determinations made prior to this date without accounting for
52 condensable particulate matter shall not be considered in violation of this section unless the applicable
53 implementation plan required condensable particulate matter to be included.

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

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

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

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

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

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

16 **AM. "Significant"** means:

17 (1) In reference to a net emissions increase or the potential of a source to emit any of the following
18 pollutants, a rate of emissions that would equal or exceed any of the following rates: carbon monoxide, 100 tons per
19 year; nitrogen oxides, 40 tons per year; sulfur dioxide, 40 tons per year; PM₁₀ emissions, 15 tons per year; ozone, 40
20 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}~~
21 emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a
22 PM_{2.5} precursor under Subsection AJ of 20.2.74.7 NMAC.

23 (2) Notwithstanding the significant emissions rate for ozone in Paragraph (1) of Subsection AM of
24 20.2.79.7 NMAC, significant means, in reference to an emissions increase or a net emissions increase, any increase
25 in actual emissions of volatile organic compounds that would result from any physical change in, or change in the
26 method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is
27 subject to subpart 2, part D, title I of the federal Clean Air Act, if such emissions increase of volatile organic
28 compounds exceeds 25 tons per year.

29 (3) For the purposes of applying the requirements of Subsection H of 20.2.79.109 NMAC to
30 modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone
31 transport region, the significant emission rates and other requirements for volatile organic compounds in Paragraphs
32 (1), (2), and (5) of Subsection AM of 20.2.79.7 NMAC shall apply to nitrogen oxides emissions.

33 (4) Notwithstanding the significant emissions rate for carbon monoxide under Paragraph (1) of
34 Subsection AM of 20.2.79.7 NMAC significant means, in reference to an emissions increase or a net emissions
35 increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or
36 change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide
37 if such increase equals or exceeds 50 tons per year, provided the U.S. environmental protection agency administrator
38 has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

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

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

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

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

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

52 [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, XX/XX/XX]

53
54 **20.2.79.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:** This Part amends and
55 supersedes Air Quality Control Regulation ("AQCR") 709 -- Permits -- Nonattainment Areas last filed June 25,
56 1992, as amended ("AQCR 709").

1 A. All references to AQCR 709 in any other rule shall be construed as a reference to this Part.
2 B. The amendment and supersession of AQCR 709 shall not affect any administrative or judicial
3 enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant
4 to AQCR 709.
5 [11/30/95; 20.2.79.8 NMAC - Rn, 20 NMAC 2.79.106, 10/31/02]

6
7 **20.2.79.9 DOCUMENTS:** Documents cited in this Part may be viewed at the New Mexico Environment
8 Department, Air Quality Bureau, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM 87505 [2048
9 Galisteo St., Santa Fe, NM 87505].
10 [11/30/95; 20.2.79.9 NMAC - Rn, 20 NMAC 2.79.108, 10/31/02]

11
12 **20.2.79.10 SEVERABILITY.** If any provision of this part, or the application of such provision to any person
13 or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or
14 circumstances other than those as to which it is held invalid, shall not be affected thereby.
15 [20.2.79.10 NMAC - N, 1/22/06]

16
17 **20.2.79.11 CONSTRUCTION.** This part shall be liberally construed to carry out its purpose.
18 [20.2.79.11 NMAC - N, 1/22/06]

19
20 **20.2.79.12 SAVINGS CLAUSE.** Repeal or supersession of prior versions of this part shall not affect any
21 administrative or judicial action initiated under those prior versions.
22 [20.2.79.12 NMAC - N, 1/22/06]

23
24 **20.2.79.13 COMPLIANCE WITH OTHER REGULATIONS.** Compliance with this part does not relieve
25 a person from the responsibility to comply with any other applicable federal, state, or local regulations.
26 [20.2.79.13 NMAC - N, 1/22/06]

27
28 **20.2.79.14 LIMITATION OF DEFENSE.** The existence of a valid permit under this part shall not constitute
29 a defense to a violation of any section of this part, except the requirement for obtaining a permit.
30 [20.2.79.14 NMAC - N, 1/22/06]

31
32 **20.2.79.15 to 20.2.79.108 [RESERVED]**

33
34 **20.2.79.109 APPLICABILITY.**

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

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

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

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

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

51 D. Other requirements.

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

56 (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] the following specific provisions apply with respect to any regulated NSR pollutant emitted from [tø] 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

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

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

8 (3) The owner or operator shall monitor the emissions of any regulated new source review pollutant
9 that could increase as a result of the project and that is emitted by any emissions units identified in Subparagraph (b)
10 of Paragraph (1) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on
11 a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a
12 period of 10 years following resumption of regular operations after the change if the project increases the design
13 capacity or potential to emit of that regulated new source review pollutant at such emissions unit.

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

18 (5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or
19 operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified
20 in Paragraph (1) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to
21 Subparagraph (c) of Paragraph (1) of this subsection, by a significant amount (as defined in Subsection AM of
22 20.2.79.7 NMAC) for that regulated new source review pollutant, and if such emissions differ from the
23 preconstruction projection as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this
24 subsection. Such report shall be submitted to the department within 60 days after the end of such year. The report
25 shall contain the following:

26 (a) the name, address and telephone number of the major stationary source;
27 (b) the annual emissions as calculated pursuant to Paragraph (3) of this subsection; and
28 (c) any other information that the owner or operator wishes to include in the report (e.g., an
29 explanation as to why the emissions differ from the preconstruction projection).

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

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

35 (b) a projected actual emissions increase that, added to the amount of emissions excluded under
36 Subparagraph (3) of Subsection AI of 20.2.79.7 NMAC, sums to at least 50 percent of the amount that is a
37 "significant emissions increase," as defined under Subsection AN of 20.2.79.7 NMAC (without reference to the
38 amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a
39 reasonable possibility occurs only within the meaning of Subparagraph (b) of Paragraph (6) of Subsection F of
40 20.2.79.109 NMAC, and not also within the meaning of Subparagraph (a) of Paragraph (6) of Subsection F of
41 20.2.79.109 NMAC, then provisions Paragraphs (2) through (5) under this subsection (Subsection F of 20.2.79.109
42 NMAC) do not apply to the project.

43 G. The owner or operator of the source shall make the information required to be documented and
44 maintained pursuant to Subsection F of this section (20.2.79.109 NMAC) available for review upon a request for
45 inspection by the department or the general public pursuant to the requirements contained in 40 CFR
46 70.4(b)(3)(viii).

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

53 I. In meeting the emissions offset requirements of 20.2.79.115 NMAC, the ratio of total actual
54 emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the
55 applicable nonattainment area in Subsections J through N of 20.2.79.109 NMAC

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

- 4 (1) in any marginal nonattainment area for ozone, at least 1.1:1;
- 5 (2) in any moderate nonattainment area for ozone, at least 1.15:1;
- 6 (3) in any serious nonattainment area for ozone, at least 1.2:1;
- 7 (4) in any severe nonattainment area for ozone, at least 1.3:1 (except that the ratio may be at least
8 1.2:1 if the approved state implementation plan also requires all existing major sources in such nonattainment area to
9 use BACT for the control of VOC); and
- 10 (5) in any extreme nonattainment area for ozone, at least 1.5:1 (except that the ratio may be at least
11 1.2:1 if the approved state implementation plan also requires all existing major sources in such nonattainment area to
12 use BACT for the control of VOC).

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

18 **K.L.** Meeting the emissions offset requirements of 20.2.79.115 NMAC for ozone nonattainment areas
19 that are subject to subpart 1, part D, title I of the clean air act, including 8-hour ozone nonattainment areas subject to
20 40 CFR 51.902(b), the ratio of total actual emissions increase of VOC shall be at least 1:1.

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

25 **N.** In meeting the emissions offset requirements of 20.2.79.115 NMAC, the emissions offsets
26 obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular
27 pollutant as specified in this paragraph. The department may allow the offset requirements in 20.2.79.115 NMAC
28 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}
29 emissions or emissions of any PM_{2.5} precursor identified under Subsection AJ of 20.2.79.7 NMAC if such offsets
30 comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular
31 nonattainment area.

32 [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, XX/XX/XX]

34 **20.2.79.110 SOURCE OBLIGATION:**

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

38 **B.** The issuance of a permit by the Department shall not relieve any owner or operator of the
39 responsibility to comply with the provisions of the Air Quality Control Act, sections 74-2-1 to 74-2-17, NMSA
40 1978, any applicable regulations of the Board, and any other requirements under local, state, or federal law.

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

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

49 **E.** For phased construction projects, the determination of the lowest achievable emission rate shall be
50 reviewed and modified as appropriate at the latest reasonable time but no later than 18 months prior to
51 commencement of construction of each independent phase of the project. At such time, the owner or operator of the
52 applicable stationary source may be required to demonstrate the adequacy of any previous determination of lowest
53 achievable emission rate.

54 **F.** If the owner or operator previously issued a permit under this Part applies for an extension as
55 provided for under subsection D of 20.2.79.110 NMAC, and the new proposed date of construction is greater than
56 18 months from the date the permit would become invalid, the determination of lowest achievable emission rate

1 shall be reviewed and modified as appropriate before such an extension is granted. At such time, the owner or
2 operator may be required to demonstrate the adequacy of any previous determination of lowest achievable emission
3 rate.

4 [11/30/95; 20.2.79.110 NMAC - Rn, 20 NMAC 2.79.110, 10/31/02]

5
6 **20.2.79.111 APPLICATION CONTENTS:** The owner or operator of a proposed major stationary source or
7 major modification shall submit all information necessary to perform any analysis or make any determination
8 required under this Part. The items of this section are required before the Department may deem an application
9 administratively complete. All applications shall include:

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

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

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

15 [11/30/95; A, 01/01/00; 20.2.79.111 NMAC - Rn, 20 NMAC 2.79.111, 10/31/02]

16
17 **20.2.79.112 SOURCE REQUIREMENTS:** In order for a permit to be granted, all of the following
18 conditions shall be met:

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

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

26 C. Emission Reductions:

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

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

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

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

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

49 [11/30/95; A, 10/01/97; 20.2.79.112 NMAC - Rn, 20 NMAC 2.79.112, 10/31/02]

50
51 **20.2.79.113 ADDITIONAL REQUIREMENTS FOR SOURCES IMPACTING MANDATORY
52 FEDERAL CLASS I AREAS:**

53 A. The requirements of this section apply only to proposed major stationary sources or major
54 modifications that meet the criteria of paragraph (1) of subsection A of 20.2.79.109 NMAC and that also are major
55 stationary sources or major modifications as defined in 20.2.74 NMAC. A major stationary source or major

1 modification which meets the criteria of paragraph (2) of subsection A of 20.2.79.109 NMAC may be subject to
2 requirements for Federal Class I Areas in 20.2.74 NMAC if that Part applies.

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

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

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

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

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

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

33 **F.** In making its determination as to whether or not to issue a permit, the Department shall ensure that
34 the source's emissions will be consistent with making reasonable progress toward the national visibility goal of
35 preventing any future impairment of visibility in mandatory Federal Class I areas. The Department may take into
36 account the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental
37 impacts of compliance, and the useful life of the source.

38 [11/30/95; 20.2.79.113 NMAC - Rn, 20 NMAC 2.79.113, 10/31/02]

39
40 **20.2.79.114 EMISSION OFFSET BASELINE:** The baseline for determining credit for emission offsets
41 shall be the most stringent emissions limitation pursuant to a New Mexico air quality regulation or federally
42 enforceable permit which is applicable and in effect at the time the application to construct is filed. If neither a state
43 air quality regulation nor a federally enforceable permit contains an emissions limitation for the source, the baseline
44 shall be the actual emissions of the source from which offset credit is obtained. Where a source is subject to an
45 emission standard established in a New Source Performance Standard (NSPS) or a National Emission Standard for
46 Hazardous Air Pollutants (NESHAPS) and a different State Implementation Plan or permit limitation, including any
47 emission limitation used in demonstrating reasonable further progress, the more stringent emission standard shall be
48 used as the baseline for determining credit for emission offsets.

49 [11/30/95; 20.2.79.114 NMAC - Rn, 20 NMAC 2.79.114, 10/31/02]

50
51 **20.2.79.115 EMISSION OFFSETS.** All emission offsets approved by the department shall meet the
52 following criteria.

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

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

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

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

12 **E.** No emissions reduction credit shall be allowed for replacing one volatile organic compound with
13 another of lesser reactivity, except as approved by the U.S. EPA reactivity guidance found at 42 *federal register*
14 35314, (1977), and any amendments thereto.

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

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

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

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

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

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

- 41 **(1)** a detailed description of the process to be controlled and the control technology to be used; and
42 **(2)** emission calculations showing the types and amounts of actual emissions to be reduced; and
43 **(3)** the effective date of the reduction.

