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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

Effective Date

Dec. 1, 1992 jr

NOTICE OF AN EMERGENCY RULE

AGENCY: WV Air Pollution Control Commission
Office of Air Quality, DEP TITLE NUMBER: 45CSR19

CITE AUTHORITY: W. Va. Code §16-20-5

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR19

TITLE OF RULE BEING AMENDED "Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants"

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: ____

TITLE OF RULE BEING FILED AS AN EMERGENCY: ____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See Attached.

3.00

Use Additional Sheets If Necessary.

Signature
G. Dale Farley, Chief

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR19 - "Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants"

Type of Rule: x Legislative _____ Interpretive _____ Procedural

Agency: West Virginia Air Pollution Control Commission

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next 1993-94	1994-95
Estimated Total Cost	$ *	$ *	$ *	$ *	$ *
Personal Services	*	*	*	*	*
Current Expense					
Repairs and Alterations					
Equipment					
Other					

*Cost for Permitting activities under this rule can range from $0 - $150,000 depending upon number of applications received.

2. Explanation of above estimates:

See Attached page.*

3. Objectives of these rules:

See Attached page.*

4. Explanation of overall economic impact of proposed rule.

A. Economic impact on state government.

See attached page.

B. Economic impact on political subdivisions; specific industries; specific groups of citizens.

See attached page.

C. Economic impact on citizens/public at large.

See attached page.

Date: November 12, 1992

Signature of agency head or authorized representative:

G. Dale Farley
Chief, Office of Air Quality

2. Explanation of above estimates:

To process major source permits under 45CSR14 and 45CSR19, the APCC has had to commit 0-3 man-years of effort depending upon the number of permits filed and active in each year. At the 3 man-year level, costs for this activity would be approximately $40,000 per engineer plus training and transportation expenses and potential contract modeling support ($50,000 - $150,000). No significant additional costs or workload, however, are anticipated as a result of the proposed revisions to this regulation per se. Greater rule applicability could result in future years due to area non-attainment redesignations and other new CAA required rules under the Clean Air Act.

3. Objectives of these rules:

To bring the state's air quality rules for preconstruction for major sources and major facility modifications into conformance with federal provisions enacted prior to the enactment of the 1990 Clean Air Act Amendments and into conformance with substantial new provisions in the revised federal Clean Air Act.

4.A. Economic Impact on State Government.

Implementation of the existing rule required under the federal Clean Air Act has resulted in minimal overall costs to date due to limited applicability.

4.B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

The regulation could impact upon the siting and emissions control requirements of major new facilities or major modifications to existing plants in Cabell, Wayne, Kanawha, Putnam, Wood, Hancock and Brooke Counties. Current state permit application fees for new major facilities can range up to $14,500.

4.C. Economic Impact on Citizens/Public at Large.

Minimal impacts anticipated as a result of proposed regulation revisions.

FILED

DATE: November 12, 1992

Nov 12 2 39 PM '92

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

FROM: G. Dale Farley
Chief, Office of Air Quality

EMERGENCY RULE TITLE: 45CSR19 - "Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants."

1. Date of filing: November 12, 1992

2. Statutory authority for promulgating the emergency rule:

W. Va. Code §16-20-5

3. Date of filing of proposed legislative rule: September 18, 1992

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

Emergency rule 45CSR19 amends the language of the current rule.

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

See Number 7. West Virginia has six (6) counties (Kanawha, Putnam, Wayne, Cabell, Wood and Greenbrier) that has been designated by the Clean Air Act as ozone nonattainment areas. This required rule will assist these counties in achieving air quality attainment status for ozone. See Statement of Emergency.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

42 U.S.C. §7511 a(a)(1)(C) [C.A.A. 182 (a)(1)(C)]

Time limit: November 15, 1992

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

The federal government requires states with ozone nonattainment areas to adopt provisions to require permits for construction and operation of each new or modified source (with respect to ozone) to be located in nonattainment areas. Failure to adopt such rules will trigger federal sanctions as provided in 42 U.S.C. §7509 [C.A.A. §179]. See Statement of Emergency.

45CSR19

REQUIREMENTS FOR PRE-CONSTRUCTION REVIEW, DETERMINATION OF EMISSION OFFSETS FOR PROPOSED NEW OR MODIFIED STATIONARY SOURCES OF AIR POLLUTANTS AND EMISSION TRADING FOR INTRASOURCE POLLUTANTS

STATEMENT OF EMERGENCY

The Clean Air Act Amendments of 1990 (42 U.S.C. §§7401, et. seq.) require a November 15, 1992, revision to the State Implementation Plan for states with ozone nonattainment areas. Counties so designated as ozone nonattainment areas are Kanawha, Cabell, Putnam, Wayne, Wood and Greenbrier. (Note: Greenbrier county is a marginal ozone nonattainment area. All other listed counties are moderate ozone nonattainment areas.)

42 U.S.C. §7511a(a)(1)(C) [C.A.A. 182(a)(1)(C)] requires states with ozone nonattainment areas to adopt provisions to require permits for the construction and operation of each new or modified stationary source (with respect to ozone) to be located in ozone nonattainment areas. 45CSR19 has been in effect since 1983. The rule has been revised primarily due to changes in major source size definitions and emissions offset ratio requirements included in Title I of the Clean Air Amendments. Such revisions are required as of November 15, 1992. Sanctions for state failure to revise State Implementation Plans are provided in 42 U.S.C. §7509 [C.A.A. §179].

45CSR19

TITLE 45
EMERGENCY LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION
AS PROMULGATED BY
WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION

SERIES 19
REQUIREMENTS FOR PRE-CONSTRUCTION REVIEW, DETERMINATION OF EMISSION OFFSETS FOR PROPOSED NEW OR MODIFIED STATIONARY SOURCES OF AIR POLLUTANTS AND ~~BUBBLE CONCEPT~~EMISSION TRADING FOR INTRASOURCE POLLUTANTS

§45-19-1. General.

1.1. Scope. -- It is the intent of the Commission that all applications filed by any person to construct major new or modified stationary air pollution sources, intending to locate in areas with air quality worse than the levels set to protect the public health and welfare, or that might impact those areas, must adequately meet the pre-construction review procedures and conditions of the Clean Air Act ~~Amendments of 1977~~as amended and this regulation.

These conditions are designed to ensure that the major new or modified source's emissions will be controlled to the greatest degree practicable; that more than equivalent offsetting emission reductions will be obtained from existing sources; that there will be progress toward achievement of the National Ambient Air Quality Standards; and that all applicable air pollution regulations adopted by the Commission will be met.

Further, it is the intent of the Commission to extend to the owners or operators of existing sources an alternative emission reduction concept, called ~~the "Bubble Concept"~~"Emission Trading", which permits a greater burden of control where the cost of control technology is low, and a lesser burden where the cost is high.

The use of ~~the bubble concept~~emission trading is intended to be and should be interpreted to be, an alternative means to expeditious compliance with the applicable regulations, not as a way to avoid or unduly delay compliance with the requirements of Chapter 16, Article 20, of the Code of West Virginia, of 1931, as amended, (the Code) or the Federal Clean Air Act, as amended, nor the applicable regulations, nor as a way to avoid, delay, or reduce the sanctions flowing from previous or future non-compliance.

1.2. Authority. -- W. Va. Code §16-20-5

1.3. Filing Date. -- ~~April 27, 1983~~

1.4. Effective Date. -- ~~May 27, 1983~~

1.5. Type. -- This regulation is a legislative rule as defined in West Virginia Code, Chapter 29A, Article 2.

§45-19-2. Definitions.

2.1. "Actual Emissions"~~; shall mean the actual rate of emissions of a pollutant from a facility or source using actual operating hours, production rates, and type of materials processed, stored or combusted during a selected time period; which such production rate shall be on a pounds per hour basis and which such selected time period shall be a two-year period unless a determination is made by the Director that a different production rate or time period is more representative of normal operation or is necessary to carry out the intent of this regulation. For any facility or source which has not begun normal operations, actual emissions equal the potential to emit of the facility or source on the date of filing of the application to construct~~: means the actual rate of emissions of a pollutant from an emissions unit, as described below:

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 two (2)-year period which precedes the particular date and which is representative of normal source operation. The Chief 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.

b. The ~~Director~~Chief may presume that source specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

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.

2.2. "Allowable Emissions"~~; shall mean the emissions rate calculated using the maximum rate capacity of the source and the most stringent of the following:~~

~~(a) The applicable regulations for such source; or,~~

~~(b) The emissions rate specified as a permit condition;~~

~~(c) Any other legal requirements enforceable by the Commission under Chapter Sixteen, Article Twenty of the West Virginia Code and by the United States Environmental Protection Agency (EPA) under Section 113 of the Clean Air Act~~: 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, limits established by the Commission or Chief pursuant to the Commission's rules which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

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

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

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

2.3. "Applicable Regulations"~~, shall mean~~ means, for the purpose of this regulation, the West Virginia Administrative Regulations of the Air Pollution Control Commission as promulgated pursuant to the Code of West Virginia, of 1931, as amended, and regulations of the Environmental Protection Agency promulgated pursuant to the Clean Air Act.

2.4. "Applicant"~~, shall mean~~ means any person who makes application to the ~~Commission~~Chief for a permit to construct, modify or relocate a source in West Virginia under the provisions of this regulation.

2.5. "Air Pollutants"~~, shall mean~~ means solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.

~~2.6. "Air Quality Control Region (AQCR)", is defined in West Virginia as follows:~~

~~Region I — made up of the counties of Brooke, Hancock, Marshall and Ohio;~~

~~Region II — made up of the counties of Jackson, Pleasants, Tyler, Wetzel and Wood.~~

~~Region III — made up of the counties of Cabell, Mason and Wayne;~~

~~Region IV — made up of the counties of Kanawha and Putnam, and the Valley Magisterial District of Fayette County;~~

~~Region V — made up of the counties of Boone, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh and Wyoming, and Fayette (except the Valley Magisterial District);~~

~~Region VI — made up of the counties of Barbour, Harrison, Marion, Monongalia, Preston and Taylor;~~

~~Region VII — made up of the Union Magisterial District of Grant County and the Elk, New Creek, and Piedmont Magisterial Districts of Mineral County;~~

~~Region VIII — made up of the counties of Braxton, Calhoun, Clay, Doddridge, Gilmer, Lewis, Nicholas, Ritchie, Roane, Upshur, Webster and Wirt;~~

~~Region IX — made up of the counties of Greenbrier, Hampshire, Hardy, Monroe, Pendleton, Pocahontas, Randolph, Summers, Tucker, the Grant and Mitroy Magisterial Districts of Grant County, and the Cabin Run, Frankfort, and Welten Magisterial Districts of Mineral County;~~

~~Region X — made up of the counties of Berkeley, Jefferson, and Morgan.~~

2.6. "Air Pollution", 'statutory air pollution', has the meaning ascribed to it in Section Two of the West Virginia Code 16-20, as amended.

2.7. "Baseline"~~;-shall-mean~~ means the limitation of emissions of a source, as determined by the applicable regulations in effect at the time ~~of-the~~an application to construct or modify a source is filed and as more fully defined in Section 7 ~~herein~~of this regulation.

2.8. "Begin Actual Construction"~~;-shall-mean~~ means, in general, initiation of physical on-site construction activities on an emissions ~~facility-or-source~~unit which are of a permanent nature~~other-than-preparator-activities~~. 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 ~~operating~~operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

2.9. "Chief of Air Quality" or "Chief" means the Chief of the Office of Air Quality or his or her designated representative appointed by the Director of the Division of Environmental Protection pursuant to the provisions of §22-1-1, et seq., of the West Virginia Code.

