

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121 AND 127]

Nonattainment New Source Review

The Environmental Quality Board (Board) proposes to amend § 121.1 (relating to definitions) and Chapter 127, Subchapter E (relating to new source review) to read as set for in Annex A.

This notice is given under the Board by an order at its meeting of December 20, 2005.

A. *Effective Date*

This proposed rulemaking will be effective upon final publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact John Slade, Chief, Division of Permits, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-4325; or Robert "Bo" Reiley, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

C. *Statutory Authority*

This proposed rulemaking is being made under the authority of section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P. S. § 4005(a)(1)), which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. *Background and Summary*

The primary goal of the Clean Air Act (CAA) (42 U.S.C.A. §§ 7401–7642) is to ensure the attainment and maintenance of air quality under the National Ambient Air Quality Standards (NAAQS) requirements under section 110 of the CAA (42 U.S.C.A. § 7410). The NAAQS are set at a level designed to protect public health and the general welfare. See section 109 of the CAA (42 U.S.C.A. § 7409). Standards have been established for the following six pollutants: sulfur dioxides (SO_x), nitrogen oxides (NO_x), particulate matter (PM₁₀ and PM_{2.5}), carbon monoxide (CO), ozone (O₃) and lead (Pb).

Section 107 of the CAA (42 U.S.C.A. § 7407) and section 110 of the CAA give each state primary responsibility for assuring that air quality within its borders is maintained at a level consistent with the NAAQS. This responsibility is achieved through the establishment of source-specific requirements in state implementation plans (SIPs) addressing the NAAQS.

A primary means of achieving the NAAQS is through the New Source Review (NSR) program, which places preconstruction review and permitting requirements on certain new and modified sources of air pollution to protect public health and air quality. The nature of the requirements depends on whether the source is to be located in an area that attains, or does not attain, the NAAQS for the pollutant in question.

In enacting the CAA, Congress expressed a concern that the costs of retrofitting existing sources with state-of-the-art air pollution control technologies could be pro-

hibitively expensive. Congress concluded that it would be more cost-effective to require high levels of technological performance at new and modified sources, because they have more flexibility as to the location and design of control equipment than do existing sources. As a result, new and modified sources are subject to more stringent levels of control, and hence more costly controls, under the CAA than existing sources.

There are two sets of regulatory requirements that subject new and modified sources to more stringent levels of control: the Prevention of Significant Deterioration (PSD) under Title I, Part C of the CAA (42 U.S.C.A. §§ 7470–7479) and the nonattainment NSR requirements under Title I, Part D of the CAA (42 U.S.C.A. §§ 7501–7515) under the NSR preconstruction permitting program.

The NSR program subjects major new or "modified" sources of air pollution to preconstruction review and permitting requirements. The PSD program applies to sources that have the potential to emit at least 250 tons per year (tpy) of a regulated pollutant, or at least 100 tpy of a regulated pollutant, if the source falls within a listed source category. See 40 CFR 52.21(b)(1) (relating to prevention of significant deterioration of air quality). SIPs must also contain provisions to prevent significant deterioration of air quality. See 40 CFR 51.166 (relating to prevention of significant deterioration of air quality).

The NSR program applies to sources that have the potential to emit at least 100 tpy of a regulated nonattainment pollutant. See section 302(j) of the CAA (42 U.S.C.A. § 7602(j)). These thresholds have been lowered for areas with more acute nonattainment problems, for instance, to 50 tpy for volatile organic compound (VOC) and 100 tpy for NO_x in moderate areas, to 50 tpy for VOC and NO_x in serious ozone nonattainment areas, to 25 tpy for VOC and NO_x for severe areas and 10 tpy for VOC and NO_x for extreme areas. See section 182 of the CAA (42 U.S.C.A. § 7511a).

The purpose of the NSR program is to ensure that the proposed source meets all applicable air quality requirements before it is constructed. The nature of the NSR preconstruction requirements depends upon whether the source is to be located in an area that meets or fails to meet the applicable ambient air quality standards.

Major stationary sources located in attainment areas are subject to the PSD permit program. Before a person can construct a major source in an attainment area, that person must receive a permit under the PSD program. To receive that permit, a person must show that the proposed source will, among other things, comply with the ambient air quality levels designed to prevent air quality deterioration and will employ the "best available control technology" for each regulated pollutant. See section 165 of the CAA (42 U.S.C.A. § 7475).

Major stationary sources located in nonattainment areas are subject to the NSR area permit program, which the states are responsible for implementing through their SIPs. Before a person can construct a major source in a nonattainment area, that person must receive a permit under the nonattainment permit program. To receive that permit, a person must show that the proposed source will, among other things, offset its potential to emit nonattainment pollutants by securing emission reductions from a nearby facility at a greater than 1:1 ratio and will employ

the "lowest achievable emission rate" (LAER) for each regulated pollutant. See section 173 of the CAA (42 U.S.C.A. § 7503).

In 1996, the United States Environmental Protection Agency (EPA) published a proposed NSR rule at 61 FR 38250, 38251 (July 23, 1996) "to provide States with greater flexibility to customize their own regulations implementing the NSR program." The EPA also decided to ease the burden on industry of complying with NSR requirements by "significantly reduc[ing] the number and types of activities at sources that would otherwise be subject to major NSR under the existing NSR program regulations." See 61 FR 38251. The EPA estimated that the changes, if finalized, would result in approximately 50% fewer sources being subject to requirements under the PSD and nonattainment NSR provisions of the CAA. See 61 FR 38319. However, the EPA explained that it would not allow environmental benefits to be sacrificed to relieve the alleged burden on industry. See 61 FR 38250.

Two years later, the EPA published a Notice of Availability (NOA) at 63 FR 39857 (July 24, 1998) that presented its preliminary conclusions on certain aspects of the proposed rule and requested additional public comment. The EPA concluded that several of the reforms proposed in 1996 required additional safeguards to protect the environment and ensure accountability on the part of industry. See 63 FR 39859—39862.

In June 2002, after completing a review of the NSR program directed by the President's National Energy Policy Development Group, the EPA announced that it would finalize five elements of the proposed rule: (1) a revised methodology for determining whether a change at a source will increase emissions significantly, and thereby be considered a "modification;" (2) a new way to determine the emissions baseline used in measuring whether a significant emission increase will occur; (3) a plantwide applicability limit (PAL) permit that would allow a source to avoid triggering NSR requirements if it does not exceed an emissions cap; (4) an exclusion from NSR for any projects at a source designated as a "clean unit;" and (5) an exclusion from NSR for changes that are classified as pollution control projects.

At 67 FR 80186 (December 31, 2002), the EPA published the NSR rule, which finalized the previous five elements. For the PSD program, the NSR rule went into effect in this Commonwealth on March 3, 2003, because the Commonwealth automatically incorporates the Federal PSD requirements by reference under Chapter 127, Subchapter D (relating to prevention of significant deterioration of air quality). Since the Commonwealth does not incorporate the Federal nonattainment NSR provisions by reference, this proposed rulemaking is to address amendments regarding the Commonwealth's nonattainment NSR program in Chapter 127, Subchapter E, and will be submitted to the EPA as a revision to the Pennsylvania SIP.

The final version of the EPA's December 2002 rule contained neither the flexibility for states in implementing the rule provisions advertised in its proposed rule nor the additional accountability discussed in the NOA. Moreover, the regulations are likely to lead to increased air pollution, in turn causing harm to human health and the environment. To address these flaws, the Department, together with a number of other states, filed a petition for review in the D.C. Circuit Court of Appeals challenging the rule. See *New York et al. v. EPA*, (D.C. Cir.) (No. 02-1387 and consolidated cases).

On June 24, 2005, the Court of Appeals for the District of Columbia Circuit issued its opinion in *New York et al. v. EPA*, which addressed the challenges of the states and other petitioners to the EPA's NSR regulations published at 67 FR 80186. See *New York et al. v. EPA*, 413 F.3d 3, (D.C. Cir. 2005). The Court of Appeals upheld the NSR regulations in part, vacated them in part and remanded them in part. The Court of Appeals upheld the EPA's revised methodology for calculating emissions increases, which determines whether those increases are significant thereby triggering the NSR requirements, by comparing prechange actual emission levels to post-change projected actual emission levels or "actual-to-projected-actual" calculation methodology. The Court of Appeals upheld the EPA's 10-year "look-back" provision for calculating baseline emissions. This provision allows regulated entities to choose any 2 consecutive years in the preceding 10 (5 years for utilities) as their baseline. The Court of Appeals also upheld the EPA's newly prescribed use of the 10-year look-back period for purposes of determining baseline emissions levels and for measuring contemporaneous increases and decreases in the context of setting PALs. The Court of Appeals also upheld the EPA's "demand growth exclusion" which excludes from the calculation of emissions increases those increases not related to the change at the facility, but rather are attributable to growth in production as a response to increased product demand, which could have been accommodated by the facility before the change in question.

The Court of Appeals vacated the clean unit exemption provision on the grounds that the CAA requires any regulatory provision to evaluate emissions increases based on actual emissions, instead of potential or allowable emissions. This provision would have exempted an emissions unit from additional control technology if state-of-the-art controls based on an NSR review had been installed within the preceding 10 years or employed comparable state-of-the-art technology to comply with permit emission limits that would not violate other air quality requirements, even if any change in the emissions unit had increased the facility's net actual emissions.

The Court of Appeals also vacated the pollution control project exclusion provision on the grounds that the CAA provided no authority to exempt modifications causing significant emissions increases of a pollutant, even if the modifications are implemented primarily to reduce emissions of other pollutants. This provision would have excluded projects from NSR review that reduced emissions of some pollutants, allowed increases in others, but had a net beneficial environmental effect.

In this same opinion, the Court of Appeals remanded to the EPA for further consideration its provision that exempted facility owners or operators from any recordkeeping requirements if they believed a change had no reasonable possibility of producing a significant emissions increase. The Court of Appeals found that the EPA had not adequately explained how it would be able to detect and enforce against facilities improperly employing this exemption without adequate records being available.

In addition to the EPA's NSR rule published at 67 FR 80186, the EPA promulgated a number of other final rules that the Board addresses in this proposed rule related to when a facility is considered a major facility for the purposes of NSR. On April 30, 2004, the EPA published two final rules regarding the 8-hour ozone NAAQS. The first rule published at 69 FR 23858 is entitled "Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards: Early

Action Compact Areas With Deferred Effective Dates.” Among other things, this rule designated Bucks, Chester, Delaware, Montgomery and Philadelphia Counties as moderate nonattainment with the 8-hour ozone NAAQS. See 69 FR 23931.

The second rule EPA published at 69 FR 2395 (April 30, 2004) is entitled “Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1.” In that final action, the EPA addressed certain implementation issues related to the 8-hour standard, including the nonattainment major NSR program mandated by Title I, Part D of the CAA. This rule, among other things, determined that the CAA does not compel the EPA to retain the 1-hour ozone NAAQS major NSR requirements in implementing the 8-hour ozone NAAQS because, it concludes, NSR is not a control measure. Since the Department views this conclusion a violation of the CAA’s antibacksliding provisions, it and a number of other states, on June 29, 2004, filed a joint petition for review challenging this rule in the Court of Appeals for the District of Columbia Circuit. See *Massachusetts v. EPA* (D.C. Cir.) (No. 04-1207).

The EPA published a final rule at 70 FR 44470 (August 3, 2005) entitled “Identification of Ozone Areas for Which the 1-Hour Standard Has Been Revoked and Technical Correction to Phase 1 Rule.” This rule codifies the revocation of the 1-hour standard for those areas with effective 8-hour ozone designations. This rule revoked the 1-hour ozone standard effective June 15, 2005, for all areas in this Commonwealth. See 70 FR 44477.

This proposed rulemaking incorporate some, but not all of the changes, which survived judicial scrutiny in *New York et al., v. EPA*, since the Board has determined that not all of the EPA’s final NSR regulatory provisions are sufficiently protective of the air quality needs of this Commonwealth. In addition, this proposed rulemaking is consistent with the Commonwealth’s litigation position in *Massachusetts et al., v. EPA*, that under the antibacksliding provisions of sections 172(e) and 193 of the CAA (42 U.S.C.A. §§ 7502(e) and 7515), the EPA is required retain the 1-hour ozone NAAQS major NSR requirements in implementing the 8-hour ozone NAAQS. Moreover, the Board has determined that to the extent any of the proposed amendments are more stringent than those required under the CAA, they are necessary to achieve or maintain the NAAQS, and therefore permissible actions under section 4.2(b)(1) of the APCA (35 P. S. § 4004.2(b)(1)).

