WEST VIRGINIA
SECRETARY OF STATE
Betty Ireland
ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In This Box

2008 JUL -3

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Department of Environmental Protection, Division of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative CITE AUTHORITY: _____

AMENDMENT TO AN EXISTING RULE: YES [X] NO [ ]

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR14

TITLE OF RULE BEING AMENDED: Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: Monday, August 11, 2008 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: WV Department of Environmental Protection
Coopers Rock Conference Room
601 57th Street, S.E.
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL [ ] WRITTEN [ ] BOTH [X]

DATE WRITTEN COMMENT PERIOD ENDS: Monday, August 11, 2008 TIME: At close of hearing

WRITTEN COMMENTS MAY BE MAILED TO:
Kathy Cosco, Public Information Office
WV Department of Environmental Protection
601 57th Street, S.E.
Charleston, WV 25304

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Authorized Signature

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

BRIEFING DOCUMENT

Rule Title: 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration"

A. AUTHORITY: W.Va. Code §22-5-4

B. SUMMARY OF RULE:

This rule establishes a state construction permit program consistent with the federal Clean Air Act's Title I program and implementing regulations at 40 CFR §51.166, "Prevention of Significant Deterioration of Air Quality." 45CSR14 is part of the State Implementation Plan and sets forth the criteria and procedures for major stationary sources to obtain a permit to construct, operate and/or modify a major stationary source.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

As required by 40 CFR Part 51, Subpart I - "Review of New Sources and Modifications," this rule adopts criteria and procedures for the prevention of significant deterioration of air quality that are consistent with the governing federal regulation at 40 CFR §51.166. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under 40 CFR Part 51 and the CAA, as amended. Revisions to the rule remove provisions for pollution control projects and clean units per a 2005 US Court of Appeals for the District of Columbia Circuit court decision which vacated these provisions in the federal counterpart. New references to NO_X as a precursor are also included in the proposed rule to comport with federal counterpart language. The DAQ will submit final rule 45CSR14 as a revision to the State Implementation Plan.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

A federal counterpart to this proposed rule exists. Because proposed revisions make the rule conform to the federal counterpart rule, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with W.Va. Code §§22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its June 24, 2008 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. (See attached minutes for Council's discussion).

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES
Tuesday, June 24, 2008
601 57th Street, SE, Charleston, WV
West Virginia Room – 3rd Floor

IN ATTENDANCE:

Members of the Council:

Jackie Hallinan
Karen Price
Bill Raney
Rick Roberts

DEP:

Randy Huffman	Cabinet Secretary
Lisa McClung	Deputy Cabinet Secretary and Director, Division of Water and Waste Management
Raymond Franks II	General Counsel
Karen Watson	Associate General Counsel
Kathy Cosco	Communications Director
Pam Nixon	Environmental Advocate
Ken Politan	Mining & Reclamation
Lewis Halstead	Mining & Reclamation
Charlie Sturey	Mining & Reclamation
Carroll Cather	Water & Waste Management
Don Martin	Land Restoration
Brian Long	Water & Waste Management
Dan Arnold	Water & Waste Management
Mike Zeto	Environmental Enforcement
Terrie Sangid	Water & Waste Management
Jim Mason	Air Quality
Mike Johnson	Water & Waste Management
Kathy Emery	Water & Waste Management
Scott Mandirola	Water & Waste Management

Visitors:

Tom Boggs	Chamber of Commerce
Don Garvin	WV Environmental Council
Ruth Lemmon	WV Auto/Truck Dealers Association

OLD BUSINESS:

Secretary Huffman called the meeting to order at 1:35 p.m., and he announced that Members Lisa Dooley and Larry Harris would not be attending. On motion made by Mr. Raney and seconded by Ms. Hallinan, the Council approved the minutes from the March 18, 2008 meeting. Secretary Huffman then ceded the floor to Mr. Franks.

NEW BUSINESS:

Mr. Franks noted that for the 2009 regular legislative session, DEP was proposing changes to 20 rules, grouped by Division for presentation to the Council. Depending on who had shepherded the rule through its initial drafting, either Mr. Franks or Ms. Watson would lead the discussion, with program administrators available to assist in answering the Council's questions.

Ms. Watson presented 60 CSR 3, the "Brownfields" Rule. Ms. Watson explained that the Rule was currently pending before the Secretary of State for authorization as an emergency rule, and that the proposed changes included adjustments to the "de minimis" table and enhancing DEP's flexibility in obtaining risk assessments.

Ms. Price referred to a letter recently sent to DEP seeking clarification of the Rule's provisions concerning land use covenants and long-term maintenance agreements. Secretary Huffman stated that the letter would be retrieved and the issue noted for further consideration by the agency.

Mr. Raney inquired whether the Council could recommend changes to the rules as presented. Ms. Watson responded in the affirmative. Mr. Raney then asked whether written comments, such as those submitted by Mr. Harris prior to the meeting, would be appended to the minutes. Mr. Franks responded in the negative, and Ms. Watson expounded that Mr. Harris's comments would be summarized and addressed orally during the discussion of the particular rules involved.

Mr. Franks then presented 38 CSR 2, the Surface Mining Reclamation Rule. Mr. Franks explained that the proposed changes would expand the Secretary's oversight of "approved persons" authorized to render technical certifications contained within mining permit applications, and would clarify certain collateral activities as being within the scope of requests for incidental boundary revisions to existing permits. Mr. Franks also noted that the proposed Rule would set forth more relevant and exacting criteria for the Secretary to consider in evaluating applications for revisions.

Mr. Raney inquired generally about the provisions with respect to approved persons. Secretary Huffman replied that the increased oversight is necessary to improve the initial quality of the permit applications, such that the delays occasioned by subsequent corrections would be reduced or eliminated. Mr. Raney asked whether approved persons could include anyone other than engineers, and Mr. Halstead responded that the definition extended to surveyors and geologists. Mr. Raney noted the need to establish a procedure for suspension or revocation to limit the agency's unfettered discretion, to which Secretary Huffman and Mr. Franks replied that the Rule provided for notice and hearing prior to curtailing the privileges of anyone on the approved-person list.

Ms. Watson presented 47 CSR 30, establishing NPDES requirements for coal mining facilities. Ms. Watson explained that the proposed changes were relatively minor, designed to enhance consistency with the non-coal rule, to allow for digital signatures, and to permit correction of clerical errors.

The Council then considered the Air Quality rules. Mr. Franks presented 45 CSR 1 and 45 CSR 26, relating to control and reduction of nitrogen oxides from, respectively, non-electric and electric generating units, the latter by means of a budget trading program. The rules are to be repealed in their entireties, and Mr. Mason explained that both are being subsumed within the Clean Air Interstate Rule program.

Mr. Franks then presented 45 CSR 8, the Ambient Air Quality Rule. Mr. Franks explained that the 1-hour primary and secondary ozone standards were being replaced with 8-hour standards, with the maximum tolerance being reduced slightly. Mr. Raney inquired as to the practical effect of the proposed change, particularly with regard to whether non-compliance areas within the State might be expanded. Mr. Mason replied that an expansion might occur, but that it was difficult to predict at this early stage. Mr. Mason added that the time-period increase would inevitably lead to more accurate measurements.

Ms. Watson presented 45 CSR 13, governing permits for constructing and modifying non-major stationary sources of air pollutants. Ms. Watson explained that the Rule was being amended to reflect the recent statutory changes reducing the lag time for issuing permits and authorizing certain pre-permit construction. It was noted that Mr. Harris had submitted in writing his concern that courts would be loath to enforce agency cease-and-desist orders based on defects discovered during the permitting process after construction had already begun. Ms. Watson pointed out that the statute had been carefully crafted to avoid facile invocation of detrimental reliance, with Mr. Franks observing that the Rule strove to conform to the statute. Ms. Price wondered whether one or more of the timeframe provisions included within the existing Rule had been inadvertently omitted from the proposed version. Ms. Watson responded that the Rule had been carefully checked for completeness, but that she would once again verify the language to assure its accuracy.

Mr. Franks presented 45 CSR 14, governing permits for constructing and significantly modifying major stationary sources of air pollutants. Mr. Franks explained that references to pollution control projects and clean units were deleted in accordance with a federal appellate court decision vacating those provisions.

Mr. Franks went on to present 45 CSR 16, 45 CSR 25, and 45 CSR 34, relating respectively to performance standards for new stationary sources, pollution from hazardous waste treatment, storage, and disposal facilities, and emission standards for hazardous air pollutants. Mr. Mason noted that the changes incorporate revisions to the Rules' federal counterparts, except that some of the new standards were not incorporated within 45 CSR 34, because they constituted unfunded mandates. Mr. Garvin was recognized, and he asked whether the failure to incorporate equated to a lack of regulation. Mr. Mason responded in the negative, explaining that the monitoring and regulation would be performed by the federal government. Mr. Garvin inquired as to the affected industries, and Mr. Mason referred to a list including smaller gas facilities and paint-stripping shops.

Ms. Watson presented 45 CSR 37, detailing the budget trading program to reduce mercury emissions. Ms. Watson explained that the rule is being repealed as inconsistent with a federal appellate court decision, pending alternative action by the EPA. Mr. Garvin inquired whether the Rule repealed two years ago would be reinstated upon revocation of the current version, to which Ms. Watson and Mr. Franks replied that it would not, if there had indeed been a previous rule in place, which was somewhat in question. Mr. Mason explained that mercury emissions would be monitored and regulated as usual, except that budget trading would not be available as a method of reduction. He also stated that there have been discussions on a national level as to whether to reinstate the federal mercury monitoring requirements.

The Council then turned its attention to the Water and Waste Management Rules. Ms. Watson presented 33 CSR 20, governing hazardous waste management systems. Ms. Watson explained that the Rule incorporated by reference its federal counterpart, the most salient change to which is its attempt to reduce disposal by permitting facilities to stage hazardous waste for three days pending recycling. Mr. Raney asked whether three days was sufficient time, and Mr. Cather responded in the affirmative.

Mr. Franks presented 33 CSR 24, the Hazardous Waste Management Fee Rule. Mr. Franks explained that increases to the fee assessments are necessary to sustain the underlying Fund by ensuring sufficient matching revenue for federal grants. Ms. Price indicated her belief that, as part of the legislative compromise extending the fee's duration, no increases would be forthcoming until completion and review of the Fund's legislative audit. Secretary Huffman responded that the preliminary audit findings in no way indicate any misallocation within the Fund or contravene the agency's determination that fee increases are necessary. Ms. Lemmon was recognized, and she commented that the proposed increase was unfair to automobile and truck dealers, as well as other small generators. Ms. Lemmon suggested that a study be done to identify the industries causing DEP to incur program costs, with fee assessments to be made proportionately.

Ms. Watson presented 33 CSR 22 and 47 CSR 56, governing the assessment of civil administrative penalties for, respectively, hazardous and solid waste violations and violations relating to groundwater. Ms. Watson explained that the Rules were being modified for the first time since their initial promulgation, with the purpose of clarifying their application by listing additional factors to be considered in calculating penalties, providing ratings examples, and expanding facility categories.

Ms. Watson then presented 47 CSR 31, addressing the State Water Pollution Control Revolving Fund. Ms. Watson explained that the proposed changes include the creation of a state review process for sewer projects in lieu of a wholesale adoption of the federal requirements. Mr. Roberts observed that many of the eligibility criteria would be deleted, but Ms. Emery assured the Council that inasmuch as the criteria were not being uniformly met, the deletion would have no practical effect on the Fund's administration. Ms. Watson advised Mr. Roberts that if he continued to have concerns upon further review, he should submit written suggestions for changes during the formal comment period.

Mr. Franks presented 47 CSR 32, governing the certification of laboratories conducting analyses of waste and wastewater. Mr. Franks explained that the proposed changes are designed to modernize outdated procedures and protocols that have remained constant since 1995, and to increase program funding through increased certification fees and a new application fee. Mr. Raney asked whether the new fees would render the program self-sustaining, and Mr. Arnold replied that it would for the time-being. In response to further inquiry, Mr. Arnold stated that DEP conducts annual, on-site audits of commercial and industrial labs, with municipal labs typically audited every two years, depending on the experience of the support personnel.