2.10. "Code"~~;-shall-mean~~ means principally Chapter 16, Article 20, of the Code of West Virginia of 1931, as amended, and, where applicable, Chapter 20, Article 5E of the Code of West Virginia of 1931, as amended.

2.~~10~~11. "Commission"~~;-shall-mean~~ means the West Virginia Air Pollution Control Commission.

2.~~11~~12. "Commence"~~;-shall-mean~~ means as applied to construction of a major stationary source or major modification that the owner or operator has all necessary pre-construction approvals or permits and either has:

~~(a)~~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

~~(b)~~b. Entered into binding agreements or contractual obligations, which cannot be ~~cancelled~~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.~~12~~13. "Construction"~~;-shall-mean~~ 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.~~13~~14. "Director"~~;-shall-mean~~ means the Director of the ~~West-Virginia-Air-Pollution-Control-Commission~~Division of Environmental Protection or his or her designated representative.

2.15. "Division of Environmental Protection" or "DEP" means that Division of the Department of Commerce, Labor and Environmental Resources which is created by the provisions of West Virginia Code §22-1-1, et seq.

2.~~14~~16. "Emissions"~~, shall mean both direct emissions resulting from the operations of a source or facility and those secondary emissions which are defined and quantifiable and result from activities related to such source or facility.~~ refers to the release, escape, or discharge of air pollutants into the air.

2.~~15~~17. "Facility"~~, shall mean an identifiable piece of process equipment. A source is composed of one or more pollutant emitting facilities.~~ "Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any regulated pollutant.

2.~~16~~18. "Fugitive Emissions"~~, shall mean~~ means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

2.~~17~~19. "Intrapollutant Emission Offsets"~~, shall mean~~ means that emission offsets may only be achieved for the same air pollutants which have comparable physical and chemical characteristics and properties (e.g., ~~hydrocarbon~~VOC increases may not be offset against SO_2 reductions, or coke plant particulate matter may not be offset against boiler fly ash, or NOx may not be offset against VOC).

2.~~18~~20. "Intrasource Pollutants"~~, shall mean~~ means air pollutants emitted from within the same source which have comparable physical and chemical characteristics and properties.

2.~~19~~21. "Lowest Achievable Emission Rate (LAER)"~~, shall mean~~ means, for any source, that rate of emissions based on the following, whichever is more stringent:

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

~~(b)~~b. The most stringent emission limitation which is achieved in practice by such class or category of source.

This term applied to a new or modified ~~facility~~emissions unit, means the lowest achievable emission rate for such ~~facility~~emissions unit within the source. In no event shall the application of this term permit a proposed new or modified ~~facility~~stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

2.~~20~~22. "Major Modification"~~, shall mean~~ means any physical change in or change in the method of operation of a major stationary source ~~that would result~~which results in a significant net emissions increase of any regulated pollutant ~~subject to regulation by the Commission. Any net emissions increase that is~~

~~considered significant for volatile organic compounds shall be considered significant for ozone~~.

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

~~(a)~~a. Routine maintenance, repair and replacement;

~~(b)~~b. Use of an alternative fuel or raw material by reason of an 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;

~~(c)~~c. Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act of 1977, as amended;

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

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

~~1.~~A. The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any ~~legally~~federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR ~~51.18~~ Subpart I or 40 CFR 51.~~24~~166; or

~~2.~~B. The source is approved to use under any permit issued under this regulations ~~approved pursuant to this section~~;

~~(f)~~f. An increase in the hours of operation or in the production rate, unless such change is prohibited under any ~~legally~~federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR ~~51.18~~ Subpart I or 40 CFR 51.~~24~~166;

~~(g)~~g. Any change in ownership at a stationary source.

2.~~21~~23. "Major Stationary Source"~~, shall mean~~ means:

~~(a)~~a. Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated pollutant ~~subject to regulation by the Commission~~; or

~~(b)~~b. Any physical change that would occur at a stationary source not qualifying under ~~Section~~Paragraph 2.~~21~~(a)23.a. above as a major stationary source if the change would constitute a major stationary source by itself.

~~A major stationary source that is major for volatile organic compounds shall be considered major for ozone.~~

c. Notwithstanding the major source size specified in Paragraph 2.23.a. of this regulation, the following source sizes are also defined as major stationary sources:

A. In serious ozone nonattainment areas, sources which emit or have the potential to emit 50 tons per year or more of VOC or 50 tons per year or more of NOx.

B. In severe ozone nonattainment areas, sources which emit or have the potential to emit 25 tons per year or more of VOC or 25 tons per year or more of NOx.

C. In extreme ozone nonattainment areas, sources which emit or have the potential to emit 10 tons per year or more of VOC or 10 tons per year or more of NOx.

D. In serious carbon monoxide nonattainment areas, sources which emit or have the potential to emit 50 tons per year or more of carbon monoxide.

E. In serious PM_{10} nonattainment areas, sources which emit or have the potential to emit 70 tons per year or more of PM_{10} or PM_{10} precursors.

2.~~22~~24. "National Ambient Air Quality Standard (NAAQS)"~~, shall mean~~ means the numerical standard specified by the United States Environmental Protection Agency for each air pollutant for which air quality criteria have been issued.

2.~~23~~25. "Necessary Pre-construction Approvals or Permits"~~, shall mean~~ means, for the ~~purpose~~purposes of this regulation, those permits or approvals required ~~by the Air Pollution Control Commission and the Clean Air Act as amended or any regulations promulgated thereby or thereunder~~under federal air quality control laws or regulations and air quality control laws and regulations of the State of West Virginia. Where a consent order is required to be submitted to the United States Environmental Protection Agency for inclusion in the State Implementation Plan, the applicant will not have all necessary pre-construction approvals or permits until such time as the United States Environmental Protection Agency approves such consent order for inclusion in the State Implementation Plan.

2.~~24~~26. "Net Emissions Increase"~~, shall mean~~ means the amount by which the sum of the following exceeds zero:

~~(a)~~a. Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

~~(b)~~b. Any other increases and decreases in actual emissions from the source that are contemporaneous with the particular change and are otherwise creditable.

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

(a) The date five (5) years before construction on a particular change commences, and

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

~~(2)~~B. An increase or decrease in actual emissions is creditable only if the ~~Director~~Chief has not relied on it in issuing a permit for the source under this regulation which permit is in effect when the increase in actual emissions from the particular change occurs.

~~(3)~~C. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

~~(4)~~D. A decrease in actual emissions is creditable only to the extent that:

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

(b) It is federally enforceable and enforceable by the ~~Commission~~Chief ~~under the Code and by EPA under Section 113 of the Clean Air Act~~ at and after the time that actual construction on the particular change begins;

(c) The ~~Director~~Chief has not relied on it in issuing any permit under this regulation, in demonstrating attainment of the NAAQS, or in a demonstration of reasonable further progress; and

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

~~(5)~~E. An increase that results from a physical change at a source occurs when the emissions ~~facility~~unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement ~~facility~~unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

2.~~25~~27. "Nonattainment Area"~~, shall mean~~ means for the purpose of this regulation, those areas designated ~~by the Commission~~ in accordance with Section 107~~(d)~~ of the Clean Air Act as not having attained National Ambient Air Quality Standards for specific air pollutants. Nonattainment areas for ozone, carbon monoxide, and PM_{10} are divided into categories, which may have different major source size definitions and offset ratio requirements than in previous regulations. These categories are as follows:

a. Ozone nonattainment areas may be designated as Marginal, Moderate, Serious, Severe, or Extreme.

b. Carbon monoxide nonattainment areas may be designated as Moderate or Severe.

c. PM_{10} nonattainment areas may be designated as Moderate or Severe.

2.2628. "Offset", and "emission offset"~~,-shall-mean~~ means an emission reduction of a given pollutant achieved at an existing source (or ~~facility~~emissions unit within such source) that allows for the emission of such given pollutant at a different proposed source (or ~~facility~~emissions unit within such proposed source); provided that the amount of reduction in emissions at the existing source (or ~~facility~~emissions unit within such source), is greater, on a pounds per hour and/or tons per year basis, than one-to-one with respect to the proposed emissions from the different source (or ~~facility~~emissions unit within such source) so that total emissions from the source including all existing and proposed facilities for a given pollutant shall be less than baseline emissions. This term ~~shall-also-mean~~also means an emission reduction of a given pollutant achieved at a ~~facility~~unit within an existing source that allows for the emission of such given pollutant at a different ~~facility~~unit within the same existing source. In addition to the above requirement that offset ratios must be greater than one-to-one, the offset ratios in ozone nonattainment areas must equal or exceed:

a. In marginal ozone nonattainment areas, 1.1 to 1.

b. In moderate ozone nonattainment areas, 1.15 to 1.

c. In serious ozone nonattainment areas, 1.2 to 1.

d. In severe ozone nonattainment areas, 1.3 to 1.

e. In extreme ozone nonattainment areas, 1.5 to 1.

2.2729. "Person"~~,-shall-mean~~ 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, statutory, public or private corporation or association organized or existing under the law of this or any other state or country, and any firm, partnership or association of whatever nature.

2.2830. "Potential to Emit"~~,-shall-mean~~ 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 ~~legally~~federally enforceable or is enforceable by the ~~Commission~~Chief in any permit and/or consent order issued~~under the Code and~~ by the United States Environmental Protection Agency ~~under Section 113 of the Clean Air Act~~or by the Chief. Secondary emissions do not count in determining the potential to emit of a stationary source.

2.2931. "Reasonable Further Progress"; ~~shall mean~~ means the annual reductions in emissions of pollutants in nonattainment areas ~~committed to by the Commission in the West Virginia State Implementation Plan to assure~~ as are required pursuant to Part D of the 1990 Clean Air Act Amendments or which are required by the Chief or USEPA for the purpose of ensuring attainment of National Ambient Air Quality Standards "(NAAQS)" by the applicable statutory deadline.

~~2.30. "Resource Recovery Facility", shall mean any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than fifty percent (50%) of the heat input to be considered a resource recovery facility under this regulation.~~

2.32. "Regulated Pollutant" means for the purpose of this regulation any pollutant for which the Commission has promulgated an Ambient Air Quality Standard, volatile organic compounds and nitrogen oxides.

2.3133. "Secondary Emissions"; ~~shall mean emissions which occur as a result of the construction and/or operation of a major source or major modification, but do not come from the source itself.~~

~~Secondary emission may include, but are not limited to:~~

~~(a) Emissions from vessels, trains, or motor vehicles coming to or from the source; and~~

~~(b) Emissions from off-site support emissions units which would be constructed or would otherwise increase emissions as a result of the construction or modification of a major source.~~ means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include, 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 or from a train.

2.3234. "Significant"; ~~shall mean~~ means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates for such pollutants: (See Table 45-19A at the end of this regulation).

2.3335. "Significant Impact"; ~~shall mean~~ means an increase in the ambient air ~~quality~~ concentration for a particular pollutant as follows: (See Table 45-19B at the end of this regulation.)

2.3436. "Source, Stationary Source"~~, shall mean all structures, buildings, facilities, equipment, or installations which are of the same industrial grouping (i.e., the same two digit code as described in the Federal Standard Industrial Classification Manual, 1972, amended 1977) and located on one or more contiguous or adjacent properties and which are owned or operated by the same person (or by persons under common control), which may directly or indirectly cause any air pollutant to be emitted.~~ means any building, structure, facility, or installation which emits or may emit any regulated air pollutant.

2.3537. "Temporary Source", and "sources of temporary emissions", ~~shall mean~~means for a source located in a nonattainment area and subject to this regulation, those emissions occurring for a period of time less than two years.

2.38. "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 0-185-718:QL 3).