One of the areas where this proposed rulemaking is different than the EPA’s approach is the “look-back” provision for calculating baseline emissions. Under the EPA’s approach, this provision allows regulated entities to choose any 2 consecutive years in the preceding 10 as their baseline, and in the case of utilities any 2 consecutive years in the preceding 5 years as their baseline. By extending this baseline period back from 5 years to 10 years, in the case of nonutilities, the EPA now allows facilities to select a higher baseline and reduce the possibility that NSR would apply. Under the Commonwealth’s proposed approach in § 127.203a (relating to applicability determination), regulated entities operating in this Commonwealth may choose any 2 consecutive years in the preceding 5 as their baseline. By limiting this baseline period to 5 years there is an increased possibility that NSR would apply and state-of-the-art air pollution control technology would need to be installed. As a result, this proposed approach will reduce air pollution

protecting public health and the environment, and ensuring that this Commonwealth can achieve and maintain the NAAQS.

In addition to the differences on this general “look-back” provision for calculating baseline emissions, the EPA allows regulated entities to choose any 2 consecutive years in the preceding 10 as their baseline for a PAL. Under the Commonwealth’s proposed approach in § 127.218 (relating to PALs), regulated entities operating in this Commonwealth may choose any 2 consecutive years in the preceding 5 as their PAL baseline. Again, by limiting this baseline period to 5 years there is an increased possibility that NSR would apply and state-of-the-art air pollution control technology would need to be installed, which would reduce emissions and ensure that the NAAQS can be achieved and maintained.

Another area where the proposed amendments are more protective than the EPA’s approach is the installation of emission controls on new emission units under an existing PAL. Under the EPA’s approach, the installation of emission controls on new emission units under an existing PAL is not necessary if a facility is able to continue to comply with its PAL. Under the Commonwealth’s proposed approach in § 127.218, the owners and operators of new emission units added under an existing PAL will need to reduce or control emissions by using the best available technology as required under section 6.6(c) of the APCA (35 P. S. § 4006.6(c)).

Another area of difference between the EPA’s approach and the Commonwealth’s proposed approach relates to the establishment of an emission limit for a proposed project. Under the EPA’s approach, owners or operators are only required to track emissions for a period of time following a modification. Under the Commonwealth’s proposed approach in § 127.203a(a)(6) and (7), an emission limit for the proposed project is established using the sum of three elements: 1) baseline actual emissions; 2) emissions that could previously be accommodated prior to the proposed modification; and 3) the projected actual emission increase due to the proposed project. The owner or operator shall demonstrate compliance with the established total emission limit and for 5 years, or 10 years when there will be a capacity increase, shall also demonstrate compliance with the projected actual emission increase which is due solely to the project. This proposed approach ensures that emissions from any modifications are legally enforceable.

In addition to the differences between the EPA’s and the Commonwealth’s approaches to the general NSR rule provisions, the Board also proposes that facilities in Bucks, Chester, Delaware, Montgomery or Philadelphia Counties that emit or have the potential to emit at least 25 tpy of VOCs or NO_x will continue to be considered a major facilities and will be subject to the requirements applicable to a major facility located in a “severe” nonattainment area of ozone. This means that any facility that was major for VOCs or NO_x while the region was classified as “severe” nonattainment for the 1-hour ozone standard will be major for those pollutants while the region is classified as moderate nonattainment under the 8-hour ozone standard. This is different than the EPA’s approach which treats these facilities as major, and therefore subject to NSR, only if they emit 50 tpy for VOCs and 100 tpy for NO_x since the area is classified as moderate nonattainment with the 8-hour ozone standard. Moreover, under the EPA’s approach, offset requirements change from 1:3 to 1:1.15, while under the Commonwealth’s proposed approach the offset requirements would

remain unchanged. Additionally, these sources will continue to be subject to reasonably available control technology requirements. Because the 8-hour ozone standard is more stringent than the revoked 1-hour ozone standard, and to ensure that the Philadelphia area achieves and maintains the NAAQS, the proposed amendment is reasonably necessary to ensure that these facilities emit no more VOCs and NO_x than previously allowed for attaining the 1-hour ozone standard.

The Department worked with the Air Quality Technical Advisory Committee (AQTAC) and the Citizens Advisory Council (CAC) in the development of this proposed rulemaking. The AQTAC and the CAC recommended that the Board consider the proposed rulemaking and seek public comment on the following issues: (1) whether the program should specify a 5-year or 10-year look-back; (2) whether PALs should have a 10-year term, should be fixed or declining, should be based on actual or potential emissions, should be reopened if emission limits change during the 10-year period and the potential enforcement consequences of noncompliance with a PAL; (3) whether the severe ozone nonattainment area provisions should be included for the five-county Philadelphia area; (4) whether permit limits should reflect the physical and legal capability of a source to operate without any modification (that is, demand growth exclusion); (5) to what extent should the Commonwealth develop an NSR regulation that differs from the Federal requirements; (6) de minimis aggregation with regard to hourly, daily and yearly applicability; and (7) the proposed emission limits under the advanced clean coal technology provision.

In addition to the issues identified by AQTAC and CAC, the Department is seeking public comment on what types of incentives may be offered through this proposed rulemaking to the owners and operators of facilities that implement voluntary proactive strategies to achieve "environmental excellence." Incentives may include: (1) whether the program should offer a 10-year look back period if the 2-year period immediately preceding the construction or modification of a major new source within the 5-year contemporaneous period is not representative of normal operations, or other incentives for facilities that purchase electricity generated from alternative energy sources, generally, and integrated combined coal gasification technology, specifically, as provided under the Alternative Energy Portfolio Standards Act (73 P. S. §§ 1647.1—1647.7); and (2) whether the program should offer an extended 10-year look back period if the 2-year period immediately preceding the construction or modification of a major new source within the 5-year contemporaneous period is not representative of normal operations, or other incentives to facilities that enter into power purchase agreements with power plants that have committed to "repower" under the Commonwealth's recently announced Energy Deployment for a Growing Economy initiative, which promotes advanced coal gasification technology.

E. Summary of Regulatory Revisions

Certain definitions for terms in Chapter 121 (relating to general provisions) are proposed to be amended to ensure that reasonably available control technology remains applicable to major stationary sources of NO_x and VOCs in Bucks, Chester, Delaware, Montgomery or Philadelphia Counties. The definitions include "major NO_x emitting facility" and "major VOC emitting facility." The proposed amendments are consistent with the changes being made in Chapter 127, Subchapter E regarding major facilities in Bucks, Chester, Delaware, Montgomery or Philadelphia Counties.

The amendments propose to delete definitions for terms in Chapter 121 that pertain only to Chapter 127, Subchapter E, which will be added to new § 127.201a (relating to definitions). The definitions include "creation," "de minimis emission increase," "generation," "major facility," "major modification" and "secondary emissions."

Section 127.201 (relating to general requirements), which applies to an owner or operator of a facility at which an emission increase that is significant would occur, is proposed to be amended. An additional proposed amendment under this section provides that facilities in Bucks, Chester, Delaware, Montgomery or Philadelphia Counties that emit or have the potential to emit at least 25 tpy of VOCs or NO_x will be considered a major facility and shall be subject to the requirements applicable to a major facility located in a "severe" nonattainment area of ozone.

The proposed rulemaking adds § 127.201a for definitions of terms used in the substantive provisions of Chapter 127, Subchapter E. The new definitions include: "actual emissions," "actual PAL for a major facility," "allowable emissions," "baseline actual emissions," "begin actual construction," "CEMS—continuous emissions monitoring system," "CERMS—continuous emissions rate monitoring system," "CPMS—continuous parameter monitoring system," "calendar year emissions," "commence construction," "creation," "deactivation," "de minimis emission increase," "electric utility steam generating unit," "emissions unit," "Federally enforceable," "fugitive emissions," "generation," "major facility," "major modification," "necessary preconstruction approvals or permits," "net emissions increase," "PAL—plantwide applicability limit," "PAL effective date," "PAL effective period," "PAL major emissions unit," "PAL major modification," "PAL permit," "PAL pollutant," "PEMS—predictive emissions monitoring system," "project," "projected actual emissions," "regulated NSR pollutant," "secondary emissions," "significant," "significant emissions unit," "significant net emissions increase" and "small emissions unit."

Section 127.201b (relating to measurements, abbreviations and acronyms) adds measurements, abbreviations and acronyms. These include "BAT—best available technology," "CO₂—carbon dioxide," "CO—carbon monoxide," "Hg—mercury," "KWH—kilowatt hour (based on electric generation)," "lb—Pounds," "µg/m³—micrograms per cubic meter," "mg/m³—milligrams per cubic meter," "O₂—oxygen," "SO_x—sulfur oxides" and "tpy—Tons per year."

Section 127.202 (relating to effective date) is proposed to be amended to include, among other things, PM_{2.5} and its precursors as pollutants.

Section 127.203 (relating to facilities subject to special permit requirements) is proposed to be amended and applies to the construction of a new major facility or modification at an existing facility located in a nonattainment area or located in an attainment or unclassified area, which impacts a nonattainment area in excess of certain significance levels. This section also includes provisions that would apply to an owner or operator of a facility in Bucks, Chester, Delaware, Montgomery or Philadelphia Counties or an area classified as a serious or severe ozone nonattainment area. Additionally, this section identifies when the NSR requirements apply and do not apply to owners and operators of facilities.

Section 127.203a is proposed to be amended and identifies the provisions the Department of Environmental Protection (Department) will use during its review of a plan approval application for the construction of a new

major facility or modification at an existing major facility to determine if the NSR requirements are applicable to that major facility. The proposed amendments include provisions to determine net emission increases, baseline actual emissions and projected actual emissions.

Section 127.204 (relating to emissions subject to this subchapter) is proposed to be amended to make minor clarifications to ensure consistency with other proposed amendments to the subchapter.

Section 127.205 (relating to special permit requirements) is proposed to be amended to add additional provisions as to when LAER applies to a proposed modification within the contemporaneous period of a proposed emission increase and when emission offsets are required for the entire net emission increase that occurred over the contemporaneous period.

Section 127.206 (relating to ERC general requirements) is proposed to be amended to make minor clarifications to ensure that it is consistent with the other proposed amendments being made to the subchapter.

Section 127.207 (relating to ERC generation and creation) is proposed to be amended to include that emission reductions necessary to meet BAT and allowance-based programs required by the CAA or APCA may not be used to generate emission reduction credits.

Sections 127.208, 127.209, and 127.210 (relating to ERC use and transfer requirements; ERC registry system; and offset ratios) are proposed to be amended to make minor clarifications to ensure consistency with other proposed amendments being made to the subchapter.

Section 127.211 (relating to applicability determination) is proposed to be deleted. Remaining applicable provisions are proposed to be moved to new § 127.203a.

Section 127.212 (relating to portable facilities) is proposed to be amended to include PM-2.5 and its precursors as pollutants and to make minor clarifications to ensure that it is consistent with the other proposed amendments being made to the subchapter.

Section 127.213 (relating to construction and demolition) is proposed to be amended to make minor clarifications to ensure that it is consistent with the other proposed changes being made to the subchapter.

Section 127.214 (relating to exemptions) is proposed to be rescinded.

Proposed § 127.214a (relating to special provisions for advanced clean coal generation technology) applies to an owner or operator of a project that uses advanced clean coal generation technology in a new electric utility steam generating unit or to retrofit or repower an existing electric utility steam generation unit. The qualifying electric utility steam generation unit will be deemed to meet the LAER control technology requirements of § 127.205 unless the Department determines that the performance requirements specified are less stringent than LAER.

Sections 127.215 and 127.217 (relating to reactivation; and Clean Air Act Titles III-V applicability) are proposed to be amended to make minor clarifications to ensure that it is consistent with the other proposed amendments being made to the subchapter.

Section 127.218 is proposed to be added to include PALs. If a facility follows the proposed provisions of this section and emissions are kept below a plantwide actual emissions cap, then these regulations allow the facility to

avoid the major NSR permitting process when making changes to the facility or individual emissions units. The PAL will impose an annual emissions limitation in tons per year for the entire major facility. Each PAL must regulate emissions of only one pollutant. Each PAL will have an effective period of 10 years.

F. *Benefits, Costs and Compliance*

Benefits

Overall, the citizens of this Commonwealth will benefit from this proposed rulemaking because they will result in improved air quality by reducing criteria pollutant emissions, recognize and encourage pollution prevention practices and encourage new technologies and practices that reduce emissions.

Compliance costs

This proposed rulemaking will reduce the operating costs of industry through enhanced operational flexibility under PALs.

Compliance assistance

The Department plans to educate and assist the public and regulated community with understanding any newly amended requirements and how to comply with them. This will be accomplished through the Department's ongoing Regional Compliance Assistance Program.

Paperwork requirements

The proposed rulemaking will not increase the paperwork that is already generated during the normal course of business. However, the owner or operator of a facility that voluntarily elects a 10-year PAL shall retain records for at least 10 years to document that the emission limit was not exceeded.

G. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This proposed rulemaking has incorporated the following pollution prevention incentives. The result of NSR requirements is that a company has a significant incentive to minimize their emissions to avoid NSR. If a company is unable to avoid NSR, then it must demonstrate that it is employing the lowest achievable emission reduction possible with existing technology. These minimized emissions can be achieved through process modifications and do not have to come from add-on control equipment. Pollution prevention is one of the most cost effective means to eliminate costly add-on controls or to reduce the costs of running add-on controls.

H. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 14, 2006, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

J. Public Comments

Written comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be postmarked by June 28, 2006. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be postmarked by June 28, 2006. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by June 28, 2006. A subject heading of the proposal and a return name and address must be included in each transmission.

K. Public Hearings

The Board will hold three public hearings for the purpose of accepting comments on this proposed rulemaking. The hearings will be held as follows:

- June 6, 2006 7 p.m. Department of Environmental Protection
Rachel Carson State Office Building,
Room 105
400 Market Street
Harrisburg, PA 17105
- June 13, 2006 1 p.m. Department of Environmental Protection
Southwest Regional Office
Waterfront A and B Conference Rooms
400 Waterfront Drive
Pittsburgh, PA 15222.
- June 19, 2006 1 p.m. Department of Environmental Protection
Delaware Room
Southeast Regional Office
2 East Main Street
Norristown, PA 19401

Persons wishing to present testimony at a public hearing are requested to contact Natalie Shepherd, Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral

testimony is limited to 10 minutes per each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

KATHLEEN A. MCGINTY,
Chairperson

Fiscal Note: 7-399. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

[**Creation**—The process of generating usable and tradable ERCs to be used to offset emissions. This process includes the following steps: application, documentation, quantification, verification and entry in the registry.]

* * * * *

[**De minimis emission increase**—An increase in actual or potential emissions which is below the threshold limits specified in § 127.203 (relating to facilities subject to special permit requirements).]

* * * * *

[**Generation**—An action taken by a source or facility that results in the actual reduction of emissions.]

* * * * *

[**Major facility**—A facility which has the potential to emit a pollutant equal to or greater than an applicable annual emissions rate in § 127.203.]

[**Major modification**—

(i) A physical change or change in the method of operation of a major facility that would result in an increase in emissions equal to or exceeding an emission rate threshold or significance level specified in § 127.203.

(ii) A net emissions increase that is significant for VOCs or NO_x will be considered significant for ozone.

(iii) A physical change or change in the method of operation does not include:

(A) Routine maintenance, repair and replacement.

(B) The use of an alternative fuel or raw material by reason of any order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA) (15 U.S.C.A. § 79(a) and (b)) (or any superseding legislation) or by reason of a natural gas curtailment plan under the Federal Power Act (16 U.S.C.A. §§ 792—825r).

(C) The use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act (42 U.S.C.A. § 7425).

(D) The use of an alternative fuel or raw material by a stationary source which meets one of the following conditions:

(I) The source was capable of accommodating before January 6, 1975, unless the change would be prohibited under an operating permit condition.

(II) The source is approved to use under an operating permit.

(E) An increase in the hours of operation or in the production rate, authorized under the conditions of an operating permit.

(F) Any change in ownership at a stationary source.

(G) The addition, replacement or use of a pollution control project at an existing source, unless the Department determines that the addition, replacement or use renders the source less environmentally beneficial, or except when the following apply:

(I) The Department has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emission of any criteria pollutant, VOC or NO_x over levels used for that facility in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any (42 U.S.C.A. §§ 7401—7515).

(II) The Department determines that the increase will cause or contribute to a violation of any National ambient air quality standard or PSD increment, or visibility limitation.

(H) The installation, operation, cessation or removal of a temporary clean coal technology demonstration project, if the project complies with the following:

(I) The SIP.

(II) Other requirements necessary to attain and maintain the National ambient air quality standards during the project and after it is terminated.

(I) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the source. This exemption applies on a pollutant-by-pollutant basis.

(J) The reactivation of a very clean coal-fired electric utility system generating source.]

Major NO_x emitting facility—A facility which emits or has the potential to emit NO_x from the processes located

at the site or on contiguous properties under the common control of the same person at a rate greater than one of the following:

* * * * *

(v) 25 tpy or more of NO_x and is located in Bucks, Chester, Delaware, Montgomery or Philadelphia County.

Major VOC emitting facility—A facility which emits or has the potential to emit VOCs from processes located at the site or on contiguous properties under the common control of the same person at a rate greater than one of the following:

* * * * *

(iv) 25 tpy or more of VOC and is located in Bucks, Chester, Delaware, Montgomery or Philadelphia County.

* * * * *

[*Secondary emissions*—Emissions which occur as a result of the construction or operation of a major stationary source or major modification of a major stationary source, but do not come from the major stationary source or facility or major modification itself. The secondary emissions shall be specific, well defined, quantifiable and impact the same general area as the stationary source or modification which causes secondary emissions. The term includes emissions from an offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. The term does not include emissions which come directly from a mobile source regulated under Title II of the Clean Air Act (42 U.S.C.A. §§ 7521—7589).]

* * * * *

CHAPTER 127. CONSTRUCTION, MODIFICATION, REACTIVATION AND OPERATION OF SOURCES

Subchapter E. NEW SOURCE REVIEW

§ 127.201. General requirements.

* * * * *

(c) The new source review requirements of this subchapter also apply to a facility located in an attainment area for ozone and within an ozone transport region that emits or has the potential to emit at least 50 tons per year of VOC or 100 tons per year of NO_x. A facility within either an unclassifiable/attainment area for ozone or within a marginal or incomplete data nonattainment area for ozone or within a basic nonattainment area for ozone and located within an ozone transport region will be considered a major [stationary] facility and shall be subject to the requirements applicable to a major [stationary] facility located in a moderate nonattainment area.

(d) The NSR requirements of this subchapter apply to an owner or operator of a facility at which a net emissions increase that is significant would occur as determined in accordance with § 127.203a (relating to applicability determination). If an emissions increase meets or exceeds the applicable emissions rate that is significant as defined in § 127.201a (relating to definitions), the facility is subject to the permitting requirements under § 127.205 (relating to special permit requirements).

An emissions increase subject to this subchapter must also be offset through the use of ERCs at the offset ratios specified in § 127.210 (relating to offset ratios). The generation, use, transfer and registration requirements for ERCs are listed in §§ 127.206—127.209.

(e) In the event of an inconsistency between this rule and any other rule promulgated by the Department, the inconsistency must be resolved by the application of the more stringent provision, term, condition, method or rule.

(f) A facility located in Bucks, Chester, Delaware, Montgomery or Philadelphia Counties that emits or has the potential to emit at least 25 tpy of VOC or NO_x will be considered a major facility and shall be subject to the requirements applicable to a major facility located in a severe nonattainment area for ozone.

§ 127.201a. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) and Chapter 121 (relating to general provisions) apply to this subchapter unless otherwise indicated. In addition, the following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Actual emissions—The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with the following:

(i) Actual emissions as of a particular date must equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the consecutive 2-year period which immediately precedes the particular date and which is representative of normal source operations. The Department will allow the use of a different time period upon a written 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.

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

Actual PAL for a major facility—A PAL based on the baseline actual emissions of all emissions units at a major facility that emit or have the potential to emit the PAL pollutant.

Allowable emissions—The emissions rate of a source calculated using the maximum rated capacity of the source unless the source is subject to Federally enforceable limits which restrict the operating rate, or hours of operation, or both, and the most stringent of the following:

(i) The applicable standards set forth in 40 CFR Part 60 or Part 61 (relating to standards of performance for new stationary sources; and National emission standards for hazardous air pollutants).

(ii) An applicable SIP emissions limitation, including those with a future compliance date.

(iii) The emissions rate specified under a requirement or permit condition that is Federally enforce-

able or enforceable as a practical matter, including those with a future compliance date.

Baseline actual emissions—The rate of emissions, in tpy, of a regulated NSR pollutant, as determined in accordance with § 127.203a(a)(5) (relating to applicability determination).

Begin actual construction—Initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. These activities include installation of building supports and foundations, laying of underground pipe work and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those onsite activities other than preparatory activities which mark the initiation of the change.

CEMS—Continuous emissions monitoring system—All of the equipment that may be required to meet the data acquisition and availability requirements of this subchapter, to sample, condition, analyze and provide a record of emissions on a continuous basis.

CERMS—Continuous emissions rate monitoring system—The total equipment required for the determination and recording of the pollutant mass emissions rate, in terms of mass per unit of time.

CPMS—Continuous parameter monitoring system—All of the equipment necessary to meet the data acquisition and availability requirements to monitor process and control device operational parameters including control device secondary voltages and electric currents, other information like gas flow rate and O₂ or CO₂ concentrations, and to record average operational parameter values on a continuous basis.

Calendar year emissions—The rate of emissions of an NSR pollutant, in tpy, from an emissions unit during a calendar year.

Commence construction—The owner or operator of a major facility has all necessary approvals or permits including plan approval and has either:

(i) Begun, or caused to begin, a continuous program of actual onsite construction of the source, to be completed within a reasonable time.

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

Creation—The process of generating usable and tradable ERCs to be used to offset emissions. This process includes the following elements:

(i) Application.

(ii) Documentation.

(iii) Quantification.

(iv) Verification.

(v) Entry into the registry.

Deactivation—Cessation of the emissions of an air pollutant from a unit or facility.

De minimis emissions increase—An increase in actual emissions or potential to emit which is less than the emissions rate that is significant as specified in this section.

Electric utility steam generating unit—A steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to a utility power distribution system for sale. Steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

Emissions unit—A part of a facility that emits or has the potential to emit a regulated NSR pollutant including an electric utility steam generating unit as defined in this section. For purposes of this subchapter, there are two types of emissions units:

(i) A new emissions unit, which is or will be newly constructed and which has existed for less than 2 years from the date the emissions unit first operated. An emissions unit which is constructed or installed for the purpose of replacing an existing unit, or an emissions unit which is relocated from another facility for the purpose of replacing an existing unit, is considered a new emissions unit at the time of replacement and until 2 years from the date the new unit commenced operation.

(ii) An existing emissions unit which is not a new emissions unit.

Federally enforceable—All limitations and conditions which are legally enforceable by the EPA, including:

(i) Those requirements developed under 40 CFR Parts 60 and 61.

(ii) Those requirements within an applicable SIP.

(iii) Permit requirements established under 40 CFR 52.21 (relating to prevention of significant deterioration of air quality) or under regulations approved under 40 CFR Part 51, Subpart I (relating to review of new sources and modifications), including operating permits issued under an EPA-approved program that is incorporated into the SIP and expressly requires adherence to a permit issued under the program.

(iv) Permit requirements not designated as "State-only" in a Federal operating permit.

Fugitive emissions—Those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

Generation—With respect to emission reduction credits, an action taken by an owner or operator of a source or facility that results in the actual reduction of emissions.

Major facility—

(i) The term includes the following:

(A) A facility which emits or has the potential to emit 100 tons per year or more of any regulated NSR pollutant subject to regulation under the Clean Air Act, except that lower emissions thresholds apply as follows:

(I) Fifty tons per year of VOCs in a serious nonattainment area for ozone.

(II) Fifty tons per year of VOCs in an area within an ozone transport region except for a severe or extreme nonattainment area for ozone.

(III) Twenty-five tons per year of VOCs in a severe nonattainment area for ozone.

(IV) Ten tons per year of VOCs in an extreme nonattainment area for ozone.

(V) Seventy tons per year of PM-10 or, where applicable, 70 tons per year of a specific PM-10 precursor, in a serious nonattainment area for PM-10.

(VI) Fifty tons per year of CO in a serious nonattainment area for CO.

(B) For the purposes of applying the requirements of this subchapter to the owner or operator of a facility which emits or has the potential to emit NO_x located in an ozone nonattainment area or in an ozone transport region, as follows:

(I) One hundred tons per year or more of NO_x in an ozone nonattainment area classified as marginal, basic or moderate.

(II) One hundred tons per year or more of NO_x in an ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when the area is located in an ozone transport region.

(III) One hundred tons per year or more of NO_x in an area designated under section 107(d) of the Clean Air Act (42 U.S.C.A. § 7407(d)) as attainment or unclassifiable for ozone that is located in an ozone transport region.

(IV) Fifty tons per year or more of NO_x in a serious nonattainment area for ozone.

(V) Twenty-five tons per year or more of NO_x in a severe nonattainment area for ozone.

(VI) Ten tons per year or more of NO_x in an extreme nonattainment area for ozone.

(C) A physical change that occurs at a facility which does not exceed the major facility thresholds specified in this subchapter is considered a major facility, if the change constitutes a major facility by itself.

(ii) A facility which is major for VOCs or NO_x is considered major for ozone.

(iii) A facility which emits, or has the potential to emit, 25 tpy or more of NO_x or VOC and is located in Bucks, Chester, Delaware, Montgomery or Philadelphia Counties.

Major modification—

(i) A physical change at or change in the method of operation of a major facility that results in:

(A) An increase in emissions of a regulated NSR pollutant equal to or exceeding the emissions rate that is significant as specified in this section.

(B) A significant net emissions increase of that pollutant from the major facility.

(ii) A significant emissions increase from an emissions unit or net emissions increase at a major facility that is significant for VOCs or NO_x is considered significant for ozone.

(iii) A physical change at or change in the method of operation of a major facility does not include:

(A) Routine maintenance, repair and replacement.