Ms. Watson presented 47 CSR 34, the Dam Safety Rule. Ms. Watson explained that the Rule is being extensively augmented to govern disbursement and use of a new Revolving Fund to finance repair and rehabilitation of deficient dams. Secretary Huffman commented that it appeared imminent that the Legislature would approve a transfer of $350,000 from excess general revenue as seed money for the Fund.

Lastly, Ms. Watson presented 47 CSR 2, the Water Quality Standards Rule. Ms. Watson explained that the proposed revisions are designed to clarify the definition of Category A use, while providing specific standards to be applied in the permitting process to determine in a more streamlined fashion whether the use is unsuitable in cases of insufficient flow and hydrologic modification. Mr. Raney commented that the Category A determination process has always been a significant problem for the coal industry. Ms. Price also agreed for her members. Mr. Garvin noted that the environmental community had expressed some initial concern regarding the proposed streamlining mechanisms, but that there was some general support for taking the matter out of the legislative arena. Mr. Huffman affirmed that the revisions are designed solely for the benefit of the regulated public and that the revisions must include the clarification that Category A applies statewide.

Ms. Watson reported that the rules will proceed to be filed with the Secretary of State, some perhaps as early as the week following the Council meeting, and that some will have an extended 45-day comment period.

Mr. Franks requested closing comments from Council members and from the public. Following the cessation of discussion, Mr. Franks reminded the Council that the next meeting is scheduled for 1:30 p.m. on September 9, 2008.

Secretary Huffman declared the meeting adjourned at 3:25 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration"

Type of Rule: ___X___ Legislative _____Interpretive _____Procedural

Agency: Division of Air Quality

Address: 601 57th Street SE

Charleston, WV 25304

Phone Number: 926-0475 Email: tmowrer@wvdep.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact above that resulting from currently applicable federal emission standards.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR

Effect of Proposal	2009 Increase/Decrease (use "-")	2010 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	$ 0	$ 0	$ 0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration"

3. Explanation of above estimates (including long-range effect):
Please include any increase or decrease in fees in your estimated total revenues.

Any costs incurred by revision to this rule were included in cost estimates prepared for implementation of Title V of the Clean Air Act, as amended, under 45CSR30.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
~~OFFICE OF~~ AIR QUALITY

SERIES 14
PERMITS FOR CONSTRUCTION AND MAJOR MODIFICATION OF MAJOR STATIONARY SOURCES OF AIR POLLUTION FOR THE PREVENTION OF SIGNIFICANT DETERIORATION

§45-14-1. General.

1.1. Scope. -- This rule provides:

1.1.a. A mechanism to ensure that economic growth will occur in harmony with the preservation of existing clean air resources; to prevent the development of any new non-attainment problems; to protect the public health and welfare from any adverse effects which might occur even at air quality levels better than the West Virginia and National Ambient Air Quality Standards; and to preserve, protect, and enhance the air quality in areas of special natural, recreational, scenic, or historic value. It is the intent of the Secretary to register and evaluate sources of air pollutants and to preclude the construction or relocation of any major stationary source or major modification in any area classified as attaining National or West Virginia Ambient Air Quality Standards or unclassifiable in which the establishment of such source or modification may interfere with the goals of the prevention of significant deterioration of air quality levels; and

1.1.b. A method to quantitatively define significant deterioration of air quality with respect to the desired degree of preservation of air quality for various areas and to set forth procedures for registration and reporting, and the criteria for obtaining a permit to construct or relocate a major stationary source or make a major modification to a stationary source within a designated attainment or unclassified area of the State of West Virginia. Such construction, modification, or relocation without such a permit is a violation of this rule.

1.2. Authority. -- W. Va. Code §22-5-4.

1.3. Filing Date. -- ~~May 20, 2005~~.

1.4. Effective Date. -- ~~June 1, 2005~~.

1.5. Federal Regulation. -- Unless otherwise indicated, where reference to a federal regulation or standard appears in this rule, such regulation or standard will, for the purpose of this rule, be construed as that version which was in effect as of ~~July 1, 2004~~ June 1, 2008.

1.6. Former Rules. -- This legislative rule amends 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration" which was filed on ~~April 28, 1995~~ May 20, 2005 and became effective on ~~May 1, 1995~~ June 1, 2005.

§45-14-2. Definitions.

2.1. "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as described below, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under section 25. Instead, subsections 2.63 and 2.8 shall apply for those purposes.

2.1.a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is

representative of normal source operation. The Secretary may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

2.1.b. The Secretary may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

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

2.1.d. For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit following the physical or operational change, provided the source owner or operator maintains and submits to the Director, on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the Director if the Director determines such a period to be more representative of normal source operations following the physical or operational change.

2.2. "Actuals PAL" for a major stationary source means a PAL based on the baseline actual emissions (as defined in subsection 2.8) of all emissions units (as defined in subsection 2.27) at the source, that emit or have the potential to emit the PAL pollutant.

2.3. "Administrator" means the Administrator of the United States Environmental Protection Agency.

2.4. "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

2.5. "Air pollutants" means solids, liquids, or gases which, if discharged into the air, may result in statutory air pollution.

2.6. "Air pollution" or "statutory air pollution" means and is limited to the discharge into the air by the act of man substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

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

2.7.a. The applicable standards as set forth in 40 CFR Parts 60 and 61;

2.7.b. The applicable State of West Virginia emissions limitations or permit conditions, including those with a future compliance date; or

2.7.c. The applicable federally enforceable emissions limitations or permit conditions, including those with a future compliance date.

2.8. "Baseline actual emissions" means the

rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with subdivisions 2.8.a through 2.8.d.

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

2.8.a.1. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

2.8.a.2. The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

2.8.a.3. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

2.8.a.4. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by ~~subdivision~~ paragraph 2.8.a.2.

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

2.8.b.1. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

2.8.b.2. The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

2.8.b.3. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 45CSR19-8.6.

2.8.b.4. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

2.8.b.5. The average rate shall not be based on any consecutive 24-month period for

which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs 2.8.b.2 and 2.8.b.3.

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

2.8.d. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision 2.8.a, for other existing emissions units in accordance with the procedures contained in subdivision 2.8.b, and for a new emissions unit in accordance with the procedures contained in subdivision 2.8.c.

2.9. "Baseline area" means any county of the State of West Virginia in which a major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 $\mu g/m^3$ (annual average) of the pollutant for which the minor source baseline date is established. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the Secretary rescinds the corresponding minor source baseline date in accordance with subdivision 2.42.d.

2.10. "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and includes:

2.10.a. The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

2.10.b. The actual emissions representative of sources in existence on the applicable minor source baseline date. However, the following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

2.10.b.1. actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

2.10.b.2. actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

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

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

the emissions allowed by any federally enforceable emissions limitations or emissions limitations enforceable by the Secretary. If the Secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

2.13. "Building, Structure, Facility, or Installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities are a part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two (2)-digit code) as described in the Standard Industrial Classification Manual, 1987 (United States Government Printing Office stock number GPO 1987 0-185-718:QL 3).

2.14. "CAA" means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101-549 (November 15, 1990).

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

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

2.17. ~~"Clean Unit" means any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, is complying with such BACT/LAER requirements, and qualifies as a Clean Unit pursuant to section 22; or any emissions unit that has been designated by the Secretary as a Clean Unit, based on the criteria in subdivisions 23.3.a through 23.3.d; or any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, is complying with such BACT/LAER requirements, and qualifies as a Clean Unit pursuant to regulations approved into the State Implementation Plan in accordance with 40 CFR § 51.165(c) or § 51.166(u); or any emissions unit that has been designated as a Clean Unit by the Administrator in accordance with 40 CFR § 52.21 (y)(3)(i) through (iv)~~ [Reserved].

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

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

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

2.19. "Complete" means, in reference to an application for a permit, that the application

contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Secretary from requesting or accepting any additional information.

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

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

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

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

2.24. "Department of Environmental Protection" or "DEP" means the Department of Environmental Protection as defined in W. Va. Code §22-1-4.

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

2.26. "Emission" means the release, escape or discharge of air pollutants into the air.

2.27. "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in subsection 2.25. For purposes of this rule, there are two types of emissions units as described in subdivisions 2.27.a and 2.27.b.

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

2.27.b. An existing emissions unit is any emissions unit that does not meet the requirements in subdivision 2.27.a.

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

2.29. "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator including those requirements developed pursuant to 40 CFR Parts 60, 61 and 63, rules of the approved West Virginia State Implementation Plan, any permit requirements established pursuant to 40 CFR §52.21 or this rule, and any operating permits issued under a program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.

2.30. [Reserved.]

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

2.32. [Reserved.]

2.33. [Reserved.]

2.34. [Reserved.]

2.35. [Reserved.]

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

2.37. "Lowest achievable emission rate (LAER)" means, for any source, the more stringent of the following:

2.37.a. The most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

2.37.b. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emission rate for the new or modified emissions units within the stationary source. In no event shall the application of the term permit a new or proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

2.38. [Reserved.]

2.39. Major emissions unit means:

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

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

2.40. "Major modification" means any physical change in or change in the method of operation of a major stationary source which results in: a significant emissions increase (as defined in subsection 2.75) of any regulated NSR pollutant (as defined in subsection 2.66); and a significant net emissions increase of that pollutant from the major stationary source. However, the following actions do not constitute a physical change or change in the method of operation:

2.40.a. Routine maintenance, repair, and replacement.

2.40.b. Use of an alternative fuel or raw material by reason of any order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

2.40.c. Use of an alternative fuel by reason of an order or rule under ~~section~~ §125 of the CAA.

2.40.d. Use of fuel generated from municipal solid waste as an alternative fuel at a steam generating unit.

2.40.e. Use of an alternative fuel or raw material by a stationary source, provided that:

2.40.e.1. Prior to January 6, 1975, the source was capable of accommodating such alternative fuel or raw material, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR §52.21 or under any permit issued or order entered pursuant to any rule of the Secretary after January 6, 1975;

2.40.e.2. The source is approved to use the alternative fuel or raw material under any permit issued under 40 CFR §52.21 or under any permit issued or order entered pursuant to any rule of the Secretary.

2.40.f. An increase in the hours of operation unless such increase would be prohibited by a Federal permit issued pursuant to 40 CFR §52.21 or by any permit issued or order entered pursuant to any rule of the Secretary.

2.40.g. An increase in the production rate unless such increase would be prohibited by a Federal permit issued pursuant to 40 CFR §52.21 or by any permit issued or order entered pursuant to any rule of the Secretary.

2.40.h. Any change in ownership at a stationary source.

2.40.i. ~~The addition, replacement or use of a pollution control project, as defined in subsection 2.56, at an existing emissions unit meeting the requirements of section 24. A replacement control technology must provide more effective emission control than that of the replaced control technology to qualify for this exclusion.~~ [Reserved.]

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

2.40.j.1. The State Implementation Plan; and

2.40.j.2. Other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

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

~~2.40.k.1.~~ 2.40.l. The reactivation of a very clean coal-fired electric utility steam generating unit.

~~2.40.l.~~ 2.40.m. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under section 25 for a PAL for that pollutant. Instead, the definition at subsection 2.53 shall apply.

2.41. "Major modification for ozone" means a major modification for volatile organic compounds ~~and~~ or NO_X.

2.42. "Major and minor source baseline date." ==

2.42.a. "Major source baseline date" means:

2.42.a.1. in the case of particulate matter and sulfur dioxide, January 6, 1975; and

2.42.a.2. in the case of nitrogen dioxide, February 8, 1988.

2.42.b. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to the requirements of 40 CFR §52.21 or to this rule submits a complete

application under this rule. The trigger date is:

2.42.b.1. In the case of particulate matter and sulfur dioxide, August 7, 1977, and

2.42.b.2. In the case of nitrogen dioxide, February 8, 1988.