2.39. "Federally Enforceable" means all limitations and conditions which are enforceable by the Administrator of the United States Environmental Protection Agency (USEPA) including those requirements developed pursuant to 40 CFR Parts 60 and 61, rules and regulations of the approved State Implementation Plan of the State of West Virginia, any permit requirements established pursuant to 40 CFR 52.21 or this regulation, and any operating permits issued under a USEPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.

2.40. "Major Modification for Ozone" means a major modification for VOC and/or NOx.

2.41. "Major Stationary Source for Ozone" means a major stationary source of VOC and/or NOx.

2.42. "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method described in Appendix J of 40 CFR 50.

2.43. "Volatile Organic Compounds (VOC)" excludes each of the following compounds, unless the compound is subject to an emission standard under Section 111 of the Clean Air Act:

- Methane
- Ethane
- Methylene Chloride
- 1,1,1-Trichloroethane (Methyl Chloroform)
- Trichlorotrifluoroethane (CFC-113) (Freon 113)

- Trichlorofluoromethane (CFC-11)
- Dichlorodifluoromethane (CFC-12)
- Chlorodifluoromethane (CFC-22)
- Trifluoromethane (FC-23)
- Dichlorotetrafluoroethane (CFC-114)
- Chloropentafluoroethane (CFC-115)
- Dichlorotrifluoroethane (HCFC-123)
- 2-Chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
- Pentafluoroethane (HFC-125)
- 1,1,2,2-Tetrafluoroethane (HFC-134)
- Tetrafluoroethane (HFC-134a)
- Dichlorofluoroethane (HCFC-141b)
- Chlorodifluoroethane (HCFC-142b)
- 1,1,1-Trifluoroethane (HCFC-143a)
- 1,1-Difluoroethane (HFC-152a)
- Cyclic, branched, or linear, completely fluorinated alkanes
- Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
- Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations
- Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine
- Any other compound excluded from the definition of VOC by USEPA and the Commission.

2.42~~44~~. "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

2.43~~45~~. "TSP" or "Total Suspended Particulate Matter" means particulate matter as measured by the method described in Appendix B of 40 CFR 50.

2.44~~46~~. "Offset Ratio" means the ratio of total emission reductions to total emission increases, for any specific pollutant.

2.45~~47~~. "USEPA" means the United States Environmental Protection Agency.

Other words and phrases used in this regulation, unless otherwise indicated, ~~shall~~ have the meaning ascribed to them in Chapter 16, Article 20, Section 2, of the Code of West Virginia, 1931, as amended.

§45-19-3. Applicability.

3.1. This regulation ~~shall apply~~applies to all major stationary sources ~~intending to locate in a designated nonattainment area~~ and ~~to all~~ major modifications to ~~any existing sources located in a designated nonattainment area~~major stationary sources proposing to construct anywhere in an area which is designated nonattainment as of the date of issuance of the permit. This regulation ~~shall also apply~~also applies to all proposed major stationary sources and to all major modifications to any such sources located anywhere in the State whose emission would cause a violation of a NAAQS or which would cause a significant impact on air quality

in a designated nonattainment area. This regulation ~~shall only apply~~only applies to such proposed major stationary sources or major modifications when the expected pollutant, when discharged, would require classification of such proposed source or modification as a major stationary source or major modification and when the expected pollutant is the same pollutant for which the area of location or significant impact was designated nonattainment. Sections 1, 2, 10, ~~12, and 13~~ and 18 of this regulation ~~shall~~ also apply to all major stationary sources located within the State.

3.2. The determination under this regulation of whether such a source will cause a violation of a NAAQS or a significant impact shall be made by the ~~Director~~Chief upon a case-by-case review of the results of an adequate demonstration submitted by the applicant.

a. The requirements of this regulation applicable for major sources of PM_{10} also apply to major stationary sources of PM_{10} precursors, except where a determination has been made to the satisfaction of the Chief and USEPA that such sources do not contribute significantly to PM_{10} levels which exceed the standard in the area.

b. The requirements of this regulation applicable for major stationary sources of VOC also apply to major stationary sources of NOx, except in the case of those sources of NOx for which a determination has been made to the satisfaction of the Chief and USEPA that no net air quality benefit will occur as a result of NOx reductions from the sources concerned.

3.3. This regulation ~~shall apply~~applies to portable facilities intending to locate or relocate anywhere in the State whose emission would cause a violation of a NAAQS or which would cause a significant impact on air quality in a designated nonattainment area. If the ~~Director~~Chief makes a determination of applicability pursuant to Subsection 3.2, then such portable facilities shall be considered as a new major stationary source for all purposes of this regulation and location or relocation of such source shall be considered construction.

3.4. Sources of temporary emissions such as pilot plants, portable facilities which will be relocated away from the nonattainment area after a short period of time, or emissions resulting from the construction phase of a new source~~; or resource recovery facilities utilizing municipal solid waste to provide more than fifty percent (50%) of the heat input for generating steam or electricity~~ may be granted an exemption from the requirements of this regulation by the ~~Commission~~Chief upon a demonstration by such source that such source will not significantly interfere with reasonable further progress toward attaining and maintaining the applicable NAAQS, except, the lowest achievable emission rate (LAER) shall apply to all such sources located in or having a significant impact on a nonattainment area with respect to the specific pollutant for which the area has been designated as nonattainment.

3.5. Any new or modified source to which this regulation is applicable shall not begin actual construction until all necessary pre-construction approvals and permits, including the permit under this regulation, have been issued.

§45-19-4. Conditions for a Permit Approval for Proposed Major Sources That Would Contribute to a Violation of NAAQS.

4.1. ~~(a)~~a. Upon determination by the ~~Director~~Chief that a proposed new major stationary source or major modification will locate within a nonattainment area, or that a proposed new major stationary source or major modification to be built outside a nonattainment area will have a significant impact on pollutant concentrations in a nonattainment area, as of such source's proposed start-up date, permit approval may be granted only if the applicant agrees within its permit application and permit (if approved), to meet the following conditions:

~~(1)~~A. The proposed major stationary source or major modification is required to meet the lowest achievable emission rate (LAER) for such source;

~~(2)~~B. The applicant must certify that all existing sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control of the applicant) in West Virginia are in compliance with the Clean Air Act and Chapter 16, Article 20, of the Code of West Virginia, 1931, as amended, or the applicable regulations, or is in compliance with a compliance program or a court decree which is federally enforceable and enforceable by the Chief~~under the Code and Section 113 of the Clean Air Act~~;

~~(3)~~C. More than equivalent emission offsets from existing sources in the nonattainment area impacted by the proposed new major stationary source or major modification (whether or not under the same ownership) are required such that there will be reasonable further progress toward attainment of the applicable NAAQS. For sources locating in ozone nonattainment areas, the offset ratios for VOC and NOx must equal or exceed those specified in Subsection 2.28 of this regulation. Only intrapollutant emission offsets are acceptable;

~~(4)~~D. The emission offsets will provide a positive net air quality benefit in the affected nonattainment area. Atmospheric simulation modeling for ozone impacts is not necessary for VOC and NOx. Fulfillment of ~~Subsection~~Subparagraph 4.1~~(a)(3)~~.a.C. above and Subsections 8.2~~(a) and (d)~~. of this regulation will be adequate to meet this condition.

~~(b)~~b. Upon determination by the ~~Director~~Chief that technological or economic limitations on the application of measurement methodology to a particular source or class of sources would make the imposition of an enforceable numerical emission standard infeasible, the applicant may, by petition, request that the ~~Commission~~Chief approve an appropriate design, operational or equipment standard. In the event that the applicant's proposed design, operational or equipment standard is unacceptable to the ~~Commission~~Chief, the ~~Commission~~Chief shall determine an appropriate measurement methodology or design, operational or equipment standard and shall incorporate such determinations and requirements within the permit.

c. For phased construction projects, the determination of the lowest achievable emission rate shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or

operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of the lowest achievable emission rate for the source.

§45-19-5. Conditions for Permit Approval for Sources Locating in Attainment or Unclassifiable Areas That Would Cause a New Violation of a NAAQS.

5.1. Upon determination by the ~~Director~~Chief that the emissions from a proposed new major stationary source or major modification locating in attainment or unclassified areas would cause a new violation of a NAAQS, permit approval may be granted only if the applicant agrees within its permit application and permit (if approved) to meet a more stringent emission limitation and/or limit emissions of existing sources below levels allowed by the applicable regulations so that the proposed source will not cause a new violation of any NAAQS. Only intrapollutant emission offsets are acceptable.

§45-19-6. Exemptions from Certain Conditions.

6.1. ~~(a)~~a. The ~~Commission~~Chief, upon petition by the applicant, may exempt the following sources from the requirements of ~~Subsections~~Subparagraphs 4.1~~(a)(3)~~.a.C. and ~~(4)~~D., and Section 5 of this regulation:

~~(1) Resource recovery facilities burning municipal solid waste; and~~

~~(2)~~A. Sources which must switch fuels:

~~(i)~~(a) due to lack of adequate fuel supplies; or

~~(ii)~~(b) where a source is required to be modified as a result of future regulation and no exemption from such regulations is available to the source.

~~(b)~~b. Such exemptions may be granted only if:

~~(1)~~A. The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with ~~Subsections~~Subparagraphs 4.1~~(a)(3)~~.a.C. and ~~(4)~~D. and Section 5 of this regulation, and that such efforts were unsuccessful; and

~~(2)~~B. The applicant has secured all reasonably available emission offsets; and

~~(3)~~C. The applicant will continue to seek the necessary emission offsets and apply them when they become available, and the State's commitment to reasonable further progress will not be adversely affected.

§45-19-7. Baseline for Determining Credit for Emission Offsets.

7.1. ~~(a)~~a. For the existing source providing the emission offsets, the~~The~~ baseline for determining credit for emission offsets will be the lower of the actual or allowable emissions in effect at the time ~~the~~an application to construct or modify a major stationary source is filed.

~~(b)~~b. Emission offsets shall be made on a pounds per hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowed production rate.

~~(c)~~c. The ~~Director~~Chief may specify other averaging periods, such as tons per year, as an alternative to the pounds per hour basis if necessary to carry out the intent of this regulation. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offset shall be calculated using the actual annual operating hours for the previous one year period (or other appropriate period if warranted by cyclical business conditions as determined by the ~~Director~~Chief).

~~(d)~~d. Where the applicable regulation requires certain design, operational or equipment standards in lieu of an emission limitation (such as floating roof tanks for petroleum storage), baseline allowable emissions shall be based on actual operating conditions for the previous one (1) to two (2) year period, whichever is appropriate, in conjunction with such design, operational or equipment standards.

7.2. Where the applicable regulation does not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be the actual emissions determined in accordance with ~~Section~~Subsection 7.1. of this regulation.

7.3. Where the applicable regulation emission limit allows greater emissions than the potential emission rate of the source, emission offset credit will be allowed only for control below the potential emission rate.

7.4. ~~(a)~~a. The emissions for determining emission credit involving an existing fuel combustion source will be the allowable emissions under the applicable regulation for the type of fuel being burned at the time ~~the~~an application is filed.

~~(b)~~b. No emission offset credit shall be allowed for emission reductions (either actual or allowable) resulting from a switch by an existing source to a different type of fuel prior to the date ~~the~~an application is filed.

~~(c)~~c. No emission offset credit, based on the allowable emissions for an alternate fuel, to which the existing source commits to switch at some future date, shall be allowed unless the permit contains conditions requiring the use of specific alternative control measures which would achieve the same degree of emission reduction in the event the source switches back to the original fuel at some later date. The applicant shall ensure that adequate long-term supplies of the new fuel are available before emission offset credit for fuel switches shall be granted.

7.5. ~~(a)~~a. A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels if such reductions are permanent, quantifiable, federally enforceable, and enforceable by the Chief within a permit or order. In addition, such reductions are creditable if they occurred on or after the design year of the most current attainment demonstration.