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

48 **K.** The total tonnage of increased emissions, in tons per year, resulting from a major modification that
49 must be offset in accordance with Section 173 of the federal Clean Air Act shall be determined by summing the
50 difference between the allowable emissions after the modification and the actual emissions before the modification
51 for each emissions unit.

52 [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]

53
54 **20.2.79.116 BANKING OF EMISSION REDUCTION:**

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

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

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

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

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

10 C. The Department shall:

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

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

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

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

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

20 D. Use and Sale of Emission Reductions.

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

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

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

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

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

32
33 **20.2.79.117 AIR QUALITY BENEFIT:** All demonstrations of the occurrence of a net air quality benefit
34 shall meet the following criteria:

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

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

44 [11/30/95; 20.2.79.117 NMAC - Rn, 20 NMAC 2.79.117, 10/31/02]

45
46 **20.2.79.118 PUBLIC PARTICIPATION AND NOTIFICATION:**

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

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

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

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

- 1 **B.** The Department shall:
- 2 (1) Make a preliminary determination whether construction should be approved, approved with
- 3 conditions, or disapproved.
- 4 (2) Make available at the Department, district and local office nearest to the proposed source a copy
- 5 of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other
- 6 materials, if any, considered in making the preliminary determination.
- 7 (3) Notify the public by advertisement in a newspaper of general circulation in the area in which the
- 8 proposed major stationary source or major modification would be constructed, of the application, the preliminary
- 9 determination, and of the opportunity for comment at a public hearing as well as written public comment. The
- 10 public comment period shall be for forty-five days from the date of such advertisement.
- 11 (4) Send a copy of the notice of public comment to the applicant, the Administrator, and to officials
- 12 and agencies having jurisdiction over the location where the proposed construction would occur as follows: any
- 13 other state or local air pollution control agencies, the chief executives of the city and county where the source would
- 14 be located, any regional comprehensive land use planning agency, and any state, federal land manager, or Indian
- 15 governing body whose lands may be affected by emissions from the source or modification.
- 16 (5) Provide opportunity for a public hearing for interested persons to appear and submit written or
- 17 oral comments on the air quality impact of the source and other appropriate considerations. Public hearings shall be
- 18 held in the geographic area likely to be impacted by the source.
- 19 (6) Consider all written comments submitted within a time specified in the notice of public comment
- 20 and all comments received at any public hearing(s) in making a final decision on the approvability of the
- 21 application. The Department shall make all comments available for public inspection in the same locations where
- 22 the Department made available preconstruction information relating to the source.
- 23 (7) Within ninety (90) days after the application is deemed administratively complete, unless the
- 24 Secretary grants an extension, as specified in 20.2.72.207 NMAC, not to exceed ninety (90) days for good cause:
- 25 (a) make a final determination whether construction should be approved, approved with
- 26 conditions, or disapproved, or whether no permit is required; and
- 27 (b) notify the applicant in writing of the final determination and make such notification
- 28 available for public inspection at the same location where the Department made available preconstruction
- 29 information and public comments relating to the source.
- 30 [11/30/95; A, 01/01/00; 20.2.79.118 NMAC - Rn, 20 NMAC 2.79.118, 10/31/02]

31

32 **20.2.79.119 TABLES:**

33 **A.** Significant Ambient Concentrations:

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

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

- 35
- 36 **B.** Fugitive Emissions Source Categories:
- 37 (1) Carbon black plants (furnace process);
- 38 (2) Charcoal production plants;
- 39 (3) Chemical process plants;
- 40 (4) Coal cleaning plants (with thermal dryers);
- 41 (5) Coke oven batteries;
- 42 (6) Fossil fuel-fired steam electric plants of more than 250 million Btu/hr heat input;
- 43 (7) Fossil fuel boiler (or combination thereof) totaling more than 50 million Btu/hr heat input;
- 44 (8) Fuel conversion plants;
- 45 (9) Glass fiber processing plants;
- 46 (10) Hydrofluoric acid plants;
- 47 (11) Iron and steel mill plants;

- 1 (12) Kraft pulp mills;
- 2 (13) Lime plants;
- 3 (14) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- 4 (15) Nitric acid plants;
- 5 (16) Petroleum refineries;
- 6 (17) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- 7 (18) Phosphate rock processing plants;
- 8 (19) Portland cement plant;
- 9 (20) Primary lead smelters;
- 10 (21) Primary zinc smelters;
- 11 (22) Primary aluminum ore reduction plants;
- 12 (23) Primary copper smelters;
- 13 (24) Secondary metal production plants;
- 14 (25) Sintering plants;
- 15 (26) Sulfur recovery plants;
- 16 (27) Sulfuric acid plants;
- 17 (28) Taconite ore processing plants.

18 [11/30/95; 20.2.79.119 NMAC - Rn, 20 NMAC 2.79.119, 10/31/02; A, XX/XX/XX]

19
20 **20.2.79.120 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALs).**

21 **A. Applicability.**

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

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

27 (3) Any physical change in or change in the method of operation of a major stationary source that
28 maintains its total source-wide emissions below the PAL level, meets the requirements of this section, and complies
29 with the PAL permit:

30 (a) is not a major modification for the PAL pollutant;

31 (b) does not have to be approved through the requirements of this part; and

32 (c) is not subject to the provisions in 20.2.79.110 NMAC (restrictions on relaxing enforceable
33 emission limitations that the major stationary source used to avoid applicability of the nonattainment major new
34 source review program).

35 (4) Except as provided under Subparagraph (c) of Paragraph (3) of this subsection, a major stationary
36 source shall continue to comply with all applicable federal or state requirements, emission limitations, and work
37 practice requirements that were established prior to the effective date of the PAL.

38 **B. Definitions.** When a term is not defined in this subsection, it shall have the meaning given in
39 20.2.79.7 NMAC or in 20.2.2 NMAC.

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

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

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

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

48 (3) Small emissions unit means an emissions unit that emits or has the potential to emit the PAL
49 pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subsection AM of
50 20.2.79.7 NMAC or in the federal Clean Air Act, whichever is lower.

51 (4) Major emissions unit means:

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

54 (b) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount
55 that is equal to or greater than the major source threshold for the PAL pollutant as defined by the federal Clean Air
56 Act for nonattainment areas; for example, in accordance with the definition of major stationary source in Section

1 182 (c) of the federal Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions
2 unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC
3 per year.

4 (5) Plantwide applicability limitation (PAL) means an emission limitation expressed in tons per year,
5 for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in
6 accordance with this section.

7 (6) PAL effective date generally means the date of issuance of the PAL permit. However, the PAL
8 effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification
9 becomes operational and begins to emit the PAL pollutant.

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

12 (8) PAL major modification means, notwithstanding the definitions for major modification and net
13 emissions increase in 20.2.79.7 NMAC, any physical change in or change in the method of operation of the PAL
14 source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

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

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

20 (11) Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL
21 pollutant in an amount that is equal to or greater than the significant level (as defined in Subsection AM of 20.2.79.7
22 NMAC or in the federal Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that
23 would qualify the unit as a major emissions unit as defined in Paragraph (4) of Subsection B of this section.

24 **C. Permit application requirements.** As part of a permit application requesting a PAL, the owner or
25 operator of a major stationary source shall submit the following information to the department for approval.

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

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

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

35 **D. General requirements for establishing PALs.**

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

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

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

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

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

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

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

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

55 (2) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant,
56 which occur during the PAL effective period, creditable as decreases for purposes of offsets under 20.2.79.115

1 NMAC unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions
2 would be creditable in the absence of the PAL.

3 **E. Public participation requirement for PALs.** PALs for existing major stationary sources shall be
4 established, renewed, or increased through a procedure that is consistent with 40 CFR 51.160 and 161. This includes
5 the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at
6 least a 30-day period for submittal of public comment. The department shall address all material comments before
7 taking final action on the permit.

8 **F. Setting the 10-year actuals PAL level.**

9 (1) Except as provided in Paragraph (2) of this subsection, the actuals PAL level for a major
10 stationary source shall be established as the sum of the baseline actual emissions (as defined in 20.2.79.7 NMAC) of
11 the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for
12 the PAL pollutant under 20.2.79.7 NMAC or under the act, whichever is lower. When establishing the actuals PAL
13 level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual
14 emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each
15 different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period
16 must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL
17 permit to become effective on the future compliance date(s) of any applicable federal or state regulatory
18 requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner
19 or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm
20 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
21 current PAL level reduced by half of the original baseline emissions of such unit(s).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50 (2) Reopening of the PAL permit.

51 (a) During the PAL effective period, the department shall reopen the PAL permit to:

52 (i) correct typographical/calculation errors made in setting the PAL or reflect a more
53 accurate determination of emissions used to establish the PAL;

54 (ii) reduce the PAL if the owner or operator of the major stationary source creates
55 creditable emissions reductions for use as offsets under 20.2.79.115 NMAC; or

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

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

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

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

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

12 (c) Except for the permit reopening in Item (i) of Subparagraph (a) of this paragraph for the
13 correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried
14 out in accordance with the public participation requirements of Subsection E of this section.

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

18 (1) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply
19 with an allowable emission limitation under a revised permit established according to the following procedures.

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

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

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

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

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

40 (5) The major stationary source owner or operator shall continue to comply with any New Mexico or
41 federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective
42 period or prior to the PAL effective period except for those emission limitations that had been established pursuant
43 to 20.2.79.109 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of
44 Paragraph (3) of Subsection A of this section.

45 **J. Renewal of a PAL.**

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

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

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

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

4 (b) A proposed PAL level.

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

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

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

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

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

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

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

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

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

26 (5) If the compliance date for a New Mexico or federal requirement that applies to the PAL source
27 occurs during the PAL effective period, and if the department has not already adjusted for such requirement, the
28 PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

29 **K. Increasing a PAL during the PAL effective period.**

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

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

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

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

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

52 (2) The department shall calculate the new PAL as the sum of the allowable emissions for each
53 modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions
54 units (assuming application of BACT equivalent controls as determined in accordance with Subparagraph (b) of
55 Paragraph (1) of Subsection K of this section), plus the sum of the baseline actual emissions of the small emissions
56 units.

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

3 **L. Monitoring requirements for PALs.**

4 (1) General Requirements.

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

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

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

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

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

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

21 (b) CEMS;

22 (c) CPMS or PEMS; and

23 (d) emission factors.

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (c) if technically practicable, the owner or operator of a significant emissions unit that relies on
55 an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific

1 emission factor within 6 months of PAL permit issuance, unless the department determines that testing is not
2 required.

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

7 (8) Notwithstanding the requirements in Paragraphs (3) through (7) of this subsection, where an
8 owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the
9 PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit
10 issuance:

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

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

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

18 **M. Recordkeeping requirements.**

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

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

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

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

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

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

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

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

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

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

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

41 (f) A notification of a shutdown of any monitoring system, whether the shutdown was
42 permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully
43 operational or replaced with another monitoring system, and whether the emissions unit monitored by the
44 monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number
45 determined by method included in the permit, as provided by Paragraph (7) of Subsection L of this section.

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

48 (2) Deviation report. The major stationary source owner or operator shall promptly submit reports of
49 any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report
50 submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall
51 be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B).
52 The reports shall contain the following information:

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

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

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

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

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

5 **O. Transition requirements.**

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

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

10 [20.2.79.120 NMAC - N, 1/22/06]

11
12 **HISTORY OF 20.2.79 NMAC:**

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

15 EIB/AQCR 709, Air Quality Control Regulation 709 - Permits - Nonattainment Areas, 07/26/85;

16 EIB/AQCR 709, Air Quality Control Regulation 709 - Permits - Nonattainment Areas, 07/16/86;

17 EIB/AQCR 709, Air Quality Control Regulation 709 - Permits - Nonattainment Areas, 08/01/88;

18 EIB/AQCR 709, Air Quality Control Regulation 709 - Permits - Nonattainment Areas, 05/29/90;

19 EIB/AQCR 709, Air Quality Control Regulation 709 - Permits - Nonattainment Areas, 06/25/92.

20
21 **History of Repealed Material:** [RESERVED]

22
23 **Other History:**

24 EIB/AQCR 709, Air Quality Control Regulation 709 - Permits - Nonattainment Areas, filed 06/25/92 was

25 **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.79, Permits - Nonattainment
26 Areas, filed 10/30/95.

27 20 NMAC 2.79, Permits - Nonattainment Areas, filed 10/30/95 was **renumbered, reformatted and replaced by**

28 20.2.79 NMAC, Permits - Nonattainment Areas, effective 10/31/02.