2.42.c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

2.42.c.1. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the CAA for the pollutant on the date of its complete application under 40 CFR §52.21 or this rule; and

2.42.c.2. In the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

2.42.d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the Secretary may rescind any such minor source baseline date where it can be demonstrated to the Secretary's satisfaction that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

2.43. "Major stationary source" means:

2.43.a. any of the following stationary sources of air pollutants which emits or has the potential to emit, one hundred (100) tons per year or more of any regulated pollutant:

- Fossil Fuel-fired Steam Electric Plants of More than 250 Million Btu/hr Heat Input,
- Coal Cleaning Plants (with thermal dryers),
- Kraft Pulp Mills,
- Portland Cement Plants,
- Primary Zinc Smelters,
- Iron and Steel Mill Plants,
- Primary Aluminum Ore Reduction Plants,
- Primary Copper Smelters,
- Municipal Incinerators Capable of Charging More than 250 Tons of Refuse per Day,
- Hydroflouric, Sulfuric and Nitric Acid Plants,
- Petroleum Refineries,
- Lime Plants,
- Phosphate Rock Processing Plants,
- Coke Oven Batteries,
- Sulfur Recovery Plants,
- Carbon Black Plants (furnace process),
- Primary Lead Smelters,
- Fuel Conversion Plants,
- Sintering Plants,
- Secondary Metal Production Plants,
- Chemical Process Plants,
- Fossil Fuel Boilers (or combinations thereof) Totaling More than 250 Million Btu/hour Heat Input,
- Petroleum Storage and Transfer Units with a Total Storage Capacity Exceeding 300,000 Barrels,
- Taconite Ore Processing Plants,
- Glass Fiber Processing Plants, and
- Charcoal Production Plants;

2.43.b. Notwithstanding the stationary source size specified in subdivision 2.43.a, any stationary source which emits or has the potential to emit, two hundred fifty (250) tons per year or more of any regulated pollutant; or

2.43.c. Any physical change at a stationary source, not otherwise qualifying under subdivision 2.43.a as a major stationary source, if the change itself would constitute a major stationary source.

2.43.d. The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source is listed in Table 1.

2.43.e. In addition to those facilities covered under subdivision 2.43.d, all coal preparation plants as defined under 40 CFR §60.251(a) which process more than 200 tons per day shall count fugitives from all "affected facilities" at the source, i.e., thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems.

2.43.f. For the purpose of this subsection, the term "affected facilities" means those facilities which are listed or identified as "affected facilities" in the applicable standard promulgated under §§111 or 112 of the CAA."

Table 1
SOURCE CATEGORIES WHICH MUST INCLUDE FUGITIVE EMISSIONS

- Fossil-Fuel-Fired Steam Electric Plants Greater Than 250 Million Btu/Hour Heat Input
- Coal Cleaning Plants (with thermal dryers)
- Kraft Pulp Mills
- Portland Cement Plants
- Primary Zinc Smelters
- Iron and Steel Mill Plants
- Primary Aluminum Ore Reduction Plants
- Primary Copper Smelters
- Municipal Incinerators Capable of Charging Greater Than 250 Tons of Refuse/Day
- Hydrofluoric, Sulfuric, and Nitric Acid Plants
- Petroleum Refineries
- Lime Plants
- Phosphate Rock Processing Plants
- Coke Oven Batteries
- Sulfur Recovery Plants
- Carbon Black Plants (furnace process)
- Primary Lead Smelters
- Fuel Conversion Plants
- Sintering Plants
- Secondary Metal Production Plants
- Chemical Process Plants
- Fossil Fuel Boilers (or combinations thereof) Totaling More Than 250 Million Btu/Hour Heat Input
- Petroleum Storage and Transfer Units with a Total Storage Capacity Exceeding 300,000 Barrels
- Taconite Ore Processing Plants
- Glass Fiber Processing Plants
- Charcoal Production Plants
- Any other stationary source category which, as of August 7, 1980, is being regulated under §§111 or 112 of the CAA.

2.44. "Major stationary source for ozone" means a major stationary source of volatile organic compounds or NO_X.

2.45. "Necessary preconstruction approvals or permits" means those permits or approvals required under the CAA and rules promulgated under W.Va. Code §22-5-4.

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

2.46.a. The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to subsection 3.4;

2.46.b. Any other increases and decreases in actual emissions at the major source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under subdivision 2.46.b shall be determined as provided in subsection 2.8 of this section, except that paragraphs 2.8.a.3 and 2.8.b.4 shall not apply;

2.46.c. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs not more than five (5) years prior to the date on which construction on the particular change commences nor later than the date on which the increase from the particular change occurs.

2.46.d. An increase or decrease in actual emissions is creditable only if:

~~2.46.d.1. The~~ the increase or decrease in actual emissions has not been relied upon by the United States Environmental Protection Agency in issuing a permit pursuant to 40 CFR §52.21 or by the Secretary in issuing a permit pursuant to this rule and such permit is in effect on the date on which the increase in emissions from the particular change occurs; ~~and~~

~~2.46.d.2. The increase or decrease in emissions did not occur at a Clean Unit except as provided in subsections 22.8 and 23.10;~~

2.46.e. The increase or decrease in actual emissions of particulate matter, sulfur dioxide, or nitrogen oxides which occurred prior to the applicable minor source baseline date was required to be considered and calculated in determining the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM_{10} emissions can be used to evaluate the net emissions increase for PM_{10};

2.46.f. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level;

2.46.g. A decrease in actual emissions is creditable only to the extent that:

2.46.g.1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2.46.g.2. It is federally enforceable and is enforceable by the Secretary at and after the time that the actual construction on the particular change begins;

2.46.g.3. The decrease in actual emissions must have approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change;

2.46.g.4. ~~The decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a Clean Unit under section 26, 40 CFR §52.21(y) or under regulations approved pursuant to or 40 CFR §51.165(d). Once an emissions unit has been designated as a Clean Unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the designation is based on in calculating the net emissions increase for another emissions unit (i.e., must not use that reduction in a "netting analysis" for another emissions unit). However, any new emission reductions that were not relied upon in a PCP excluded pursuant to section 27 of this section or for a Clean Unit designation are creditable to the extent they meet the requirements in subdivision 24.6.d for the PCP and subsections 22.8 and 23.10 for a Clean Unit.~~ [Reserved.]

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

2.47. "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

2.48. "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method, specified in 40 CFR Part 60, Appendix B, or by a test method specified in any rule of the Secretary which has been incorporated as part of the federally approved State Implementation Plan. All references to particulate or particulate matter in

this rule shall mean particulate matter emissions.

2.49. "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other state and all agencies or divisions thereof, any state political subdivision, the United States of America, any municipal, public, statutory or private corporation or association organized or existing under the laws of this or any state or country, and any firm, partnership, or association of whatever nature.

2.50. "Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with subsections 25.1 through 25.15.

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

2.52. "PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

2.53. "PAL major modification" means, notwithstanding subsections 2.40 and 2.46 (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

2.54. "PAL permit" means the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the State Implementation Plan, or the title V permit issued by the Secretary that establishes a PAL for a major stationary source.

2.55. "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

~~2.56. "Pollution control project (PCP)" means any activity, set of work practices or project (including pollution prevention as defined under subsection 3.36 undertaken at an existing emissions unit that reduces emissions of air pollutants from such unit. Such qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects listed in subdivisions 2.56.a through 2.56.f. are presumed to be environmentally beneficial pursuant to subdivision 24.2.a. Projects not listed in these paragraphs may qualify for a case-specific PCP exclusion pursuant to the requirements of subsections 24.2 and 24.5.~~

~~2.56.a. Conventional or advanced flue gas desulfurization or sorbent injection for control of SO_2;~~

~~2.56.b. Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants;~~

~~2.56.c. Flue gas recirculation, low-NO_x burners or combustors, selective non-catalytic reduction, selective catalytic reduction, low emission combustion (for internal combustion (IC) engines), and oxidation/absorption catalyst for control of NO_x;~~

~~2.56.d. Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this section, "hydrocarbon combustion flare" means either a flare used to comply with an applicable NSPS or MACT standard (including uses of flares during startup, shutdown, or malfunction permitted under such a standard), or a flare that serves to control emissions of waste streams comprised~~

~~predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide;~~

~~2.56.e. Activities or projects undertaken to accommodate switching (or partially switching) to an inherently less polluting fuel, to be limited to the following fuel switches:~~

~~2.56.e.1. Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05 percent sulfur diesel (i.e., from a higher sulfur content #2 fuel or from #6 fuel, to CA 0.05 percent sulfur #2 diesel);~~

~~2.56.e.2. Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;~~

~~2.56.e.3. Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of "unclean" wood;~~

~~2.56.e.4. Switching from coal to number 2 fuel oil (0.5 percent maximum sulfur content); and~~

~~2.56.e.5. Switching from high sulfur coal to low sulfur coal (maximum 1.2 percent sulfur content).~~

~~2.56.f. Activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the requirements of paragraphs 2.56.f.1 and 2.56.f.2.~~

~~2.56.f.1. The productive capacity of the equipment is not increased as a result of the activity or project.~~

~~2.56.f.2. The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. To make this determination, follow the procedure in subparagraph 2.56.f.2.A through 2.56.f.2.D.~~

~~2.56.f.2.A. Determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B.~~

~~2.56.f.2.B. Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage (using the annualized average of any 24 consecutive months of usage within the past 10 years) by the ODP of the replaced ODS.~~

~~2.56.f.2.C. Calculate the projected ODP-weighted amount by multiplying the projected actual usage of the new substance by its ODP.~~

~~2.56.f.2.D. If the value calculated in subparagraph 2.56.f.2.D is more than the value calculated in subparagraph 2.56.f.2.C, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.~~ [Reserved.]

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

2.58. "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 or is enforceable by the

Secretary in any permit and/or consent order issued by the United States Environmental Protection Agency or by the Secretary. Secondary emissions do not count in determining the potential to emit of a stationary source.

2.59. "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

2.60. "Prevention of Significant Deterioration (PSD) program" means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the State Implementation Plan, or the program in 40 CFR §52.21. Any permit issued under such a program is a major new source review (NSR) permit.

2.61. [Reserved.]

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

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

2.63.a. In determining the projected actual emissions under subsection 2.63 (before beginning actual construction), the owner or operator of the major stationary source:

2.63.a.1. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved State Implementation Plan; and

2.63.a.2. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

2.63.a.3. Shall exclude, in calculating any increase in emissions that results from he particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under subsection 2.8 and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

2.63.a.4. In lieu of using the method set out in paragraphs 2.63.a.1 through 2.63.a.3, may elect to use the emissions unit's potential to emit, in tons per year, as defined under subsection 2.58.

2.64. "Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

2.64.a. Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the Secretary's emissions inventory at the time of enactment;

2.64.b. Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than eighty-five (85) percent and a removal efficiency for particulates of no less than ninety-eight (98) percent;

2.64.c. Is equipped with low-NO_X burners prior to the time of commencement of operations following reactivation; and

2.64.d. Is otherwise in compliance with the requirements of the CAA.

2.65. [Reserved.]

2.66. "Regulated NSR pollutant," for purposes of this rule, means the following:

2.66.a. Any pollutant for which a National Ambient Air Quality Standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (e.g., volatile organic compounds or NO_X are precursors for ozone);

2.66.b. Any pollutant that is subject to any standard promulgated under ~~section~~ §111 of the CAA;

2.66.c. Any Class I or II substance subject to a standard promulgated under or established by title VI of the CAA; or

2.66.d. Any pollutant that otherwise is subject to regulation under the CAA; except that any or all hazardous air pollutants either listed in ~~section~~ §112 of the CAA or added to the list pursuant to ~~section~~ §112(b)(2) of the CAA, which have not been delisted pursuant to ~~section~~ §112(b)(3) of the CAA, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under ~~section~~ §108 of the CAA.

2.67. "Relocate" or "Relocation" means the physical movement of a source outside of its existing plant boundaries.

2.68. [Reserved.]

2.69. "Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

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

2.69.b. The Secretary shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection 2.69 and is granted an extension under ~~section~~ §409 of the CAA.

2.70. [Reserved.]

2.71. "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within ten (10) years after that change, where the Secretary determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the Secretary shall:

2.71.a. Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under Title IV of the CAA; and

2.71.b. Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

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

2.73. "Secretary" means the Secretary of the Department of Environmental Protection as defined in W. Va. Code §§22-1-6 or 22-1-8.