~~(b)~~b. Emission offsets that involve reducing operating hours or production or source shutdowns must be proposed by the applicant in the permit application and embodied in the permit or as more fully set forth in Section 9 ~~herein~~of this regulation.

~~(c)~~c. ~~Source shutdowns and curtailments in production or operating hours occurring prior to the date the application is filed generally may not be used for emission offset credit. However, where~~Where an applicant can establish that it shut down or curtailed production less than three (3) years prior to the date of permit application, and the proposed source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the proposed source.

~~7.6. No emission offset credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for the following compounds: methane, ethane, 1,1,1, Trichloroethane (Methyl Chloroform), and Trichlorotrifluoroethane (Freon 113).~~

§45-19-8. Location of Offsetting Emissions.

8.1. Offsets shall be obtained from sources located as close to the proposed major stationary or major modified source site as possible. Except for ozone nonattainment areas, these offsets must be obtained from the same nonattainment area as the proposed major source or major modification.

8.2. ~~(a)~~a. The ~~Commission~~Chief, by petition, may allow offsets from sources located at greater distances from the proposed major stationary source or major modification provided that an adequate demonstration that nearby offsets were investigated and reasonable alternatives which provide a positive net air quality benefit are not available is submitted by the applicant, subject to the following:

~~(1)~~A. Emission offsets for volatile organic compounds (VOC) and/or NOx will generally be acceptable from sources located within the same ~~Air Quality Control Region (AQCR)~~ozone nonattainment area or from other ozone nonattainment areas of equal or higher classification which ~~may~~can be shown to cause or significantly contribute to the ozone problem at the proposed new or modified source location;

~~(2)~~B. Emission offsets for sources of sulfur dioxide (SO_2), and total suspended particulate (TSP), should be obtained from an existing or shutdown facility, on the same premises or in the immediate vicinity of the proposed source.

~~(b)~~b. If such allowance is granted, as provided for in ~~Subsection (a),~~Paragraph 8.2.a. of this ~~Section~~regulation, the ~~Commission~~Chief ~~should~~may increase the ratio of the required offsets for such source.

~~(c)~~c. In order to ensure that the emission offsets will provide a positive net air quality benefit, the ~~Director~~Chief may, at his option, perform the necessary analysis or require the applicant to submit appropriate modeling results for review.

~~(d)~~d. The appropriate modeling referred to in ~~Section~~Paragraph 8.2~~(c)~~.c. above is as follows:

~~(1)~~A. For sulfur dioxide (SO_2) and total suspended particulates (TSP), the source's allowable emissions should be used in an atmospheric simulation model to ensure that the emission offsets provide a positive net air quality benefit. It may, however, be assumed that if the emission offsets are obtained from an existing or shutdown source on the same premises or in the immediate vicinity of the proposed major stationary source or major modification and the pollutants disperse from substantially the same effective stack height, the air quality test of ~~Subsection~~Subparagraph 4.1.~~(a)(4)~~a.D. of this regulation will be met without the necessity of modeling. Thus, when stack emissions are offset against a ground level source at the same time, modeling would be required.

~~(2)~~B. Atmospheric simulation modeling for ozone impacts is not necessary for volatile organic compounds and NOx. For such pollutants, meeting the requirements of ~~Subsection~~Subparagraphs 4.1.~~(a)(3)~~a.C. and ~~Subsection~~ 8.2.~~(a)(1)~~a.A. of this regulation will be adequate.

~~(3)~~C. (a) Proposed sources of volatile organic compounds (VOC) and/or NOx locating in a designated nonattainment area for ozone shall be subject to the provisions of Section 4 of this regulation.

(b) Proposed VOC and/or NOx sources locating within thirty-six (36) hours travel time (under wind conditions associated with concentrations exceeding the NAAQS for ozone) of a nonattainment monitor ~~shall also be~~are subject to Section 4 of this regulation.

~~(c) A proposed VOC source may be exempt from these requirements if the applicant can demonstrate that the emissions from the proposed source will have virtually no effect upon any nonattainment area for ozone. This exemption is only intended for remote rural sources whose emissions would be very unlikely to interact with other significant sources of VOC or NO_x to form additional ozone.~~

§45-19.9. Administrative Procedures for Emission Offset Proposals.

9.1. Emission offsets may be proposed either by the applicant for the proposed major stationary source or major modification or by the local community or the State.

~~(a)~~a. The emission offsets committed to must be accomplished by the applicant's proposed start-up date, except when such proposed source is a replacement for a source that is being shut down in order to provide the necessary benefits; in such cases the ~~Director~~Chief may allow up to one hundred eighty (180) days for shakedown of the new source before the existing source is required to cease operation. Such allowances must be requested by the applicant and contained, if granted, within the construction permit.

~~(b)~~b. If the emission reductions which are to be used as offset credit for a proposed major stationary source or major modification are to be obtained in a State that neighbors West Virginia, or from another source at another site not controlled by the applicant ~~for offset credit for a proposed major stationary source or major modification~~, the offsets committed to must be embodied in a United States Environmental Protection Agency approved State Implementation Plan revision in the neighboring State and must be ~~legally~~federally enforceable and enforceable by both such neighboring State and the ~~Commission~~Chief ~~in accordance with the Code and the United States Environmental Protection Agency in accordance with Section 113 of the Clean Air Act~~ and at all participating sources.

9.2. ~~(a)~~a. The applicant may propose emission offsets which involve:

~~(1)~~A. Reductions from sources controlled by the applicant; and/or

~~(2)~~B. Reductions from neighboring sources not controlled by the applicant.

~~(b)~~b. A state or local community which desires that a major stationary source or major modification locate in its area may commit to reducing emissions from existing sources to sufficiently offset the impact of such proposed source.

9.3. Any emission offset proposal described in ~~Section~~Subsection 9.2. above must be embodied either in the applicant's permit application and permit if such offsets are directly controlled by the applicant or if from neighboring sources located in the State not controlled by the applicant, in a consent order as provided in Chapter 16, Article 20, Section 5 (17) of the Code, which such consent order shall be submitted to the United States Environmental Protection Agency for inclusion in the State Implementation Plan. (Note: See ~~Section~~Subsection 2.2325 of this regulation regarding necessary pre-construction approvals or permits.)

§45-19-10. Control of Fugitive Emissions.

10.1. Fugitive emissions associated with a proposed major stationary source or major modification subject to this regulation shall not be excluded from the provisions of this regulation.

§45-19-11. Offsetting of Secondary Emissions.

11.1. The conditions of this regulation must be met for secondary emission of a particular pollutant only if the proposed major stationary source or major modification is subject to this regulation for emission of that same pollutant.

11.2. For the purposes of this regulation, secondary emissions must be shown as specific and well defined, must be quantifiable, and must impact the nonattainment area.

11.3. Secondary emissions shall not be considered in determining whether the significant impact levels as defined in ~~Section~~Subsection 2.3335 of this regulation would be exceeded.

11.4. ~~(a)~~a. For the following pollutants, the determination of whether, in the area of nonattainment, there is any overlap between the areas of impact of the direct emissions and the secondary emissions, shall be based on a pollutant-by-pollutant analysis:

~~(1)~~A. For total suspended particulate (TSP) and sulfur dioxide (SO_2), the areas of impact shall be determined by modeling in accordance with ~~Subsection~~Paragraph 8.2~~(d)~~.d.

~~(2)~~B. For volatile organic compound (VOC) emissions, the area of impact would be the areas designated as nonattainment for ozone or as otherwise shown to be in violation of the NAAQS for ozone.

~~(b)~~b. If the applicant and the ~~Director~~Chief disagree as to whether the secondary emissions impact the same area as the direct emissions, the applicant has the burden of proving it is correct by performing the necessary modeling.

§45-19-12. Permit Requirements for Major Stationary Sources and Major Modifications.

12.1. 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 regulation in any area designated as nonattainment under Section 107 of the Clean Air Act, without notifying the Chief of such intent and obtaining prior to commencement of construction, modification, or relocation a permit(s) to so construct, modify, or relocate the major stationary source or major modification as herein provided.

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

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;

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

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 the requirement for lowest achievable emission rate as applicable would be met;

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

e. A detailed description of any emission offsets proposed by the applicant.

12.3. 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 and regulations of the Commission, the permit application, and any permit issued pursuant to this regulation.

12.4. 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 Chief 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 Chief received all required information.

12.5. Within twelve (12) months of the receipt of a complete permit application for construction or relocation of a major stationary source or for a major modification, the Chief shall issue such a permit unless the Chief determines that the proposed major stationary source or major modification has not satisfied the requirements of this regulation, 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 regulation, in which case the Chief shall issue an order for the prevention of such construction, modification, or relocation.

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

12.7. The Chief 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.

§45-19-13. Public Review Procedures.

13.1. After completing the review of a complete application, the Chief shall make a preliminary determination whether a permit should be approved, approved with conditions, or disapproved.

13.2. The Chief 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 the Code and any regulations pursuant thereto), a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

13.3. The Chief 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, 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 has already been 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.

13.4. The Chief shall send a copy of the advertisement to the applicant, to USEPA, 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.

13.5. Public comments submitted within thirty (30) days after the Chief'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 shall be considered by the Chief before making a final decision on the approvability of the application. The Chief shall make copies of all comments available for public inspection in the same locations where the Chief made available preconstruction information relating to the proposed source or modification.

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

13.7. The Chief 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 Chief made available preconstruction information and public comments relating to the proposed source or modification.

§45-19-14. Public Meetings.

14.1. Public meetings to receive comments on permit applications shall be held when the Chief 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.

14.2. The Chief or the Chief's designee shall preside over such meetings and insure 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.

14.3. At a reasonable time prior to such meetings, the Chief shall provide appropriate information to news media in the area where the proposed source or modification is to be located.

§45-19-15. Permit Transfer, Cancellation, and Responsibility.

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

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

b. The transferee acknowledges, in writing, that it accepts and will comply with all the requirements, terms, and conditions as contained in the subject permit.

15.2. The Chief shall cancel or suspend a permit if, after eighteen (18) months from the date of issuance the holder of the permit cannot provide the Chief, at the Chief'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 Chief's request.

15.3. The Chief may cancel or suspend the permit if the plans and specifications upon which the approval was based or the conditions established in the permit are not adhered to.

15.4. 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 USEPA or the Chief, 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 regulation as though construction had not yet commenced on the source or modification.

§45-19-16. Disposition of Permits.

16.1. In the event that the Commission promulgates changes to this regulation or in the event of a redesignation of an attainment or non-attainment area (in accordance with Section 107 of the Clean Air Act) prior to final disposition of a permit, the Chief shall make final disposition of the permit application in accordance with such newly promulgated standards or redesignation.

§45-19-17. Requirements for Air Quality Models.

17.1. All estimates of ambient concentrations required under this regulation shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1986) (EPA-450/2-78-027R) and Supplement A (1987).

17.2. Where an air quality impact model specified in the "Guideline on Air Quality Models (Revised)" (1986) and Supplement A (1987) is inappropriate, the model may be modified or another model substituted, provided that said modification or substitution is approved in writing by the USEPA Administrator.

§45-19-~~12~~18. ~~Bubble Concept~~Emission Trading Plans for Intrasource Pollutants.

~~12~~18.1. The owner or operator of a source with multiple process-related emission facilities (stacks, vents, ports, etc.), each of which is subject to specific emission requirements under the applicable regulations, may propose to meet the total emission control requirements of the applicable regulations, for a given pollutant, through a different mix of emissions control ~~technology~~requirements. No ~~bubble concept design~~such emission trading proposal shall be approved or allowed to vary or alter New Source Performance Standards (40 CFR Part 60) ~~and~~, National Emissions Standards for Hazardous Air Pollutants (40 CFR Part 61), or any source-specific emission limitations established under the Commission's pre-construction review regulations and 45 CSR 27.

