**DISTRICT DEPARTMENT OF THE ENVIRONMENT**

**NOTICE OF FINAL RULEMAKING**

**New Source Review Program**

The Director of the District Department of the Environment, pursuant to the authority set forth in sections 5 and 6(b) of the District of Columbia Air Pollution Control Act of 1984, as amended, effective March 15, 1985 (D.C. Law 5-165; D.C. Official Code §§ 8-101.05 and 8-101.06(b)(2008 Repl.)); section 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07(4)(2008 Repl.)); Mayor's Order 98-44, dated April 10, 1998, and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of adoption of the following amendments to Chapters 1 and 2 of title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR). As required by section 6(b) of the District of Columbia Air Pollution Control Act, prior to the issuance of a Notice of Final Rulemaking, this rulemaking was submitted to the Council of the District of Columbia (Council) for a review period of up to forty-five (45) days. The Notice of Final Rulemaking was deemed approved by the Council on November 1, 2012.

The New Source Review (NSR) program is a permit program created to help achieve and maintain compliance with the National Ambient Air Quality Standards (NAAQS) set by the United States Environmental Protection Agency (EPA). The EPA has set NAAQS for six (6) "criteria" pollutants: ozone ($O_3$), particulate matter (PM), carbon monoxide (CO), nitrogen oxides ($NO_x$), sulfur dioxide ($SO_2$), and lead (Pb). NSR applies to new and modified major emission sources that have the ability to significantly impact air quality or interfere with other programs created to achieve and maintain NAAQS levels. The District is currently designated by EPA as being in "nonattainment" of the NAAQS for ozone and particulate matter. Nonattainment NSR requires more stringent emission standards for certain pollutants that exceed the NAAQS. Therefore, the District must have increased control measures for particulate matter and the precursor pollutants (mainly $NO_x$ and volatile organic compounds) that create ozone.

Proposed regulations were published in the *D.C. Register* on February 17, 2012, at 59 DCR 001217. The comment period officially closed on March 19, 2012, with the Department having received comments from four (4) members of the regulated community, JBG Companies (JBG), the U.S. Department of Defense (DOD), the U.S. General Services Administration (GSA), and the D.C. Water and Sewer Authority (DC Water). The Department considered these comments and posted responses on its website on November 16, 2012; however the Department has elected not to incorporate the commenters' suggested changes and is therefore proceeding with this final rulemaking. The Department has made five (5) clarification amendments, which the Office of the Attorney General determined are non-substantive in nature and therefore do not necessitate reproposal. Section 200.3 is amended to replace the word "forms" with "for" and the phrase "of this chapter" is added after "in accordance with the requirements". These changes reflect the previous wording of § 200.3, which the Department did not intend to change through the proposed rulemaking but was altered due to a drafting error. Section 200.5 is amended to add the language "construction or" after "including applications for renewal of any" and to add the language "construction activities or" before "operations are to continue beyond the expiration date". These

amendments are made in response to comments requesting clarification whether the permit renewal requirements apply to construction permits. Section 209.1(b) is amended to add the language "from an individual unit" after "[r]esults in an increase of the potential to emit rate equal to or greater than five tons per year (5 Tpy)". This amendment is intended to clarify that the Department determines minor NSR applicability on a unit-by-unit basis, not through project aggregation. Two (2) commenters requested clarification on this issue.

The Department received several significant comments regarding the proposed rules' departure from the federal nonattainment NSR rule, specifically with respect to the calculation of actual emissions and PAL baseline emissions, and the test for determining NSR applicability. All four commenters noted that the District proposed an "actual-to-potential" test for major NSR applicability, whereas the federal rule applies an "actual-to-projected-actual" test. The commenters noted that the actual-to-potential test would subject a large number of projects to NSR requirements even if they only resulted in a minor increase in actual emissions. The commenters suggested that the District follow the federal rule's actual-to-projected actual test. The Department is very familiar with the federal NSR rule and has submitted numerous drafts of its own proposed rule to EPA for comment, and determined that the actual-to-potential test is more protective of air quality in the District. The District's rule is intended to encourage industries to use state-of-art technologies to limit their potential to emit below the NSR threshold when undergoing modifications, and in the event that this is not possible, to use the opportunity when they are already making changes to install the most effective pollution control technology and reduce overall emissions in the District through offsets. Therefore, the District has retained the actual-to-potential test.

Two comments were received on the definition of "actual emissions" proposed in § 199. The federal nonattainment NSR rule permits sources to select any consecutive twenty-four (24) month period within the previous ten (10) years when calculating the source's actual emissions, and also to choose a different twenty-four (24) month period for each regulated pollutant. The District's rule requires sources to use the "the twenty-four (24) month period which precedes the particular date" when calculating the actual emissions, unless it makes a determination that a different time period within the last five (5) is more representative of operations. Two commenters requested that DDOE follow the federal NSR rule by allowing sources to use the ten (10) year "look back" period and also to choose different periods for each regulated pollutant. The Department has considered these comments and decided to retain the method for calculating actual emissions as proposed because it is more stringent than the federal rule and therefore more protective of air quality in the District. The look back period proposed by the District is intended to capture the emissions levels that are representative of current operations at the source, rather than permitting the source to just pick the twenty-four (24) months when emissions where highest in the last ten (10) years. In addition, the requirement that sources use the same "twenty-four" month period for each pollutant is intended to prevent sources from choosing the highest baseline for each pollutant, and therefore will result in a more stringent limit on overall emissions.