2.74. "Significant" means:

2.74.a. in reference to a net emission 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:

~~Pollutant and Emissions Rate~~

~~Carbon monoxide: 100 tons per year (TPY)~~

~~Nitrogen oxides: 40 TPY~~

~~Sulfur dioxide: 40 TPY~~

~~Particulate matter: 2 5 TPY~~

~~PM_{10}: 15 TPY~~

~~Ozone: 40 TPY of volatile organic compounds~~

~~Lead: 0.6 TPY~~

~~Fluorides: 3 TPY~~

~~Sulfuric acid mist: 7 TPY~~

~~Hydrogen sulfide (H_2S): 10 TPY~~

~~Total reduced sulfur (including H_2S): 10 TPY~~

~~Reduced sulfur compounds (including H_2S): 1 0 TPY~~

~~Municipal waste combustor organics (as total tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans): $3.5x10^{-6}$ TPY~~

~~Municipal waste combustor metals (as particulate matter): 15 TPY~~

~~Municipal waste combustor acid gases (as the sum of SO_2 and HCl): 40 TPY~~

~~Municipal solid waste landfill emissions (as nonmethane organic compounds): 50 TPY.~~

Pollutant and Emission Rate (tons per year)	
Carbon monoxide:	100
Nitrogen oxides:	40
Sulfur dioxide:	40
Particulate matter:	25
PM_{10}:	15
Ozone: of volatile organic compounds or NO_x	40
Lead:	0.6
Fluorides:	3
Sulfuric acid mist:	7
Hydrogen sulfide (H_2S):	10
Total reduced sulfur (including H_2S):	10
Reduced sulfur compounds (including H_2S):	10
Municipal waste combustor organics (as total tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans):	$3.5x10^{-6}$
Municipal waste combustor metals (as particulate matter):	15
Municipal waste combustor acid gases (as the sum of SO_2 and HCl):	40
Municipal solid waste landfill emissions (as nonmethane organic compounds):	50

2.74.b. in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that is not listed in subdivision 2.74.a, any emissions rate; and

2.74.c. notwithstanding subdivision 2.74.a, any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten (10) kilometers of any Class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$ (twenty-four (24) hour average).

2.75. "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in subsection 2.74) for that pollutant.

2.76. Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in subsection 2.74 or in the CAA, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in subsection 2.39.

2.77. "Significant impact" means an increase in the ambient air concentration for a particular pollutant as follows:

~~Averaging time (hours)~~

~~Pollutant:~~	~~Annual~~	~~24~~	~~8~~	~~3~~	~~1~~
~~SO_2~~	~~1.0 $\mu g/m^3$~~	~~5.0 $\mu g/m^3$~~		~~25.0 $\mu g/m^3$~~	
~~PM_{10}~~	~~1.0 $\mu g/m^3$~~	~~5.0 $\mu g/m^3$~~			
~~NO_2~~	~~1.0 $\mu g/m^3$~~				
~~CO~~		~~0.5 mg/m^3~~		~~2.0 mg/m^3~~	

Averaging time (hours)					
	Annual	24	8	3	1
Ambient Air Concentration Increase ($\mu g/m^3$)					
SO_2	1.0	5.0		25.0	
PM_{10}	1.0	5.0			
NO_2	1.0				
Ambient Air Concentration Increase (mg/m^3)					

CO			0.5		2.0

2.78. "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in subsection 2.74 or in the CAA, whichever is lower.

2.79. "Source" or "Stationary source" means any building, structure, facility, or installation which emits or may emit any regulated air pollutant.

2.80. "TSP" or "Total suspended particulate matter" means particulate matter as measured by the methods described in Appendix B of 40 CFR Part 50.

2.81. "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five (5) years or less, and which complies with the State Implementation Plan and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during and after the project is terminated.

2.82. [Reserved.]

2.83. "US EPA" means the United States Environmental Protection Agency.

2.84. "Volatile organic compounds (VOC)" is as defined in 40 CFR §51.100(s).

§45-14-3. Applicability.

3.1. The requirements of this rule apply to the construction of any new major stationary source (as defined in subsection 2.43) or any proposed project at an existing major stationary source in an area designated as attainment or unclassifiable under §§ 107(d)(1)(A)(ii) or (iii) of the CAA.

3.2. The requirements of sections 7 through 13 and sections 17 through 19 apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this rule otherwise provides.

3.3. No new major stationary source or major modification to which the requirements of sections 7 through 13 and sections 17 through subsection 19.7 apply shall begin actual construction without a permit issued by the Secretary that states that the major stationary source or major modification will meet those requirements.

3.4. Determination of major modification. -- The determination as to whether a proposed project is a major modification for a regulated NSR pollutant shall be determined in accordance with the specific provisions set forth in subdivisions 3.4.a through 3.4.f.

3.4.a. Except as otherwise provided in subsections 3.5 and 3.6, and consistent with the definition of major modification contained in subsection 2.40, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases -- a significant emissions increase (as defined in subsection 2.75), and a significant net emissions increase (as defined in subsections 2.46 and 2.74). The proposed project is not a major modification if it does not cause a significant emissions increase. If the proposed project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

3.4.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 subdivisions 3.4.c through 3.4.f. 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 subsection 2.46. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

3.4.c. Actual-to-projected-actual applicability test for projects that only involve existing emissions units. -- A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in subsection 2.63) and the baseline actual emissions (as defined in subdivisions 2.8.a and 2.8.b), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in subsection 2.74).

3.4.d. Actual-to-potential test for projects that only involve construction of a new emissions unit(s). -- A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in subsection 2.58) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in subdivision 2.8.c) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in subsection 2.74).

3.4.e. ~~Emission test for projects that involve Clean Units. -- For a project that will be constructed and operated at a Clean Unit without causing the emissions unit to lose its Clean Unit designation, no emissions increase is deemed to occur.~~

~~3.4.f.~~ 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 subdivisions 3.4.c through ~~3.4.e~~ 3.4.d as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in subsection 2.74). ~~For example, if a project involves both an existing emissions unit and a Clean Unit, the projected increase is determined by summing the values determined using the method specified in subdivision 3.4.c for the existing unit and using the method specified in subdivision 3.4.c for the Clean Unit.~~

3.5. For any major stationary source subject to a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements set forth in section 25.

~~3.6. An owner or operator undertaking a PCP (as defined in subsection 2.56) shall comply with the requirements set forth in section 24.~~

§45-14-4. Ambient Air Quality Increments and Ceilings.

4.1. No increases in pollutant concentrations over the baseline concentrations are allowed in excess of those listed below:

~~Pollutant Maximum Allowable Increase ($\mu g/m^3$)~~

~~Class I~~	
~~Particulate matter:~~	
~~PM_{10}, Annual geometric mean~~	~~4~~
~~PM_{10}, 24-hour maximum~~	~~8~~
~~Sulfur dioxide:~~	
~~Annual arithmetic mean~~	~~2~~
~~24-hour maximum~~	~~5~~
~~3-hour maximum~~	~~25~~
~~Nitrogen dioxide:~~	
~~Annual arithmetic mean~~	~~2.5~~
~~Class II~~	
~~Particulate matter:~~	
~~PM_{10}, Annual geometric mean~~	~~17~~
~~PM_{10}, 24-hour maximum~~	~~30~~
~~Sulfur dioxide:~~	
~~Annual arithmetic mean~~	~~20~~
~~24-hour maximum~~	~~91~~
~~3-hour maximum~~	~~512~~
~~Nitrogen dioxide:~~	

~~Annual arithmetic mean 25~~

~~Class III~~

~~Particulate matter:~~

~~PM_{10}, Annual geometric mean 34~~

~~PM_{10}, 24-hour maximum 60~~

~~Sulfur dioxide:~~

~~Annual arithmetic mean 40~~

~~24-hour maximum 182~~

~~3-hour maximum 700~~

~~Nitrogen dioxide:~~

~~Annual arithmetic mean 50~~

Maximum Allowable Pollutant Concentration Increase over Baseline Concentration ($\mu g/m^3$)	
Class I Areas	
Particulate matter:	
PM_{10}, Annual geometric mean	4
PM_{10}, 24-hour maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
Class II Areas	
Particulate matter:	
PM_{10}, Annual geometric mean	17
PM_{10}, 24-hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
Class III	
Particulate matter:	
PM_{10}, Annual geometric mean	34
PM_{10}, 24-hour maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hour maximum	182
3-hour maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

4.2. For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one location.

4.3. No pollutant concentration shall exceed any air quality standard promulgated:

4.3.a. by the Secretary; or

4.3.b. by the US_EPA.

§45-14-5. Area Classification.

5.1. Dolly Sods Wilderness Area and Otter Creek Wilderness Area are designated as Class I Areas;

5.2. The Spruce Knob-Seneca Rocks National Recreational Area, the Cranberry National Wilderness, and the New River Gorge National Scenic River are designated as Class II Areas; and

5.3. The remainder of the State of West Virginia is designated as a Class II Area.

§45-14-6. Prohibition of Dispersion Enhancement Techniques.

6.1. The use of stack heights which exceed good engineering practice or any dispersion techniques to reduce the concentration of any air pollutant and thereby, affect the degree of emission limitation required is prohibited unless a stack existed or dispersion technique was implemented before December 31, 1970.

§45-14-7. Registration, Reporting and

Permit Requirements for Major Stationary Sources and Major Modifications.

7.1. No person shall cause, suffer, allow, or permit the construction or relocation of any major stationary source or a major modification to be commenced after the effective date of this rule in any area designated as attainment or unclassifiable under ~~section~~ §107 of the CAA, without notifying the Secretary of such intent and obtaining prior to beginning actual construction, or modification (as defined by subsection 2.10) a permit(s) to so construct, modify, or relocate the major stationary source or major modification as herein provided. If the area in which such source would be constructed or the area in which such modification would occur is designated as nonattainment under §107 of the CAA, as amended, for any pollutant which the source or modification would emit in significant amounts (as defined by subsection 45CSR19-2.65), the source or modification shall meet all requirements of 45CSR19 for that pollutant and shall not be subject to the requirements of this rule for that pollutant.

7.2. The owner or operator of the source shall file with the Secretary a timely and complete permit application containing sufficient information as, in the judgment of the Secretary, will enable the Secretary to determine whether such source construction, modification, or relocation will be in conformance with the provisions of any rules promulgated by the Secretary in general and with the requirements of this rule. Such information may include, but not be limited to:

7.2.a. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

7.2.b. A detailed schedule for construction of the source or modification;

7.2.c. A detailed description as to what system of continuous emission reduction is planned by the source or modification, emission estimates, and any other information as necessary to determine that best available control technology as applicable would be applied;

7.2.d. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

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

7.3. Each permit application shall be signed by the owner or operator of the major stationary source or major modification, and such signature shall constitute an agreement that the applicant will assume responsibility for the construction, modification, or relocation, and operation of the major stationary source or major modification in accordance with applicable rules of the Secretary, the permit application, and any permit issued pursuant to this rule.

7.4. Within thirty (30) days of the receipt of a permit application for construction or relocation of a major stationary source or for a major modification, the Secretary shall determine if the application is complete or if there exists any deficiency in the application or information submitted, and shall notify the applicant of all such deficiencies, if any. In the event of such a deficiency, the date of receipt of the application shall be the date on which the Secretary received all required information.

7.5. Within six (6) months of the receipt of a complete permit application for construction or relocation of a major stationary source or for a major modification, the Secretary shall issue such a permit unless the Secretary determines that the proposed major stationary source or major modification has not satisfied the requirements of this rule, will violate applicable emission

standards, will interfere with the attainment or maintenance of applicable ambient air quality standards, or will be inconsistent with the intent and purpose of this rule, in which case the Secretary shall issue an order for the prevention of such construction, modification, or relocation.

7.6. If the Secretary denies a permit application for the proposed construction or relocation of any major stationary source or major modification, the order shall set forth the Secretary's reasons with reasonable specificity.

7.7. The Secretary may impose any reasonable conditions as part of a granted construction, modification, or relocation permit. Such conditions may include, but not be limited to, the submission of periodic progress or operation reports, the provisions of a suitable sampling site, the installation of pollutant monitoring devices, and the operation and maintenance of ambient air quality monitoring stations.

§45-14-8. Control Technology Requirements.

8.1. Any person proposing to construct or relocate a major stationary source or major modification shall meet each applicable emissions limitation promulgated by the Secretary and any applicable emissions standard or standard of performance under 40 CFR Parts 60, 61 and 63.