~~12~~18.2. It is the responsibility of the owner or operator of the source to develop its specific ~~bubble concept design~~emission trading proposal. The owner or operator also has the burden to demonstrate to the satisfaction of the ~~Commission~~Chief that the proposed ~~bubble concept design~~emission trading proposal is equivalent in emission reduction, enforceability, and environmental impact to existing individual process standards or applicable regulations.

~~12~~18.3. The ~~Commission~~Chief shall not approve any ~~bubble concept design~~emission trading proposal without first giving due notice and holding a public hearing, on a case-by-case basis. Such approved ~~bubble concept design~~emission trading proposal shall be embodied in a consent order as provided in Chapter 16, Article 20, Section 5 (17) of the Code, which such consent order shall be submitted to the United States Environmental Protection Agency for inclusion in the State Implementation Plan.

~~12~~18.4. ~~An approved bubble concept design shall be in effect for any such source for a period of no more than three (3) years from the date of issuance for~~

~~sources located in nonattainment areas and five (5) years for sources located in attainment areas. At the end of such three (3) or five (5) year period, the Commission shall review the bubble concept design for such source and may extend approval of the design based on consideration of air quality, control technology innovation, compliance and such other determinations as the Commission deems appropriate.~~ Any such emission trading proposal must meet all requirements of USEPA's "Emission Trading Policy Statement" as published in the Federal Register at 51 FR 43814.

~~**§45-19-13. Discretionary Decisions Made by the Director.**~~

~~13.1. Any discretionary decision made by the Director as provided herein may be presented to the Commission for review by petition. The consideration of any such review shall be discretionary with the Commission.~~

§45-19-19. Conflict with Other Permitting Rules.

19.1. For sources subject to the permitting requirements of this regulation, the provisions of 45 CSR 13 - "Permits for Construction, Modification, or Relocation of Stationary Sources of Air Pollutants, and Procedures for Registration and Evaluation" do not apply, provided, however, that the base permit application fee of $1,000 under Paragraph 3.4.a. of 45CSR22 shall apply to such sources in addition to other applicable fees.

§45-19-20. Severability.

20.1. The provisions of this regulation are severable and if any provision or part thereof shall be held invalid, unconstitutional, or inapplicable to any person or circumstance, such invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sections, or parts of this regulation or their application to any persons or circumstances.

TABLE 45-19A

Carbon monoxide:	100	tons per year (tpy)
Nitrogen oxides:	40	tpy
Sulfur dioxide:	40	tpy
Particulate matter:	25	tpy
PM_{10}:	15	tpy
~~Ozone:~~	~~40~~	~~tpy of volatile organic compounds~~
Ozone, marginal and moderate nonattainment areas	40	tpy of VOC or NOx
Ozone, serious and severe nonattainment areas	25	tons of VOC or NOx determined over a consecutive 5 year period
Ozone, extreme nonattainment areas	zero	tons of VOC or NOx
Lead:	0.6	tpy

TABLE 45-19B

	Averaging time (hours)				
	Annual	24	8	3	1
Pollutant:					
SO_2	1.0 ug/m^3	5.0 ug/m^3		25.0 ug/m^3	
TSP	1.0 ug/m^3	5.0 ug/m^3			
PM_{10}	1.0 ug/m^3	5.0 ug/m^3			
NO_2	1.0 ug/m^3				
CO			0.5 mg/m^3		2.0 mg/m^3

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(Plus all the volunteer help we can get)

December 1, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Air Pollution Control Commission

RULE: Amendments, Series 19, Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emissions Trading for Intrasource Pollutants

DATE FILED AS AN EMERGENCY RULE: November 12, 1992

DECISION NO. 30-92

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER
Secretary of State

FILED
DEC 1 4 45 PM '92
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

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DECISION EMERGENCY RULE DECISION
(ERD 30-92)

AGENCY: Air Pollution Control Commission
RULE: Amendments, Series 19, Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants & Emissions Trading for Intrasource Pollutants
FILED AS AN EMERGENCY RULE: November 12, 1992

par. 1 The Air Pollution Control Commission (APCC) has filed the above amendments as an emergency rule.

par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.

par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a)].

par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).

par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The APCC filed this emergency rule with supporting documents with the Secretary of State November 12, 1992 and with the LRMRC November 12, 1992.

par. 7 It is the determination of the Secretary of State that the APCC has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code 16-20-5 reads in part:

(4) To promulgate legislative rules in accordance with the provisions of §29A-1-1 et seq. of this code not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule of the commission shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the "Federal Clean Air Act," as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: Provided, however, That no legislative rule or program of the commission hereafter adopted shall be any more stringent than any federal rule or program except to the limited extent that the commission first makes a specific written finding for any such departure, that there exists scientifically supportable evidence for such rule or program reflecting factors unique to WV or some area thereof.

par. 9 It is the determination of the Secretary of State that the APCC has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the APCC are as follows:

The Clean Air Act Amendments of 1990 (42 U.S.C. §§701, et seq.) require a November 15, 1992, revision to the State Implementation Plan for states with ozone nonattainment areas. Counties so designated as ozone nonattainment areas are Kanawha, Cabell, Putnam, Wayne, Wood and Greenbrier. (Note: Greenbrier county is a marginal ozone nonattainment area. All other listed counties are moderate ozone nonattainment areas.) 42 U.S.C. §7511a(a)(1)(C) [C.A.A. 182(a)(1)(C)] requires states with ozone nonattainment areas to adopt provisions to require permits for the construction and operation of each new or modified stationary source (with respect to ozone) to be located in ozone nonattainment areas. 45CSR19 has been in effect since 1983. The rule has been revised primarily due to changes in major source size definitions and emissions offset ratio requirements included in Title I of the Clean Air Amendments. Such revisions are required as of November 15, 1992. Sanctions for state failure to revise State Implementation Plans are provided in 42 U.S.C. §7509 [C.A.A. §179].

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "federal time limitation".

par. 14 This decision shall be cited as Emergency Rule Decision 30-92 or ERD 30-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Air Pollution Control Commission, the Attorney General and the Legislative Rule Making Review Commission.

Ken Hechler

KEN HECHLER
Secretary of State

Entered_____

FILED
DEC 1 4 45 PM '92
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

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GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

October 26, 1992

Mr. L. Newton Thomas, Jr.
Chairman, WVAPCC
914 Newton Road
Charleston, WV 25314

RE: **Proposed Rules - Title 45, Series 19 (Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants/Non-attainment NSR); Title 45, Series 21 (Regulations to Prevent and Control Air Pollution from the Emission of Volatile Organic Compounds/VOC RACT), and Title 45, Series 29, (Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions/VOC and NO_x Emissions Statements)**

Dear Chairman Thomas:

Dale Farley, Chief of the Office of Air Quality, has advised me that in order for West Virginia to remain in compliance with 1990 Clean Air Act requirements, rules filed by the Commission earlier this year should now be adopted on an emergency basis. As a result, pursuant to West Virginia Code §5F-2-2(a)(12), I hereby consent to the proposal of the rules specified above as emergency rules.

You may attach a copy of this letter to your filing with the Secretary of State as evidence of my consent.

Sincerely yours,

John M. Ranson

John M. Ranson
Cabinet Secretary

JMR:cjb
cc: Dale Farley
Ann Spaner

T:RUL-APCC.RUL

purposes of applying the provisions of subparagraphs (B) and (C).

(c) References to terms

(1) Any reference in this subpart to a "Marginal Area", a "Moderate Area", a "Serious Area", a "Severe Area", or an "Extreme Area" shall be considered a reference to a Marginal Area, a Moderate Area, a Serious Area, a Severe Area, or an Extreme Area as respectively classified under this section.

(2) Any reference in this subpart to "next higher classification" or comparable terms shall be considered a reference to the classification related to the next higher set of design values in table 1. (July 14, 1955, ch. 360, title I, § 181, as added Nov. 15, 1990, Pub.L. 101–549, title I, § 103, 104 Stat. 2423.)

Effective Date

Section to take effect Nov. 15, 1990, except as otherwise provided, see section 711(b) of Pub.L. 101–549, set out as a note under section 7401 of this title.

Savings Provisions

Suits, actions or proceedings commenced under this chapter as in effect prior to Nov. 15, 1990, not to abate by reason of the taking effect of amendments by Pub.L. 101–549, except as otherwise provided for, see section 711(a) of Pub.L. 101–549, set out as a note under section 7401 of this title.

Exemptions for Stripper Wells

Section 819 of Pub.L. 101–549 provided that:

"Notwithstanding any other provision of law, the amendments to the Clean Air Act [this chapter] made by section 103 of the Clean Air Act Amendments of 1990 (relating to additional provisions for ozone nonattainment areas) [enacting sections 7511 to 7511f of this title], by section 104 of such amendments (relating to additional provisions for carbon monoxide nonattainment areas) [enacting sections 7512 and 7512a of this title], by section 105 of such amendments (relating to additional provisions for PM–10 nonattainment areas) [enacting sections 7513 to 7513b of this title and amending section 7476 of this title], and by section 106 of such amendments (relating to additional provisions for areas designated as nonattainment for sulfur oxides, nitrogen dioxide, and lead) [enacting sections 7514 and 7514a of this title] shall not apply with respect to the production of and equipment used in the exploration, production, development, storage or processing of—

"(1) oil from a stripper well property, within the meaning of the June 1979 energy regulations (within the meaning of section 4996(b)(7) of the Internal Revenue Code of 1986 [section 4996(b)(7) of Title 26, Internal Revenue Code], as in effect before the repeal of such section); and

"(2) stripper well natural gas, as defined in section 108(b) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3318(b)) [section 3318(b) of Title 15, Commerce and Trade],

except to the extent that provisions of such amendments cover areas designated as Serious pursuant to part D of title I of the Clean Air Act [part D of subchapter I of this chapter] and having a population of 350,000 or more, or areas designated as Severe or Extreme pursuant to such part D."

§ 7511a. Plan submissions and requirements [CAA § 182]

(a) Marginal areas

Each State in which all or part of a Marginal Area is located shall, with respect to the Marginal Area (or portion thereof, to the extent specified in this subsection), submit to the Administrator the State implementation plan revisions (including the plan items) described under this subsection except to the extent the State has made such submissions as of November 15, 1990.

(1) Inventory

Within 2 years after November 15, 1990, the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 7502(c)(3) of this title, in accordance with guidance provided by the Administrator.

(2) Corrections to the State implementation plan

Within the periods prescribed in this paragraph, the State shall submit a revision to the State implementation plan that meets the following requirements—

(A) Reasonably available control technology corrections

For any Marginal Area (or, within the Administrator's discretion, portion thereof) the State shall submit, within 6 months of the date of classification under section 7511(a) of this title, a revision that includes such provisions to correct requirements in (or add requirements to) the plan concerning reasonably available control technology as were required under section 7502(b) of this title (as in effect immediately before November 15, 1990), as interpreted in guidance issued by the Administrator under section 7408 of this title before November 15, 1990.

(B) Savings clause for vehicle inspection and maintenance

(i) For any Marginal Area (or, within the Administrator's discretion, portion thereof), the plan for which already includes, or was required by section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) to have included, a specific schedule for implementation of a vehicle emission control inspection and maintenance program, the State shall submit, immediately after November 15, 1990, a revision that includes any provisions necessary to provide for a vehicle inspection and maintenance program of no less stringency than that of either the program defined in House Report Numbered 95–294, 95th Congress, 1st Session, 281–291 (1977) as interpreted in guidance of the Administrator issued pursuant to section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990)

or the program already included in the plan, whichever is more stringent.