(B) The use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA) (15 U.S.C.A. § 79(a) and (b)) (or superseding legislation) or by reason of a natural gas curtailment plan under the Federal Power Act (16 U.S.C.A. §§ 792—825r).

(C) The use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act (42 U.S.C.A. § 7425).

(D) The use of an alternative fuel or raw material by a facility which meets one of the following conditions:

(I) The source was capable of accommodating the fuel before January 6, 1975, unless the change would be prohibited under a Federally-enforceable operating permit condition.

(II) The source is approved to use the fuel or material under a Federally-enforceable operating permit.

(E) An increase in the hours of operation or in the production rate, unless the change is prohibited under a condition of a Federally-enforceable plan approval or an operating permit.

(F) A change in ownership at a facility.

(iv) The term does not apply to a particular regulated NSR pollutant when the major facility is complying with the requirements under § 127.218 (relating to PALs). Instead, the definition of PAL major modification applies.

Necessary preconstruction approvals or permits—Those permits or approvals required under the Clean Air Act or the act and its regulations, which are part of the applicable SIP.

Net emissions increase—Emission changes at an existing major facility that result from a physical change or change in the method of operation as determined in accordance with § 127.203a(a)(4).

PAL—Plantwide applicability limit—An emissions limit expressed in tpy, for a pollutant at a major facility, that is legally enforceable and established source-wide in accordance with § 127.218.

PAL effective date—The date of issuance of the PAL permit. The PAL effective date for an increased PAL is the date an emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

PAL effective period—The period beginning with the PAL effective date and ending 10 years later.

PAL major emissions unit—An emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major facility threshold for the PAL pollutant.

PAL major modification—Notwithstanding the definitions for major modification and net emissions increase under this section, a physical change at or change in the method of operation of the PAL facility that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

PAL permit—The major or minor plan approval, the state operating permit or the Title V permit issued by the Department that establishes a PAL for a major facility.

PAL pollutant—The pollutant for which a PAL is established at a major facility.

PEMS—Predictive emissions monitoring system—All of the equipment necessary to monitor parameters including control device secondary voltages and electric currents, other information including gas flow rate and O₂ or CO₂ concentrations, and calculate and record the mass emissions rate in terms of mass per unit time, like lb/hr, on a continuous basis.

Project—Physical change in or change in the method of operation of an existing facility, including a new emission unit.

Projected actual emissions—The emission rates at which an existing emissions unit is projected to emit a regulated NSR pollutant, determined in accordance with § 127.203a(a)(6).

Regulated NSR pollutant—

(i) NO_x or VOCs.

(ii) A pollutant for which a NAAQS has been promulgated.

(iii) A pollutant that is a constituent or precursor of a pollutant listed under subparagraph (i) or (ii), if the constituent or precursor pollutant may only be regulated under NSR as part of regulation of the pollutant listed under subparagraph (i) or (ii).

Secondary emissions—

(i) Emissions which occur as a result of the construction or operation of a major facility or major modification of a major facility, but do not come from the major facility or major modification itself. The secondary emissions must be specific, well defined, quantifiable and impact the same general area as the facility or modification which causes the secondary emissions.

(ii) The term includes emissions from an offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major facility or major modification.

(iii) The term does not include emissions which come directly from a mobile source regulated under Title II of the Clean Air Act (42 U.S.C.A. §§ 7521—7589).

Significant—

(i) A net emissions increase or the potential of a facility to emit one of the following pollutants at a rate of emissions that would equal or exceed the following emissions rates except as specified in subparagraphs (ii)—(v):

Pollutant Emissions Rate

Carbon monoxide (CO): 100 tpy

Nitrogen oxides (NO_x): 40 tpy or 100 lbs/hr or 1,000 lbs/day, whichever is more restrictive

Sulfur oxides (SO_x): 40 tpy

Ozone: 40 tpy of VOCs or 100 lbs/hr or 1,000 lbs/day, whichever is more restrictive

Lead: 0.6 tpy

PM₁₀ or PM₁₀ precursor: 15 tpy

PM 2.5 or PM 2.5 precursor: 15 tpy

(ii) The emissions rate that is significant for VOCs in a serious or severe ozone nonattainment area is 25 tpy or 100 lbs/hr or 1,000 lbs/day, whichever is more restrictive.

(iii) For the purposes of applying the requirements of this subchapter to the owner or operator of modifications at major facilities located in an ozone nonattainment area or in an ozone transport region that emit or have the potential to emit NO_x, the emissions rate that is significant and other requirements for VOCs in subparagraphs (i) and (ii) apply to NO_x emissions.

(iv) The emissions rate that is significant for CO in a serious nonattainment area is 50 tpy if the EPA has determined that the affected facility contributes significantly to CO levels in that area.

(v) The emissions rate that is significant for VOCs in an extreme nonattainment area for ozone is any amount above zero.

Significant emissions unit—An emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the emissions rate that is significant as defined in this section or in the Clean Air Act for that PAL pollutant, whichever is lower, but less than the amount that would qualify the unit as a major facility as defined in this section.

Significant net emissions increase—For a regulated NSR pollutant, a net emissions increase that is significant.

Small emissions unit—An emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the emissions rate that is significant for that PAL pollutant as defined in this section or in the Clean Air Act, whichever is lower.

§ 127.201b. Measurements, abbreviations and acronyms.

Measurements, abbreviations and acronyms used in this subchapter are defined as follows:

- BAT—Best available technology
- BACT—Best available control technology
- CEMS—Continuous-emissions monitoring system
- CERMS—Continuous emissions rate monitoring system
- CPMS—Continuous parametric monitoring system
- CO₂—Carbon dioxide
- CO—Carbon monoxide
- ERC—Emission reduction credit
- Hg—Mercury
- KWH**—Kilowatt hour (based on electric generation)
- LAER—Lowest achievable emission rate
- MACT—Maximum achievable control technology
- NSPS—New source performance standard
- NSR—New source review
- PEMS—Predictive emissions monitoring system
- lb—Pounds
- µg/m³—Micrograms per cubic meter

- mg/m³—Milligrams per cubic meter
- NO_x—Nitrogen oxides
- O₂—Oxygen
- PAL—Plantwide Applicability Limit
- PM—Particulate matter
- RACT—Reasonably available control technology
- SO_x—Sulfur oxides
- tpy—Tons per year
- VOC—Volatile organic compound

§ 127.202. Effective date.

(a) The special permit requirements in this subchapter apply to an owner or operator of a facility submitting a complete plan approval application to the Department [after January 15, 1994].

(b) For SO_x, [particulate matter,] PM-10, PM-10 precursors, [PM-10] PM 2.5 precursors, PM 2.5, lead and CO, this subchapter applies until a given nonattainment area is redesignated as an unclassifiable or attainment area. After a redesignation, special permit conditions remain effective until the Department approves a permit modification request and modifies the permit.

§ 127.203. Facilities subject to special permit requirements.

[(a) This subchapter applies to a facility with the potential to emit 100 tons per year or more of one of the following pollutants and meeting the requirements for that pollutant:

(1) For PM-10, PM-10 precursors and particulate matter, either a new facility, or a modification to an existing facility including the addition of a new source at an existing facility, which when aggregated with the other emissions increases determined in accordance with § 127.211 (relating to applicability determination) results in an increase in the potential to emit PM-10, PM-10 precursors or particulate matter that would yield 15 tons per year of PM-10 or 25 tons per year of particulate matter, or 1,000 pounds per day, or 100 pounds per hour of PM-10 or particulate matter, or more, whichever is more restrictive, and which new facility or modification is located in one of the following:

- (i) A nonattainment area.
- (ii) An attainment or unclassifiable area which impacts a part of a nonattainment area in excess of the following significance levels:

<i>Averaging Period</i>	<i>Significance Levels</i>
Annual	1.00 µg/m ³
24-hour	5.00 µg/m ³

(2) For sulfur oxides, either a new facility, or a modification to an existing facility including the addition of a new source at an existing facility, which when aggregated with the other emissions increases determined in accordance with § 127.211 results in an increase in the potential to emit of 40 tons per year, or 1,000 pounds per day, or 100 pounds per hour of SO_x, or more, whichever is more restrictive, and which new facility or modification is located in one of the following:

- (i) A nonattainment area.

(ii) An attainment or unclassifiable area which impacts a nonattainment area in excess of the following significance levels:

<i>Averaging Period</i>	<i>Significance Levels</i>
Annual	1.00 µg/m ³
24-hour	5.00 µg/m ³
3-hour	25.00 µg/m ³

(3) For carbon monoxide, either a new facility, or a modification to an existing facility, including the addition of a new source at an existing facility which, when aggregated with the other emissions increases determined in accordance with § 127.211, results in an increase in the potential to emit of 50 tons per year, 1,000 pounds per day or 100 pounds per hour of CO, or more, whichever is more restrictive, and which new facility or modification is located in one of the following:

(i) A nonattainment area.

(ii) An attainment or unclassifiable area which impacts a nonattainment area in excess of the following significance levels:

<i>Averaging Period</i>	<i>Significance Levels</i>
8-hour	0.5 mg/m ³
1-hour	2.0 mg/m ³

(4) For lead, either a new facility, or a modification to an existing facility including the addition of a new source at an existing facility, which when aggregated with the other emissions increases determined in accordance with § 127.211, results in an increase in the potential to emit of 0.6 tons per year, 10 pounds per day or 1 pound per hour of lead, or more, whichever is more restrictive, and which new facility or modification is located in one of the following:

(i) A nonattainment area.

(ii) An attainment or unclassifiable area which impacts a nonattainment area in excess of the following significance level:

<i>Averaging Period</i>	<i>Significance Level</i>
24-hour	0.1 µg/m ³

(b) This subchapter applies to a VOC or NO_x facility located in or having an impact on one of the following areas and meeting the applicable requirements:

(1) For an area either classified at 40 CFR 81.339 (relating to Pennsylvania) as a moderate nonattainment area for ozone, or an area included in an ozone transport region established under section 184 of the Clean Air Act (42 U.S.C.A. § 7511c), which is either classified as a marginal or incomplete data nonattainment area for ozone or designated as an unclassifiable/attainment area for ozone, this subchapter applies to the following:

(i) A new facility with the potential to emit 100 tons or more per year of NO_x or 50 tons or more per year of VOCs.

(ii) A modification to an existing facility with the potential to emit 100 tons or more per year of NO_x or 50 tons or more per year of VOCs, or a new source at an existing facility resulting in an increase in the potential to emit either VOC or NO_x which, when aggregated with the other emissions increases determined in accordance with § 127.211,

results in an increase of 40 tons per year, 1,000 pounds per day or 100 pounds per hour of VOC or NO_x, or more, whichever is more restrictive.

(2) For an area classified at 40 CFR 81.339 as a serious nonattainment area for ozone, this subchapter applies to the following:

(i) A new facility with the potential to emit 50 tons or more per year of NO_x or VOCs.

(ii) A modification to an existing facility with the potential to emit 50 tons or more per year of VOC or NO_x, or a new source at an existing facility resulting in an increase in the potential to emit either VOC or NO_x which, when aggregated with the other emissions increases determined in accordance with subsection (c)(1), results in an increase of 25 tons per year, 1,000 pounds per day or 100 pounds per hour of VOC or NO_x, or more, whichever is more restrictive.

(3) For an area classified at 40 CFR 81.339 as a severe nonattainment area for ozone, this subchapter applies to the following:

(i) A new facility with the potential to emit 25 tons or more per year of NO_x or VOCs.

(ii) A modification to an existing facility with the potential to emit 25 tons or more per year of NO_x or VOC, or a new source at an existing facility resulting in an increase in the potential to emit either VOC or NO_x which, when aggregated with the other emissions increases determined in accordance with subsection (c)(1), results in an increase of 25 tons per year or 1,000 pounds per day or 100 pounds per hour of VOC or NO_x, or more, whichever is more restrictive.

(c) Special rules for modifications to VOC or NO_x facilities located in serious and severe nonattainment areas for ozone are as follows:

(1) The applicability requirements in § 127.211 apply except as provided by this subsection. A modification to an existing facility with the potential to emit 25 tons per year or more which results in an increase in the potential to emit VOC or NO_x may not be considered a de minimis increase. The requirements of this subchapter apply if the increase in potential to emit, when aggregated with the other net emission increases in potential to emit occurring over a consecutive 5-calendar-year period exceeds 25 tons per year or 1,000 pounds per day or 100 pounds per hour, whichever is more restrictive. The consecutive 5-calendar-year period for an increase that is not considered de minimis shall include the calendar year of the modification or addition which results in the emissions increase, and may not extend beyond either January 1, 1991, or the design year of the most recent attainment demonstration, whichever is later.

(2) For a facility with the potential to emit less than 100 tons per year of VOC or NO_x, when a modification results in an increase—other than a de minimis increase—in emissions of VOC or NO_x from a discrete operation, unit or other pollutant emitting activity at the facility, the increase shall be considered a modification unless the owner or operator elects to offset the increase by a greater reduction in emissions of VOC or NO_x from other operations, units or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the

owner or operator does not elect to offset at the required ratio, the change shall be considered a modification, but in the case of the modification, the BACT requirement shall be substituted for LAER. The facility shall comply with the applicable EPA requirements and shall also satisfy the Best Available Technology (BAT) requirement.