8.2. Any person proposing to construct a new major stationary source shall apply best available control technology for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

8.3. Any person proposing a major modification of a stationary source shall apply best available control technology for each regulated NSR pollutant for which such proposed major modification would cause a significant net emissions increase from such source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

8.4. For any proposed construction of a major stationary source or major modification which is a phased construction project, the determination of best available control technology shall be reviewed and modified as appropriate at the last reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

§45-14-9. Requirements Relating to the Source's Impact on Air Quality.

9.1. Any person proposing to construct or relocate a major stationary source or to make a major modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emission increases or reductions (including secondary emissions) would not cause or contribute to air pollution in violation of:

9.1.a. Any National or West Virginia Ambient Air Quality Standard; or

9.1.b. Any applicable maximum allowable increase over the baseline concentration in any area.

9.2. A major source or major modification will be considered to cause or contribute to a violation of a National Ambient Air Quality Standards when the ambient impact of the emissions from such source or modification would, at a minimum, exceed the significant impact levels defined in subsection 2.63.

§45-14-10. Modeling Requirements.

10.1. All estimates of ambient concentrations required under section 9 shall be based on the

applicable air quality models, data bases, and other requirements specified in the Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models).

10.2. Where an air quality impact model specified in Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted, provided that said modification or substitution is approved in writing by the Administrator.

§45-14-11. Air Quality Monitoring Requirements.

11.1. Any person proposing to construct or relocate a major stationary source shall provide an analysis of the ambient air quality in the area that the major stationary source would affect for each pollutant that it would have the potential to emit in a significant amount.

11.2. Any person proposing to make a major modification to a stationary source shall provide an analysis of the ambient air quality in the area that the major modification would affect for each pollutant for which it would result in a significant net emissions increase.

11.3. For those pollutants for which no National or West Virginia Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Secretary determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

11.4. For those pollutants (other than non-methane hydrocarbons) for which such an ambient air quality standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

11.5. All ambient air quality monitoring data that is required shall have been gathered over a period of one (1) year and shall represent the year preceding receipt of the application, except that, if the Secretary determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not to be less than four (4) months), the data that is required shall have been gathered over at least that shorter period.

11.6. Any person proposing to construct or relocate a major stationary source or make a major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Secretary determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

11.7. Operation of monitoring stations required by section 11 shall meet the requirements of Appendix B of 40 CFR Part 58 during the operation of the monitoring stations.

§45-14-12. Additional Impact Analysis Requirements.

12.1. Any person proposing to construct or relocate a major stationary source or make a major modification shall provide:

12.1.a. An analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value; and

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

§45-14-13. Additional Requirements and Variances for Sources Impacting Federal Class

I Areas.

13.1. Notice to EPA. -- The Secretary shall transmit to the Administrator a copy of each permit application relating to a major stationary source or major modification impacting a Class I area and provide notice to the Administrator of every action related to the consideration of such permit.

13.2. Notice to Federal land managers. -- The Secretary shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal land manager or the Federal official, charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area.

13.3. The Secretary shall also provide the Federal land manager or such Federal officials with a copy of the preliminary determination required under subsection 17.2, and shall make available to them any materials used in making that determination, promptly after the Secretary makes such determination. Finally, the Secretary shall also notify all affected Federal land managers within 30 days of receipt of any advance notification of any such permit application.

13.4. Federal Land Manager. -- The Federal Land Manager or the Federal official, charged with direct responsibility for management of such lands has an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Secretary, whether a proposed source or modification will have an adverse impact on such values.

13.5. The Federal Land Manager of the affected Class I area may present to the Secretary during the public review process described in section 17 a demonstration that the emissions from the proposed major stationary source or major modification would have an adverse impact on the air quality-related values (including visibility) of any Federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Secretary concurs with such demonstration, the Secretary shall deny the permit to construct.

13.6. Class I variances. -- The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal land manager concurs with such demonstration and he so certifies, the Secretary may issue the permit: Provided, That the applicable requirements of this section are otherwise met, to issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

~~Pollutant~~	~~Maximum Allowable Increase (micrograms per cubic meter)~~
~~Particulate Matter:~~	
~~PM-10, annual arithmetic mean~~	~~17~~
~~PM-10, 24-hr maximum~~	~~30~~
~~Sulfur dioxide:~~	
~~Annual arithmetic mean~~	~~20~~
~~24-hr maximum~~	~~91~~

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

Maximum Allowable Pollutant Concentration Increase over Minor Source Baseline Concentration ($\mu g/m^3$)	
Particulate Matter:	
PM-10, annual arithmetic mean	17
PM-10, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

13.7. An applicant for a permit pursuant to this rule shall be allowed the Class I variances as provided in 40 CFR §§51.166-(p)-(4), (5), (6), and (7) as contained in the Code of Federal Regulations on July 1, 1994, provided, that all requirements of said 40 CFR §§51.166-(p)-(4), (5), (6), and (7) are met and written notification of variance in accordance with said section(s) is provided to the Secretary.

§45-14-14. Procedures for Sources Employing Innovative Control Technology.

14.1. Any person proposing to construct or modify a major stationary source or major modification may petition the Secretary to approve a system of innovative control technology in lieu of best available control technology. Any such proposed innovative control technology shall meet the following conditions:

14.1.a. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

14.1.b. The proposed source or modification must achieve a level of continuous emissions reduction equivalent to that which would have been required under section 8 by a date specified by the Secretary;

14.1.c. The source or modification would meet requirements equivalent to all requirements of this rule that a stationary source employing a system of best available control technology would be required to meet;

14.1.d. Before the date specified in subsection 14.4, the source or modification would:

14.1.d.1. Not cause or contribute to any violation of an applicable National Ambient Air Quality Standard;

14.1.d.2. Not impact any area where an applicable increment is known to be violated;

14.1.d.3. Meet all other applicable requirements including those for public participation; and

14.1.e. The provisions of 40 CFR §51.166(p) (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

14.2. The Secretary shall consult with the governor(s) of other state(s) and the Federal Land Manager(s) of areas impacted by the proposed source or modification.

14.3. The Secretary, with the concurrence of the governor(s) of other state(s) and the Federal Land Manager(s), may make a determination that the source or modification would be employing innovative control technology.

14.4. The Secretary shall specify a date by which the source or modification must meet the requirements and conditions of subsection 14.1. Such date shall not be later than four (4) years from the time of start-up or seven (7) years from permit issuance.

14.5. The Secretary shall withdraw any

approval to employ a system of innovative control technology made under this section 14 if:

14.5.a. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

14.5.b. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

14.5.c. The Secretary decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

14.6. If the source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with subsection 14.5, the Secretary shall specify a date by which the source or modification shall meet the requirement for the application of best available control technology through use of a demonstrated system of control. This date shall not exceed three (3) years from the date of the end of the specified time period or the date that the approval is withdrawn, whichever is earlier.

§45-14-15. Exclusions From Increment Consumption.

15.1. The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

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

15.1.b. Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

15.1.c. Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; and

15.1.d. Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources so long as such exclusion is meets the following requirements:

15.1.d.1. The temporary emissions increase of sulfur dioxide, particulate matter or nitrogen dioxides does not exceed two (2) years in duration;

15.1.d.2. The exclusion period for the temporary emissions increase is not renewable.; and

15.1.d.3. The exclusion allows no emissions increases from a stationary source which would:

15.1.d.3.A. Impact a Class I area or an area where an applicable increment is known to be violated; or

15.1.d.3.B. Cause or contribute to a violation of a National Ambient Air Quality Standard.

15.1.d.4. The exclusion requires limitations to be in effect at the end of the exclusion period specified in paragraph 15.1.d.1, which ensures that the emissions levels from stationary sources would not exceed those levels occurring from such sources before the temporary increase.

15.2. No exclusion of such concentrations shall apply more than five (5) years after the effective date of the order to which subdivision 15.1.a refers or the plan to which subdivision 15.1.b refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five (5) years after the later of such effective dates.

§45-14-16. Specific Exemptions.

16.1. A non-profit health or non-profit educational institution proposing to construct or relocate a major stationary source or to make a major modification may petition the Secretary for an exemption from the requirements of subsections 8.2, 8.3 and 8.4 and sections 9, 11 and 12.

16.2. Any person proposing to construct, modify or relocate a source which does not belong to any category listed in Table 1 may exclude fugitive emissions, to the extent quantifiable, in the calculation of potential to emit.

16.3. Any person proposing to relocate a source or modification that is a portable stationary source which has previously received a permit under this rule may petition the Secretary for an exemption from the requirements of subsections 8.2, 8.3 and 8.4 and sections 9, 11 and 12. The Secretary shall grant this exemption if the following conditions are met:

16.3.a. The source proposes to relocate and emissions of the source at the new location would not exceed two (2) years;

16.3.b. The emissions from the source would not exceed its allowable emissions;

16.3.c. The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated;

16.3.d. The source identifies the proposed new location and the probable duration of operation at the new location; and

16.3.e. Such petition shall be submitted to the Secretary not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the Secretary.

16.4. Any person proposing to construct or relocate a major stationary source or make a major modification may petition the Secretary for an exemption from the requirements of sections 9 through 12 with respect to a particular pollutant and the Secretary shall grant such exemption, if the allowable emissions of that pollutant from a new source, or the net emissions increase of that pollutant from a modification, would not exceed two (2) years, would not impact any Class I area and would not impact any area where an applicable increment is known to be violated.

16.5. Any person proposing to modify a major stationary source located in a Class II area that was in existence prior to March 1, 1978 may petition the Secretary for an exemption from the requirements of sections 9, 11 and 12 as they relate to any maximum allowable increase for a Class II area. The Secretary shall grant such exemption if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than fifty (50) tons per year.

16.6. Any person proposing to construct or relocate a major stationary source or make a major modification may petition the Secretary for an exemption from the requirements of section 11 with respect to a particular pollutant if:

16.6.a. The applicant demonstrates that the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, an air quality impact less than that listed in Table 2; or

16.6.b. The applicant demonstrates that the existing concentrations of the pollutant in the area that the source or modification would affect

are less than that listed in Table 2; or

16.6.c. The applicant's request is for any pollutant which is not listed in Table 2; or

16.6.d. With respect to ozone, the net increase of volatile organic compounds or NO_X from the proposed source or modification will be less than one hundred (100) tons per year.

Table 2 - De Minimis Air Quality Impacts		
Pollutant	Concentration ($\mu g/m^3$)	Averaging Time
Carbon Monoxide	575	8-hour
Nitrogen Dioxide	14	annual
PM_{10}	10	24-hour
Sulfur Dioxide	13	24-hour
Ozone	None	NA
Lead	0.1	3-month
Fluorides	0.25	24-hour
Hydrogen Sulfide	0.2	1-hour
Total Reduced Sulfur	10	1-hour
Reduced Sulfur Compounds	10	1-hour

16.7. Any person proposing to construct or relocate a major stationary source or make a major modification to a source of volatile organic compounds may petition the Secretary for an exemption from the requirements of subsection 11.5 that the continuous air monitoring data be representative of the year preceding the receipt of the application. The Secretary shall grant such an exemption if the proposed major stationary source or major modification for volatile organic compounds satisfies all conditions of 40 CFR Part 51, Appendix S, section IV.

~~Table 2.~~
~~DE MINIMIS AIR QUALITY IMPACTS~~

~~- Carbon Monoxide - 575 $\mu g/m^3$, 8-hour average~~
~~- Nitrogen Dioxide - 14 $\mu g/m^3$, annual average~~
~~- PM_{10} - 10 $\mu g/m^3$, 24-hour average~~
~~- Sulfur Dioxide - 13 $\mu g/m^3$, 24-hour average~~
~~- Ozone - no minimum air quality value~~
~~- Lead - 0.1 $\mu g/m^3$, 3-month average~~
~~- Fluorides - 0.25 $\mu g/m^3$, 24-hour average~~
~~- Hydrogen Sulfide - 0.2 $\mu g/m^3$, 1-hour average~~
~~- Total Reduced Sulfur - 10 $\mu g/m^3$, 1-hour average~~
~~- Reduced Sulfur Compounds - 10 $\mu g/m^3$, 1-hour average~~

16.8. Any complete permit application pending final disposition by the Secretary on the effective date of this rule shall continue to be deemed complete with respect to the applicant's analysis under subdivision 9.1.b concerning the maximum allowable increase for total suspended particulate matter which is applicable prior to the effective date of this rule.

§45-14-17. Public Review Procedures.