(ii) Within 12 months after November 15, 1990, the Administrator shall review, revise, update, and republish in the Federal Register the guidance for the States for motor vehicle inspection and maintenance programs required by this chapter, taking into consideration the Administrator's investigations and audits of such program. The guidance shall, at a minimum, cover the frequency of inspections, the types of vehicles to be inspected (which shall include leased vehicles that are registered in the nonattainment area), vehicle maintenance by owners and operators, audits by the State, the test method and measures, including whether centralized or decentralized, inspection methods and procedures, quality of inspection, components covered, assurance that a vehicle subject to a recall notice from a manufacturer has complied with that notice, and effective implementation and enforcement, including ensuring that any retesting of a vehicle after a failure shall include proof of corrective action and providing for denial of vehicle registration in the case of tampering or misfueling. The guidance which shall be incorporated in the applicable State implementation plans by the States shall provide the States with continued reasonable flexibility to fashion effective, reasonable, and fair programs for the affected consumer. No later than 2 years after the Administrator promulgates regulations under section 7521(m)(3) of this title (relating to emission control diagnostics), the State shall submit a revision to such program to meet any requirements that the Administrator may prescribe under that section. REG 19

(C) Permit programs

Within 2 years after November 15, 1990, the State shall submit a revision that includes each of the following:

(i) Provisions to require permits, in accordance with sections 7502(c)(5) and 7503 of this title, for the construction and operation of each new or modified major stationary source (with respect to ozone) to be located in the area.

(ii) Provisions to correct requirements in (or add requirements to) the plan concerning permit programs as were required under section 7502(b)(6) of this title (as in effect immediately before November 15, 1990), as interpreted in regulations of the Administrator promulgated as of November 15, 1990.

(3) Periodic inventory

(A) General requirement

No later than the end of each 3-year period after submission of the inventory under paragraph (1) until the area is redesignated to attainment, the State shall submit a revised inventory meeting the requirements of subsection (a)(1) of this section. REG 29

(B) Emissions statements

(i) Within 2 years after November 15, 1990, the State shall submit a revision to the State implementation plan to require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the State with a statement, in such form as the Administrator may prescribe (or accept an equivalent alternative developed by the State), for classes or categories of sources, showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. The first such statement shall be submitted within 3 years after November 15, 1990. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.

(ii) The State may waive the application of clause (i) to any class or category of stationary sources which emit less than 25 tons per year of volatile organic compounds or oxides of nitrogen if the State, in its submissions under subparagraphs (1) or (3)(A), provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

(4) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increased emissions of such air pollutant shall be at least 1.1 to 1.

The Administrator may, in the Administrator's discretion, require States to submit a schedule for submitting any of the revisions or other items required under this subsection. The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the

applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area. Section 7502(c)(9) of this title (relating to contingency measures) shall not apply to Marginal Areas.

(b) Moderate areas

Each State in which all or part of a Moderate Area is located shall, with respect to the Moderate Area, make the submissions described under subsection (a) of this section (relating to Marginal Areas), and shall also submit the revisions to the applicable implementation plan described under this subsection.

(1) Plan provisions for reasonable further progress

(A) General rule

(i) By no later than 3 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to provide for volatile organic compound emission reductions, within 6 years after November 15, 1990, of at least 15 percent from baseline emissions, accounting for any growth in emissions after 1990. Such plan shall provide for such specific annual reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the national primary ambient air quality standard for ozone by the attainment date applicable under this chapter. This subparagraph shall not apply in the case of oxides of nitrogen for those areas for which the Administrator determines (when the Administrator approves the plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment.

(ii) A percentage less than 15 percent may be used for purposes of clause (i) in the case of any State which demonstrates to the satisfaction of the Administrator that—

(I) new source review provisions are applicable in the nonattainment areas in the same manner and to the same extent as required under subsection (e) of this section in the case of Extreme Areas (with the exception that, in applying such provisions, the terms "major source" and "major stationary source" shall include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 5 tons per year of volatile organic compounds);

(II) reasonably available control technology is required for all existing major sources (as defined in subclause (I)); and

(III) the plan reflecting a lesser percentage than 15 percent includes all measures that can feasibly be implemented in the area, in light of technological achievability.

To qualify for a lesser percentage under this clause, a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher category.

(B) Baseline emissions

For purposes of subparagraph (A), the term "baseline emissions" means the total amount of actual VOC or NO_x emissions from all anthropogenic sources in the area during the calendar year of 1990, excluding emissions that would be eliminated under the regulations described in clauses (i) and (ii) of subparagraph (D).

(C) General rule for creditability of reductions

Except as provided under subparagraph (D), emissions reductions are creditable toward the 15 percent required under subparagraph (A) to the extent they have actually occurred, as of 6 years after November 15, 1990, from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit under subchapter V of this chapter.

(D) Limits on creditability of reductions

Emission reductions from the following measures are not creditable toward the 15 percent reductions required under subparagraph (A):

(i) Any measure relating to motor vehicle exhaust or evaporative emissions promulgated by the Administrator by January 1, 1990.

(ii) Regulations concerning Reid Vapor Pressure promulgated by the Administrator by November 15, 1990 or required to be promulgated under section 7545(h) of this title.

(iii) Measures required under subsection (a)(2)(A) of this section (concerning corrections to implementation plans prescribed under guidance by the Administrator).

(iv) Measures required under subsection (a)(2)(B) of this section to be submitted immediately after November 15, 1990 (concerning

corrections to motor vehicle inspection and maintenance programs).

REG. 21 VOC RACT

(2) Reasonably available control technology

The State shall submit a revision to the applicable implementation plan to include provisions to require the implementation of reasonably available control technology under section 7502(c)(1) of this title with respect to each of the following:

(A) Each category of VOC sources in the area covered by a CTG document issued by the Administrator between November 15, 1990 and the date of attainment.

(B) All VOC sources in the area covered by any CTG issued before November 15, 1990.

(C) All other major stationary sources of VOCs that are located in the area.

Each revision described in subparagraph (A) shall be submitted within the period set forth by the Administrator in issuing the relevant CTG document. The revisions with respect to sources described in subparagraphs (B) and (C) shall be submitted by 2 years after November 15, 1990, and shall provide for the implementation of the required measures as expeditiously as practicable but no later than May 31, 1995.

(3) Gasoline vapor recovery

(A) General rule

Not later than 2 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to require all owners or operators of gasoline dispensing systems to install and operate, by the date prescribed under subparagraph (B), a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. The Administrator shall issue guidance as appropriate as to the effectiveness of such system. This subparagraph shall apply only to facilities which sell more than 10,000 gallons of gasoline per month (50,000 gallons per month in the case of an independent small business marketer of gasoline as defined in section 7625–1 of this title).

(B) Effective date

The date required under subparagraph (A) shall be—

(i) 6 months after the adoption date, in the case of gasoline dispensing facilities for which construction commenced after November 15, 1990;

(ii) one year after the adoption date, in the case of gasoline dispensing facilities which dispense at least 100,000 gallons of gasoline per month, based on average monthly sales for the 2-year period before the adoption date; or

(iii) 2 years after the adoption date, in the case of all other gasoline dispensing facilities.

Any gasoline dispensing facility described under both clause (i) and clause (ii) shall meet the requirements of clause (i).

(C) Reference to terms

For purposes of this paragraph, any reference to the term "adoption date" shall be considered a reference to the date of adoption by the State of requirements for the installation and operation of a system for gasoline vapor recovery of emissions from the fueling of motor vehicles.

(4) Motor vehicle inspection and maintenance

For all Moderate Areas, the State shall submit, immediately after November 15, 1990, a revision to the applicable implementation plan that includes provisions necessary to provide for a vehicle inspection and maintenance program as described in subsection (a)(2)(B) of this section (without regard to whether or not the area was required by section 7502(b)(11)(B) of this section (as in effect immediately before November 15, 1990) to have included a specific schedule for implementation of such a program).

(5) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increase emissions of such air pollutant shall be at least 1.15 to 1.

(c) Serious areas

Except as otherwise specified in paragraph (4), each State in which all or part of a Serious Area is located shall, with respect to the Serious Area (or portion thereof, to the extent specified in this subsection), make the submissions described under subsection (b) of this section (relating to Moderate Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Serious Area, the terms "major source" and "major stationary source" include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of volatile organic compounds.

(1) Enhanced monitoring

In order to obtain more comprehensive and representative data on ozone air pollution, not later than 18 months after November 15, 1990 the Administrator shall promulgate rules, after notice and public comment, for enhanced monitoring of ozone, oxides of nitrogen, and volatile organic compounds. The rules shall, among other things, cover the location and maintenance of monitors. Immediately following the promulgation of rules by the Administrator relating to enhanced monitoring, the State shall commence such actions as may be necessary to adopt and implement a program based on such rules, to improve monitoring for ambient concentrations of ozone, oxides of nitrogen and volatile organic compounds and to improve monitoring of emissions of oxides of nitrogen and volatile organic compounds. Each State implementation plan for the area shall contain measures to improve the ambient monitoring of such air pollutants.

(2) Attainment and reasonable further progress demonstrations

Within 4 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan that includes each of the following:

(A) Attainment demonstration

A demonstration that the plan, as revised, will provide for attainment of the ozone national ambient air quality standard by the applicable attainment date. This attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.

(B) Reasonable further progress demonstration

A demonstration that the plan, as revised, will result in VOC emissions reductions from the baseline emissions described in subsection (b)(1)(B) of this section equal to the following amount averaged over each consecutive 3-year period beginning 6 years after November 15, 1990, until the attainment date:

(i) at least 3 percent of baseline emissions each year; or

(ii) an amount less than 3 percent of such baseline emissions each year, if the State demonstrates to the satisfaction of the Administrator that the plan reflecting such lesser amount includes all measures that can feasibly be implemented in the area, in light of technological achievability.

To lessen the 3 percent requirement under clause (ii), a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher classification. Any determination to lessen the 3 percent requirement shall be reviewed at each milestone under subsection (g) of this section and revised to reflect such new measures (if any) achieved in practice by sources in the same category in any State, allowing a reasonable time to implement such measures. The emission reductions described in this subparagraph shall be calculated in accordance with subsection (b)(1)(C) and (D) of this section (concerning creditability of reductions). The reductions creditable for the period beginning 6 years after November 15, 1990, shall include reductions that occurred before such period, computed in accordance with subsection (b)(1) of this section, that exceed the 15-percent amount of reductions required under subsection (b)(1)(A) of this section.

(C) NO_x control

The revision may contain, in lieu of the demonstration required under subparagraph (B), a demonstration to the satisfaction of the Administrator that the applicable implementation plan, as revised, provides for reductions of emissions of VOC's and oxides of nitrogen (calculated according to the creditability provisions of subsection (b)(1)(C) and (D) of this section), that would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reductions required under subparagraph (B). Within 1 year after November 15, 1990, the Administrator shall issue guidance concerning the conditions under which NO_x control may be substituted for VOC control or may be combined with VOC control in order to maximize the reduction in ozone air pollution. In accord with such guidance, a lesser percentage of VOCs may be accepted as an adequate demonstration for purposes of this subsection.

(3) Enhanced vehicle inspection and maintenance program

(A) Requirement for submission

Within 2 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to provide for an enhanced program to reduce hydrocarbon emissions and NO_x emissions from in-use motor vehicles registered in each urbanized area (in the nonattain-

ment area), as defined by the Bureau of the Census, with a 1980 population of 200,000 or more.

(B) Effective date of State programs; guidance

The State program required under subparagraph (A) shall take effect no later than 2 years from November 15, 1990, and shall comply in all respects with guidance published in the Federal Register (and from time to time revised) by the Administrator for enhanced vehicle inspection and maintenance programs. Such guidance shall include—

(i) a performance standard achievable by a program combining emission testing, including on-road emission testing, with inspection to detect tampering with emission control devices and misfueling for all light-duty vehicles and all light-duty trucks subject to standards under section 7521 of this title; and

(ii) program administration features necessary to reasonably assure that adequate management resources, tools, and practices are in place to attain and maintain the performance standard.