(3) For a facility with the potential to emit 100 tons per year or more of VOC or NO_x, when a modification at the facility results in an increase—other than a de minimis increase in emissions of VOC or NO_x from a discrete operation, unit or other pollutant emitting activity at the facility, the increase shall be considered a modification unless the owner or operator elects to offset the increase

by a greater reduction in emissions of VOC or NO_x from other operations, units or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the owner or operator elects to offset at the required ratio, the LAER requirement does not apply. The facility shall comply with the applicable EPA requirements and shall also satisfy the BAT requirement.]

(a) This subchapter applies to the construction of a new major facility or modification at an existing major facility located in a nonattainment area or located in an attainment or unclassifiable area which impacts a nonattainment area in excess of the following significance levels:

<i>Pollutant</i>	<i>Annual</i>		<i>Averaging time</i>		
	<i>Annual</i>	<i>24 (hours)</i>	<i>8 (hours)</i>	<i>3 (hours)</i>	<i>1 (hours)</i>
SO ₂	1.0 µg/m ³	5 µg/m ³	-	25 µg/m ³	-
PM ₁₀	1.0 µg/m ³	5 µg/m ³	-	-	-
CO	-	-	0.5 mg/m ³	-	2 mg/m ³
Lead	-	0.1 µg/m ³	-	-	-

(b) The following provisions apply to an owner or operator of a facility located in Bucks, Chester, Delaware, Montgomery or Philadelphia counties or an area classified as a serious or severe ozone nonattainment area:

(1) The applicability requirements in § 127.203a (relating to applicability determination) apply except as provided by this subsection. The requirements of this subchapter apply if the aggregated emissions exceed 25 tpy or 1,000 pounds per day or 100 pounds per hour of NO_x or VOCs, whichever is more restrictive, as follows:

(i) The increase in emissions, when aggregated with the other increase in net emissions occurring over a consecutive 5 calendar-year period, which includes the calendar year of the modification or addition which results in the emissions increase.

(ii) The increases and decreases in emissions when aggregated with other increases and decreases since January 1, 1991, or 15 years prior to the date of submission of complete plan approval application, whichever is later.

(2) An increase in emissions of VOCs or NO_x, other than a de minimis emission increase, from a discrete operation, unit or other pollutant emitting activity at a facility with a potential to emit of less than 100 tpy of VOCs or NO_x is considered a modification unless the owner or operator elects to offset the increase by a greater reduction in emissions of VOCs or NO_x from other operations, units or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not elect to offset at the required ratio, the increase is considered a modification and the BACT requirement is substituted for LAER. The owner or operator of the facility shall comply with all applicable requirements including the BAT requirement.

(3) An increase in emissions of VOCs or NO_x, other than a de minimis emission increase, from a discrete operation, unit or other pollutant emitting activity at a facility with a potential to emit of 100 tpy or more is considered a modification unless the

owner or operator elects to offset the increase by a greater reduction in emissions of VOCs or NO_x from other operations, units or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the owner or operator elects to offset at the required ratio, the LAER requirement does not apply. The owner or operator of the facility shall comply with the applicable requirements including the BAT requirement.

(c) The NSR requirements of this subchapter apply to an owner or operator of:

(1) A facility at which the net emissions increase as determined under this subchapter meets or exceeds the applicable emissions rate that is significant. A decrease in a facility's emissions will not qualify as a decrease for purposes of this subchapter unless the emission reduction credit provisions in § 127.207(1) and (3)—(7) (relating to ERC generation and creation) are met.

(2) A facility which was deactivated for a period in excess of 1 year and is not in compliance with the reactivation requirements of § 127.215 (relating to reactivation).

(d) The requirements of this subchapter which apply to VOC emissions from major facilities and major modifications apply to NO_x emissions from major facilities and major modifications in an ozone transport region or an ozone nonattainment area classified as marginal, basic, moderate, serious, severe or extreme, except in areas which the EPA has determined that additional reductions of NO_x will not produce net air quality benefits.

(e) The following provisions apply to an owner or operator of a major facility subject to this subchapter:

(1) Approval to construct or modify an air contamination source or facility does not relieve an owner or operator of the responsibility to comply fully with applicable provisions of the SIP and other requirements under local, State or Federal law.

(2) If a particular source or modification becomes a major facility or major modification solely by virtue of a relaxation in an enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant including a restriction on hours of operation, the requirements of this subchapter also apply to the source or modification as though construction had not yet commenced on the source or modification.

(f) The requirements of this subchapter which apply to PM-10 emissions from major facilities and major modifications also apply to PM-10 precursor emissions from major facilities and major modifications, except if the EPA has determined that these sources do not contribute significantly to PM-10 levels which exceed the PM-10 ambient standards in the area.

(g) The requirements of this subchapter which apply to PM-2.5 emissions from major facilities and major modifications also apply to PM-2.5 precursor emissions from major facilities and major modifications, except if the EPA or the Department has determined that these sources do not contribute significantly to PM-2.5 levels which exceed the PM-2.5 ambient standards in the area.

(h) The NSR requirements of this subchapter do not apply to an owner or operator of a major facility at which:

(1) A physical change or change in the method of operation still maintains its total facility-wide emissions below the PAL, meets the requirements in § 127.218 (relating to PALs) and complies with the PAL permit.

(2) A project results in a net emissions increase which does not meet or exceed the applicable emissions rate that is significant.

(3) A proposed de minimis increase results in a net emissions increase since January 1, 1991, or 15 years prior to the date of submission of a complete plan approval application, whichever is later, which does not meet or exceed the emissions rate that is significant.

(4) A construction of a new facility or a project at an existing major facility located in an attainment or unclassifiable area, which does not impact a nonattainment area for applicable pollutant in excess of the significance level specified § 127.203a. § 127.203a. Applicability determination.

(a) The Department will conduct an applicability determination during its review of a plan approval application for the construction of a new major facility or modification at an existing major facility under the following provisions:

(1) As part of the plan approval application, the owner or operator of the facility shall calculate in accordance with the provisions under paragraphs (2) and (3) whether a net emissions increase that is significant as defined in § 127.201a (relating to definitions) will occur. The procedures for calculating whether a net emissions increase that is significant will occur at the major facility are contained in paragraph (4). If the project causes a net emissions increase that is significant, the project is a major modification for the regulated NSR pollutant.

(2) A net emissions increase of a regulated NSR pollutant for projects that involve existing emissions units is the sum of the differences between the projected actual emissions and the baseline actual emissions, as specified in paragraphs (5) and (6), for each existing emissions unit.

(3) A net emissions increase of a regulated NSR pollutant for projects that involve construction of new emissions units is the sum of the potentials to emit from each new emissions unit.

(4) The following procedures apply in determining the net emissions increase:

(i) For a regulated NSR pollutant emitted by a major facility, the amount by which the sum of the following exceeds zero:

(A) The increase in emissions from a particular physical change or change in the method of operation at a major facility as calculated under paragraph (6).

(B) Other increases and decreases in emissions at the major facility that are contemporaneous with the project and are otherwise creditable. Baseline actual emissions for calculating increases and decreases are determined as specified under paragraph (5).

(ii) For a proposed increase which equals or exceeds the emissions rate that is significant, an increase or decrease in emissions is contemporaneous with the increase from the project only if it occurs between the date 5 years before construction on the project commences and the date that construction on the project is complete.

(iii) For a proposed de minimis increase, an increase or decrease in emissions is contemporaneous with the increase from the project only if it occurs after January 1, 1991, or 15 years prior to the date of the Department's receipt of a complete plan approval application, whichever is later.

(iv) For a proposed de minimis increase in which the net emissions increase since January 1, 1991, or 15 years prior to the date of the Department's receipt of a complete plan approval application meets or exceeds the emissions rate that is significant, the emissions offset requirements in § 127.205(3) (relating to special permit requirements) apply only to the net emissions increase.

(v) For PM-2.5 and PM-2.5 precursors, an increase or decrease in emissions is contemporaneous with the increase from the project only if it occurs after April 5, 2005.

(vi) An increase or decrease in emissions is creditable as related to the applicability determination only if the Department has not relied on it in issuing a permit for the facility under this subchapter, for which permit is in effect when the increase in emissions from the project occurs.

(vii) An increase in emissions is creditable to the extent that the new level of emissions exceeds the old level of emissions for the contemporaneous change.

(viii) A decrease in emissions is creditable if the following conditions are met:

(A) The emissions reduction credit provisions in § 127.207(1) and (3)—(7) (relating to ERC generation and creation) have been complied with, and the

decrease is Federally enforceable by the time construction begins on the project.

(B) The emissions decrease is such that when compared with the proposed emissions increase there is no significant change in the character of the emissions, including seasonal emission patterns, stack heights or hourly emission rates. A significant change in the character of the emissions means a change resulting in an increase in emissions equal to or greater than an emissions rate that is significant as specified under § 127.201a or an impact in excess of the significance levels as specified in § 127.203a.

(C) The emissions decrease represents approximately the same qualitative significance for public health and welfare as attributed to the proposed increase. This requirement is satisfied if the emissions rate that is significant is not exceeded.

(D) An emissions decrease or an ERC generated at the facility may be used as a creditable decrease in a net emissions increase. A portion of an ERC generated at another facility, acquired by trade and incorporated in a plan approval for use at the facility, is not creditable as an emissions decrease.

(5) The following procedures apply in determining the baseline actual emissions:

(i) For an existing emissions unit, the average rate, in tpy, at which the unit emitted the regulated NSR pollutant during the 2 consecutive calendar years immediately prior to the year a complete plan approval application is received by the Department. The Department may allow the use of a different consecutive 2-year period within the last 5 years upon a determination that it is more representative of normal operations.

(A) The average rate includes fugitive emissions to the extent quantifiable and authorized emissions associated with startups and shutdowns; the average rate does not include excess emissions including emissions associated with upsets or malfunctions.

(B) The average rate is adjusted downward to exclude noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 2-year period.

(C) The average rate is adjusted downward to exclude emissions that would have exceeded an emissions limitation with which the facility must currently comply, had the facility been required to comply with the limitations during the consecutive 2-year period. The baseline actual emissions is based on the emissions limitation in this subchapter or a permit limitation or other more stringent emissions limitation required by the Clean Air Act or the act, whichever is more restrictive.

(D) When a project involves multiple emissions units or multiple regulated NSR pollutants, or both, one consecutive 2-year period must be used to determine the baseline actual emissions for all pollutants and for all the emissions units affected by the project.

(E) The average rate is not based on a consecutive 2-year period for which there is inadequate information for:

(I) Determining annual emissions, in tpy.

(II) Adjusting this amount if required by clause (B) or clause (C).

(F) The average rate is not greater than the emissions previously reported in the required emissions statement and for which applicable emission fees have been paid.

(ii) For a new emissions unit, the baseline actual emissions equal zero.

(iii) The baseline actual emissions is determined by measurement, calculations or estimations in the order of the following preferences:

(A) Monitoring systems including:

(I) CEMS data interpolated to annual emissions using flow meters and conversion factors.

(II) PEMS approved, in writing, by the Department.

(B) Other measurements and calculations including:

(I) Stack measurement which generates emission estimates using stack test derived emission factors and throughput.

(II) A mass balance equation which includes the following elements:

(-a) The amount of materials used per unit of time, determined through measurements in the process.

(-b) The emissions per unit mass of material used, determined using mass balance techniques.

(-c) The annual emissions, calculated using emissions per unit mass of material and amount of material used per unit of time.

(C) Emission factors, including generally recognized and accepted emission factors by EPA, such as USEPA "Compilation of Air Pollutant Emission Factors" (AP-42) or other emission factors accepted by the Department.

(D) Other calculations and measurements as approved by the Department.

(6) The following procedures apply in determining the projected actual emissions of a regulated NSR pollutant for an emissions unit, before beginning actual construction on the project:

(i) The owner or operator of the major facility shall:

(A) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, and the company's filings with the State or Federal regulatory authorities.

(B) Include fugitive emissions to the extent quantifiable, and emissions associated with startups, and shutdowns.

(C) Exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following completion of the project that existing units could have accommodated during the consecutive 2-year period used to establish the baseline actual emissions and that

is also unrelated to the particular project, including any increased utilization due to product demand growth.

(ii) In lieu of using the method set out in subparagraph (i), the owner or operator of the major facility may elect to use the emissions unit's potential to emit, in tpy.

(iii) If the projected actual emissions are in excess of the baseline actual emissions, they must be incorporated into the required plan approval or the operating permit as an emission limit. The emission limit shall be the sum of the following:

(A) Baseline actual emissions.

(B) The portion of the unit's emissions following completion of the project that existing units could have accommodated considering any process constraints in place during the consecutive 2-year period used to establish the baseline actual emissions and that is also unrelated to the particular project, including any increased utilization due to product demand growth.