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 2 AIR QUALITY (STATEWIDE)**
3 **PART 74 PERMITS - PREVENTION OF SIGNIFICANT DETERIORATION (PSD)**
4

5 **20.2.74.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board
6 [07/20/95; 20.2.74.1 NMAC - Rn, 20 NMAC 2.74.100, 10/31/02]
7

8 **20.2.74.2 SCOPE:** Any person constructing any new major stationary source or major modification as
9 defined in this Part, that emits or will emit regulated pollutants in an attainment or unclassified area.
10 [07/20/95; 20.2.74.2 NMAC - Rn, 20 NMAC 2.74.101, 10/31/02]
11

12 **20.2.74.3 STATUTORY AUTHORITY:** The Environmental Improvement Board "shall promulgate
13 regulations and standards in...air quality management" (NMSA 1978, section 74-1-8.A) and "the environmental
14 improvement board...shall adopt...regulations to attain and maintain national ambient air quality standards and
15 prevent or abate air pollution..." (NMSA 1978, section 74-2-5.B).
16 [07/20/95; 20.2.74.3 NMAC - Rn, 20 NMAC 2.74.102, 10/31/02]
17

18 **20.2.74.4 DURATION:** Permanent.
19 [07/20/95; 20.2.74.4 NMAC - Rn, 20 NMAC 2.74.103, 10/31/02]
20

21 **20.2.74.5 EFFECTIVE DATE:** July 20, 1995, except where a later date is cited at the end of a section or
22 paragraph.
23 [07/20/95; 01/01/00; 20.2.74.5 NMAC - Rn, 20 NMAC 2.74.104, 10/31/02]
24 [The latest effective date of any section in this Part is 08/31/09.]
25

26 **20.2.74.6 OBJECTIVE:** The purpose of this Part is to require any person constructing any new major
27 stationary source or major modification as defined in this Part, that emits or will emit regulated pollutants in an
28 attainment or unclassified area, to obtain a permit from the Department in accordance with the requirements of this
29 Part prior to the construction or modification.
30 [07/20/95; 20.2.74.6 NMAC - Rn, 20 NMAC 2.74.105, 10/31/02]
31

32 **20.2.74.7 DEFINITIONS:** Terms used but not defined in this part shall have the meaning given them by
33 20.2.2 NMAC (Definitions) (formerly AQCR 100). As used in this part the following definitions shall apply.

34 **A. "Act"** means the Federal Clean Air Act, as amended, 42 U. S. C. Sections 7401 et seq.

35 **B. "Actual emissions"** means the actual rate of emissions of a regulated new source review pollutant
36 from an emissions unit, as determined in accordance with Paragraphs (2) through (4) of this subsection.

37 (1) This definition shall not apply for calculating whether a significant emissions increase has
38 occurred, or for establishing a PAL under 20.2.74.320 NMAC. Instead, Subsections G and AR of this section shall
39 apply for those purposes.

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

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

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

50 **C. "Administrator"** means the administrator of the U.S. environmental protection agency (EPA) or
51 an authorized representative.

52 **D. "Adverse impact on visibility"** means visibility impairment which interferes with the
53 management, protection, preservation, or enjoyment of the visitor's visual experience of the class I federal area.
54 This determination must be made on a case-by-case basis taking into account the geographic extent, intensity,
55 duration, frequency, and time of the visibility impairments and how these factors correlate with the following: 1)

1 times of visitor use of the class I federal area; and 2) the frequency and timing of natural conditions that reduce
2 visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 Definitions.

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

6 (1) the applicable standards as set forth in 40 CFR Parts 60 and 61;

7 (2) the applicable state implementation plan emissions limitation, including those with a future
8 compliance date; or

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

11 **F. "Attainment area"** means, for any air pollutant, an area which is shown by monitored data or
12 which is calculated by air quality modeling not to exceed any national ambient air quality standard for such
13 pollutant, and is so designated under Section 107 (d) (1) (D) or (E) of the act.

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

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

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

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

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

30 (d) the average rate shall not be based on any consecutive 24-month period for which there is
31 inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required
32 by Subparagraph (b) of this paragraph.

33 (2) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual
34 emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during
35 any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding
36 either the date the owner or operator begins actual construction of the project, or the date a complete permit
37 application is received by the department for a permit required either under this part or under a plan approved by the
38 administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November
39 15, 1990.

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

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

45 (c) the average rate shall be adjusted downward to exclude any emissions that would have
46 exceeded an emission limitation with which the major stationary source must currently comply, had such major
47 stationary source been required to comply with such limitations during the consecutive 24-month period. However,
48 if an emission limitation is part of a maximum achievable control technology standard that the administrator
49 proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has
50 taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the
51 requirements of 40 CFR 51.165(a)(3)(ii)(G).

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

1 (e) the average rate shall not be based on any consecutive 24-month period for which there is
2 inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required
3 by Subparagraphs (b) and (c) of this paragraph.

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

7 (4) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing
8 electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of this
9 subsection, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of this
10 subsection, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of this
11 subsection.

12 **H. "Baseline area"** means all lands designated as attainment or unclassifiable in which the major
13 source or major modification establishing the minor source baseline date would construct or would have an air
14 quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than one
15 microgram per cubic meter (annual average) ~~[of the pollutant for which the minor source baseline date is~~
16 ~~established]~~ for sulfur dioxide, nitrogen dioxide, or PM₁₀; or equal or greater than 0.3 microgram per cubic meter
17 (annual average) for PM_{2.5}. The major source or major modification establishes the minor source baseline date (see
18 the definition "minor source baseline date" in this part). Lands are designated as attainment or unclassifiable under
19 Section 107(d)(1)(D) or (E)-(A)(ii) or (iii) of the act within each federal air quality control region in the state of
20 New Mexico. Any baseline area established originally for TSP (total suspended particulates) increments shall
21 remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments. A TSP
22 baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date (see
23 "minor source baseline date" in this part).

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

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

28 (a) the actual emissions, as defined in this section, representative of sources in existence on the
29 applicable minor source baseline date, except as provided in Paragraph (2) of this subsection;

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

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

34 (a) actual emissions, as defined in this section, from any major stationary source on which
35 construction commenced after the major source baseline date; and

36 (b) actual emissions increases and decreases, as defined in Subsection B of this section, at any
37 stationary source occurring after the minor source baseline date.

38 **J. "Begin actual construction"** means, in general, initiation of physical onsite construction
39 activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to,
40 installation of building supports and foundations, laying underground pipework and construction of permanent
41 storage structures. With respect to a change in method of operations, this term refers to those on-site activities other
42 than preparatory activities which mark the initiation of the change.

43 **K. "Best Available Control Technology (BACT)"** means an emissions limitation (including a
44 visible emission standard) based on the maximum degree of reduction for each regulated pollutant which would be
45 emitted from any proposed major stationary source or major modification, which the secretary determines is
46 achievable on a case-by-case basis. This determination will take into account energy, environmental, and economic
47 impacts and other costs. The determination must be achievable for such source or modification through application
48 of production processes or available methods, systems, and techniques, including fuel cleaning, clean fuels, or
49 treatment or innovative fuel combustion techniques for control of such pollutants. In no event shall application of
50 best available control technology result in emissions of any pollutant which would exceed the emissions allowed by
51 any applicable standard under 40 CFR Parts 60 and 61. If the department determines that technological or economic
52 limitations on the application of measurement methodology to a particular emissions unit would make the
53 imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or
54 combination thereof, may be prescribed instead to satisfy the requirement for the application of best available
55 control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by

1 implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means
2 which achieve equivalent results.

3 **L. "Building, structure, facility, or installation"** means all of the pollutant emitting activities
4 which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are
5 under the control of the same person (or persons under common control). Pollutant-emitting activities shall be
6 considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the
7 same first two digit code) as described in the standard industrial classification (SIC) manual, 1972, as amended by
8 the 1977 supplement (U. S. government printing office stock numbers 4101-0066 and 003-005-00176-0,
9 respectively) or any superseding SIC manual.

10 **M. "Class I federal area"** means any federal land that is classified or reclassified as "class I" as
11 described in 20.2.74.108 NMAC.

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

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

16 (2) Entered into binding agreements or contractual obligations, which cannot be cancelled or
17 modified without substantial loss to the owner or operator, to undertake and complete, within a reasonable time, a
18 program of actual construction.

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

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

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

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

32 **S. "Department"** means the New Mexico environment department.

33 **T. "Electric utility steam generating unit"** means any steam electric generating unit that is
34 constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than
35 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam
36 distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical
37 energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

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

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

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

45 **V. "Federal land manager"** means, with respect to any lands in the United States, a federal level
46 cabinet secretary of a federal level department (e.g. interior dept.) with authority over such lands.

47 **W. "Federally enforceable"** means all limitations and conditions which are enforceable by the
48 administrator, including:

49 (1) those requirements developed pursuant to 40 CFR Parts 60 and 61;

50 (2) requirements within any applicable state implementation plan;

51 (3) any permit requirements established pursuant to 40 CFR 52.21; or

52 (4) under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and
53 40 CFR 51.166.

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

1 **Y. "Greenhouse gas"** for the purpose of this part is defined as the aggregate group of the following
2 six gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

3 **Z. "High terrain"** means any area having an elevation nine hundred (900) feet or more above the
4 base of a source's stack.

5 **AA. "Indian governing body"** means the governing body of any tribe, band, or group of Indians
6 subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-
7 government.

8 **AB. "Innovative Control Technology"** means any system of air pollution control that has not been
9 adequately demonstrated in practice. But such system would have a substantial likelihood of achieving greater
10 continuous emissions reduction than any control system in current practice or achieving at least comparable
11 reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

12 **AC. "Low terrain"** means any area other than high terrain.

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

15 **(1)** the most stringent emissions limitation which is contained in the implementation plan of any state
16 for such class or category of stationary source, unless the owner or operator of the proposed stationary source
17 demonstrates that such limitations are not achievable; or

18 **(2)** the most stringent emissions limitation which is achieved in practice by such class or category of
19 stationary source; this limitation, when applied to a modification, means the lowest achievable emissions rate for the
20 new or modified emissions units within the stationary source. In no event shall the application of this term permit a
21 proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an
22 applicable new source standard of performance.

23 **AE. "Major modification"** means any physical change in or change in the method of operation of a
24 major stationary source that would result in: a significant emissions increase (as defined in of this section) of a
25 regulated new source review pollutant (as defined in this section); and a significant net emissions increase of that
26 pollutant from the major stationary source. Any significant emissions increase (as defined in this section) from any
27 emissions units or net emissions increase (as defined in this section) at a major stationary source that is significant
28 for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

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

30 **(a)** routine maintenance, repair, and replacement;

31 **(b)** use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b)
32 of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of
33 a natural gas curtailment plan pursuant to the Federal Power Act;

34 **(c)** use of an alternative fuel by reason of an order or rule under Section 125 of the act;

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

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

38 **(i)** the source was capable of accommodating before January 6, 1975, unless such change
39 would be prohibited under any federally enforceable permit condition which was established after January 6, 1975
40 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or

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

43 **(f)** an increase in the hours of operation or in the production rate, unless such change would be
44 prohibited under any federally enforceable permit which was established after January 6, 1975, pursuant to 40 CFR
45 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

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

47 **(h)** the installation, operation, cessation, or removal of a temporary clean coal technology
48 demonstration project, provided that the project complies with:

49 **(i)** the state implementation plan for the state in which the project is located; and

50 **(ii)** other requirements necessary to attain and maintain the national ambient air quality
51 standards during the project and after it is terminated.

52 **(i)** the installation or operation of a permanent clean coal technology demonstration project that
53 constitutes repowering, provided that the project does not result in an increase in the potential to emit of any
54 regulated pollutant emitted by the unit; this exemption shall apply on a pollutant-by-pollutant basis;

55 **(j)** the reactivation of a very clean coal-fired electric utility steam generating unit.

1 (2) This definition shall not apply with respect to a particular regulated new source review pollutant
2 when the major stationary source is complying with the requirements under 20.2.74.320 NMAC for a PAL for that
3 pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.2.74.320 NMAC shall apply.

4 **AF. "Major source baseline date" means:**

5 (1) In the case of [~~particulate matter~~] PM₁₀ and sulfur dioxide, January 6, 1975; [~~and~~]

6 (2) In the case of nitrogen dioxide, February 8, 1988[-]; and

7 (3) In the case of PM_{2.5}, October 20, 2010.

8 **AG. "Major stationary source" means the following.**

9 (1) Any stationary source listed in table 1 (20.2.74.501 NMAC) which emits, or has the potential to
10 emit, emissions equal to or greater than one hundred (100) tons per year of any regulated new source review
11 pollutant.

12 (2) Any stationary source not listed in table 1 (20.2.74.501 NMAC) and which emits or has the
13 potential to emit two hundred fifty (250) tons per year or more of any regulated new source review pollutant.

14 (3) Any physical change that would occur at a stationary source not otherwise qualifying under
15 Paragraphs (1) or (2) of this subsection if the change would constitute a major stationary source by itself.