17.1. At the time that an application for a construction, modification or relocation permit is filed, the applicant shall place a Class I legal advertisement in a newspaper of general circulation in the area where the source will be located. No permit shall be issued to any applicant until at least thirty (30) days notice has been provided to the public. The advertisement shall contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants proposed to be discharged, the nature of the permit being sought, the proposed start-up date for the source and a contact telephone number for more information.

17.2. After finishing the review of a complete

application, the Secretary shall make a preliminary determination whether a permit should be approved, approved with conditions, or disapproved.

17.3. The Secretary shall make available in at least one location in the region in which the proposed source would be constructed a copy of all materials the applicant submitted (excluding data entitled to protection as confidential information under 45CSR31), a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

17.4. The Secretary shall place a Class I legal advertisement in a paper of general circulation in the area where the proposed source would be constructed, modified, or relocated. The advertisement shall contain, as a minimum, the name of the applicant, the type and location of the source, the proposed start-up date, the preliminary determination, the degree of increment consumption that is expected from the source or modification, notification of the opportunity for written public comment, provisions for requesting a public meeting, details concerning the time and place of such a meeting if one is scheduled, and notification of the opportunity for comment at a public meeting if such meeting is to be conducted. A public comment period of thirty (30) days shall be provided and so stated in the advertisement.

17.5. The Secretary shall send a copy of the advertisement to the applicant, to the Administrator, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other State or local air pollution control agencies, the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency, any State, and any Federal Land Manager, whose lands may be affected by emissions from the source or modification.

17.6. The Secretary shall consider public comments submitted within thirty (30) days after the Secretary's public notification of an opportunity for comment upon a proposed construction or relocation of a major stationary source or major modification, and comments submitted within a specified period not to exceed fifteen (15) days after any public meeting to receive comment on such proposed construction, modification, or relocation before making a final decision on the approvability of the application. The Secretary shall make copies of all comments available for public inspection in the same locations where the Secretary made available preconstruction information relating to the proposed source or modification.

17.7. The Secretary shall make a final determination whether construction should be approved, approved with conditions, or disapproved.

17.8. The Secretary shall notify the applicant in writing of the final determination and make a copy of such notification available for public inspection at the same location where the Secretary made available preconstruction information and public comments relating to the proposed source or modification.

§45-14-18. Public Meetings.

18.1. Public meetings to receive comments on permit applications shall be held when the Secretary deems it appropriate or when substantial interest is expressed, in writing, by persons who might reasonably be expected to be affected by the proposed major source or major modification.

18.2. The Secretary or the Secretary's designee shall preside over such meetings and ensure that all interested parties have ample opportunity to present comments. Such meetings shall be held at a convenient place as near as practicable to the location of the proposed major source or major modification.

18.3. At a reasonable time prior to such meetings, the Secretary shall provide appropriate information to news media in the area where the

proposed source or modification is to be located.

§45-14-19. Permit Transfer, Cancellation and Responsibility.

19.1. A permittee may petition the Secretary for a transfer of a permit previously issued in accordance with this rule. The Secretary shall approve such permit transfer provided the following conditions are met:

19.1.a. The permittee, in the petition, describes the reasons for the requested permit transfer and certifies that the subject source is in compliance with all the provisions and requirements of its permit, and

19.1.b. The transferee provides written acknowledgment that it accepts and will comply with all the requirements, terms, and conditions as contained in the subject permit.

19.2. The Secretary shall suspend or revoke a permit if, after eighteen (18) months from the date of issuance the holder of the permit cannot provide the Secretary, at the Secretary's request, with written proof of a good faith effort that such construction, modification, or relocation has commenced and remains ongoing. Such proof shall be provided not later than thirty (30) days after the Secretary's request.

19.3. The Secretary may suspend, modify, or revoke the permit if the plans and specifications upon which the approval was based or the conditions established in the permit are not adhered to. Upon notice of the Secretary's intent to suspend, modify or revoke a permit, the permittee may request a conference with the Secretary in accordance with the provisions of W.Va. Code § 22-5-5 to show cause why the permit should not be suspended, modified or revoked.

19.4. Any owner or operator who constructs, modifies or relocates any stationary source not in accordance with the application submitted pursuant to this rule or with the terms of any permit to construct, modify or relocate, or any owner or operator of a source subject to this rule who commences construction after the effective date of this rule without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

19.5. Possession of a permit does not relieve any person of the responsibility of complying with any and all rules of the Secretary or W.Va. Code § 22-1-1 et seq.

19.6. [Reserved.]

19.7. Any person who owns or operates any particular source or modification which becomes a major stationary source or major modification solely by virtue of a relaxation in any limitation, enforceable by the Administrator or the Secretary, on the capacity of the source or modification otherwise to emit a pollutant (such as a restriction on hours of operation), shall become subject to the requirements of this rule as though construction had not yet commenced on the source or modification.

19.8. The provisions of this subsection apply to proposed projects at an existing emissions unit at a major stationary source (other than projects ~~at a Clean Unit or~~ at a source with a PAL) in circumstances where ~~there is a reasonable possibility that~~ a proposed project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs 2.63.a.1 through 2.63.a.3 for calculating projected actual emissions.

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

19.8.a.1. A description of the proposed project;

19.8.a.2. Identification of the emissions unit(s) whose emissions of a regulated NSR

pollutant could be affected by the proposed project; and

19.8.a.3. A description of the applicability test used to determine that the proposed project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 2.63.a.2 and an explanation for why such amount was excluded, and any netting calculations, if applicable.

19.8.b. 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 required under subdivision 19.8.a to the Secretary. Nothing in subdivision 19.8.b shall be construed to require the owner or operator of such a unit to obtain any determination from the Secretary before beginning actual construction.

19.8.c. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph 19.8.a.1. The owner or operator shall 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 of or potential to emit that regulated NSR pollutant at such emissions unit.

19.8.d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Secretary within 60 days after the end of each year during which records must be generated under subdivision 19.8.c setting out the unit's annual emissions during the calendar year that preceded submission of the report.

19.8.e. 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 Secretary if the annual emissions, in tons per year, from the project identified in subdivision 19.8.a, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph 19.8.a.3), by a significant amount (as defined in subsection 2.74) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph 19.8.a.3. Such report shall be submitted to the Secretary within 60 days after the end of such year. The report shall contain the following:

19.8.e.1. The name, address and telephone number of the major stationary source;

19.8.e.2. The annual emissions as calculated pursuant to subdivision 19.8.c; and

19.8.e.3. 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).

19.9. The owner or operator of the source shall make available the information required to be documented and maintained pursuant to subsection 19.8 for review upon a request for inspection by the Secretary or the general public pursuant to the requirements contained in 45CSR30.

§45-14-20. Disposition of Permits.

20.1. In the event that the Secretary promulgates changes to this rule or in the event of a redesignation of an attainment or non-attainment area (in accordance with § 107 of the CAA) prior to final disposition of a permit, the Secretary shall make final disposition of the permit application in accordance with such newly promulgated standards or redesignation.

§45-14-21. Conflict with Other Permitting Rules.

21.1. For sources required to obtain a permit under this rule, the provisions of 45CSR13 requiring a permit do not apply, so that only a single permit is required; provided, however, that:

21.1.a. The base permit application fee of $1,000 pursuant to 45CSR22, subdivision 3.4.a shall apply to such sources in addition to other applicable fees; and

21.1.b. Any permit issued under this rule includes conditions that ensure compliance with the provisions of 45CSR13 to the extent applicable to any regulated air pollutant (as defined in 45CSR13) not otherwise covered under this rule.

21.2. For sources that may be subject to 45CSR13, 45CSR14 and/or 45CSR19, the more stringent provisions of each applicable rule shall apply.

§45-14-22. ~~Clean Unit Test for Emissions Units that are subject to BACT or LAER.~~ [Reserved.]

~~22.1. Applicability. -- The provisions of this section apply to any emissions unit for which the Secretary has issued a major NSR permit within the last 10 years.~~

~~22.2. General provisions for Clean Units. -- The provisions of subdivisions 22.2.a through 22.2.d shall apply to a Clean Unit.~~

~~22.2.a. Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with subsection 22.4) and before the expiration date (as determined in accordance with subsection 22.5) will be considered to have occurred while the emissions unit was a Clean Unit.~~

~~22.2.b. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT and the project would not alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subdivision 22.6.d, the emissions unit shall remain a Clean Unit.~~

~~22.2.c. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT or the project would alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subdivision 22.6.d, then the emissions unit shall lose its designation as a Clean Unit upon issuance of the necessary permit revisions, unless the unit re-qualifies as a Clean Unit pursuant to subdivision 22.3.c. If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.~~

~~22.2.d. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of subdivisions 3.4.a through 3.4.d and subdivision 3.4.f as if the emissions unit was never a Clean Unit.~~

~~22.3. Qualifying or re-qualifying to use the Clean Unit Applicability Test. -- An emissions unit automatically qualifies as a Clean Unit when the unit meets the criteria in subdivisions 22.3.a and 22.3.b. After the original Clean Unit designation expires in accordance with subsection 22.5 or is lost pursuant to subdivision 22.2.c, such emissions unit may re-qualify as a Clean Unit under either subdivision 22.3.c, or under the Clean Unit provisions in section 23. To re-qualify as a Clean Unit under subdivision 22.3.c, the emissions unit must obtain a new major NSR permit issued through the applicable NSR program and meet all the criteria in subdivision 22.3.c. The Clean Unit designation applies individually for each pollutant emitted by the emissions unit.~~

22.3.a. Permitting requirement. -- The emissions unit must have received a major NSR permit within the last 10 years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

22.3.b. Qualifying air pollution control technologies. -- Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes pollution prevention as defined under subsection 2.56 or work practices, that meets both the following requirements in paragraphs 22.3.b.1 and 22.3.b.2.

22.3.b.1. The control technology achieves the BACT or LAER level of emissions reductions as determined through issuance of a major NSR permit within the past 10 years. However, the emissions unit is not eligible for the Clean Unit designation if the BACT determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

22.3.b.2. The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

22.3.c. Re-qualifying for the Clean Unit designation. -- The emissions unit must obtain a new major NSR permit that requires compliance with the current-day BACT (or LAER), and the emissions unit must meet the requirements set forth in subdivisions 22.3.a and 22.3.b.

22.4. Effective date of the Clean Unit designation. -- The effective date of an emissions unit's Clean Unit designation (the date on which the owner or operator may begin to use the Clean Unit Test to determine whether a project at the emissions unit is a major modification) is determined in accordance with subdivision 22.4.a or 22.4.b, as applicable.

22.4.a. Original Clean Unit designation, and emissions units that re-qualify as Clean Units by implementing new control technology to meet current-day BACT. -- The effective date is the date the emissions unit's air pollution control technology is placed into service, or 3 years after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule.

22.4.b. Emissions units that re-qualify for the Clean Unit designation using an existing control technology. -- The effective date is the date the new, major NSR permit is issued.

22.5. Clean Unit expiration. -- An emissions unit's Clean Unit designation expires (that is, the date on which the owner or operator may no longer use the Clean Unit Test to determine whether a project affecting the emissions unit is, or is part of, a major modification) according to the applicable subdivision 22.5.a or 22.5.b.

22.5.a. Original Clean Unit designation, and emissions units that re-qualify by implementing new control technology to meet current-day BACT. -- For any emissions unit that automatically qualifies as a Clean Unit under subdivision 22.3.a and 22.3.b or re-qualifies by implementing new control technology to meet current-day BACT under subdivision 22.3.c, the Clean Unit designation expires 10 years after the effective date, or the date the equipment went into service, whichever is earlier; or, it expires at any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in subsection 22.7.

22.5.b. Emissions units that re-qualify for the Clean Unit designation using an existing control technology. -- For any emissions unit that re-qualifies as a Clean Unit under subdivision 22.3.c using an existing control technology, the Clean Unit designation expires 10 years after the

effective date; or, it expires any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in subsection 22.7.

22.6. Required title V permit content for a Clean Unit. -- After the effective date of the Clean Unit designation, and in accordance with the provisions of 45CSR30, but no later than when the 45CSR30 permit is renewed, the 45CSR30 permit for the major stationary source must include the following terms and conditions in subdivision 22.6.a through 22.6.f related to the Clean Unit.

22.6.a. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutant(s) for which this designation applies.