(C) Any emissions increase that results from the particular project.

(7) The following procedures apply for demonstrating compliance with the emission limit established under paragraph (6)(i):

(i) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified for the project, and calculate and maintain a record of these annual emissions, in tpy on a calendar year basis, for 5 years following resumption of regular operations after the change, or for 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at the emissions unit.

(ii) The owner or operator shall record sufficient information to identify for all emission units in the approved project their total actual annual emissions and their actual annual emissions increase due to the project.

(iii) The owner or operator shall submit a report to the Department, within 60 days after the end of each calendar year, which contains the emissions data required by subparagraph (i) and (ii). This report must also contain a demonstration of how these emissions were determined if the determination was not by direct measurement with a Department-certified CEMS system.

(b) An owner or operator of a major facility with a PAL for a regulated NSR pollutant shall comply with the requirements under § 127.218 (relating to PALs).

§ 127.204. Emissions subject to this subchapter.

(a) In determining whether a facility exceeds the [emissions rates] emission rate that is significant or the significance levels specified in § 127.203 (relating to facilities subject to special permit requirements), the potential [emissions] to emit, actual emissions and actual emissions increase shall be determined by aggregating the emissions or emissions increases from the facilities on contiguous or adjacent properties under the common control of a person or entity. This includes

emissions resulting from the following: flue emissions, stack and additional fugitive emissions, material transfer, use of parking lots and paved and unpaved roads on the facility property, storage piles and other emission generating activities resulting from operation of the new or modified facility.

(b) Secondary emissions [need] must not be considered in determining whether a facility meets the requirements of [§ 127.203] this subchapter. If a facility is subject to [§ 127.203] this subchapter on the basis of the direct emissions from the facility, the conditions of § 127.205 (relating to special permit requirements) shall also be met for secondary emissions.

§ 127.205. Special permit requirements.

The Department will not issue a plan approval, or an operating permit, or allow continued operations under an existing permit or plan approval unless the applicant demonstrates that the following special requirements are met:

(1) A new or modified facility subject to this subchapter shall comply with LAER, except as provided in § 127.203a(a)(4)(ii)(B) (relating to applicability determination). [In cases where] When a facility is composed of several sources, only sources which are new or which are modified shall be required to implement LAER. In addition, LAER applies to the proposed modification which results in an increase in emissions and to subsequent or previous modifications which result in emissions increases that are directly related to and normally included in the project associated with the proposed modification and which occurred within the contemporaneous period of the proposed emissions increase.

* * * * *

(2) Each facility located within this Commonwealth which meets [or exceeds the threshold limits contained in § 127.203 (relating to facilities subject to special permit requirements)] the requirements of and is subject to this subchapter, which is owned or operated by the applicant, or by an entity controlling, controlled by or under common control with the applicant, and which is subject to emissions [limitation] limitations shall be in compliance, or on a schedule for compliance approved by the Department in a plan approval or permit, with the applicable emissions limitation and standards contained in this article. A responsible official of the applicant shall certify as to the facilities' compliance in writing on a form provided by the Department.

(3) Each modification to a facility which meets the requirements of and is subject to [§ 127.203] this subchapter shall offset, in accordance with §§ 127.203a and 127.210 [and 127.211] (relating to applicability determination; and offset ratios[; and applicability determination]), the total of the net increase [in potential to emit]. Emissions offsets shall be required for the entire net emissions increase which occurred over the contemporaneous period except to the extent that emissions offsets or other reductions were previously applied against emissions increases in an earlier applicability determination.

(4) Each new facility which meets the requirements of and is subject to [§ 127.203] this subchapter shall offset the potential to emit of that facility with ERCs in accordance with § 127.210.

(5) For a new or modified facility [with potential emissions exceeding significance levels or otherwise meeting the requirements of § 127.203] which meets the requirements of and is subject to this subchapter, an analysis shall be conducted of alternative sites, sizes, production processes and environmental control techniques for the proposed facility, which demonstrates that the benefits of the proposed facility significantly outweigh the environmental and social costs imposed within this Commonwealth as a result of its location, construction or modification.

* * * * *

§ 127.206. ERC general requirements.

(a) Emissions reductions or ERCs banked prior to January 1, 1991, may not be used as ERCs for emission offsets or netting purposes. [ERCs generated prior to January 1, 1991, which meet the requirements of this subchapter for ERCs and are approved by the Department may be used in applicability determinations conducted in accordance with § 127.211 (relating to applicability determination) for netting purposes, if the ERCs are treated as new source growth and offset at the applicable ratio specified in § 127.210 (relating to offset ratios).]

* * * * *

(d) The Department may issue a plan approval for the construction of a new or modified facility which satisfies the offset requirements specified in § 127.205(3) and (4) (relating to special permit requirements) under the following conditions:

* * * * *

(2) The owner or operator of the proposed new or modified facility may not commence operation or increase emissions until the required emissions reductions are certified and registered as ERCs by the Department.

(e) ERCs generated by the overcontrol of emissions by an existing facility will not expire for use as offsets. The use of these ERCs in applicability determinations for netting purposes is limited to the period specified in [§ 127.211] § 127.203a(a)(4) (relating to applicability determination).

(f) ERCs generated by the curtailment or shutdown of a facility which are not included in a plan approval and used as offsets will expire for use as offsets 10 years after the date the facility ceased emitting the ERC generating emissions. The use of these ERCs in applicability determinations for netting purposes is limited to the period specified in [§ 127.211] § 127.203a(a)(4).

* * * * *

(i) ERCs may not be used to achieve compliance with RACT, MACT, BAT, NSPS, BACT, LAER or other emissions limitations required by the Clean Air Act or the act.

(j) ERCs may not be entered into the ERC registry until the emissions reduction generating the ERCs has been certified by the Department in accordance with the criteria for ERC generation and creation contained in § 127.207 (relating to ERC generation and creation)[, with the following qualifications:].

[(i) ERCs may not be generated for emissions in excess of those previously identified in required emission statements and for which applicable emission fees have been paid.

(ii) Emissions reduction at a facility occurring after January 1, 1991, but prior to January 15, 1994 may be used to generate ERCs, if a complete ERC registry application is submitted to the Department by May 16, 1994.]

* * * * *

(l) ERCs may not be traded to facilities under different ownership until the emissions reduction generating the ERCs is made Federally enforceable. [A facility which is not subject to Title V permit requirements under the Clean Air Act will require EPA approval in the form of a SIP revision which incorporates the required permit modification reflecting the reduced emissions limitation of the generating facility.]

* * * * *

(n) ERCs transferred from one facility to another may not be transferred to a third party, [except as provided in subsection (h)] unless the transfer of the ERCs is processed by the Department through the ERC registry system.

* * * * *

(q) ERCs may not be generated for emissions in excess of those previously identified in required emission statements and for which applicable emission fees have been paid.

§ 127.207. ERC generation and creation.

ERC generation and creation may occur under the following conditions:

(1) ERCs [shall] must be surplus, permanent, quantified and Federally enforceable as follows:

(i) Surplus. ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emissions limitation or compliance plans. [Emission] Emissions reductions necessary to meet NSPS, LAER, RACT, [Best Available Technology (BAT)] BAT, BACT, allowance-based programs and permit or plan approval emissions limitations or [another] other emissions limitations required by the Clean Air Act or the act may not be used to generate ERCs.

* * * * *

(iv) Enforceable. ERCs shall be Federally enforceable emissions reductions, regulated by Federal or SIP emissions [limitation] limitations, such as a limit on potential to emit in the permit, and be generated from a plan approval, economic incentive program or permit limitation.

* * * * *

(5) Acceptable emissions reduction techniques, which an applicant may use to generate ERCs, are limited to the following:

* * * * *

(vi) For facilities or sources not subject to this subchapter, a MERC program or another Economic Incentive Program which meets the requirements of this subchapter and which is approved by the EPA as a SIP revision.

(A) The program [shall] must comply with the following requirements:

* * * * *

(IV) ERCs shall be surplus to **emissions reductions achieved under** other Federal and State regulations relied upon in an applicable attainment plan or demonstration or credited in an RFP or milestone demonstration.

* * * * *

(7) The reduced emissions limitation of the new or modified permit of the source or facility generating the ERC shall be continuously verified by Department, local air pollution control agency or other State approved compliance monitoring and reporting programs. Onsite inspections will be made to verify shutdowns. If equipment has not been dismantled or removed, the owner or operator shall on an annual basis certify **in writing** to the Department the continuance of the shutdown.

§ 127.208. ERC use and transfer requirements.

The use and transfer of ERCs shall meet the following conditions:

* * * * *

(2) The transferee shall secure approval to use the offsetting ERCs through a plan approval **or an operating permit**, which indicates the [**Department**] **Department's** approval of the ERC transfer and use. Upon the issuance of a plan approval **or an operating permit**, the ERCs are no longer subject to expiration under § 127.206(f) (relating to ERC general requirements) except as specified in § 127.206(g).

* * * * *

(9) [**For a VOC or NO_x facility, the use and transfer of ERCs shall comply with the following:**

(i) [**For the purpose of emissions offset transfers at VOC or NO_x facilities, the areas included within an ozone transport region established under section 184 of the Clean Air Act (42 U.S.C.A. § 7511c), which are designated in 40 CFR 81.339 (relating to Pennsylvania) as attainment [areas], nonattainment or unclassifiable areas for ozone, shall be treated as a single nonattainment area.**

[(ii) **A (10) An owner or operator of a facility shall acquire ERCs for use as offsets from an ERC generating facility located within the same nonattainment area.**

[(iii) **An exception to the requirement of subparagraph (ii) may be granted to allow the acquisition of ERCs from a facility located outside the nonattainment area, but within either 2 days transport upwind or within 200 kilometers of the using facility, if the ERCs are obtained from another nonattainment area with an equal or higher classification and if the emissions from the other nonattainment area contribute to an NAAQS violation in the nonattainment area of the proposed facility. The facility shall demonstrate to the Department's satisfaction that the ERC generating facilities located in the nonattainment area were investigated and no suitable ERCs were available, and that the ERCs meet the 2-day transport upwind requirement.]**

§ 127.209. ERC registry system.

* * * * *

(e) Registry operations and procedures are as follows:

(1) The registry will list the ERCs, and the Department will publish **revisions to** the list of registered ERCs available for trading purposes in the *Pennsylvania Bulletin* on a quarterly basis.

* * * * *

(4) Upon issuance of a plan approval allowing the use of ERCs entered in the registry, the following registry transactions will occur:

* * * * *

(ii) The registry will indicate the effective date, the quantity of [**used**] ERCs **used**, the originating generator and the ERC creation date, which is the date of actual or anticipated emissions reduction by the ERC generating facility.

§ 127.210. Offset ratios.

The emission offset ratios for ERC transactions subject to the requirements of this subchapter [**shall**] **must** be in an amount equal to or greater than the ratios specified in the following table:

	<i>Required Emission Reductions From Existing Sources</i>	<i>Flue</i>	<i>Fugitive</i>
	<i>Emissions</i>	<i>Emissions</i>	<i>Emissions</i>
[Particulate Matter] PM-2.5, PM-10 and SO _x	1.3:1	5:1	
[Primary Nonattainment Areas	1.3:1	5:1]
[Secondary Nonattainment Areas	1.1:1	3:1]

* * * * *

§ 127.211. [Applicability determination] (Reserved).

[(a) **An applicability determination will establish whether:**

(1) **A modification which results in an emissions rate increase or the emission of pollutants not previously emitted at an existing major facility for particulate matter, PM-10 precursors, PM-10, SO_x, CO or lead emissions, located in or impacting a nonattainment area for these criteria pollutants, is a major modification under § 127.203 (relating to facilities subject to special permit requirements) and is subject to the new source review requirements of this subchapter.**

(2) **A modification which results in an emissions rate increase or the emission of pollutants not previously emitted at an existing major facility of VOC or NO_x emissions, located in or impacting a moderate nonattainment area for ozone, or an area included within an ozone transport region and designated as either a marginal or incomplete data nonattainment area or as an unclassifiable/attainment area for ozone, is a major modification under § 127.203 and is subject to the new source review requirements of this subchapter.**

(3) **A modification which results in an emissions rate increase or the emission of pollutants not previously emitted at an existing major facility of VOC or NO_x emissions, located in or impacting a serious or severe nonattainment area for ozone is a major modification under § 127.203 and is subject**

to the new source review requirements of this subchapter, except as modified by the requirements in § 127.203(c).

(b) The Department will conduct an applicability determination during its review of a plan approval application for a proposed modification which results in an increase in allowable emissions to determine the amount of the net increase in accordance with the following:

(1) For a proposed de minimis increase the proposed increase will be summed with those emission increases and decreases occurring after January 1, 1991.