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

18 (5) The fugitive emissions of a stationary source shall not be included in determining for any of the
19 purposes of this section whether it is a major stationary source, unless the source belongs to one of the stationary
20 source categories found in Table 1 (20.2.74.501 NMAC) or any other stationary source category which, as of August
21 7, 1980, is being regulated under Section 111 or 112 of the act.

22 **AH. "Mandatory class I federal area" means any area identified in the Code of Federal Regulations**
23 **(CFR), 40 CFR Part 81, Subpart D. See 20.2.74.108 NMAC for a list of these areas in New Mexico.**

24 **AI. "Minor source baseline date" means the earliest date after the trigger date on which the owner or**
25 **operator of a major stationary source or major modification subject to 40 CFR 52.21 or to this part submits a**
26 **complete application under the relevant regulations.**

27 (1) The trigger date is:

28 (a) in the case of [~~particulate matter~~] PM₁₀ and sulfur dioxide, August 7, 1977; [~~and~~]

29 (b) in the case of nitrogen dioxide, February 8, 1988[-]; and

30 (c) in the case of PM_{2.5}, October 20, 2010.

31 (2) Any minor source baseline date established originally for the TSP (total suspended particulates)
32 increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10
33 increments. The department may rescind any TSP minor source baseline date where it can be shown, to the
34 department's satisfaction, that the emissions increase from the major stationary source, or the net emissions increase
35 from the major modification, responsible for triggering that date, did not result in a significant amount of PM-10
36 emissions.

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

39 **AK. "Necessary preconstruction approvals or permits" means those permits or approvals required**
40 **under federal air quality control laws and regulations and those air quality control laws and regulations which are**
41 **part of the New Mexico state implementation plan.**

42 **AL. "Net emissions increase" means, with respect to any regulated new source review pollutant**
43 **emitted by a major stationary source, the following.**

44 (1) The amount by which the sum of the following exceeds zero.

45 (a) the increase in emissions from a particular physical change or change in the method of
46 operation at a stationary source as calculated pursuant to Subsection D of 20.2.74.200 NMAC.

47 (b) any other increases and decreases in actual emissions at the major stationary source that are
48 contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating
49 increases and decreases under this paragraph shall be determined as provided in Subsection G, except that
50 Subparagraph (c) of Paragraph (1) and Subparagraph (d) of Paragraph (2) of Subsection G of this section shall not
51 apply.

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

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

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

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

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

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

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

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

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

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

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

21 (8) Paragraph (2) of Subsection B of this section shall not apply for determining creditable increases
22 and decreases.

23 **AM. "Nonattainment area"** means an area which has been designated under Section 107 of the
24 Federal Clean Air Act as nonattainment for one or more of the national ambient air quality standards by EPA.

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

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

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

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

39 **AR. "Projected actual emissions"** means the maximum annual rate, in tons per year, at which an
40 existing emissions unit is projected to emit a regulated new source review pollutant in any one of the 5 years (12-
41 month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years
42 following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that
43 regulated new source review pollutant, and full utilization of the unit would result in a significant emissions
44 increase, or a significant net emissions increase at the major stationary source. In determining the projected actual
45 emissions (before beginning actual construction), the owner or operator of the major stationary source:

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

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

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

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

3 AS. "Regulated new source review pollutant", for purposes of this part, means the following:

4 (1) any pollutant for which a national ambient air quality standard has been promulgated and any
5 pollutant identified under this paragraph (Paragraph (1) of Subsection AS of 20.2.74.7 NMAC) as a constituents or
6 precursors [for] to such pollutants [~~identified by the administrator (e.g., volatile organic compounds and nitrogen
7 oxides are precursors for ozone);~~]. Precursors identified by the Administrator for purposes of NSR are the
8 following:

9 (a) volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment
10 and unclassifiable areas.

11 (b) sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas.

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

16 (d) volatile organic compounds are presumed not to be precursors to PM_{2.5} in any attainment or
17 unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that
18 emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's
19 ambient PM_{2.5} concentrations;

20 (2) Any pollutant that is subject to any standard promulgated under Section 111 of the act;

21 (3) Any class I or II substance subject to a standard promulgated under or established by title VI of
22 the act; [or]

23 (4) Any pollutant that otherwise is subject to regulation under the Act as defined in paragraph AZ of
24 this section.

25 (5) Notwithstanding paragraphs AS (1) through (4) of this section, the term "regulated NSR
26 pollutant" shall not include any or all hazardous air pollutants either listed in section 112 of the act, or added to the
27 list pursuant to section 112(b)(2) of the act, and which have not been delisted pursuant to section 112(b)(3) of the
28 act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant
29 listed under section 108 of the act.

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

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

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

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

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

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

47 AV. "Secretary" means the cabinet level secretary of the New Mexico environment department or his
48 or her successor.

49 AW. "Significant" means in reference to a net emissions increase or the potential of a source to emit
50 air pollutants, a rate of emission that would equal or exceed any of the rates listed in table 2 (20.2.74.502 NMAC).

51 AX. "Significant emissions increase" means, for a regulated new source review pollutant, an increase
52 in emissions that is significant (as defined in Subsection AW of this section) for that pollutant.

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

55 AZ. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a
56 provision in the act, or a nationally-applicable regulation codified by the Administrator in subchapter C of 40 CFR

1 Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control
2 requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant
3 released from the regulated activity. Except that:

4 (1) "Greenhouse gases (GHGs)" shall not be subject to regulation except as provided in paragraphs
5 AZ(4) and (5) of this section.

6 (2) For purposes of paragraphs AZ (3) through (5) of this section, the term tons per year "CO₂
7 equivalent emissions (CO₂e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

8 (a) multiplying the mass amount of emissions (tons per year), for each of the six greenhouse
9 gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of
10 40 CFR part 98 - Global Warming Potentials.

11 (b) sum the resultant value from paragraph AZ (2)(a) of this section for each gas to compute a
12 tons per year CO₂e.

13 (3) The term "emissions increase" as used in paragraphs AZ (4) and (5) of this section shall mean that
14 both a significant emissions increase (as calculated using the procedures in Subsection D of 20.2.74.200 NMAC)
15 and a significant net emissions increase (as defined in Subsections AL, AW and AX of 20.2.74.7 NMAC) occur.
16 For the pollutant GHGs, an emissions increase shall be based on tons per year CO₂e, and shall be calculated
17 assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tons per year CO₂e
18 instead of applying the value in Table 2 of this part.

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

20 (a) the stationary source is a new major stationary source for a regulated NSR pollutant that is
21 not GHGs, and also will emit or will have the potential to emit 75,000 tons per year CO₂e or more; or

22 (b) the stationary source is an existing major stationary source for a regulated NSR pollutant
23 that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant that is not GHGs, and also
24 will have an emissions increase of 75,000 tons per year CO₂e or more; and,

25 (5) Beginning July 1, 2011, in addition to the provisions in Paragraph (4) of this subsection, the
26 pollutant GHGs shall also be subject to regulation:

27 (a) at a new stationary source that will emit or have the potential to emit 100,000 tons per year
28 CO₂e; or

29 (b) at an existing stationary source that emits or has the potential to emit 100,000 tons per year
30 CO₂e, when such stationary source undertakes a physical change or change in the method of operation that will
31 result in an emissions increase of 75,000 tons per year CO₂e or more.

32 (6) If a federal court stays, invalidates or otherwise renders unenforceable by the US EPA, in whole
33 or in part, the prevention of significant deterioration and Title V greenhouse gas tailoring rule (75 FR 31514, June 3,
34 2010), this definition shall be enforceable by the Department only to the extent that it is enforceable by US EPA.

35 **BA. "Temporary source"** means a stationary source which changes its location or ceases to exist
36 within two years from the date of initial start of operations.

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

39 **BC. "Volatile organic compound (VOC)"** means any organic compound which participates in
40 atmospheric photochemical reactions; that is, any organic compound other than those which the administrator
41 designates as having negligible photochemical reactivity.

42 [07/20/95; 01/01/00; 20.2.74.7 NMAC - Rn, 20 NMAC 2.74.107, 10/31/02; A, 1/22/06; A, 8/31/09; A, XX/XX/XX]

44 **20.2.74.8 AMENDMENT AND SUPERSESION OF PRIOR REGULATIONS:** This Part amends and
45 supersedes Air Quality Control Regulation (AQCR) 707, which was originally filed on February 14, 1984, and
46 subsequently refiled on July 15, 1986; August 1, 1988; and May 29, 1990. All references to AQCR 707 in any other
47 rule shall be understood as a reference to this Part.

48 [07/20/95; 20.2.74.8 NMAC - Rn, 20 NMAC 2.74.106, 10/31/02]

50 **20.2.74.9 DOCUMENTS:** Documents cited in this Part may be viewed at the New Mexico Environment
51 Department, Air Quality Bureau, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM 87503 [1031 Siler
52 Rd., Bldg. B, Santa Fe, NM 87507].

53 [07/20/95; 20.2.74.9 NMAC - Rn, 20 NMAC 2.74.109, 10/31/02]

1 **20.2.74.10 SEVERABILITY.** If any provision of this part, or the application of such provision to any
2 person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or
3 circumstances other than those as to which it is held invalid, shall not be affected thereby.
4 [20.2.74.10 NMAC - N, 1/22/06]

5
6 **20.2.74.11 CONSTRUCTION.** This part shall be liberally construed to carry out its purpose.
7 [20.2.74.11 NMAC - N, 1/22/06]

8
9 **20.2.74.12 SAVINGS CLAUSE.** Repeal or supersession of prior versions of this part shall not affect any
10 administrative or judicial action initiated under those prior versions.
11 [20.2.74.12 NMAC - N, 1/22/06]

12
13 **20.2.74.13 COMPLIANCE WITH OTHER REGULATIONS.** Compliance with this part does not relieve
14 a person from the responsibility to comply with any other applicable federal, state, or local regulations.
15 [20.2.74.13 NMAC - N, 1/22/06]

16
17 **20.2.74.14 LIMITATION OF DEFENSE.** The existence of a valid permit under this part shall not constitute
18 a defense to a violation of any section of this part, except the requirement for obtaining a permit.
19 [20.2.74.14 NMAC - N, 1/22/06]

20
21 **20.2.74.15 to 20.2.74.107 [RESERVED]**

22
23 **20.2.74.108 RESTRICTIONS ON AREA CLASSIFICATIONS:**

24 **A. Mandatory Class I Federal areas:**

25 **(1)** The following areas which were in existence on August 7, 1977, shall be mandatory Class I
26 Federal areas and may not be redesignated:

- 27 **(a)** International parks (all of them);
- 28 **(b)** National wilderness areas which exceed 5,000 acres in size;
- 29 **(c)** National memorial parks which exceed 5,000 acres in size; and
- 30 **(d)** National parks which exceed 6,000 acres in size.

31 **(2)** Specifically for New Mexico, these areas are:

- 32 **(a)** Bandelier Wilderness, administered by NPS;
- 33 **(b)** Bosque del Apache Wilderness, administered by NFWS;
- 34 **(c)** Carlsbad Caverns National Park, administered by NPS;
- 35 **(d)** Gila Wilderness, administered by NFS;
- 36 **(e)** Pecos Wilderness, administered by NFS;
- 37 **(f)** Salt Creek Wilderness, administered by NFWS;
- 38 **(g)** San Pedro Parks Wilderness, administered by NFS;
- 39 **(h)** Wheeler Peak Wilderness, administered by NFS; and
- 40 **(i)** White Mountain Wilderness, administered by NFS; where: NPS = National Park Service,
41 NFWS = National Fish and Wildlife Service, NFS = National Forest Service.

42 **B. Areas which may be redesignated only as Class I or Class II:**

43 **(1)** The following areas may be redesignated only as Class I or II:

- 44 **(a)** an area, as of August 7, 1977, which exceeds 10,000 acres in size and is a national
45 monument, national primitive area, national preserve, national recreational area, national wild and scenic river,
46 national wildlife refuge; or
- 47 **(b)** a national park or national wilderness area established after August 7, 1977 which exceeds
48 10,000 acres in size.