Three commenters had similar concerns about the method for calculating Plantwide Applicability Limit (PAL) baseline emissions. These commenters requested clarification on why the District proposed a more stringent method for determining the PAL baseline period than the

federal nonattainment NSR requirements, and suggested that it follow the federal rule. The proposed rule uses the immediately preceding two (2) calendar years for the PAL baseline period, unless the Department determines that a different twenty-four (24) month period within the previous five (5) years is more representative of normal source operations. The federal rule permits a source to use any consecutive twenty-four (24) month period within the previous ten (10) years. The District proposed a five (5) year look back period instead of a ten (10) year look back to limit a source's potential to find a higher baseline. The Department has determined that this method is more protective of air quality in the District, because a lower baseline will also result in a lower PAL for the source and therefore likely lower actual emissions. Therefore, the District retained the definition of "PAL baseline period" as proposed. The federal rule also permits sources to select a different PAL baseline period for each PAL pollutant, whereas the District's rule provides less flexibility. One commenter requested that the District allow the selection of different baseline periods for different pollutants, as in the federal rule. Because the PAL baseline period is generally going to be the immediately preceding two (2) calendar years, if a source applies for different PALs at different times, the baseline period will likely be different for each pollutant. (An exception would be if the Department determines that a different twenty-four (24) month period is more representative of normal source operations.) If a source applies for multiple PALs at the same time, then the baseline period for each PAL would be the same. Restricting sources to one baseline is intended to prevent a source from selecting the highest baseline for each regulated pollutant, and therefore will also result in a lower PAL and be more protective of air quality in the District. Therefore, the District has retained the proposed method for determined the PAL baseline period.

Three commenters sought clarification on whether the public notice and comment procedures proposed in § 210 would allow the Department to issue synthetic minor permits, and if so, would the Department confirm whether it intends to issue such permits. The Department recognizes the need for a synthetic minor program and agrees that the public notice and comment provisions in § 210 will be sufficient to support such a program when it does create one in the future. However, the District will not have the resources to implement a synthetic program until it creates a fee schedule for 20 DCMR chapter 2 permits and amends the fees for 20 DCMR chapter 3 permits. The synthetic minor program will be created at the same time as these fee amendments through a separate rulemaking action.

Three commenters requested that the Department clarify whether a deviation report required under § 208.35(b) is considered prompt if it complies with the overarching semi-annual reporting requirement of the proposed section. Deviation reports must be submitted in accordance with the requirements specified in the source's permit and 20 DCMR § 302.1(c)(3). While this will mean that many deviation reports are considered prompt if they are submitted with the source's semi-annual reports, some deviations may be required to be reported sooner, such as deviations resulting from an emergency or that pose an imminent and substantial danger to public health.

Two commenters requested that the District expand the list of exempted sources under § 200.12. One commenter requested that the District create an exemption for temporary, portable sources, such as portable generators. Another commenter requested that the District add general language that it will develop a list of exempted sources and physical changes, and publish this list for thirty (30) days of public comment in the *D.C. Register*. The Department recognizes that there

may be a need to exempt additional sources from the 20 DCMR chapter 2 permitting requirements; however it does not intend to address additional exemptions through the current rulemaking. However, it is the Department's policy that it does not consider portable generators to be a "stationary source" subject to the requirements of § 200 provided they do not remain in one location for more than twelve (12) consecutive months. This is consistent with the definition of "stationary source" in the federal Clean Air Act, which does not include emissions from a nonroad engine. 42 U.S.C. § 7603(z). The term "nonroad engine" is defined by the U.S. Environmental Protection Agency ("EPA") as including "any internal combustion engine … [t]hat, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another," but not including an engine that "remains or will remain at a location for more than 12 consecutive months." 40 C.F.R. § 89.2.

The Department also received comments on the proposed Minor New Source Review program proposed in § 209. One commenter asked the District to consider a higher applicability threshold. One commenter suggested that the District consider dropping the minor NSR program altogether. The commenter argued that the program effectively lowered the major source and major modification threshold to five (5) tons per year (tpy). The Department disagrees with this characterization of the minor NSR program. Minor NSR provides more flexibility with respect to the required control technologies than major NSR and does not require that emissions increases be offset. Also, minor NSR applicability is determined through a potential-to-potential test rather than an actual-to-potential test and therefore is less stringent. The intent of the minor NSR program is to discourage sources from installing used emissions units with outdated pollution control technologies, and instead require them to install new state-of-the-art equipment. The same commenter also requested that the Department publish a manual detailing the state-of-the-art (SOTA) technology requirements for compliance with minor NSR. The Department does not have the resources at this time to publish such a manual, therefore compliance with the requirements of § 209 will be determined on a case-by-case basis for the time being. The Department may consider publishing a document that provides guidance on SOTA at a future date.