22.6.b. The effective date of the Clean Unit designation. -- If this date is not known when the Clean Unit designation is initially recorded in the title V permit (e.g., because the air pollution control technology is not yet in service), the permit must describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is determined, the owner or operator must notify the Secretary of the exact date. This specific effective date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.

22.6.c. The expiration date of the Clean Unit designation. -- If this date is not known when the Clean Unit designation is initially recorded into the title V permit (e.g., because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is determined, the owner or operator must notify the Secretary of the exact date. The expiration date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.

22.6.d. All emission limitations and work practice requirements adopted in conjunction with BACT, and any physical or operational characteristics which formed the basis for the BACT determination (e.g., possibly the emissions unit's capacity or throughput).

22.6.e. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the Clean Unit designation. (See subsection 22.7.)

22.6.f. Terms reflecting the owner or operator's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in subsection 22.7.

22.7. Maintaining the Clean Unit designation. -- To maintain the Clean Unit designation, the owner or operator must conform to all the restrictions listed in subdivisions 22.7.a through 22.7.c. This subsection 22.7 applies independently to each pollutant for which the emissions unit has the Clean Unit designation. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.

22.7.a. The Clean Unit must comply with the emission limitation(s) and/or work practice requirements adopted in conjunction with the BACT that is recorded in the major NSR permit, and subsequently reflected in the title V permit. The owner or operator may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT determination (e.g., possibly the emissions unit's capacity or throughput).

~~22.7.b. The Clean Unit must comply with any terms and conditions in the title V permit related to the unit's Clean Unit designation.~~

~~22.7.c. The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.~~

~~22.8. Netting at Clean Units. -- Emissions changes that occur at a Clean Unit must not be included in calculating a significant net emissions increase (that is, must not be used in a "netting analysis"), unless such use occurs before the effective date of the Clean Unit designation, or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.~~

~~22.9. Effect of redesignation on the Clean Unit designation. -- The Clean Unit designation of an emissions unit is not affected by re-designation of the attainment status of the area in which it is located. If a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if an existing Clean Unit designation expires, it must re-qualify under the requirements that are currently applicable in the area.~~

§45-14-23. ~~Clean Unit Provisions for Emissions Units that Achieve an Emission Limitation Comparable to BACT.~~ [Reserved.]

~~23.1. Applicability. -- The provisions of this section apply to emissions units which do not qualify as Clean Units under section 22, but which are achieving a level of emissions control comparable to BACT, as determined by the Secretary.~~

~~23.2. General provisions for Clean Units. -- The provisions in subdivisions 23.2.a through 23.2.d apply to a Clean Unit designated under 45CSR14.~~

~~23.2.a. Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation, as determined in accordance with subsection 23.5, and before the expiration date, as determined in accordance with subsection 23.6, will be considered to have occurred while the emissions unit was a Clean Unit.~~

~~23.2.b. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined, pursuant to subsection 23.4, to be comparable to BACT, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in subdivision 23.8.d, the emissions unit remains a Clean Unit.~~

~~23.2.c. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to subsection 23.4) to be comparable to BACT, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in subdivision 23.8.d, then the emissions unit loses its~~

designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit re-qualifies as a Clean Unit pursuant to subdivision 23.3.d. of this section). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

23.2.d. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of subdivisions 3.4.a through 3.4.d and subdivision 3.4.f as if the emissions unit is not a Clean Unit.

23.3. Qualifying or re-qualifying to use the Clean Unit applicability test. -- An emissions unit qualifies as a Clean Unit when the unit meets the criteria in subdivision 23.3.a through 23.3.c. After the original Clean Unit designation expires in accordance with subsection 23.6 or is lost pursuant to subdivision 23.2.c, such emissions unit may re-qualify as a Clean Unit under either subdivision 23.3.d, or under the Clean Unit provisions in section 22. To re-qualify as a Clean Unit under subdivision 23.3.d, the emissions unit must obtain a new permit issued pursuant to the requirements in subsections 23.7 and 23.8 and meet all the criteria in subsection 23.3.d. The Secretary will make a separate Clean Unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a Clean Unit.

23.3.a. Qualifying air pollution control technologies. -- Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology (which includes pollution prevention as defined under subsection 2.56 or work practices) that meets both the following requirements in paragraphs 23.3.a.1 and 23.3.a.2.

23.3.a.1. The owner or operator has demonstrated that the emissions unit's control technology is comparable to BACT according to the requirements of subsection 23.4. However, the emissions unit is not eligible for a Clean Unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type (e.g., if the BACT determinations to which it is compared have resulted in a determination that no control measures are required).

23.3.a.2. The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

23.3.b. Impact of emissions from the unit. -- The Secretary must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or adversely impact an air quality related value (such as visibility) that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

23.3.c. Date of installation. -- An emissions unit may qualify as a Clean Unit even if the control technology, on which the Clean Unit designation is based, was installed before the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule. However, for such emissions units, the owner or operator must apply for the Clean Unit designation within two (2) years after the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule. For technologies installed on and after the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule, the owner or operator must apply for the Clean Unit designation at the time the control technology is installed.

23.3.d. Re-qualifying as a Clean Unit. -- The emissions unit must obtain a new permit (pursuant to requirements in subsection 23.7 and 23.8) that demonstrates that the emissions unit's

control technology is achieving a level of emission control comparable to current-day BACT, and the emissions unit must meet the requirements in paragraph 23.3.a.1 and subdivision 23.3.b.

23.4. Demonstrating control effectiveness comparable to BACT. -- The owner or operator may demonstrate that the emissions unit's control technology is comparable to BACT for purposes of subdivision 23.3.a according to either subdivision 23.4.a or 23.4.b. Subdivision 23.4.c specifies the time for making this comparison.

23.4.a. Comparison to previous BACT and LAER determinations. -- The Secretary maintains an on-line data base of previous determinations of RACT, BACT, and LAER in the RACT/BACT/LAER Clearinghouse (RBLC). The emissions unit's control technology is presumed to be comparable to BACT if it achieves an emission limitation that is equal to or better than the average of the emission limitations achieved by all the sources for which a BACT or LAER determination has been made within the preceding 5 years and entered into the RBLC, and for which it is technically feasible to apply the BACT or LAER control technology to the emissions unit. The Secretary shall also compare this presumption to any additional BACT or LAER determinations of which he or she is aware, and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to BACT is correct.

23.4.b. The substantially-as-effective test. -- The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT. In addition, any other person may present evidence related to whether the control technology is substantially as effective as BACT during the public participation process required under subsection 23.7. The Secretary shall consider such evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as BACT.

23.4.c. Time of comparison.

23.4.c.1. Emissions units with control technologies that are installed before the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule. -- The owner or operator of an emissions unit whose control technology is installed before the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule may, at its option, either demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed, or demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements. The expiration date of the Clean Unit designation will depend on which option the owner or operator uses, as specified in subsection 23.6.

23.4.c.2. Emissions units with control technologies that are installed on and after the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule. -- The owner or operator must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements.

23.5. Effective date of the Clean Unit designation. -- The effective date of an emissions unit's Clean Unit designation (that is, the date on which the owner or operator may begin to use the Clean Unit Test to determine whether a project involving the emissions unit is a major modification) is the date that the permit required by subsection 23.7 is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

23.6. Clean Unit expiration. -- If the owner or operator demonstrates that the emission limitation achieved by the emissions unit's control

technology is comparable to the BACT requirements that applied at the time the control technology was installed, then the Clean Unit designation expires 10 years from the date that the control technology was installed. For all other emissions units, the Clean Unit designation expires 10 years from the effective date of the Clean Unit designation, as determined according to subsection 23.5. In addition, for all emissions units, the Clean Unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in subsection 23.9.

23.7. Procedures for designating emissions units as Clean Units. -- The Secretary shall designate an emissions unit a Clean Unit by issuing a permit pursuant to 45CSR13. Such permit must also meet the requirements in subsection 23.8.

23.8. Required permit content. -- The permit required by subsection 23.7 shall include the terms and conditions set forth in subdivisions 23.8.a through 23.8.f. Such terms and conditions shall be incorporated into the major stationary source's title V permit in accordance with the provisions 45CSR30, but no later than when the title V permit is renewed.

23.8.a. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutant(s) for which this designation applies.

23.8.b. The effective date of the Clean Unit designation. -- If this date is not known when the Secretary issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is known, then the owner or operator must notify the Secretary of the exact date. This specific effective date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.

23.8.c. The expiration date of the Clean Unit designation. If this date is not known when the Secretary issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is known, then the owner or operator must notify the Secretary of the exact date. The expiration date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.

23.8.d. All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to BACT, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT (e.g., possibly the emissions unit's capacity or throughput).

23.8.e. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its Clean Unit designation. (See subsection 23.9.)

23.8.f. Terms reflecting the owner or operator's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in subsection 23.9.

23.9. Maintaining a Clean Unit designation. -- To maintain the Clean Unit designation, the owner or operator must conform to all the restrictions listed in subdivisions 23.9.a through 23.9.c. This subsection applies independently to each pollutant for which the Secretary has designated the emissions unit a Clean Unit. That is, failing to

conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.

23.9.a. The Clean Unit must comply with the emission limitation(s) and/or work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to BACT.

23.9.b. The owner or operator may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to BACT (e.g., possibly the emissions unit's capacity or throughput).

23.9.c. [Reserved]

23.9.d. The Clean Unit must comply with any terms and conditions in the title V permit related to the unit's Clean Unit designation.

23.9.e. The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

23.10. Netting at Clean Units. -- Emissions changes that occur at a Clean Unit must not be included in calculating a significant net emissions increase (that is, must not be used in a "netting analysis") unless such use occurs before the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the emissions unit's new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

23.11. Effect of redesignation on a Clean Unit designation. -- The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if a Clean Unit's designation expires or is lost pursuant to subdivisions 22.2.c and 23.2.c, it must re-qualify under the requirements that are currently applicable.

§45-14-24. PCP Exclusion Procedural Requirements [Reserved].

24.1. Before an owner or operator begins actual construction of a PCP, the owner or operator must either submit a notice to the Secretary if the project is listed in subdivisions 2.56.a through 2.56.f, or if the project is not listed in subdivisions 2.56.a through 2.56.f, then the owner or operator must submit a permit application and obtain approval to use the PCP exclusion from the Secretary consistent with the requirements in subsection 24.5. Regardless of whether the owner or operator submits a notice or a permit application, the project must meet the requirements in subsection 24.2, and the notice or permit application must contain the information required in subsection 24.3.

24.2. Any project that relies on the PCP exclusion must meet the requirements of subdivision 24.2.a and 24.2.b.

24.2.a. Environmentally beneficial

analysis. -- The environmental benefit from the emissions reductions of pollutants regulated under the CAA must outweigh the environmental detriment of emissions increases in pollutants regulated under the CAA. A statement that a technology from subdivisions 2.56.a through 2.56.f is being used shall be presumed to satisfy this requirement.

24.2.b. Air quality analysis. -- The emissions increases from the project will not cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or adversely impact an air quality related value (such as visibility) that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

24.3. Content of notice or permit application. -- In the notice or permit application sent to the Secretary, the owner or operator must include, at a minimum, the information listed in subdivisions 24.3.a through 24.3.e.

24.3.a. A description of the project.

24.3.b. The potential emissions increases and decreases of any pollutant regulated under the CAA and the projected emissions increases and decreases using the methodology in subsection 3.4, that will result from the project, and a copy of the environmentally beneficial analysis required by subdivision 24.2.a.

24.3.c. A description of monitoring and recordkeeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods should be sufficient to meet the requirements in 45CSR30.

24.3.d. A certification that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subdivisions 24.2.a and 24.2.b, with information submitted in the notice or permit application, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

24.3.e. Demonstration that the PCP will not have an adverse air quality impact (e.g., modeling, screening level modeling results, or a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise) as required by subdivision 24.2.b. An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project.

24.4. Notice process for listed projects. -- For projects listed in subdivisions 2.56.a through 2.56.f, the owner or operator may begin actual construction of the project immediately after notice is sent to the Secretary (unless otherwise prohibited under requirements of the State Implementation Plan). The owner or operator shall respond to any requests by the Secretary for additional information that the Secretary determines is necessary to evaluate the suitability of the project for the PCP exclusion.