49 **(2)** Specifically for New Mexico, these areas include (but are not necessarily limited to):

- 50 **(a)** Apache Kid Wilderness, administered by NFS;
- 51 **(b)** Bandelier National Monument, administered by NPS;
- 52 **(c)** Bitter Lake National Wildlife Refuge, administered by NFWS;
- 53 **(d)** Blue Range Wilderness, administered by NFS;
- 54 **(e)** Bosque del Apache National Wildlife Refuge, administered by NFWS;
- 55 **(f)** Capitan Mountains Wilderness, administered by NFS;
- 56 **(g)** Cebolla Wilderness, administered by BLM;

- 1 (h) Chama River Canyon Wilderness, administered by NFS;
- 2 (i) Cruces Basin Wilderness, administered by NFS;
- 3 (j) De-na-zin Wilderness, administered by BLM;
- 4 (k) El Malpais National Monument, administered by NPS;
- 5 (l) Latir Peak Wilderness, administered by NFS;
- 6 (m) Manzano Mountain Wilderness, administered by NFS;
- 7 (n) San Andres National Wildlife Refuge, administered by NFWS;
- 8 (o) Sandia Mountain Wilderness, administered by NFS;
- 9 (p) Sevilleta National Wildlife Refuge, administered by NFWS;
- 10 (q) West Malpais Wilderness, administered by BLM;
- 11 (r) White Sands National Monument, administered by NPS; and
- 12 (s) Withington Wilderness, administered by NFS; where: NFS = National Forest Service, NPS

13 = National Park Service, NFWS = National Fish and Wildlife Service, BLM = Bureau of Land Management.
 14 [07/20/95; 20.2.74.108 NMAC - Rn, 20 NMAC 2.74.108, 10/31/02]

16 **20.2.74.109 to 20.2.74.199** [RESERVED]

18 **20.2.74.200 APPLICABILITY.**

19 A. The requirements of this part apply to the construction of any new major stationary source (as
 20 defined in 20.2.74.7 NMAC) or any project at an existing major stationary source in an area designated as
 21 attainment or unclassifiable.

22 B. The requirements of Sections 300 through 306, 400 and 403 of this part apply to the construction
 23 of any new major stationary source or the major modification of any existing major stationary source, except as this
 24 part otherwise provides.

25 C. No new major stationary source or major modification to which the requirements of Subsections
 26 A, B, C and D of 20.2.74.300 NMAC, and Sections 301, 302, 303, 304, 305, 306, 400 and 403 of this part apply
 27 shall begin actual construction without a permit that states that the major stationary source or major modification
 28 will meet those requirements.

29 **D. Applicability procedures.**

30 (1) Except as otherwise provided in Subsections E and F of this section, and consistent with the
 31 definition of major modification contained in 20.2.74.7 NMAC, a project is a major modification for a regulated
 32 new source review pollutant if it causes two types of emissions increases - a significant emissions increase (as
 33 defined in 20.2.74.7 NMAC), and a significant net emissions increase (as defined in Subsections AL and AX of
 34 20.2.74.7 NMAC). The project is not a major modification if it does not cause a significant emissions increase. If the
 35 project causes a significant emissions increase, then the project is a major modification only if it also results in a
 36 significant net emissions increase.

37 (2) The procedure for calculating (before beginning actual construction) whether a significant
 38 emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being
 39 modified, according to Paragraphs (3) through (4) of this subsection. The procedure for calculating (before
 40 beginning actual construction) whether a significant net emissions increase will occur at the major stationary source
 41 (i.e., the second step of the process) is contained in the definition in 20.2.74.7 NMAC. Regardless of any such
 42 preconstruction projections, a major modification results if the project causes a significant emissions increase and a
 43 significant net emissions increase.

44 (3) Actual-to-projected-actual applicability test for projects that involve existing emissions units. A
 45 significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the
 46 difference between the projected actual emissions (as defined in 20.2.74.7 NMAC) and the baseline actual emissions
 47 (as defined in Paragraphs (1) and (2) of Subsection G of 20.2.74.7 NMAC) for each existing emissions unit, equals
 48 or exceeds the significant amount for that pollutant (as defined in 20.2.74.7 NMAC).

49 (4) Actual-to-potential test for projects that involve construction of a new emissions unit(s). A
 50 significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the
 51 difference between the potential to emit (as defined in 20.2.74.7 NMAC) from each new emissions unit following
 52 completion of the project and the baseline actual emissions (as defined in Paragraph (3) of Subsection G of 20.2.74.7
 53 NMAC) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in
 54 20.2.74.7 NMAC).

55 (5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions
 56 increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions

1 unit, using the method specified in Paragraphs (3) and (4) of this subsection as applicable with respect to each
2 emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant. For
3 example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is
4 determined by summing the values determined using the method specified in Paragraph (3) of this subsection for the
5 existing unit and determined using the method specified in Paragraph (4) of this subsection for the new unit.

6 **E.** For any major stationary source for a PAL for a regulated new source review pollutant, the major
7 stationary source shall comply with requirements under 20.2.74.320 NMAC.
8 [07/20/95; 20.2.74.200 NMAC - Rn, 20 NMAC 2.74.200, 10/31/02; A, 1/22/06; A, XX/XX/XX]
9

10 **20.2.74.201 EXEMPTIONS:** This Part shall not apply to:

11 **A.** Each regulated pollutant emitted for which the area the source proposes to locate in is designated
12 as nonattainment;

13 **B.** Sources or modifications that are part of a nonprofit health or nonprofit educational institution and
14 are approved by the Secretary;

15 **C.** A portable stationary source which has previously received a permit pursuant to this Part; and

16 (1) The owner or operator proposes to relocate the source, and emissions from the source at the new
17 location will be temporary; and

18 (2) The emissions from the source would not exceed its allowable emission rate; and

19 (3) The emissions from the source would not impact any Class I Federal area nor any area where an
20 applicable increment is known to be violated; and

21 (4) Reasonable notice is given to the Department prior to the relocation identifying the proposed new
22 location and probable duration of operation at the new location. Such notice shall be given to the Department not
23 less than ten (10) days in advance of the proposed relocation unless a different time interval is previously approved
24 by the Department;

25 **D.** A source or modification that would be major only if fugitive emissions, to the extent they are
26 quantifiable, are considered in calculating the potential to emit or net emissions increase, and the source does not
27 belong to:

28 (1) Any category in Table 1 of this Part (20.2.74.501 NMAC); or

29 (2) Any other stationary source category which as of August 7, 1980 is being regulated under section
30 111 or 112 of the Act.

31 [07/20/95; 20.2.74.201 NMAC - Rn, 20 NMAC 2.74.201, 10/31/02]
32

33 **20.2.74.202 to 20.2.74.299** [RESERVED]
34

35 **20.2.74.300 OBLIGATIONS OF OWNERS OR OPERATORS OF SOURCES:**

36 **A.** Any owner or operator who begins actual construction or operates a source or modification
37 without, or not in accordance with, a permit issued under the requirements of this part shall be subject to
38 enforcement action.

39 **B.** The issuance of a permit does not relieve any person from the responsibility of complying with the
40 provisions of the Air Quality Control Act, sections 74-2-1 to 74-2-17, NMSA 1978; any applicable regulations of
41 the board; and any other requirements under local, state, or federal law.

42 **C.** Approval to construct shall become invalid if: 1) construction is not commenced within eighteen
43 (18) months after receipt of such approval; 2) if construction is discontinued for a period of eighteen (18) months or
44 more; or 3) if construction is not completed within a reasonable time. For a phased construction project, each phase
45 must commence construction within eighteen (18) months of the projected and approved commencement date. The
46 secretary may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified.

47 **D.** If a source or modification becomes a major stationary source or major modification solely due to
48 a relaxation in any enforceable limitation (which limitation was established after August 7, 1980), on the capacity of
49 the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then this part
50 shall apply to the source or modification as though construction had not yet commenced.

51 **E.** Except as otherwise provided in Paragraph (6) under this subsection (Subsection E of 20.2.74.300
52 NMAC), [The] the following specific provisions apply with respect to any regulated NSR pollutant emitted from ~~to~~
53 projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in
54 circumstances where there is a reasonable possibility, within the meaning of Paragraph (6) under this subsection
55 (Subsection E of 20.2.74.300 NMAC), that a project that is not a part of a major modification may result in a
56 significant emissions increase of such pollutant, [where] and the owner or operator elects to use the method

1 specified in Paragraphs (1) through (3) of Subsection AR of 20.2.74.7 NMAC for calculating projected actual
2 emissions.

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

5 (a) a description of the project;

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

8 (c) a description of the applicability test used to determine that the project is not a major
9 modification for any regulated new source review pollutant, including the baseline actual emissions, the projected
10 actual emissions, the amount of emissions excluded under Paragraph (3) of Subsection AR of 20.2.74.7 NMAC and
11 an explanation for why such amount was excluded, and any netting calculations, if applicable.

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

17 (3) The owner or operator shall monitor the emissions of any regulated new source review pollutant
18 that could increase as a result of the project and that is emitted by any emissions unit identified in Subparagraph (b)
19 of Paragraph (1) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on
20 a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a
21 period of 10 years following resumption of regular operations after the change if the project increases the design
22 capacity or potential to emit of that regulated new source review pollutant at such emissions unit.

23 (4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a
24 report to the department within 60 days after the end of each year during which records must be generated under
25 Subparagraph (c) of Paragraph (1) of this subsection setting out the unit's annual emissions during the calendar year
26 that preceded submission of the report.

27 (5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or
28 operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified
29 in Paragraph (1) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to
30 Subparagraph (c) of Paragraph (1) of this subsection) by a significant amount (as defined in 20.2.74.7 NMAC) for
31 that regulated new source review pollutant, and if such emissions differ from the preconstruction projection as
32 documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection. Such report shall be
33 submitted to the department within 60 days after the end of such year. The report shall contain the following:

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

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

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

38 (6) A "reasonable possibility" under this subsection (Subsection E of 20.2.74.300 NMAC) occurs
39 when the owner or operator calculates the project to result in either:

40 (a) a projected actual emissions increase of at least 50 percent of the amount that is a
41 "significant emissions increase," as defined under Subsection AX of 20.2.74.7 NMAC (without reference to the
42 amount that is a significant net emissions increase), for the regulated NSR pollutant; or

43 (b) a projected actual emissions increase that, added to the amount of emissions excluded under
44 Paragraph (3) of Subsection AR of 20.2.74.7 NMAC, sums to at least 50 percent of the amount that is a "significant
45 emissions increase," as defined under Subsection AX of 20.2.74.7 NMAC (without reference to the amount that is a
46 significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility
47 occurs only within the meaning under this subparagraph (Subparagraph (b) of Paragraph (6) of Subsection E of
48 20.2.74.300 NMAC), and not also within the meaning of Subparagraph (a) under this paragraph (Paragraph (6) of
49 Subsection E of 20.2.74.300 NMAC), then the provisions in Paragraphs (2) through (5) under this subsection
50 (Subsection E of 20.2.74.300 NMAC) do not apply to the project.

51 F. The owner or operator of the source shall make the information required to be documented and
52 maintained pursuant to Subsection E of this section available for review upon request for inspection by the
53 department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).
54 [07/20/95; 20.2.74.300 NMAC - Rn, 20 NMAC 2.74.300, 10/31/02; A, 1/22/06; A, XX/XX/XX]
55

1 **20.2.74.301 SOURCE INFORMATION:** The owner or operator of a proposed source or modification shall
2 submit all information necessary to perform any analysis or make any determination required under this Part.

3 A. Information shall include, but is not limited to:

4 (1) A description of the nature, location, design capacity, and typical operating schedule of the source
5 or modification, including specifications and drawings showing the design and plant layout; and

6 (2) A detailed schedule of construction of the source or modification; and

7 (3) A detailed description of the planned system of continuous emission reduction for the source or
8 modification, emission estimates, and other information necessary to determine that Best Available Control
9 Technology will be applied.

10 B. Upon request by the Department, the owner or operator shall also provide information on:

11 (1) The air quality impact of the source or modification, including meteorologic and topographic data
12 necessary to estimate such impact; and

13 (2) The air quality impacts, and the nature and extent of any or all general commercial, residential,
14 industrial, and other growth which has occurred since August 7, 1977 in the area the source or modification would
15 affect.

16 [07/20/95; 20.2.74.301 NMAC - Rn, 20 NMAC 2.74.301, 10/31/02]

17
18 **20.2.74.302 CONTROL TECHNOLOGY REQUIREMENTS:**

19 A. A new major stationary source shall apply Best Available Control Technology for each regulated
20 pollutant that it would have the potential to emit in amounts equal to or greater than the significance levels as listed
21 in Table 2 of this Part (20.2.74.502 NMAC). This requirement applies to each proposed emissions unit or operation
22 that will emit such pollutant.

23 B. A major modification shall apply Best Available Control Technology for each regulated pollutant
24 at the source when a significant net emissions increase occurs as defined in this Part. This requirement applies to
25 each proposed emissions unit or operation where a net emissions increase in the pollutant would occur as a result of
26 a physical change or change in the method of operation in the unit.

27 C. For phased construction projects, the determination of Best Available Control Technology shall be
28 reviewed and modified as appropriate at the latest reasonable time but no later than eighteen (18) months prior to
29 commencement of construction of each independent phase of the project. At such time, the owner or operator of the
30 applicable stationary source may be required to demonstrate the adequacy of any previous determination of Best
31 Available Control Technology for the source.