Compliance with the performance standard under clause (i) shall be determined using a method to be established by the Administrator.

(C) State program

The State program required under subparagraph (A) shall include, at a minimum, each of the following elements—

(i) Computerized emission analyzers, including on-road testing devices.

(ii) No waivers for vehicles and parts covered by the emission control performance warranty as provided for in section 7541(b) of this title unless a warranty remedy has been denied in writing, or for tampering-related repairs.

(iii) In view of the air quality purpose of the program, if, for any vehicle, waivers are permitted for emissions-related repairs not covered by warranty, an expenditure to qualify for the waiver of an amount of $450 or more for such repairs (adjusted annually as determined by the Administrator on the basis of the Consumer Price Index in the same manner as provided in subchapter V of this chapter.

(iv) Enforcement through denial of vehicle registration (except for any program in operation before November 15, 1990 whose enforcement mechanism is demonstrated to the Administrator to be more effective than the applicable vehicle registration program in assuring that noncomplying vehicles are not operated on public roads).

(v) Annual emission testing and necessary adjustment, repair, and maintenance, unless the State demonstrates to the satisfaction of the Administrator that a biennial inspection, in combination with other features of the program which exceed the requirements of this chapter, will result in emission reductions which equal or exceed the reductions which can be obtained through such annual inspections.

(vi) Operation of the program on a centralized basis, unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective. An electronically connected testing system, a licensing system, or other measures (or any combination thereof) may be considered, in accordance with criteria established by the Administrator, as equally effective for such purposes.

(vii) Inspection of emission control diagnostic systems and the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems.

Each State shall biennially prepare a report to the Administrator which assesses the emission reductions achieved by the program required under this paragraph based on data collected during inspection and repair of vehicles. The methods used to assess the emission reductions shall be those established by the Administrator.

(4) Clean-fuel vehicle programs

(A) Except to the extent that substitute provisions have been approved by the Administrator under subparagraph (B), the State shall submit to the Administrator, within 42 months of November 15, 1990, a revision to the applicable implementation plan for each area described under part C of subchapter II of this chapter to include such measures as may be necessary to ensure the effectiveness of the applicable provisions of the clean-fuel vehicle program prescribed under part C of subchapter II of this chapter, including all measures necessary to make the use of clean alternative fuels in clean-fuel vehicles (as defined in part C of subchapter II of this chapter) econom-

ic from the standpoint of vehicle owners. Such a revision shall also be submitted for each area that opts into the clean fuel-vehicle program as provided in part C of subchapter II of this chapter.

(B) The Administrator shall approve, as a substitute for all or a portion of the clean-fuel vehicle program prescribed under part C of subchapter II of this chapter, any revision to the relevant applicable implementation plan that in the Administrator's judgment will achieve long-term reductions in ozone-producing and toxic air emissions equal to those achieved under part C of subchapter II of this chapter, or the percentage thereof attributable to the portion of the clean-fuel vehicle program for which the revision is to substitute. The Administrator may approve such revision only if it consists exclusively of provisions other than those required under this chapter for the area. Any State seeking approval of such revision must submit the revision to the Administrator within 24 months of November 15, 1990. The Administrator shall approve or disapprove any such revision within 30 months of November 15, 1990. The Administrator shall publish the revision submitted by a State in the Federal Register upon receipt. Such notice shall constitute a notice of proposed rulemaking on whether or not to approve such revision and shall be deemed to comply with the requirements concerning notices of proposed rulemaking contained in sections 553 through 557 of Title 5 (related to notice and comment). Where the Administrator approves such revision for any area, the State need not submit the revision required by subparagraph (A) for the area with respect to the portions of the Federal clean-fuel vehicle program for which the Administrator has approved the revision as a substitute.

(C) If the Administrator determines, under section 7509 of this title, that the State has failed to submit any portion of the program required under subparagraph (A), then, in addition to any sanctions available under section 7509 of this title, the State may not receive credit, in any demonstration of attainment or reasonable further progress for the area, for any emission reductions from implementation of the corresponding aspects of the Federal clean-fuel vehicle requirements established in part C of subchapter II of this chapter.

(5) Transportation control

(A) Beginning 6 years after November 15, 1990 and each third year thereafter, the State shall submit a demonstration as to whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for the area's demonstration of attainment. Where such parameters and emissions levels exceed the levels projected for purposes of the area's attainment demonstration, the State shall within 18 months develop and submit a revision of the applicable implementation plan that includes a transportation control measures program consisting of measures from, but not limited to, section 7408(f) of this title that will reduce emissions to levels that are consistent with emission levels projected in such demonstration. In considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 7408(e) of this title and with the requirements of section 7504(b) of this title and shall include implementation and funding schedules that achieve expeditious emissions reductions in accordance with implementation plan projections.

(6) De minimis rule

The new source review provisions under this part shall ensure that increased emissions of volatile organic compounds resulting from any physical change in, or change in the method of operation of, a stationary source located in the area shall not be considered de minimis for purposes of determining the applicability of the permit requirements established by this chapter unless the increase in net emissions of such air pollutant from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred.

(7) Special rule for modifications of sources emitting less than 100 tons

In the case of any major stationary source of volatile organic compounds located in the area (other than a source which emits or has the potential to emit 100 tons or more of volatile organic compounds per year), whenever any change (as described in section 7411(a)(4) of this title) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 7502(c)(5) of this title and section 7503(a) of this title, except that such in-

crease shall not be considered a modification for such purposes if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic compounds concerned from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not make such election, such change shall be considered a modification for such purposes, but in applying section 7503(a)(2) of this title in the case of any such modification, the best available control technology (BACT), as defined in section 7479 of this title, shall be substituted for the lowest achievable emission rate (LAER). The Administrator shall establish and publish policies and procedures for implementing the provisions of this paragraph.

(8) Special rule for modifications of sources emitting 100 tons or more

In the case of any major stationary source of volatile organic compounds located in the area which emits or has the potential to emit 100 tons or more of volatile organic compounds per year, whenever any change (as described in section 7411(a)(4) of this title) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 7502(c)(5) of this title and section 7503(a) of this title, except that if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic compounds from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1, the requirements of section 7503(a)(2) of this title (concerning the lowest achievable emission rate (LAER)) shall not apply.

(9) Contingency provisions

In addition to the contingency provisions required under section 7502(c)(9) of this title, the plan revision shall provide for the implementation of specific measures to be undertaken if the area fails to meet any applicable milestone. Such measures shall be included in the plan revision as contingency measures to take effect without further action by the State or the Administrator upon a failure by the State to meet the applicable milestone.

(10) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increase emissions of such air pollutant shall be at least 1.2 to 1.

Any reference to "attainment date" in subsection (b) of this section, which is incorporated by reference into this subsection, shall refer to the attainment date for serious areas.

(d) Severe areas

Each State in which all or part of a Severe Area is located shall, with respect to the Severe Area, make the submissions described under subsection (c) of this section (relating to Serious Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Severe Area, the terms "major source" and "major stationary source" include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of volatile organic compounds.

(1) Vehicle miles traveled

(A) Within 2 years after November 15, 1990, the State shall submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart, to comply with the requirements of subsection [1] (b)(2)(B) and (c)(2)(B) of this section (pertaining to periodic emissions reduction requirements). The State shall consider measures specified in section 7408(f) of this title, and choose from among and implement such measures as necessary to demonstrate attainment with the national ambient air quality standards; in considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them.

(B) Within 2 years after November 15, 1990, the State shall submit a revision requiring employers in such area to implement programs to reduce work-related vehicle trips and miles traveled by employees. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 7408(f) of this title and shall, at a minimum, require that each employer of 100 or more persons in such area

increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods by not less than 25 percent above the average vehicle occupancy for all such trips in the area at the time the revision is submitted. The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high occupancy modes. The revision shall provide that each employer subject to a vehicle occupancy requirement shall submit a compliance plan within 2 years after the date the revision is submitted which shall convincingly demonstrate compliance with the requirements of this paragraph not later than 4 years after such date.

(2) Offset requirement

For purposes of satisfying the offset requirements pursuant to this part, the ratio of total emission reductions of VOCs to total increased emissions of such air pollutant shall be at least 1.3 to 1, except that if the State plan requires all existing major sources in the nonattainment area to use best available control technology (as defined in section 7479(3) of this title) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(3) Enforcement under section 7511d of this title

By December 31, 2000, the State shall submit a plan revision which includes the provisions required under section 7511d of this title.

Any reference to the term "attainment date" in subsection (b) or (c) of this section, which is incorporated by reference into this subsection (d) of this section, shall refer to the attainment date for Severe Areas.

(e) Extreme areas

Each State in which all or part of an Extreme Area is located shall, with respect to the Extreme Area, make the submissions described under subsection (d) of this section (relating to Severe Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. The provisions of clause (ii) of subsection (c)(2)(B) of this section (relating to reductions of less than 3 percent), the provisions of paragraphs (6), (7) and (8) of subsection (c) of this section (relating to de minimus rule and modification of sources), and the provisions of clause (ii) of subsection (b)(1)(A) of this section (relating to reductions of less than 15 percent) shall not apply in the case of an Extreme Area. For any Extreme Area, the terms "major source" and "major stationary source" includes (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 10 tons per year of volatile organic compounds.

(1) Offset requirement

For purposes of satisfying the offset requirements pursuant to this part, the ratio of total emission reductions of VOCs to total increased emissions of such air pollutant shall be at least 1.5 to 1, except that if the State plan requires all existing major sources in the nonattainment area to use best available control technology (as defined in section 7479(3) of this title) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(2) Modifications

Any change (as described in section 7411(a)(4) of this title) at a major stationary source which results in any increase in emissions from any discrete operation, unit, or other pollutant emitting activity at the source shall be considered a modification for purposes of section 7502(c)(5) and section 7503(a) of this title, except that for purposes of complying with the offset requirement pursuant to section 7503(a)(1) of this title, any such increase shall not be considered a modification if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of the air pollutant concerned from other discrete operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. The offset requirements of this part shall not be applicable in Extreme Areas to a modification of an existing source if such modification consists of installation of equipment required to comply with the applicable implementation plan, permit, or this chapter.

(3) Use of clean fuels or advanced control technology

For Extreme Areas, a plan revision shall be submitted within 3 years after November 15, 1990 to require, effective 8 years after such date, that each new, modified, and existing electric utility and industrial and commercial boiler which emits more than 25 tons per year of oxides of nitrogen—

(A) burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low polluting fuel), or

(B) use advanced control technology (such as catalytic control technology or other comparably effective control methods) for reduction of emissions of oxides of nitrogen.

For purposes of this subsection, the term "primary fuel" means the fuel which is used 90 percent or more of the operating time. This paragraph shall not apply during any natural gas supply emergency (as defined in title III of the Natural Gas Policy Act of 1978 [15 U.S.C.A. § 3361 et seq.]).

(4) **Traffic control measures during heavy traffic hours**

For Extreme Areas, each implementation plan revision under this subsection may contain provisions establishing traffic control measures applicable during heavy traffic hours to reduce the use of high polluting vehicles or heavy-duty vehicles, notwithstanding any other provision of law.

(5) **New technologies**

The Administrator may, in accordance with section 7410 of this title, approve provisions of an implementation plan for an Extreme Area which anticipate development of new control techniques or improvement of existing control technologies, and an attainment demonstration based on such provisions, if the State demonstrates to the satisfaction of the Administrator that—

(A) such provisions are not necessary to achieve the incremental emission reductions required during the first 10 years after November 15, 1990; and

(B) the State has submitted enforceable commitments to develop and adopt contingency measures to be implemented as set forth herein if the anticipated technologies do not achieve planned reductions.