24.5. Permit process for unlisted projects. -- Before an owner or operator may begin actual construction of a PCP project that is not listed in subdivisions 2.56.a through 2.56.f, the project must be approved by the Secretary and recorded in a permit issued pursuant to 45CSR13, 45CSR19 or 45CSR30. This includes the requirement that the Secretary provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a 30-day period for the public and the Administrator to submit comments. The Secretary must address all material comments received by the end of the comment period before taking final action on the permit.

24.6. Operational requirements. -- Upon

~~installation of the PCP, the owner or operator must comply with the requirements of subdivisions 24.6.a through 24.6.d.~~

~~24.6.a. General duty. -- The owner or operator must operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subdivisions 24.2.a and 24.2.b, with information submitted in the notice or permit application required by subsection 24.3, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.~~

~~24.6.b. Recordkeeping. -- The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in subdivision 24.6.a.~~

~~24.6.c. Permit requirements. -- The owner or operator must comply with any provisions in the State Implementation Plan-approved permit or title V permit related to use and approval of the PCP exclusion.~~

~~24.6.d. Generation of emission reduction credits. -- Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion (e.g., taking an operational restriction on the hours of operation). The owner or operator may generate a credit for the difference between the level of reduction which was used to qualify for the PCP exclusion and the new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.~~

§45-14-25. Actuals PALs.

25.1. Applicability.

25.1.a. The Secretary may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in subsections 25.1 through 25.15. The term "PAL" shall mean "actuals PAL" throughout section 25.

25.1.b. Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in subsections 25.1 through 25.15, and complies with the PAL permit:

25.1.b.1. Is not a major modification for the PAL pollutant;

25.1.b.2. Does not have to be approved through the PSD program; and

25.1.b.3. Is not subject to the provisions in subsection 19.4 (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

25.1.c. Except as provided under paragraph 25.1.b.3, a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

25.2. Definitions. -- For the purposes of this section 25, the definition in subdivision 25.2.a applies. When a term is not defined in these paragraphs, it shall have the meaning given in section 2 or in the CAA.

25.2.a. Allowable emissions means "allowable emissions" as defined in subsection 2.6, except as modified according to ~~paragraph~~

paragraphs 25.2.a.1 and 25.2.a.2.

25.2.a.1. The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

25.2.a.2. An emissions unit's potential to emit shall be determined using the definition in subsection 2.58, except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

25.3. Permit application requirements. -- As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Secretary for approval:

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

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

25.3.c. The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision 25.13.a.

25.4. General requirements for establishing PALs.

25.4.a. The Secretary is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in ~~paragraph~~ paragraphs 25.4.a.1 through 25.4.a.7 are met.

25.4.a.1. The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

25.4.a.2. The PAL shall be established in a PAL permit that meets the public participation requirements in section 17.

25.4.a.3. The PAL permit shall contain all the requirements of subsection 25.7.

25.4.a.4. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

25.4.a.5. Each PAL shall regulate emissions of only one pollutant.

25.4.a.6. Each PAL shall have a PAL effective period of 10 years.

25.4.a.7. The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections 25.12 through 25.14 for each emissions unit under the PAL through the PAL effective period.

25.4.b. At no time during or after the PAL effective period are emissions reductions of

a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets pursuant to 45CSR19 unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

25.5. Public participation requirements for PALs. -- PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 45CSR13. This includes the requirement that the Secretary provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Secretary must address all material comments before taking final action on the permit.

25.6. Setting the 10-year actuals PAL level. -- The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in subsection 2.8) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under subsection 2.74 or under the CAA, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period must be added to the PAL level in an amount equal to the potential to emit of the units. The Secretary shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Secretary is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

25.7. Contents of the PAL permit. -- The PAL permit must contain, at a minimum, the information in subdivisions 25.7.a through 25.7.j.

25.7.a. The PAL pollutant and the applicable source-wide emission limitation in tons per year.

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

25.7.c. Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with subsection 25.10 before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Secretary.

25.7.d. A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.

25.7.e. A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subsection 25.9.

25.7.f. The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subdivision 25.13.a.

25.7.g. A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under subsection 25.12.

25.7.h. A requirement to retain the

records required under subsection 25.13 on site. Such records may be retained in an electronic format.

25.7.i. A requirement to submit the reports required under subsection 25.14 by the required deadlines.

25.7.j. Any other requirements that the Secretary deems necessary to implement and enforce the PAL.

25.8. PAL effective period and reopening of the PAL permit. -- The requirements in subdivisions 25.8.a and 25.8.b apply to actuals PALs.

25.8.a. PAL effective period. -- The Secretary shall specify a PAL effective period of 10 years.

25.8.b. Reopening of the PAL permit.

25.8.b.1. During the PAL effective period, the Secretary must reopen the PAL permit to:

25.8.b.1.A. Correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

25.8.b.1.B. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets pursuant to 45CSR19; and

25.8.b.1.C. Revise the PAL to reflect an increase in the PAL as provided under subsection 25.11.

25.8.b.2. The Secretary shall have discretion to reopen the PAL permit for the following:

25.8.b.2.A. Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

25.8.b.2.B. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the State Implementation Plan; and

25.8.b.2.C. Reduce the PAL if the Secretary determines that a reduction is necessary to avoid causing or contributing to a National Ambient Air Quality Standard (NAAQS) or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

25.8.b.3. Except for the permit reopening in subparagraph 25.8.b.1.A for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection 25.5.

25.9. Expiration of a PAL. -- Any PAL that is not renewed in accordance with the procedures in subsection 25.10 shall expire at the end of the PAL effective period, and the requirements in subdivisions 25.9.a through 25.9.e shall apply.

25.9.a. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in ~~paragraph~~ paragraphs 25.9.a.1 and 25.9.a.2.

25.9.a.1. Within the time frame specified for PAL renewals in subdivision 25.10.b, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Secretary) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that

existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subdivision 25.10.e, such distribution shall be made as if the PAL had been adjusted.

25.9.a.2. The Secretary shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Secretary determines is appropriate.

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

25.9.c. Until the Secretary issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph 25.9.a.2, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

25.9.d. Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in subsection 2.40.

25.9.e. 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 subsection 19.4, but were eliminated by the PAL in accordance with the provisions in paragraph 25.1.b.3.

25.10. Renewal of a PAL. -- The Secretary shall follow the procedures specified in subsection 25.5 in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Secretary.

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

25.10.b. Application requirements. -- The application to renew a PAL permit shall contain the information required in paragraphs 25.10.c.1 through 25.10.c.4.

25.10.b.1. The information required in subdivisions 25.3.a through 25.3.c.

25.10.b.2. A proposed PAL level.

25.10.b.3. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

25.10.b.4. Any other information the owner or operator wishes the Secretary to consider in determining the appropriate level for renewing the PAL.

25.10.c. PAL adjustment. -- In determining whether and how to adjust the PAL, the Secretary shall consider the options outlined in paragraphs 25.10.d.1 and 25.10.d.2. However, in

no case may any such adjustment fail to comply with paragraph 25.10.d.3.

25.10.c.1. If the emissions level calculated in accordance with subsection 25.6 is equal to or greater than 80 percent of the PAL level, the Secretary may renew the PAL at the same level without considering the factors set forth in paragraph 25.10.d.2; or

25.10.c.2. The Secretary may set the PAL at a level that he or she determines to be more representative of the source's baseline actual emissions, or that he or she determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Secretary in his or her written rationale.

25.10.c.3. Notwithstanding paragraphs 25.10.d.1 and 25.10.d.2:

25.10.c.3.A. If the potential to emit of the major stationary source is less than the PAL, the Secretary shall adjust the PAL to a level no greater than the potential to emit of the source; and

25.10.c.3.B. The Secretary shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection 25.11 (increasing a PAL).

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

25.11. Increasing a PAL during the PAL effective period.

25.11.a. The Secretary may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs 25.11.a.1 and 25.11.a.2.

25.11.a.1. The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

25.11.a.2. As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

25.11.a.3. The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph 25.11.a.1, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

25.11.a.4. The PAL permit shall

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

25.11.b. The Secretary shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph 25.11.a.2), plus the sum of the baseline actual emissions of the small emissions units.

25.11.c. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection 25.5.

25.12. Monitoring requirements for PALs.

25.12.a. General requirements.

25.12.a.1. Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

25.12.a.2. The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs 25.12.b.1 through 25.12.b.4 and must be approved by the Secretary.

25.12.a.3. Notwithstanding paragraph 25.12.a.2, you may also employ an alternative monitoring approach that meets paragraph 25.12.a.1 if approved by the Secretary.

25.12.a.4. Failure to use a monitoring system that meets the requirements of this rule renders the PAL invalid.

25.12.b. Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subdivisions 25.12.c through 25.12.i:

25.12.b.1. Mass balance calculations for activities using coatings or solvents;

25.12.b.2. CEMS;

25.12.b.3. CPMS or PEMS; and

25.12.b.4. Emission factors.

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

25.12.c.1. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

25.12.c.2. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

25.12.c.3. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Secretary determines there is site-specific data or a site-specific monitoring program to support another content within the range.

25.12.d. CEMS. An owner or operator

using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

25.12.d.1. CEMS must comply with applicable Performance Specifications found in 40 CFR ~~part~~ Part 60, appendix B; and

25.12.d.2. CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

25.12.e. CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

25.12.e.1. The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

25.12.e.2. Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Secretary, while the emissions unit is operating.

25.12.f. Emission factors. -- An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

25.12.f.1. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

25.12.f.2. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

25.12.f.3. If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Secretary determines that testing is not required.

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

25.12.h. Notwithstanding the requirements in subdivisions 25.12.c through 25.12.g, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Secretary shall, at the time of permit issuance:

25.12.h.1. Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

25.12.h.2. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

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

25.13. Recordkeeping requirements.

25.13.a. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of section 28 and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

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

25.13.b.1. A copy of the PAL permit application and any applications for revisions to the PAL; and

25.13.b.2. Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

25.14. Reporting and notification requirements. -- The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Secretary in accordance with the applicable title V operating permit program. The reports shall meet the requirements in subdivisions 25.14.a through 25.14.c.

25.14.a. Semi-annual report. -- The semi-annual report shall be submitted to the Secretary within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs 25.14.a.1 through 25.14.a.7.

25.14.a.1. The identification of owner and operator and the permit number.

25.14.a.2. Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subdivision 25.13.a.

25.14.a.3. All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

25.14.a.4. A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

25.14.a.5. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

25.14.a.6. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subdivision 25.12.g.

25.14.a.7. A signed statement by the responsible official (as defined by the 45CSR30-2.38) certifying the truth, accuracy, and completeness of the information provided in the report.

25.14.b. Deviation report. -- The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 45CSR30-5.1.c.3 shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 45CSR30-5.1.c.3. The reports shall contain the following information:

25.14.b.1. The identification of owner and operator and the permit number;

25.14.b.2. The PAL requirement that experienced the deviation or that was exceeded;

25.14.b.3. Emissions resulting from the deviation or the exceedance; and

25.14.b.4. A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

25.14.c. Re-validation results. -- The owner or operator shall submit to the Secretary the results of any re-validation test or method within 3 months after completion of such test or method.

25.15. Transition requirements.

25.15.a. The Secretary may not issue a PAL that does not comply with the requirements in subsections 25.1 through 25.15 after the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule.

25.15.b. The Secretary may supersede any PAL that was established prior to the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule with a PAL that complies with the requirements of subsections 25.1 through 25.15.

§45-14-26. Inconsistency Between Rules.

26.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, such inconsistency shall be resolved by the determination of the Secretary and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration"

Type of Rule: ___X__ Legislative _____Interpretive _____Procedural

Agency: Division of Air Quality

Address: 601 57th Street SE
Charleston, WV 25304

Phone Number: 926-0475 Email: tmowrer@wvdep.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact above that resulting from currently applicable federal emission standards.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR

Effect of Proposal	2009 Increase/Decrease (use "-")	2010 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	$ 0	$ 0	$ 0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration"

3. Explanation of above estimates (including long-range effect):
Please include any increase or decrease in fees in your estimated total revenues.

Any costs incurred by revision to this rule were included in cost estimates prepared for implementation of Title V of the Clean Air Act, as amended, under 45CSR30.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 7/11/08

Signature of Agency Head