32 D. The Department may approve a system of innovative control technology for the major stationary
33 source or major modification if:

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

36 (2) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to
37 that which would have been required under Best Available Control Technology by a date specified by the
38 Department. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit
39 issuance; and

40 (3) The source or modification would meet the requirements of 20.2.74.302 NMAC and 20.2.74.303
41 NMAC based on the emission rate that the system of innovative control technology would be required to meet on
42 the date specified by the Department; and

43 (4) During the interim period of achieving the permitted emission level, the source or modification
44 would not:

45 (a) Cause or contribute to a violation of an applicable national ambient air quality standard; nor

46 (b) Impact any Class I Federal area; nor

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

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

49 E. The Department shall withdraw any approval to employ a system of innovative control technology
50 if:

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

53 (2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to
54 public health, welfare, or safety; or

55 (3) The Department decides at any time that the proposed system is unlikely to achieve the required
56 level of control or to protect the public health, welfare, or safety.

1 F. If a source or modification fails to meet the required level of continuous emission reduction within
2 the specified time period or the approval is withdrawn in accordance with subsection E of 20.2.74.302 NMAC, the
3 Department may allow the source or modification up to an additional three (3) years to meet the requirement for the
4 application of Best Available Control Technology. This shall be accomplished through use of a demonstrated
5 system of control.

6 G. If the owner or operator of a major stationary source or major modification previously issued a
7 permit under this Part applies for an extension (as provided for under subsection C of 20.2.74.300 NMAC), and the
8 new proposed date of construction is greater than eighteen (18) months from the date the permit would become
9 invalid, the determination of Best Available Control Technology shall be reviewed and modified as appropriate
10 before such an extension is granted. At such time, the owner or operator of the applicable stationary source may be
11 required to demonstrate the adequacy of any previous determination of Best Available Control Technology for the
12 source.

13 H. With respect to PM_{10} , for the case where PM_{10} emissions cannot be quantified, the Best Available
14 Control Technology limitation may be defined in terms of particulate matter emissions.
15 [07/20/95; 20.2.74.302 NMAC - Rn, 20 NMAC 2.74.302, 10/31/02]

16
17 **20.2.74.303 AMBIENT IMPACT REQUIREMENTS:**

18 A. The requirements of this section shall apply to each pollutant emitted by a new major stationary
19 source or major modification in amounts equal to or greater than those in Table 2 of this Part (20.2.74.502 NMAC).
20 For ~~particulate matter~~ PM_{10} , the source will only be required to perform ambient impact analysis for PM_{10} when
21 the source has the potential to emit significant amounts of PM_{10} (Table 2, 20.2.74.502 NMAC). For $PM_{2.5}$, the
22 demonstration required in Subsection B of 20.2.74.303 NMAC is deemed to have been made if the emissions
23 increase from the new stationary source alone or from the modification alone would cause, in all areas, air quality
24 impacts less than 0.06 micrograms per cubic meter (annual average) or 0.07 micrograms per cubic meters (24-hour
25 average) for Class I federal areas or 0.3 micrograms per cubic meters (annual average) or 1.2 micrograms per cubic
26 meters (24 hour average) for Class II and Class III federal areas.

27 B. The allowable emission increases from the proposed source or modification, including secondary
28 emissions, in conjunction with all other applicable emissions increases or reductions, including secondary emissions,
29 shall not cause or contribute to air pollution in violation of:

30 (1) Any National Ambient Air Quality Standard in any location; or

31 (2) Any applicable maximum allowable increase as shown in Table 4 of this Part (20.2.74.504
32 NMAC) over the baseline concentrations in any area.

33 (3) The owner or operator of the proposed major stationary source or major modification shall
34 demonstrate that neither paragraph (1) nor paragraph (2) of 20.2.74.303 NMAC will occur.

35 [07/20/95; 20.2.74.303 NMAC - Rn, 20 NMAC 2.74.303, 10/31/02; A, XX/XX/XX]

36
37 **20.2.74.304 ADDITIONAL IMPACT REQUIREMENTS:**

38 A. The owner or operator of the proposed major stationary source or major modification shall provide
39 an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or
40 modification and general commercial, residential, industrial, and other growth associated with the source or
41 modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant
42 commercial or recreational value. The analysis can use data or information available from the Department.

43 B. The owner or operator shall also provide an analysis of the air quality impact projected for the area
44 as a result of general commercial, residential, industrial, and other growth associated with the source or
45 modification.

46 [07/20/95; 20.2.74.304 NMAC - Rn, 20 NMAC 2.74.304, 10/31/02]

47
48 **20.2.74.305 AMBIENT AIR QUALITY MODELING:** All estimates of ambient concentrations required by
49 this Part shall be based on applicable air quality models, data bases, and other requirements as specified in EPA's
50 Guideline on Air Quality Models (EPA-450/2-78-027R, July, 1986), its revisions, or any superseding EPA
51 document, and approved by the Department. Where an air quality impact model specified in the Guideline on Air
52 Quality Models is inappropriate, the model may be modified or another model substituted. Any substitution or
53 modification of a model must be approved by the Department. Notification shall be given by the Department of
54 such a substitution or modification and the opportunity for public comment provided for in fulfilling the public
55 notice requirements in subsection B of 20.2.74.400 NMAC. The Department will seek EPA approval of such
56 substitutions or modifications.

1 [07/20/95; 20.2.74.305 NMAC - Rn, 20 NMAC 2.74.305, 10/31/02]

2
3 **20.2.74.306 MONITORING REQUIREMENTS:**

4 **A.** Any application for a permit under this Part shall contain an analysis of ambient air quality. Air
5 quality data can be that measured by the applicant or that available from a government agency in the area affected
6 by the major stationary source or major modification. The analysis shall contain the following:

7 (1) For a major stationary source, each pollutant for which the potential to emit is equal to or greater
8 than the significant emission rates as listed in Table 2 of this Part (20.2.74.502 NMAC); or

9 (2) For a major modification, each pollutant that would result in a significant net emission increase.
10 **B.** If no National Ambient Air Quality Standard (NAAQS) for a pollutant exists, and there is an
11 acceptable method for monitoring that pollutant, the analysis shall contain such air quality monitoring data as the
12 Department determines is necessary to assess ambient air quality for that pollutant.

13 **C.** Continuous air quality monitoring data shall be required for all pollutants for which a National
14 Ambient Air Quality Standard exists. Such data shall be submitted to the Department for at least the one (1) year
15 period prior to receipt of the permit application. The Department has the discretion to:

16 (1) Determine that a complete and adequate analysis can be accomplished with monitoring data
17 gathered over a period shorter than one year but not less than four months; or

18 (2) Determine that existing air quality monitoring data is representative of air quality in the affected
19 area and accept such data in lieu of additional monitoring by the applicant.

20 **D.** Ozone monitoring shall be performed if monitoring data is required for volatile organic
21 compounds. Post construction ozone monitoring data may be submitted in lieu of providing preconstruction data as
22 required under subsection C of 20.2.74.306 NMAC if the owner or operator of the proposed major source or major
23 modification satisfies all the provisions of 40 CFR Part 51, Appendix S, Section IV.

24 **E.** The Department may require monitoring of visibility in any Class I Federal area where the
25 Department determines that an adverse impact on visibility may occur due primarily to the operations of the
26 proposed new source or modification. Such monitoring shall be conducted following procedures approved by the
27 Department and subject to the following:

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

30 (2) The cost of visibility monitoring required by the Department shall not exceed fifty percent (50%)
31 of the cost of ambient monitoring required by this Part. If ambient monitoring is not required, the cost shall be
32 estimated as if it were required for each pollutant to which this Part applies.

33 (3) Both preconstruction and post construction visibility monitoring may be required. In each case,
34 the duration of such monitoring shall not exceed one (1) year.

35 **F.** The owner or operator of a major stationary source or major modification shall conduct post
36 construction ambient monitoring as the Department determines is necessary to validate attainment of ambient air
37 quality standards and to assure that increments are not exceeded.

38 **G.** The owner or operator of a major stationary source or major modification shall meet the
39 requirements of 40 CFR 58, Appendix B during the operation of monitoring stations for purposes of satisfying the
40 requirements of this section.

41 **H.** The Department has the discretion to exempt a stationary source or modification from the
42 requirements of this section with respect to monitoring for a particular pollutant if the emissions of the pollutant
43 from the new source or the net emissions increase of the pollutant from the modification would cause, in any area,
44 increases in ambient concentrations less than the levels listed in Table 3 of this Part (20.2.74.503 NMAC).

45 **I.** The Department shall exempt a stationary source or modification from the requirements of this
46 section with respect to preconstruction monitoring for a particular pollutant if:

47 (1) For ozone, volatile organic compound emissions are less than one hundred (100) tons per year; or

48 (2) The air pollutant is not a regulated pollutant; or

49 (3) The ~~existing ambient~~ concentrations of the pollutant in the area ~~affected by~~ that the source or
50 modification would affect are less than the concentrations listed in Table 3 of this Part (20.2.74.503 NMAC); or

51 (4) The pollutant is not listed in Table 3 of this Part (20.2.74.503 NMAC).

52 [07/20/95; 20.2.74.306 NMAC - Rn, 20 NMAC 2.74.306, 10/31/02; A, XX/XX/XX]

53
54 **20.2.74.307 TEMPORARY SOURCE EXEMPTIONS:** The requirements of 20.2.74.304 NMAC and
55 20.2.74.306 NMAC shall not apply to a temporary source subject to this Part for a given pollutant if the allowable

1 emissions of such pollutant would not impact any Class I Federal area or any areas where an applicable increment is
2 violated and would be temporary.
3 [07/20/95; 20.2.74.307 NMAC - Rn, 20 NMAC 2.74.307, 10/31/02]

4
5 **20.2.74.308 to 20.2.74.319** [RESERVED]

6
7 **20.2.74.320 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALs)**

8 **A. Applicability.**

9 (1) The department may approve the use of an actuals PAL for any existing major stationary source if
10 the PAL meets the requirements in this section. The term "PAL" shall mean "actuals PAL" throughout this section.

11 (2) Any physical change in or change in the method of operation of a major stationary source that
12 maintains its total source-wide emissions below the PAL level, meets the requirements of this section, and complies
13 with the PAL permit:

14 (a) is not a major modification for the PAL pollutant;

15 (b) does not have to be approved through the requirements of this part; and

16 (c) is not subject to the provisions in Subsection D of 20.2.74.300 NMAC (restrictions on
17 relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major
18 new source review program).

19 (3) Except as provided under Subparagraph (c) of Paragraph (2) of this subsection, a major stationary
20 source shall continue to comply with all applicable federal or state requirements, emission limitations, and work
21 practice requirements that were established prior to the effective date of the PAL.

22 **B. Definitions applicable to this section.**

23 (1) Actuals PAL for a major stationary source means a PAL based on the baseline actual emissions
24 (as defined in 20.2.74.7 NMAC) of all emissions units (as defined in 20.2.74.7 NMAC) at the source, that emit or
25 have the potential to emit the PAL pollutant.

26 (2) Allowable emissions means "allowable emissions" as defined in 20.2.74.7 NMAC, except as this
27 definition is modified in accordance with the following.

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

30 (b) An emissions unit's potential to emit shall be determined using the definition in 20.2.74.7
31 NMAC, except that the words "or enforceable as a practical matter" should be added after "federally enforceable".

32 (3) Small emissions unit means an emissions unit that emits or has the potential to emit the PAL
33 pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subsection AW of
34 20.2.74.7 NMAC or in the act, whichever is lower.

35 (4) Major emissions unit means:

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

38 (b) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount
39 that is equal to or greater than the major source threshold for the PAL pollutant as defined by the act for
40 nonattainment areas. For example, in accordance with the definition of major stationary source in Section 182(c) of
41 the act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious
42 ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

43 (5) Plantwide applicability limitation (PAL) means an emission limitation expressed in tons per year,
44 for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in
45 accordance with this section.

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

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

51 (8) PAL major modification means, notwithstanding the definitions for major modification and net
52 emissions increase in 20.2.74.7 NMAC, any physical change in or change in the method of operation of the PAL
53 source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

54 (9) PAL permit means the major new source review permit, the minor new source review permit, or
55 the state operating permit under a program that is approved into the plan, or the title V permit issued by the
56 department that establishes a PAL for a major stationary source.

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

2 (11) Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL
3 pollutant in an amount that is equal to or greater than the significant level (as defined in Subsection AW of 20.2.74.7
4 NMAC or in the act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit
5 as a major emissions unit as defined in Paragraph (4) of this subsection.

6 C. **Permit application requirements.** As part of a permit application requesting a PAL, the owner or
7 operator of a major stationary source shall submit the following information to the department for approval.