(2) For a proposed increase which equals or exceeds an emissions rate threshold or significance level specified in § 127.203, the proposed increase will be summed with those emissions increases and decreases that occurred within the contemporaneous period which begins 5 years before commencement of construction of the proposed modification and ends with the date that the emission increase from the modification occurs. Notwithstanding the requirement to begin the contemporaneous period 5 years before construction, the period may not begin prior to January 1, 1991, or the design year of the most recent attainment demonstration, whichever is later.

(3) The following procedures will apply in determining the amount of emissions increases and decreases to be summed:

(i) If a facility's maximum allowable emissions rate has not been established, the rate will be calculated for purposes of the applicability determination.

(ii) The increase in potential to emit for each proposed modification or new source will be used to set an allowable emissions rate for the modified or new facility. The allowable rate increase will be treated as an increase in the maximum allowable emissions rate for the facility.

(iii) Other increases and decreases in allowable emission rates at a facility which occur within the applicable time period are creditable in accordance with the following:

(A) Increases in the allowable rates shall be factored into the facility maximum allowable emissions rate.

(B) A decrease in an allowable emissions rate is not creditable unless the following conditions are met:

(I) The emissions reduction credit provisions in § 127.207(1) and (3)—(7) (relating to ERC generation and creation) have been complied with, and the decrease is Federally enforceable by the time that actual construction begins on the modification. The plan approval for the modification will contain a provision specifying that the emissions decrease is Federally enforceable on or before the date of commencement of construction. The facility owner or operator shall certify in writing that the reductions were not relied on for a previous applicability determination or to generate ERCs.

(II) The emissions decrease is such that when compared with the proposed increase there is no significant change in the character of emissions,

including seasonal emission patterns, stack heights or hourly emission rates. A significant change in the character of emissions means a change resulting in an increase in emissions equal to or greater than an emissions rate threshold or an impact in excess of a significance level as specified in § 127.203. For VOC and NO_x during the ozone season, the portion of the annual emissions rate threshold specified in § 127.203 which as a percentage occurs during the ozone season may not be exceeded.

(III) The emission decrease represents approximately the same qualitative significance for public health and welfare as attributed to the proposed increase. This requirement is satisfied if the emission rate thresholds and significance levels contained in § 127.203 are not exceeded.

(C) An emissions reduction or an ERC generated at the facility may be used as a creditable decrease in an applicability determination. A portion of an ERC generated at another facility, acquired by trade and incorporated in a plan approval for use at the facility will not be credited as an emissions decrease in an applicability determination.

(D) ERCs which the facility has generated and registered are not creditable as reductions in an applicability determination unless the ERCs are withdrawn from the registry.

(E) A creditable emissions decrease which occurred prior to January 1, 1991, or the design year of the most recent attainment demonstration, whichever is later, and within the contemporaneous period of the proposed increase will be treated as new source growth and discounted in accordance with the applicable nonattainment area ratio in § 127.210 (relating to offset ratios).

(iv) An emissions increase that results from a physical change at a facility occurs when the unit on which construction occurred becomes operational and begins to emit a criteria pollutant. A replacement unit that is allowed a shakedown period becomes operational at the end of the approved shakedown period, which may not exceed 180 days.

(c) The new source review requirements of this subchapter apply to:

(1) A facility at which the proposed emissions increase and the net increase in the facility maximum allowable emissions rate as determined under subsection (b) meet or exceed the applicable threshold limits in § 127.203. A decrease in a facility maximum allowable emissions rate will not qualify as a decrease for purposes of this section when a facility petitions for a decrease in its maximum allowable emissions rate through a permit restriction unless the conditions of subsection (b)(3)(iii) are met.

(2) A facility which was deactivated for a period in excess of 1 year and is not in compliance with the reactivation requirements of § 127.215 (relating to reactivation).

(3) A source which has netted out of new source review by applying emissions reduction or ERCs generated by another source at the facility, if the emissions reduction or ERC generating source subsequently increases its allowable emissions unless

the facility generates sufficient additional emissions reductions or ERCs equal to the proposed increase at the ERC generating source.

(d) For a proposed emissions increase that is subject to the new source requirements under subsection (c), the requirements of § 127.205 (relating to special permit requirements) are applicable in the following manner:

(1) Emissions offsets shall be required for the entire net emissions increase which occurred over the contemporaneous period except to the extent that offsets or other reductions were previously applied against increases in an earlier applicability determination.

(2) LAER applies to the proposed modification which results in an increase in emissions, and to subsequent or previous modifications which result in emissions increases that are directly related to and normally included in the project associated with the proposed modification and which occurred within the contemporaneous period of the proposed emissions increase.

(e) For a proposed de minimis increase in which the net emissions increase since January 1, 1991, meets or exceeds the threshold limits in § 127.203, only the emissions offset requirements in § 127.205(3) apply to the net emissions increase.

(f) The new source review requirements of this subchapter do not apply to:

(1) A facility at which a proposed major modification results in a net increase in the maximum allowable emission rate as determined under subsection (b) which does not meet or exceed the applicable threshold limits in § 127.203.

(2) A facility at which a proposed de minimis increase results in a net emissions increase since January 1, 1991, which as determined under subsection (b) does not meet or exceed the applicable threshold limits in § 127.203.]

§ 127.212. Portable facilities.

(a) [A] An owner or operator of a portable SO_x, [particulate matter,] PM-10 [precursor] precursors, PM-10, PM-2.5 precursors, PM-2.5, lead or CO facility subject to this subchapter which will be relocated within 6 months of the commencement of operation to a location within an attainment area which does not have an impact on a nonattainment area at or above the significance levels contained in § 127.203 (relating to facilities subject to special permit requirements) shall be exempt from this subchapter. [A] An owner or operator of a facility which subsequently returns to a location where it is subject to this subchapter shall comply with this subchapter.

(b) [A] An owner or operator of a portable VOC or NO_x facility subject to this subchapter which will be relocated outside of this Commonwealth within 6 months of the commencement of operation shall be exempt from this subchapter. [A] An owner or operator of a facility which subsequently returns to a location in this Commonwealth where it is subject to this subchapter shall comply with this subchapter.

§ 127.213. Construction and demolition.

* * * * *

(b) Emissions from construction and demolition activities may not be considered under [§ 127.203 (relating to facilities subject to special permit requirements)] § 127.203a (relating to applicability determination).

§ 127.214. [Exemptions] (Reserved).

[The special permit requirements of this subchapter may be waived for modifications to an existing facility through a plan approval application which demonstrates to the satisfaction of the Department that:

(1) The capital expenditure is being made with the primary purpose of achieving compliance with a new, more stringent regulation than was previously applicable, and will bring the facility into compliance with the new regulation.

(2) The maximum allowable emissions from the facility itself or a discrete operation, unit or other pollutant emitting activity at the facility will not increase.]

§ 127.214a. Special provisions for advanced clean coal generation technology.

(a) This section applies to an owner or operator of a project that uses advanced clean coal generation technology in a new electric utility steam generating unit or to retrofit or repower an existing electric utility steam generation unit.

(b) As used in this section, the term “advanced clean coal generation technology” means an electric utility steam generating unit uses an advanced clean coal generation technology if the following conditions are met:

(1) The unit either:

(i) Uses integrated gasification combined cycle technology.

(ii) Has a design net heat rate of no more than 8530 Btu/KWH (at least 40% efficiency).

(2) The vendor warrants that the unit is designed, at a minimum, to meet the following performance requirements:

<i>Pollutants</i>	<i>Emission Rate</i>	<i>Averaging Period</i>
SO _x	99% removal	30-days rolling average
NO _x	0.5 lbs/MWH	30-days rolling average
CO	0.32 lbs/MWH	24-hour rolling average
PM-10	0.06 lbs/MWH	Average of three one-hour stack tests
VOC	0.01 lbs/MWH	Average of three one-hour stack tests
CO ₂	1.76 lbs/KWH	12-month rolling average
Hg	95% removal	12-month rolling average

(c) An owner or operator of a new, retrofitted or repowered electric utility steam generation unit that qualifies as advanced clean coal generation technology with a net emissions increase from the facility which meets or exceeds the applicable emissions rate that is significant shall be subject to this subchapter.

(d) The qualifying electric utility steam generation unit will be deemed to meet the LAER control technology requirements of § 127.205 (relating to special permit requirements) unless the Department determines that the performance requirements specified in subsection (b) are less stringent than LAER.

(e) The owner or operator of an electric utility steam generation unit meeting the requirements of this section shall offset the net emissions increase of a regulated NSR pollutant in accordance with the offset ratios specified in § 127.210 (relating to offset ratios).

(f) The Department will expedite the processing of a plan approval application for an electric steam generating unit that qualifies under this section.

§ 127.215. Reactivation.

(a) A facility which has been out of operation or production for 1 year or more during the term of its operating permit may be reactivated within the term of its operating permit and will not be considered a new facility subject to this subchapter if the following conditions are satisfied:

(1) The permittee shall within 1 year of the deactivation submit **in writing** to the Department and implement a maintenance plan which includes the measures to be taken, including maintenance, upkeep, repair or rehabilitation procedures, which will enable the facility to be reactivated in accordance with the terms of the permit.

(2) The permittee shall submit a reactivation plan at least 30 days prior to the proposed date of reactivation. The reactivation plan [**shall**] **must** include sufficient measures to ensure that the facility will be reactivated in compliance with the permit requirements. The permittee may submit a reactivation plan to the Department at any time during the term of its operating permit. The reactivation plan may also be submitted to and approved **in writing** by the Department as part of the plan approval or permit application process.

(3) The permittee shall [**submit a notice to**] **notify** the Department **in writing** within 1 year of deactivation requesting preservation of the emissions in the inventory and indicating the intent to reactivate the facility.

(4) The permittee shall comply with the terms and conditions of the [**maintenance**] **following**:

(i) **Maintenance** plan while the facility is deactivated [, and shall comply with the terms and conditions of the reactivation] .

(ii) **Reactivation** plan and the operating permit upon reactivation.

* * * * *

(b) The Department will approve or disapprove **in writing** the complete reactivation plan within 30 days of plan submission, unless additional time is required based on the size or complexity of the facility.

* * * * *

§ 127.217. Clean Air Act Titles III—V applicability.

Compliance with this subchapter does not relieve a source or facility from complying with Titles III—V of the Clean Air Act (42 U.S.C.A. §§ 7601—7627; 7641, 7642, 7651—7651o; and 7661—7661f), **applicable requirements of the act or regulations adopted under the act.**

§ 127.218. PALs.

(a) The following provisions govern an actual PAL for a major facility.

(1) The Department may approve the use of an actual PAL for any existing major facility if the PAL meets the requirements in this subsection through subsection (n).

(2) The Department will not permit an actual PAL for VOC or NO_x for a major facility located in an extreme ozone nonattainment area.

(3) A physical change in or change in the method of operation of a major facility that maintains its total facility-wide emissions below the PAL level, meets the requirements in this subsection through subsection (n) and complies with the PAL permit is not:

(i) A major modification for the PAL pollutant.

(ii) Subject to this subchapter.

(iii) Subject to § 127.203(e)(2) (relating to facilities subject to special permitting requirements).

(4) An owner or operator of a major facility shall continue to comply with applicable Federal or State requirements, emissions limitations and work practice requirements that were established prior to the PAL effective date.

(b) The owner or operator of a major facility shall submit the following information to the Department as part of the PAL application:

(1) A list of the emissions units at the facility designated as small, significant or major based on their potential to emit. The list must indicate which Federal or State applicable requirements, emissions limitations or work practices apply to each unit.

(2) Calculations and supporting documentation for the baseline actual emissions, which include emissions associated with operation of the unit, startups and shutdowns.

(3) The calculation procedures that the owner or operator of the major facility proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subsection (m)(1).

(c) The Department may establish a PAL if the following requirements are met:

(1) The PAL must impose an annual emissions limitation in tpy for the entire major facility. For each month during the PAL effective period after the first 12 months of establishing a PAL, the owner or operator of the major facility shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months, expressed as a 12-month rolling average, is less than the PAL. For each month during the first 11 months from the PAL effective date, the owner or operator of the major facility shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(2) The PAL must be established in a PAL permit that meets the public participation requirements in subsection (d).

(3) The PAL permit must contain all the requirements of subsection (g).

(4) The PAL must include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major facility.

(5) Each PAL must regulate emissions of only one pollutant.

(6) Each PAL must have a PAL effective period of 10 years.

(7) The owner or operator of a major facility issued a PAL permit shall comply with the monitoring, recordkeeping and reporting requirements provided in subsections (m)—(o) for each emissions unit under the PAL through the PAL effective period.

(d) At no time during or after the PAL effective period are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under this subchapter unless the level of the PAL is reduced by the amount of the emissions reductions and the reductions would be creditable in the absence of the PAL.

(e) A PAL for an existing major facility must be established or modified in accordance with the public notice procedures set forth under §§ 127.44, 127.424 and 127.521 (relating to public notice; public notice; and additional public participation provisions).

(f) Setting the 10-year actual PAL level must comply with the following:

(1) The actual PAL level for a major facility must be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the facility plus an amount equal to the applicable emissions rate that is significant for the PAL pollutant or under the Clean Air Act, whichever is lower.

