Proposed Amendments to 20.2.79 NMAC, *Permits - Nonattainment Areas*

20.2.79.7 NMAC DEFINITIONS:

Z "Net emissions increase"

(1)

(b) *any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable; baseline actual emissions for calculating increases and decreases shall be determined as provided in Subsection E of this section, except that Subparagraphs (c) of Paragraph (1) and (d) of Paragraph (2) of Subsection E of this section shall not apply.*

This citation is incorrect. The language comes from 40 CFR 51.165(a)(1)(vi)(A), which provides: *"(2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph (a)(1)(vi)(A)(2) shall be determined as provided in paragraph (a)(1)(xxxv) of this section, except that paragraphs (a)(1)(xxxv)(A)(3) and (a)(1)(xxxv)(B)(4) of this section shall not apply."*

In this case: "40 CFR 51.165(a)(1)(xxxv)(A)(3)" = 20.2.79.7.E.(1).(c) NMAC; and "40 CFR 51.165(a)(1)(xxxv)(B)(4)" = 20.2.79.7.E.(2)(d) NMAC.

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

This definition is obsolete. The language comes from the 1977 Clean Air Act, which was amended by the 1990 Clean Air Act. The proposed amended language mirrors the current CAA definition which provides:
"(2) Nonattainment Area. —The term "nonattainment area" means, for any air pollutant, an area which is designated "nonattainment" with respect to that pollutant within the meaning of section 7407(d) of this title."

AE. "Potential to emit" *means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or*

processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the PTE of a stationary source."

The language in this paragraph is based on 40 CFR 51.165(a)(1)(iii), which included the proposed added language at the time 20.2.79 NMAC was adopted. This language was left out when this provision was originally adopted into the NM regulation. Nonetheless, the definition of a major source (20.2.79.7.V.(6) NMAC) addresses this in determining the PTE of a stationary source under this rule. (e.g. "A stationary source shall not be a major stationary source due to secondary emissions.").

40 CFR 51.165(a)(1)(iii) provides:
"Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source."

20.2.79.109 APPLICABILITY:

A.

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

The language in this paragraph is derived from 40 CFR 51.165.(b)(1) & (2) but is not verbatim. The proposed amendment would align Part 79 with the CFR.

40 CFR 51.165.(b)(1) & (2) provides:
(b)(1) Each plan shall include a preconstruction review permit program or its equivalent to satisfy the requirements of section 110(a)(2)(D)(i) of the Act for any new major stationary source or major modification as defined in paragraphs (a)(1) (iv) and (v) of this section. Such a

program shall apply to any such source or modification that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to section 107 of the Act, when it would cause or contribute to a violation of any national ambient air quality standard.
(2) A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

E. Applicability procedures.

(1) *Except as otherwise provided in [~~Paragraphs (3) and (4)~~] Paragraph (6) 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."*

This citation is outdated. The language comes from 40 CFR 51.165(a)(2)(ii)(A), which provides: *"(A) Except as otherwise provided in paragraph[s] (a)(2)(iii) [and (iv)] of this section, and consistent with the definition of major modification contained in paragraph (a)(1)(v)(A) of this section, a project is a major modification for a regulated NSR pollutant (as defined in paragraph (a)(1)(xxxvii) of this section) if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (a)(1)(xxvii) of this section), and a significant net emissions increase (as defined in paragraphs (a)(1)(vi) and (x) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase."*

In this case, "40 CFR 51.165 (a)(2)(iii)" = 20.2.79.109.E.(6) NMAC; and "40 CFR 51.165 (a)(2)(iv)" no longer exists in the CFR. [84 FR 70098, 12/20/19]

(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) and (5) 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."

This citation is incorrect. The language comes from 40 CFR 51.165(a)(2)(ii)(B), which provides: *"(B) 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 (a)(2)(ii)(C) through (F) of this section. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in paragraph (a)(1)(vi) of this section. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase."*

In this case, "40 CFR 51.165 (a)(2)(ii)(C)" = 20.2.79.109.E.(3) NMAC; "40 CFR 51.165 (a)(2)(ii)(D)" = 20.2.79.109.E.(4) NMAC; "40 CFR 51.165 (a)(2)(ii)(E) = Reserved; "40 CFR 51.165 (a)(2)(ii)(F)" = 20.2.79.109.E.(5) NMAC.

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

The language in this paragraph comes from 40 CFR 51.165(a)(9)(iii), which provides: *"(iii) Notwithstanding the requirements of paragraph (a)(9)(ii) of this section for meeting the requirements of paragraph (a)(3) of this section, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to subpart 2, part D, title I of the Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to subpart 2, part D, title I of the Act."*

In this case: "40 CFR 51.165 (a)(9)(ii)" = 20.2.79.109.J NMAC.

L. *In meeting the emissions offset requirements of 20.2.79.115 NMAC for ozone nonattainment areas that are subject to subpart 1, part D, title I of the federal clean air act, (but are not subject to subpart 2, part D title I of the clean air act including 8-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions increase of VOC shall be at least 1:1.*

The missing language in this paragraph comes from 40 CFR 51.165(a)(9)(iv), which provides:
"(iv) The plan shall require that in meeting the emissions offset requirements of paragraph (a)(3) of this section for ozone nonattainment areas that are subject to subpart 1, part D, title I of the Act (but are not subject to subpart 2, part D, title I of the Act, including 8-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1:1."

20.2.79.115 EMISSION OFFSETS:

F.

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

The missing language in this subparagraph comes from 40 CFR 51.165(a)(3)(ii)(C)(1), which provides:
"Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if they meet the requirements in paragraphs (a)(3)(ii)(C)(1)(i) through (ii) of this section.
(i) Such reductions are surplus, permanent, quantifiable, and federally enforceable.
(ii) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, a reviewing authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977."

20.2.79.119 TABLES:

B. Fugitive emissions source categories:

(7) *fossil fuel boiler (or combination thereof) totaling more than [~~50~~] 250 million Btu/hr heat input*

The value of "50 million BTU" is incorrect, it should be "250" million BTU.
40 CFR 51.165(a)(1)(iv)(C)(21) provides:

"Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;"

20.2.79.120 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALs):

I. Expiration of a PAL.

(5) *The major stationary source owner or operator shall continue to comply with any New Mexico or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to ~~[20.2.79.109 NMAC]~~ Subsection A of 20.2.79.110 NMAC , but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (3) of Subsection A of this section.*

This citation is incorrect. The language in this subparagraph was adopted at the 11/1/2005 EIB hearing, and was based on 40 CFR 51.165(f)(9) which provides:

"(v) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph (a)(5)(ii) of this section, but were eliminated by the PAL in accordance with the provisions in paragraph (f)(1)(iii)(C) of this section."

In this case: "40 CFR 51.165 (a)(5)(ii)" = 20.2.79.110.A NMAC, ***not*** 20.2.79.109 NMAC.

40 CFR 51.165 (a)(5)(ii) provides:

"At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification;"

Which correlates with 20.2.79.110.A NMAC:

20.2.79.110 SOURCE OBLIGATION:

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