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

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

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

17 **D. General requirements for establishing PALs.**

18 (1) The department may establish a PAL at a major stationary source, provided that at a minimum,
19 the following requirements are met.

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

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

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

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

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

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

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

37 (2) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant
38 that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR
39 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such
40 reductions would be creditable in the absence of the PAL.

41 **E. Public participation requirements for PALs.** PALs for existing major stationary sources shall
42 be established, renewed, or increased, through a procedure that is consistent with 40 CFR 51.160 and 161. This
43 includes the requirement that the department provide the public with notice of the proposed approval of a PAL
44 permit and at least a 30-day period for submittal of public comment. The department must address all material
45 comments before taking final action on the permit.

46 **F. Setting the 10-year actuals PAL level.**

47 (1) Except as provided in Paragraph (2) of this subsection, the actuals PAL level for a major
48 stationary source shall be established as the sum of the baseline actual emissions (as defined in 20.2.74.7 NMAC) of
49 the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for
50 the PAL pollutant under Subsection AW of 20.2.74.7 NMAC or under the act, whichever is lower. When
51 establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to
52 determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month
53 period may be used for each different PAL pollutant. Emissions associated with units that were permanently
54 shutdown after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced
55 PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable
56 federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For

1 instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from
2 baseline emissions of 60 ppm NOx to a new rule limit of 30 ppm, then the permit shall contain a future effective
3 PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (1) PAL effective period. The PAL effective period shall be 10 years.

32 (2) Reopening of the PAL permit.

33 (a) During the PAL effective period, the department shall reopen the PAL permit to:

34 (i) correct typographical/calculation errors made in setting the PAL or reflect a more
35 accurate determination of emissions used to establish the PAL;

36 (ii) reduce the PAL if the owner or operator of the major stationary source creates
37 creditable emissions reductions for use as offsets under 40 CFR 51.165(a)(3)(ii); and

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

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

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

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

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

49 (c) Except for the permit reopening in Item (i) of Subparagraph (a) of Paragraph (2) of this
50 subsection for the correction of typographical/calculation errors that do not increase the PAL level, all reopenings
51 shall be carried out in accordance with the public participation requirements of Subsection E of this section.

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

55 (1) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply
56 with an allowable emission limitation under a revised permit established according to the following procedures.

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

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

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

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

18 (4) Any physical change or change in the method of operation at the major stationary source will be
19 subject to major new source review requirements if such change meets the definition of major modification in
20 20.2.74.7 NMAC.

21 (5) The major stationary source owner or operator shall continue to comply with any New Mexico or
22 federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective
23 period or prior to the PAL effective period except for those emission limitations that had been established pursuant
24 to Subsection D of 20.2.74.300 NMAC, but were eliminated by the PAL in accordance with the provisions in
25 Subparagraph (c) of Paragraph (2) of Subsection A of this section.

26 **J. Renewal of a PAL.**

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

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

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

39 (a) The information required in Subsection C of this section.

40 (b) A proposed PAL level.

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

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

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

48 (a) If the emissions level calculated in accordance with Subsection F of this section is equal to
49 or greater than 80 percent of the PAL level, the department may renew the PAL at the same level without
50 considering the factors set forth in Subparagraph (b) of this paragraph.

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

55 (c) Notwithstanding Subparagraphs (a) and (b) of this paragraph:

1 (i) if the potential to emit of the major stationary source is less than the PAL, the
2 department shall adjust the PAL to a level no greater than the potential to emit of the source; and
3 (ii) the department shall not approve a renewed PAL level higher than the current PAL,
4 unless the major stationary source has complied with the provisions of Subsection K of this section (increasing a
5 PAL).

6 (5) If the compliance date for a state or federal requirement that applies to the PAL source occurs
7 during the PAL effective period, and if the department has not already adjusted for such requirement, the PAL shall
8 be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

9 **K. Increasing a PAL during the PAL effective period.**

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

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

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

25 (c) The owner or operator obtains a major new source review permit for all emissions unit(s)
26 identified in Subparagraph (a) of this paragraph, regardless of the magnitude of the emissions increase resulting
27 from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions
28 requirements resulting from the major new source review process (for example, BACT), even though they have also
29 become subject to the PAL or continue to be subject to the PAL.

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

32 (2) The department shall calculate the new PAL as the sum of the allowable emissions for each
33 modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions
34 units (assuming application of BACT equivalent controls as determined in accordance with Subparagraph (b) of
35 Paragraph (1) of this subsection), plus the sum of the baseline actual emissions of the small emissions units.

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

38 **L. Monitoring requirements for PALs.**

39 (1) General requirements.

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

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

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

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

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

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

55 (b) CEMS;

56 (c) CPMS or PEMS; and

1 (d) emission factors.

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

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

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

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

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

15 (a) CEMS must comply with applicable performance specifications found in 40 CFR Part 60,
16 Appendix B; and

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

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

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

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

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

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

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

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

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

40 (8) Notwithstanding the requirements in Paragraphs (3) through (7) of this subsection, where an
41 owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the
42 PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit
43 issuance:

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

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

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

51 **M. Recordkeeping requirements.**

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

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

- 1 (a) a copy of the PAL permit application and any applications for revisions to the PAL; and
2 (b) each annual certification of compliance pursuant to title V and the data relied on in
3 certifying the compliance.

4 **N. Reporting and notification requirements.** The owner or operator shall submit semi-annual
5 monitoring reports and prompt deviation reports to the department in accordance with the applicable title V
6 operating permit program. The reports shall meet the following requirements.

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

- 9 (a) the identification of owner and operator and the permit number;
10 (b) total annual emissions (tons per year) based on a 12-month rolling total for each month in
11 the reporting period recorded pursuant to Paragraph (1) of Subsection M of this section;
12 (c) all data relied upon, including, but not limited to, any quality assurance or quality control
13 data, in calculating the monthly and annual PAL pollutant emissions;
14 (d) a list of any emissions units modified or added to the major stationary source during the
15 preceding 6-month period;
16 (e) the number, duration, and cause of any deviations or monitoring malfunctions (other than
17 the time associated with zero and span calibration checks), and any corrective action taken;
18 (f) a notification of a shutdown of any monitoring system, whether the shutdown was
19 permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully
20 operational or replaced with another monitoring system, and whether the emissions unit monitored by the
21 monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number
22 determined by method included in the permit, as provided by Paragraph (7) of Subsection L of this section; and
23 (g) a signed statement by the responsible official (as defined by the applicable title V operating
24 permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

25 (2) Deviation report. The major stationary source owner or operator shall promptly submit reports of
26 any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report
27 submitted pursuant to Paragraph (2) of Subsection E of 20.2.70.302 NMAC shall satisfy this reporting requirement.
28 The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing
29 Paragraph (2) of Subsection E of 20.2.70.302 NMAC. The reports shall contain the following information:

- 30 (a) the identification of owner and operator and the permit number;
31 (b) the PAL requirement that experienced the deviation or that was exceeded;
32 (c) emissions resulting from the deviation or the exceedance; and
33 (d) a signed statement by the responsible official (as defined by the applicable title V operating
34 permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

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

37 **O. Transition requirements.**

38 (1) The department may not issue a PAL that does not comply with the requirements in this section
39 after the administrator has approved regulations incorporating these requirements into a plan.

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

42 [20.2.74.320 NMAC - N, 1/22/06; A, XX/XX/XX]

43
44 **20.2.74.321 to 20.2.74.399** [RESERVED]

45
46 **20.2.74.400 PUBLIC PARTICIPATION AND NOTIFICATION:**

47 **A.** The Department shall, within thirty (30) days after receipt of an application, review such
48 application and determine whether it is administratively complete or there is any deficiency in the application or
49 information submitted. To be deemed administratively complete, the application must meet the requirements of
50 20.2.74.301 NMAC in addition to the requirements of 20.2.72 NMAC. If the application is deemed:

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

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

3 B. For purposes of determining minor source baseline date pursuant to 40 CFR 51:

4 (1) An application is complete when it contains all the information necessary for processing the
5 application. Designating an application complete for purposes of 40 CFR 51 does not preclude the Department from
6 requesting or accepting any additional information; and

7 (2) In the event that additional information is submitted to remedy any deficiency in the application
8 or information submitted, the date of receipt of the application shall be the date on which the Department received
9 all required information.

10 C. The Department shall:

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

13 (2) Make available at the Department district and local office nearest to the proposed source a copy of
14 all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other
15 materials, if any, considered in making the preliminary determination.

16 (3) Notify the public by advertisement in a newspaper of general circulation in the area in which the
17 proposed source would be constructed:

18 (a) Of the application,

19 (b) The preliminary determination,

20 (c) The degree of increment consumption that is expected from the source or modification, and

21 (d) Of the opportunity for comment at a public hearing as well as written public comment. The
22 public comment period shall be for thirty (30) days from the date of such advertisement.

23 (4) Send a copy of the notice of public comment to:

24 (a) The applicant,

25 (b) The Administrator, and

26 (c) Officials and agencies having jurisdiction over the location where the proposed construction
27 would occur as follows:

28 (i) Any other state or local air pollution control agencies;

29 (ii) The chief executives of the city and county where the source would be located;

30 (iii) Any comprehensive regional land use planning agency; and

31 (iv) Any state, Federal Land Manager, or Indian governing body whose lands may be
32 affected by emissions from the source or modification.

33 (5) Provide opportunity for a public hearing for interested persons to appear and submit written or
34 oral comments on the air quality impact of the source and other appropriate considerations.

35 (6) Consider all written comments submitted within a time specified in the notice of public comment
36 and all comments received at any public hearing(s) in making a final decision on the approvability of the
37 application. The Department shall make all comments available for public inspection in the same locations where
38 the Department made available preconstruction information relating to the source.

39 (7) Within one hundred eighty (180) days after an application is deemed administratively complete,
40 unless the Secretary, as specified in 20.2.72.207 NMAC, grants an extension not to exceed ninety (90) days for good
41 cause:

42 (a) make a final determination of whether construction should be approved, approved with
43 conditions, or disapproved; and

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

47 [07/20/95; 01/01/00; 20.2.74.400 NMAC - Rn, 20 NMAC 2.74.400, 10/31/02]

48
49 **20.2.74.401 STACK HEIGHT CREDIT:** The Department shall review all applications in accordance with
50 the provisions of 20.2.80 NMAC (Stack Heights) (formerly Air Quality Control Regulation 710 -- Stack Height
51 Requirements).

52 [07/20/95; 20.2.74.401 NMAC - Rn, 20 NMAC 2.74.401, 10/31/02]

53
54 **20.2.74.402 EXCLUSIONS FROM INCREMENT CONSUMPTION:** Following a public hearing, the
55 Secretary may exclude the following concentrations in determining compliance with a maximum allowable increase:

1 A. Concentrations due to the increase in emissions from stationary sources, over the emissions from
2 such sources before the effective date of an order under sections 2(a) and (b) of the Energy Supply and
3 Environmental Coordination Act of 1974 (or any superseding legislation). Sources must have converted from the
4 use of petroleum products, natural gas, or both by reason of such order. This exclusion shall not apply more than
5 five (5) years after the effective date of such an order; or

6 B. Concentrations due to the increase in emissions from sources, over the emissions from such
7 sources before the effective date of a plan in effect pursuant to the Federal Power Act. Sources must have converted
8 from using natural gas by reason of a natural gas curtailment plan. This exclusion shall not apply more than five (5)
9 years after the effective date of such a plan; or

10 C. Concentrations of particulate matter due to the increase in emissions from construction or other
11 temporary emission-related activities of new or modified sources; or

12 D. The increase in concentrations due to new sources outside the United States over the
13 concentrations attributed to existing sources which are included in the baseline concentrations.
14 [07/20/95; 20.2.74.402 NMAC - Rn, 20 NMAC 2.74.402, 10/31/02]

15
16 **20.2.74.403 ADDITIONAL REQUIREMENTS FOR SOURCES IMPACTING CLASS I FEDERAL**
17 **AREAS:**

18 A. The Department shall transmit to the Administrator and the Federal Land Manager a copy of each
19 permit application relating to a major stationary source or major modification proposing to locate within one
20 hundred (100) kilometers of any Class I Federal area. The complete permit application shall be transmitted within
21 thirty (30) days of receipt and sixty (60) days prior to any public hearing on the application. The Department shall
22 include all relevant information in the permit application. Relevant information shall include an analysis of the
23 proposed source's anticipated impacts on visibility in the Class I Federal area. The Department shall consult with all
24 affected Federal Land Managers as to the completeness of the permit application and shall consider any analysis
25 performed by the Federal Land Manager concerning the impact of the proposed major stationary source or major
26 modification on air quality related values. This consideration shall include visibility, if such analysis is received
27 within thirty (30) days after the Federal Land Manager receives a copy of the complete application. Additionally,
28 the Department shall notify any affected Federal Land Manager within thirty days (30) from the date the Department
29 receives a request for a pre-application meeting from a proposed source subject to this Part. Notice shall be
30 provided to the Administrator and Federal Land Manager of every action related to the consideration of such permit.
31 The department shall also provide the Federal Land Manager and the Administrator with a copy of the preliminary
32 determination required under 20.2.74.400 NMAC and shall make available to them any materials used in making
33 that determination. In any case where the Department disagrees with the Federal Land Manager's analysis of source
34 impact on air quality related values, the Department shall, either explain its decision or give notice to the Federal
35 Land Manager as to where the explanation can be obtained. In the case where the Department disagrees with the
36 Federal Land Managers' analysis, the Department will also explain its decision or give notice to the public by
37 advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed,
38 as to where the decision can be obtained.