(2) When establishing the actual PAL level, for a PAL pollutant, one consecutive 2-year period must be used to determine the baseline actual emissions for all existing emissions units.

(3) Emissions associated with units that were permanently shut down after this 2-year period must be subtracted from the PAL level.

(4) Emissions from units on which actual construction began after the 2-year period must be added to the PAL level in an amount equal to the actual emissions of the units.

(5) The Department will specify a reduced PAL level in tpy in the PAL permit to become effective on the future compliance date of any applicable Federal or State regulatory requirement that the Department is aware of prior to issuance of the PAL permit.

(g) At a minimum, the PAL permit must contain the following information:

(1) The PAL pollutant and the applicable facility-wide emissions limitation in tpy.

(2) The effective date and the expiration date.

(3) A requirement that if the owner or operator of a major facility applies to renew a PAL in accord-

ance with subsection (i) before the end of the PAL effective period, the PAL permit does not expire at the end of the PAL effective period. The PAL permit remains in effect until the Department issues a revised PAL permit.

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

(5) A requirement that, upon expiration of the PAL permit, the owner or operator of a major facility is subject to the requirements of subsection (j).

(6) The calculation procedures that the owner or operator of a major facility shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subsection (n)(1).

(7) A requirement that the owner or operator of a major facility shall monitor all emissions units in accordance with subsection (m).

(8) A requirement that the owner or operator shall retain the records required under subsection (n) onsite.

(9) A requirement that the owner or operator shall submit the reports required under subsection (o) by the required deadlines.

(10) A requirement that the emissions from a new source must be the minimum attainable through the use of BAT.

(11) Other requirements the Department deems necessary to implement and enforce the PAL.

(h) The Department will specify a PAL effective period of 10 years.

(i) The following requirements apply to reopening of the PAL permit:

(1) During the PAL effective period, the Department will reopen the PAL permit to:

(i) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.

(ii) Reduce the PAL if the owner or operator of the major facility creates creditable emissions reductions for use as offsets under § 127.207 (relating to ERC generation or creation).

(iii) Revise the PAL to reflect an increase in the PAL as provided under subsection (l).

(2) The Department may reopen the PAL permit to reduce the PAL:

(i) To reflect newly applicable Federal requirements with compliance dates after the PAL effective date.

(ii) Consistent with a requirement that is enforceable as a practical matter and that the State may impose on the major facility consistent with all applicable requirements.

(iii) If the Department determines that a reduction is necessary to avoid causing or contributing to:

(A) A NAAQS or PSD increment violation.

(B) An adverse impact on an air quality related value that has been identified for a Federal Class I

area by a Federal land manager and for which information is available to the general public.

(3) Except for the permit reopening paragraph (1)(i) for the correction of typographical/calculation errors that do not increase the PAL level, other reopenings shall be carried out in accordance with the public participation requirements of subsection (e).

(j) A PAL permit which is not renewed in accordance with the procedures in subsection (k) expires at the end of the PAL effective period and the following requirements apply:

(1) The owner or operator of each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emissions limitation under a revised permit established according to the following procedures:

(i) Within the time frame specified for PAL permit renewals in subsection (k)(2), the owner or operator of the major facility shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units if this distribution is more appropriate as decided by the Department, by distributing the PAL allowable emissions for the major facility among each of the emissions units that existed under the PAL permit. If the PAL permit has not been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (k)(5), this distribution is made as if the PAL permit has been adjusted.

(ii) The Department will decide whether and how to distribute the PAL allowable emissions and issue a revised permit incorporating allowable limits for each emissions unit or each group of emissions units.

(2) The owner or operator of each emissions unit or group of emissions units shall comply with the allowable emissions limitation on a 12-month rolling basis. The Department may approve the use of emissions monitoring systems other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emissions limitation.

(3) Until the Department issues the revised PAL permit incorporating the allowable limits for each emissions unit or group of emissions units required under paragraph (1)(i), the owner or operator of the facility shall continue to comply with a facility-wide, multi-unit emissions cap equivalent to the level of the PAL emissions limitation.

(4) A physical change or change in the method of operation at the major facility is subject to this subchapter if the change meets the definition of major modification.

(5) The owner or operator of the major facility shall continue to comply with any State or Federal applicable requirements including BAT, BACT, RACT or NSPS that may have applied either during the PAL effective period or prior to the PAL effective period except for those emissions limitations that had been established under § 127.203(e), but were eliminated by the PAL in accordance with the provisions in subsection (a)(3)(iii).

(k) The following requirements apply to renewal of a PAL:

(1) The Department will follow the procedures specified in subsection (e) in approving a request to renew a PAL permit for a major facility, and will provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment in accordance with the public notice requirements in § 127.44. During the public review, a person may propose a PAL level for the major facility for consideration by the Department.

(2) An owner or operator of a major facility shall submit a timely application to the Department to request renewal of a PAL permit. A timely application is one that is submitted at least 6 months, prior to, but not earlier than 18 months prior to the date of permit expiration. If the owner or operator of a major facility submits a complete application to renew the PAL permit within this time period, then the PAL continues to be effective until the revised permit with the renewed PAL is issued.

(3) The application to renew a PAL permit must contain the following information:

(i) The information required in subsection (b)(1)–(3).

(ii) A proposed PAL level.

(iii) The sum of the potentials to emit of the emissions units under the PAL.

(iv) Other information the owner or operator wishes the Department to consider in determining the appropriate level at which to renew the PAL.

(4) The Department will consider the options in subparagraphs (i) and (ii) in determining whether and how to adjust the PAL. In no case may the adjustment fail to comply with subparagraphs (iii) and (iv).

(i) If the emissions level calculated in accordance with subsection (f) is equal to or greater than 80% of the PAL level, the Department may renew the PAL at the same level without considering the factors set forth in subparagraph (ii).

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

(iii) If the potential to emit of the major facility is less than the PAL, the Department will adjust the PAL to a level no greater than the potential to emit of the facility.

(iv) The Department will not approve a renewed PAL level higher than the current PAL unless the major facility has complied with subsection (l).

(5) If the compliance date for a State or Federal requirement that applies to the facility occurs during the PAL effective period and the Department has not already adjusted for this requirement, the PAL must be adjusted at the time of the PAL permit renewal or Title V permit renewal, whichever occurs first.

(l) The following requirements apply to increasing a PAL during the PAL effective period:

(1) The Department may increase a PAL emissions limitation during the PAL effective period if the owner or operator of the major facility complies with the following:

(i) The owner or operator of the major facility shall submit a complete application to request an increase in the PAL limit for a PAL major modification. The application must identify the emissions units contributing to the increase in emissions that cause the major facility's emissions to equal or exceed its PAL.

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

(iii) The owner or operator of the major facility shall obtain a major NSR permit for all emissions units identified in subparagraph (i), regardless of the magnitude of the emissions increase resulting from them. The owner or operator of these emissions units shall comply with the applicable emissions requirements of this subchapter, even if the units are subject to a PAL or continue to be subject to a PAL.

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

(2) The Department will calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls determined in accordance with paragraph (1)(ii), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit must be revised to reflect the increased PAL level under the public notice requirements of subsection (e).

(m) The following monitoring requirements apply to an owner or operator subject to a PAL:

(1) Each PAL permit must contain enforceable requirements for the monitoring system to accurately determine plantwide emissions of the PAL pollutant in terms of mass per unit of time.

(2) The PAL monitoring system must employ one or more of the four general monitoring approaches

meeting the minimum requirements in paragraph (5) and must be approved in writing by the Department.

(3) The owner or operator of the facility may also use an alternative monitoring approach that meets the requirements of paragraph (1), if approved in writing by the Department.

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

(5) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (6)—(12):

(i) Mass balance calculations for activities using coatings or solvents.

(ii) CEMS.

(iii) CPMS or PEMS.

(iv) Emission factors.

(6) An owner or operator of a major facility using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

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

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

(iii) If the vendor of a material or fuel used in or at the emissions unit publishes a range of pollutant content from the material, the owner or operator shall use the highest value of the range to calculate the PAL pollutant emissions unless the Department determines, in writing, that there is site-specific data or a site-specific monitoring program to support another content within the range.

(7) An owner or operator of a major facility using a CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) The CEMS must comply with applicable Performance Specifications found in 40 CFR Part 60, Appendix B (relating to performance specifications).

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

(8) An owner or operator of a major facility using a CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) The CPMS or PEMS must be calibrated based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit.

(ii) Each CPMS or PEMS must sample, analyze and record data at least every 15 minutes or other less frequent interval approved in writing by the Department, while the emissions unit is operating.

(9) An owner or operator of a major facility using emission factors to monitor PAL pollutant emissions shall:

(i) Adjust the emission factors to account for the degree of uncertainty or limitations in the development of the factors.

(ii) Operate the emissions unit within the designated range of use for the emission factor, if applicable.

(iii) Conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Department determines, in writing, that testing is not required.

(10) An owner or operator of a facility shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during a period of time that there is no monitoring data, unless another method for determining emissions during these periods is specified in the PAL permit.

(11) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at the operating points of the emissions unit, the Department will, at the time of permit issuance, either:

(i) Establish default values for determining compliance with the PAL permit based on the highest potential emissions reasonably estimated at the operating points.

(ii) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL permit.

(12) Data used to establish the PAL must be revalidated through performance testing or other scientifically valid means approved in writing by the Department. This testing must occur at least once every 5 years after issuance of the PAL permit.

(n) The following requirements apply to recordkeeping:

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

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

(i) A copy of the PAL permit application and applications for revisions to the PAL permit.

(ii) Each annual certification of compliance required under Title V of the Clean Air Act (42 U.S.C.A. §§ 7661–7661f) and regulations adopted under the act and the data relied on in certifying the compliance.

(o) The following requirements apply to reporting and notification:

(1) The owner or operator of a major facility shall submit semiannual monitoring reports and prompt

deviation reports to the Department in accordance with the Title V operating permit requirements of Chapter 127, Subchapters F and G (relating to operating permit requirements; and Title V operating permits).

(2) The semiannual reports must:

(i) Be submitted to the Department within 30 days of the end of each reporting period.

(ii) Contain the following information:

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

(B) Total annual emissions in tpy based on a 12-month rolling total for each month in the reporting period recorded in compliance with subsection (n)(1).

(C) Data relied upon, including the quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

(D) A list of the emissions units modified or added to the major facility during the preceding 6-month period.

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

(F) A notification of a shutdown of a monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by the method included in the permit under subsection (m)(10).

(G) A compliance certification signed by a responsible official of the company that owns or operates the facility. In addition to the certification requirements of this section, the certification must state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

(3) The reports of deviations and exceedances of the PAL requirements, including periods in which no monitoring is available, must:

(i) Be submitted to the Department promptly. A report submitted under Subchapter G (relating to Title V operation permits) satisfies this reporting requirement.

(ii) Contain the following information:

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

(B) The PAL requirement that experienced the deviation or that was exceeded.

(C) Emissions resulting from the deviation or the exceedance.

(D) A compliance certification signed by a responsible official of the company that owns or operates the facility. In addition to the certification requirements of this section, the certification must state that, based on information and belief formed

after reasonable inquiry, the statements and information in the document are true, accurate and complete.

(4) The owner or operator of a major facility shall submit to the Department the results of any revalidation test or method within 3 months after completion of the test or method.

(p) The Department may modify or supersede any PAL which was established prior to the date of approval of the PAL provisions by the EPA as a revision to the SIP.

[Pa.B. Doc. No. 06-701. Filed for public inspection April 28, 2006, 9:00 a.m.]

[25 PA. CODE CH. 245]

[Correction]

Administration of the Storage Tank and Spill Prevention Act

An error occurred in the preamble to the proposed rulemaking which appeared at 36 Pa.B. 1851, 1862 (April 22, 2006). A date was inadvertently omitted from the paragraph regarding the submission of electronic comments.

The correct version of the paragraph is as follows:

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by June 29, 2006. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission. If an acknowledgment of electronic com-

ments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

[Pa.B. Doc. No. 06-06-656. Filed for public inspection April 21, 2006, 9:00 a.m.]

MILK MARKETING BOARD

[7 PA. CODE CH. 145]

Transactions Between Dealers and Customers

The Milk Marketing Board (Board) will conduct a public hearing on May 16, 2006, at 10 a.m. in Room 202 of the Agriculture Building, 2301 North Cameron Street, Harrisburg, PA.

The purpose of the hearing is to receive testimony and comments regarding proposed amendments to 7 Pa. Code Chapter 145 (relating to transactions between dealers and customers). See 35 Pa.B. 1772 (March 19, 2005). The proposed amendments deal with the sale and leasing of refrigeration equipment, milk dispensers and cream dispensers.

There is no requirement for prior notification or entry of appearance to be able to provide testimony or comments at the hearing. A draft of the proposed amendments may be obtained at the Board's website or by contacting the Board office.

KEITH BIERLY,
Secretary

[Pa.B. Doc. No. 06-702. Filed for public inspection April 28, 2006, 9:00 a.m.]