Such contingency measures shall be submitted to the Administrator no later than 3 years before proposed implementation of the plan provisions and approved or disapproved by the Administrator in accordance with section 7410 of this title. The contingency measures shall be adequate to produce emission reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emission reductions required by subsection (b)(1) or (c)(2) of this section and attainment by the applicable dates. If the Administrator determines that an Extreme Area has failed to achieve an emission reduction requirement set forth in subsection (b)(1) or (c)(2) of this section, and that such failure is due in whole or part to an inability to fully implement provisions approved pursuant to this subsection, the Administrator shall require the State to implement the contingency measures to the extent necessary to assure compliance with subsections (b)(1) and (c)(2) of this section.

Any reference to the term "attainment date" in subsection (b), (c), or (d) of this section which is incorporated by reference into this subsection, shall refer to the attainment date for Extreme Areas.

(f) **NO_x Requirements**

(1) The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 7602 of this title and subsections (c), (d), and (e) of this section) of oxides of nitrogen. This subsection shall not apply in the case of oxides of nitrogen for those sources for which the Administrator determines (when the Administrator approves a plan or plan revision) that net air quality benefits are greater in the absence of reductions of oxides of nitrogen from the sources concerned. This subsection shall also not apply in the case of oxides of nitrogen for—

(A) nonattainment areas not within an ozone transport region under section 7511c of this title if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

(B) nonattainment areas within such an ozone transport region if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not produce net ozone air quality benefits in such region.

The Administrator shall, in the Administrator's determinations, consider the study required under section 7511f of this title.

(2)(A) If the Administrator determines that excess reductions in emissions of NO_x would be achieved under paragraph (1), the Administrator may limit the application of paragraph (1) to the extent necessary to avoid achieving such excess reductions.

(B) For purposes of this paragraph, excess reductions in emissions of NO_x are emission reductions for which the Administrator determines that net air quality benefits are greater in the absence of such reductions. Alternatively, for purposes of this paragraph, excess reductions in emissions of NO_x are, for—

(i) nonattainment areas not within an ozone transport region under section 7511c of this title, emission reductions that the Administrator determines would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

(ii) nonattainment areas within such ozone transport region, emission reductions that the Administrator determines would not produce net ozone air quality benefits in such region.

(3) At any time after the final report under section 7511f of this title is submitted to Congress, a person may petition the Administrator for a determination under paragraph (1) or (2) with respect to any nonattainment area or any ozone transport region under section 7511c of this title. The Administrator shall grant or deny such petition within 6 months after its filing with the Administrator.

(g) Milestones

(1) Reductions in emissions

6 years after November 15, 1990 and at intervals of every 3 years thereafter, the State shall determine whether each nonattainment area (other than an area classified as Marginal or Moderate) has achieved a reduction in emissions during the preceding intervals equivalent to the total emission reductions required to be achieved by the end of such interval pursuant to subsection (b)(1) of this section and the corresponding requirements of subsections (c)(2)(B) and (C), (d), and (e) of this section. Such reduction shall be referred to in this section as an applicable milestone.

(2) Compliance demonstration

For each nonattainment area referred to in paragraph (1), not later than 90 days after the date on which an applicable milestone occurs (not including an attainment date on which a milestone occurs in cases where the standard has been attained), each State in which all or part of such area is located shall submit to the Administrator a demonstration that the milestone has been met. A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require, by rule. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) Serious and severe areas; state election

If a State fails to submit a demonstration under paragraph (2) for any Serious or Severe Area within the required period or if the Administrator determines that the area has not met any applicable milestone, the State shall elect, within 90 days after such failure or determination—

(A) to have the area reclassified to the next higher classification,

(B) to implement specific additional measures adequate, as determined by the Administrator, to meet the next milestone as provided in the applicable contingency plan, or

(C) to adopt an economic incentive program as described in paragraph (4).

If the State makes an election under subparagraph (B), the Administrator shall, within 90 days after the election, review such plan and shall, if the Administrator finds the contingency plan inadequate, require further measures necessary to meet such milestone. Once the State makes an election, it shall be deemed accepted by the Administrator as meeting the election requirement. If the State fails to make an election required under this paragraph within the required 90–day period or within 6 months thereafter, the area shall be reclassified to the next higher classification by operation of law at the expiration of such 6–month period. Within 12 months after the date required for the State to make an election, the State shall submit a revision of the applicable implementation plan for the area that meets the requirements of this paragraph. The Administrator shall review such plan revision and approve or disapprove the revision within 9 months after the date of its submission.

(4) Economic incentive program

(A) An economic incentive program under this paragraph shall be consistent with rules published by the Administrator and sufficient, in combination with other elements of the State plan, to achieve the next milestone. The State program may include a nondiscriminatory system, consistent with applicable law regarding interstate commerce, of State established emissions fees or a system of marketable permits, or a system of State fees on sale or manufacture of products the use of which contributes to ozone formation, or any combination of the foregoing or other similar measures. The program may also include incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 7408(f) of this title.

(B) Within 2 years after November 15, 1990, the Administrator shall publish rules for the programs to be adopted pursuant to subparagraph (A). Such rules shall include model plan provisions which may be adopted for reducing emissions from permitted stationary sources, area sources, and mobile sources. The guidelines shall require that any revenues generated by the plan provisions adopted pursuant to subparagraph (A) shall be used by the State for any of the following:

(i) Providing incentives for achieving emission reductions.

(ii) Providing assistance for the development of innovative technologies for the control of ozone air pollution and for the development of lower-polluting solvents and surface coatings. Such assistance shall not provide for the payment of more than 75 percent of either the costs of any project to develop such a technology or the costs of development of a lower-polluting solvent or surface coating.

(iii) Funding the administrative costs of State programs under this chapter. Not more than 50 percent of such revenues may be used for purposes of this clause.

(5) **Extreme areas**

If a State fails to submit a demonstration under paragraph (2) for any Extreme Area within the required period, or if the Administrator determines that the area has not met any applicable milestone, the State shall, within 9 months after such failure or determination, submit a plan revision to implement an economic incentive program which meets the requirements of paragraph (4). The Administrator shall review such plan revision and approve or disapprove the revision within 9 months after the date of its submission.

(h) Rural transport areas

(1) Notwithstanding any other provision of section 7511 of this title or this section, a State containing an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census), which area is treated by the Administrator, in the Administrator's discretion, as a rural transport area within the meaning of paragraph (2), shall be treated by operation of law as satisfying the requirements of this section if it makes the submissions required under subsection (a) of this section (relating to marginal areas).

(2) The Administrator may treat an ozone nonattainment area as a rural transport area if the Administrator finds that sources of VOC (and, where the Administrator determines relevant, NO_x) emissions within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas.

(i) Reclassified areas

Each State containing an ozone nonattainment area reclassified under section 7511(b)(2) of this title shall meet such requirements of subsections (b) through (d) of this section as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.

(j) Multi-State ozone nonattainment areas

(1) **Coordination among States**

Each State in which there is located a portion of a single ozone nonattainment area which covers more than one State (hereinafter in this section referred to as a "multi-State ozone nonattainment area") shall—

(A) take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned; and

(B) use photochemical grid modeling or any other analytical method determined by the Administrator, in his discretion, to be at least as effective.

The Administrator may not approve any revision of a State implementation plan submitted under this part for a State in which part of a multi-State ozone nonattainment area is located if the plan revision for that State fails to comply with the requirements of this subsection.

(2) **Failure to demonstrate attainment**

If any State in which there is located a portion of a multi-State ozone nonattainment area fails to provide a demonstration of attainment of the national ambient air quality standard for ozone in that portion within the required period, the State may petition the Administrator to make a finding that the State would have been able to make such demonstration but for the failure of one or more other States in which other portions of the area are located to commit to the implementation of all

measures required under this section (relating to plan submissions and requirements for ozone nonattainment areas). If the Administrator makes such finding, the provisions of section 7509 of this title (relating to sanctions) shall not apply, by reason of the failure to make such demonstration, in the portion of the multi-State ozone nonattainment area within the State submitting such petition.

(July 14, 1955, ch. 360, title I, § 182, as added Nov. 15, 1990, Pub.L. 101-549, title I, § 103, 104 Stat. 2426.)

[1] The term "subsection" in subsec. (d)(1)(A) of this section probably should read "subsections".

References in Text

The Natural Gas Policy Act of 1978, referred to in subsec. (e), the last sentence, is Pub.L. 95-621, Nov. 9, 1978, 92 Stat. 3350, as amended. Title III of the Natural Gas Policy Act of 1978 is classified to subchapter III (section 3361 et seq.) of chapter 60 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

Effective Date

Section to take effect Nov. 15, 1990, except as otherwise provided, see section 711(b) of Pub.L. 101-549, set out as a note under section 7401 of this title.

Savings Provisions

Suits, actions or proceedings commenced under this chapter as in effect prior to Nov. 15, 1990, not to abate by reason of the taking effect of amendments by Pub.L. 101-549, except as otherwise provided for, see section 711(a) of Pub.L. 101-549, set out as a note under section 7401 of this title.

§ 7511b. Federal ozone measures [CAA § 183]

(a) Control techniques guidelines for VOC sources

Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines, in accordance with section 7408 of this title, for 11 categories of stationary sources of VOC emissions for which such guidelines have not been issued as of November 15, 1990, not including the categories referred to in paragraphs (3) and (4) of subsection (b) of this section. The Administrator may issue such additional control techniques guidelines as the Administrator deems necessary.

(b) Existing and new CTGS

(1) Within 36 months after November 15, 1990, and periodically thereafter, the Administrator shall review and, if necessary, update control technique guidance issued under section 7408 of this title before November 15, 1990.

(2) In issuing the guidelines the Administrator shall give priority to those categories which the Administrator considers to make the most significant contribution to the formation of ozone air pollution in ozone nonattainment areas, including hazardous waste treatment, storage, and disposal facilities which are permitted under subtitle C of the Solid Waste Disposal Act [42 U.S.C.A. § 6921 et seq.]. Thereafter the Administrator shall periodically review and, if necessary, revise such guidelines.

(3) Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines in accordance with section 7408 of this title to reduce the aggregate emissions of volatile organic compounds into the ambient air from aerospace coatings and solvents. Such control techniques guidelines shall, at a minimum, be adequate to reduce aggregate emissions of volatile organic compounds into the ambient air from the application of such coatings and solvents to such level as the Administrator determines may be achieved through the adoption of best available control measures. Such control technology guidance shall provide for such reductions in such increments and on such schedules as the Administrator determines to be reasonable, but in no event later than 10 years after the final issuance of such control technology guidance. In developing control technology guidance under this subsection, the Administrator shall consult with the Secretary of Defense, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration with regard to the establishment of specifications for such coatings. In evaluating VOC reduction strategies, the guidance shall take into account the applicable requirements of section 7412 of this title and the need to protect stratospheric ozone.

(4) Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines in accordance with section 7408 of this title to reduce the aggregate emissions of volatile organic compounds and PM-10 into the ambient air from paints, coatings, and solvents used in shipbuilding operations and ship repair. Such control techniques guidelines shall, at a minimum, be adequate to reduce aggregate emissions of volatile organic compounds and PM-10 into the ambient air from the removal or application of such paints, coatings, and solvents to such level as the Administrator determines may be achieved through the adoption of the best available control measures. Such control techniques guidelines shall provide for such reductions in such increments and on such schedules as the Administrator determines to be reasonable, but in no event later than 10 years after the final issuance of such control technology guidance. In developing control techniques guidelines under this subsection,