39 B. The Department shall transmit to air quality control agencies of neighboring states and Indian
40 governing bodies a copy of each permit application having the potential to affect Class I Federal areas or increment
41 consumption in areas under their jurisdiction. The Department shall also provide the affected air quality control
42 agencies and Indian governing bodies with a copy of the preliminary determination required under 20.2.74.400
43 NMAC and shall make available to them any materials used in making that determination. The Department shall
44 include a provision for a sixty (60) day comment period for the Federal Land Managers before any public hearing on
45 a permit application is held.

46 C. Federal Land Managers may demonstrate to the Department that emissions from a proposed
47 source or modification would have an adverse impact on air quality related values, including visibility, of any Class
48 I Federal lands under their jurisdiction. This may be done even though the change in air quality resulting from
49 emissions from the proposed source or modification would not cause or contribute to concentrations which would
50 exceed the maximum allowable increases for a Class I Federal area. If the Department concurs with this
51 demonstration, then the source shall not be issued a permit.

52 D. Class I Waivers: The owner or operator of a proposed source or modification may demonstrate to
53 the Federal Land Manager that the emissions from a proposed source or modification would have no adverse impact
54 on air quality related values, including visibility, of Class I Federal lands under his or her jurisdiction. This may be
55 done even though the change in air quality resulting from emissions from such source or modification would cause
56 or contribute to concentrations which would exceed the maximum allowable increases for a Class I Federal area. If

1 the Federal Land Manager concurs with such demonstration and so certifies to the Department, the Department may
2 grant a waiver from such maximum allowable increases. Emission limitations must be included in the permit as
3 necessary to assure that emissions of sulfur dioxide, [~~particulate matter~~] PM₁₀, PM_{2.5}, and nitrogen oxides would not
4 exceed the maximum allowable increases over minor source baseline concentrations shown in Table 5 of this Part
5 (20.2.74.505 NMAC).

6 **E.** For the case where the Federal Land Manager does not perform an impact analysis with respect to
7 visibility impairment in a Class I Federal area, the Department may perform such an analysis. The Department shall
8 not issue the source a permit if the Department determines that an adverse impact on visibility would occur. The
9 adverse impact must be due, primarily, to the operation of the proposed source or modification.

10 **F.** Sulfur Dioxide Waiver by Governor: The owner or operator of a proposed major stationary source
11 or major modification, which cannot be approved under subsection D of 20.2.74.403 NMAC, may demonstrate to
12 the Governor that the source cannot be constructed by reason of an exceedance of a maximum allowable increase for
13 a Class I Federal area for sulfur dioxide for a period of twenty-four (24) hours or less. The owner or operator may
14 also demonstrate that a waiver from this requirement would not adversely affect the air quality related values of the
15 Class I Federal area. The Governor, after consideration of the Federal Land Manager's recommendation and subject
16 to his concurrence, may, after notice and public hearing, grant a waiver from such maximum allowable increase. If
17 the waiver is granted, the Department shall issue a permit to the owner or operator of the source or modification.
18 Any owner or operator of a source or modification who obtains a permit under this section shall comply with sulfur
19 dioxide emissions limitations. These limitations do not allow increases of ambient concentrations, above the
20 baseline concentration, to exceed the levels found in Table 6 of this Part (20.2.74.506 NMAC) for periods of twenty-
21 four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, in any annual period.

22 **G.** Sulfur Dioxide Waiver by Governor with the President's Concurrence. In any case where the
23 Governor recommends a waiver in which the Federal Land Manager does not concur, the recommendations of the
24 Governor and the Federal Land Manager shall be transmitted to the President through the office of the Governor. If
25 the President so directs, the Department shall issue the permit. Any source or modification that obtains a permit
26 under this section shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases
27 in ambient concentrations, above the baseline concentration, to exceed the levels found in Table 6 of this Part
28 (20.2.74.506 NMAC) for periods of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily
29 consecutive, in any annual period.

30 [07/20/95; 20.2.74.403 NMAC - Rn, 20 NMAC 2.74.403, 10/31/02; A, XX/XX/XX]

31
32 **20.2.74.404 to 20.2.74.500** [RESERVED]

33
34 **20.2.74.501** **TABLE 1 - PSD SOURCE CATEGORIES.**

- 35 **A.** Carbon black plants (furnace process)
- 36 **B.** Charcoal production plants
- 37 **C.** Chemical process plants
- 38 **D.** Coal cleaning plants (with thermal dryers)
- 39 **E.** Coke oven batteries
- 40 **F.** Fossil fuel boilers (or combinations thereof) totaling more than 250 million BTU/hr heat input
- 41 **G.** Fossil fuel-fired steam electric plants of more than 250 million BTU/hr heat input
- 42 **H.** Fuel conversion plants
- 43 **I.** Glass fiber processing plants
- 44 **J.** Hydrofluoric acid plants
- 45 **K.** Iron and steel mills
- 46 **L.** Kraft pulp mills
- 47 **M.** Lime plants
- 48 **N.** Municipal incinerators capable of charging more than 50 tons of refuse per day
- 49 **O.** Nitric acid plants
- 50 **P.** Petroleum refineries
- 51 **Q.** Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels
- 52 **R.** Phosphate rock processing plants
- 53 **S.** Portland cement plants
- 54 **T.** Primary aluminum ore reduction plants
- 55 **U.** Primary copper smelters
- 56 **V.** Primary lead smelters

- 1 W. Primary zinc smelters
 - 2 X. Secondary metal production plants
 - 3 Y. Sintering plants
 - 4 Z. Sulfur recovery plants
 - 5 AA. Sulfuric acid plants
 - 6 AB. Taconite ore processing plants
- 7 [07/20/95; 20.2.74.501 NMAC - Rn, 20 NMAC 2.74 Table 1, 10/31/02; A, 1/22/06]

8
9 **20.2.74.502 TABLE 2 - SIGNIFICANT EMISSION RATES:**

POLLUTANT	EMISSION RATE (TONS/YR)
Carbon monoxide	100
Fluorides	3
Lead	0.6
Municipal waste combustor	
Acid gases (measured as sulfur dioxide and hydrogen chloride)	40 (36 megagrams/year)
Metals (measured as particulate matter)	15 (14 megagrams/year)
Organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035 (0.0000032 megagrams/yr)
Nitrogen oxides	40
Ozone (Volatile Organic Compounds or nitrogen oxides)	40
Particulate Matter	
Particulate matter emissions	25
PM ₁₀ emissions	15
Particulate Matter _{2.5}	
PM _{2.5} emissions	10
Sulfur dioxide emissions	40
Nitrogen oxide emissions (unless demonstrated not to be a PM _{2.5} precursor under Subsection AS of 20.2.74.7 NMAC)	40
Sulfur compounds	
Hydrogen sulfide (H ₂ S)	10
Reduced sulfur compounds (incl. H ₂ S)	10
Sulfur dioxide	40
Sulfuric acid mist	7
Total reduced sulfur (incl. H ₂ S)	10
Any other pollutant regulated under the act that is not listed in this table	Any emission rate
Each regulated pollutant	Emission rate or net emissions increase associated with a major stationary source or major modification that causes an air quality impact of one microgram per cubic meter or greater (24-hr average) in any class I federal area located within 10 km of the source.

11 [07/20/95; 20.2.74.502 NMAC - Rn, 20 NMAC 2.74 Table 2, 10/31/02; A, 1/22/06; A, 8/31/09; A, XX/XX/XX]

12
13
14 **20.2.74.503 TABLE 3 - SIGNIFICANT MONITORING CONCENTRATIONS.**

POLLUTANT	AIR QUALITY CONCENTRATION micrograms per cubic meter	AVERAGING TIME
Carbon monoxide	575	8 hours
Fluorides	0.25	24 hours
Lead	0.1	3 months

Nitrogen dioxide	14	Annual
Ozone	b	
[Particulate matter (PM-10)] PM ₁₀	10	24 hours
PM _{2.5}	4	24 hours
Sulfur compounds		
Hydrogen sulfide (H ₂ S)	0.20	1 hour
Reduced sulfur compounds (incl. H ₂ S)	10	1 hour
Sulfur dioxide	13	24 hours
Sulfuric acid mist	a	
Total reduced sulfur (incl. H ₂ S)	10	1 hour
a - No acceptable monitoring techniques available at this time. Therefore, monitoring is not required until acceptable techniques are available.		
b - No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.		

[07/20/95; 20.2.74.503 NMAC - Rn, 20 NMAC 2.74 Table 3, 10/31/02; A, 1/22/06; A, 8/31/09; A, XX,XX,XX]

20.2.74.504 TABLE 4 - ALLOWABLE PSD INCREMENTS:

	Micrograms per cubic meter (µg/m ³)		
	Class I	Class II	Class III
Nitrogen Dioxide annual arithmetic mean	2.5	25	50
Particulate Matter			
PM ₁₀ , annual arithmetic mean	4	17	34
PM ₁₀ , 24-hour maximum	8 ^a	30 ^a	60 ^a
PM _{2.5} , annual arithmetic mean	1	4	8
PM _{2.5} , 24-hour maximum	2 ^a	9 ^a	18 ^a
Sulfur Dioxide			
annual arithmetic mean	2	20	40
24-hour maximum	5 ^a	91 ^a	182 ^a
3-hour maximum	25 ^a	512 ^a	700 ^a
a - Not to be exceeded more than once a year.			

[07/20/95; 20.2.74.504 NMAC - Rn, 20 NMAC 2.74 Table 4, 10/31/02; A, XX/XX/XX]

20.2.74.505 TABLE 5 - MAXIMUM ALLOWABLE INCREASES FOR CLASS I WAIVERS:

	Micrograms per cubic meter (µg/m ³)
Nitrogen Dioxide annual arithmetic mean	25
Particulate Matter	
PM ₁₀ , annual arithmetic mean	17
PM ₁₀ , 24-hour maximum	30
PM _{2.5} , annual arithmetic mean	4
PM _{2.5} , 24-hour maximum	9
Sulfur Dioxide	
annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325

[07/20/95; 20.2.74.505 NMAC - Rn, 20 NMAC 2.74 Table 5, 10/31/02; A, XX/XX/XX]

1 **20.2.74.506 TABLE 6 - MAXIMUM ALLOWABLE INCREASE FOR SULFUR DIOXIDE WAIVER**
 2 **BY GOVERNOR:**
 3

Period of Exposure	Micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) Terrain Areas	
	Low	High
24-hr. maximum	36	62
3-hr. maximum	130	221

4
 5 [07/20/95; 20.2.74.506 NMAC - Rn, 20 NMAC 2.74 Table 6, 10/31/02]
 6

7 **HISTORY OF 20.2.74 NMAC:**

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

10 EIB/AQCR 707, Air Quality Control Regulation 707 - Permits, Prevention Of Significant Deterioration (PSD),
 11 02/14/84;

12 EIB/AQCR 707, Air Quality Control Regulation 707 - Permits, Prevention Of Significant Deterioration (PSD),
 13 07/15/86;

14 EIB/AQCR 707, Air Quality Control Regulation 707 - Permits, Prevention Of Significant Deterioration (PSD),
 15 08/01/88;

16 EIB/AQCR 707, Air Quality Control Regulation 707 - Permits, Prevention Of Significant Deterioration (PSD),
 17 05/29/90.

18
 19 **History of Repealed Material: [RESERVED]**
 20

21 **Other History:**

22 EIB/AQCR 707, Air Quality Control Regulation 707 - Permits, Prevention Of Significant Deterioration (PSD), filed
 23 05/29/90 was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.74, Permits --
 24 Prevention Of Significant Deterioration (PSD), filed 06/20/95.

25 20 NMAC 2.74, Permits -- Prevention Of Significant Deterioration (PSD), filed 06/20/95 was **renumbered,**
 26 **reformatted and replaced** by 20.2.74 NMAC, Permits -- Prevention Of Significant Deterioration (PSD), effective
 27 10/31/02.
 28