Two commenters sought clarification on whether minor NSR applicability was determined on a unit-by-unit basis or whether the use of the word "project" and the reference to "collateral emissions increases" imply that the Department will aggregate emissions units. The Department clarifies that minor NSR applicability is determined on a unit-by-unit basis. The term "project" as defined in § 199 is only applicable to major sources and the language "that results in collateral emissions increases" is intended to clarify when installation or modification of a pollution control device would trigger minor NSR applicability. For new sources or modifications to existing sources, collateral emissions increases will not be considered.

**SECTION 199 (DEFINITIONS AND ABBREVIATIONS), subsection 199.1, of CHAPTER 1 (GENERAL RULES), of TITLE 20 (ENVIRONMENT) of the DCMR is amended as follows:**

**By amending the definition of "Actual emissions" to read as follows:**

**Actual emissions** – the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (a) through (g):

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the twenty-four (24) month period which precedes the particular date and which is representative of normal source operation;

(b) 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;

(c) When a project involves multiple emissions units or multiple regulated NSR pollutants, or both, only one (1) consecutive twenty-four (24) month period within the last five (5) years must be used to determine the actual emissions for all pollutants and for all the emissions units affected by the project;

(d) The average rate shall not be based on any consecutive twenty-four (24) period for which there is inadequate information for determining annual emissions;

(e) The Department may allow the use of a different time period within the last five (5) years upon determining that it is more representative of operations; and

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

**By adding a definition for "Administrator" to read as follows:**

**Administrator** – Administrator of the United States Environmental Protection Agency or an authorized representative.

**By amending the definition of "Allowable emissions" to read as follows:**

**Allowable emissions** – the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in 40 C.F.R. parts 60, 61, and 63;

(b) Any applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified under any requirement or permit condition that is enforceable as a practical matter, including those with a future compliance date.

**By adding a definition for "Best available control technology" to read as follows:**

**Best available control technology (BACT)** – an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 C.F.R. parts 60, 61, or 63. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means that achieve equivalent results.

**By amending the definition for "Building, structure, facility, or installation" to read as follows:**

**Building, structure, facility, or installation** – all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (for example, which have the same first two (2) digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

**By adding a definition for "Clean Air Act" to read as follows:**

**Clean Air Act –** federal Clean Air Act, enacted August 7, 1977 (Public Law 95-95; 42 U.S.C. 7401 *et seq.*).

**By adding a definition for "Construction" to read as follows:**

**Construction** – any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of an emissions unit that would result in a change in emissions.

**By adding a definition for "Continuous emissions monitoring system" to read as follows:**

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

**By adding a definition for "Continuous emissions rate monitoring system" to read as follows:**

**Continuous emissions rate monitoring system (CERMS)** – the total equipment required for the determination and recording of the pollutant mass emissions rate of mass per unit of time.

**By adding a definition for "Continuous parameter monitoring system" to read as follows:**

**Continuous parameter monitoring system (CPMS)** – all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, $O_2$ or $CO_2$ concentrations), and to record average operational parameter value(s) on a continuous basis.

**By adding a definition for "Department" to read as follows:**

**Department** – The District Department of the Environment (DDOE).

**By deleting the definition of "Federal Clean Air Act."**

**By amending the definition of "Federally enforceable" to read as follows:**

**Federally enforceable** – all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60, 61, and 63 requirements within any applicable state implementation plan, any permit requirements established pursuant to 40 C.F.R. § 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under such program, or any permit requirements not designated as "state only" in a federal operating permit, a permit issued pursuant to chapter 3 of this title, or a permit issued pursuant to 40 C.F.R. parts 70 and 71.

**By adding a definition for "Lowest achievable emission rate" to read as follows:**

**Lowest achievable emission rate (LAER)** – for any source, the more stringent rate of emissions based on the following:

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

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

**By deleting the definition of "Major Modification."**

**By amending the definition of "Major stationary source" to read as follows:**

**Major stationary source** – any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year (100 Tpy) or more of any pollutant regulated under the Clean Air Act, except that lower emissions thresholds shall apply as follows:

(a) Seventy (70) Tpy or more of $PM_{10}$ or, where applicable, seventy (70) Tpy of a specific $PM_{10}$ precursor, in any nonattainment area for $PM_{10}$;

(b) Fifty (50) Tpy or more of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the EPA Administrator);

(c) Twenty-five (25) Tpy or more of nitrogen oxides or volatile organic compounds in any nonattainment area for ozone, except where paragraph (d) below is applicable;

(d) Ten (10) Tpy or more of nitrogen oxides or volatile organic compounds in any extreme nonattainment area for ozone;

(e) Any physical change that would occur at a stationary source not qualifying under paragraphs (a) - (d) above, is a major stationary source if the change would constitute a major stationary source by itself;

(f) A major stationary source that is major for volatile organic compounds or oxides of nitrogen shall be considered major for ozone; and

(h) The fugitive emissions of a stationary source shall not be included in determining major stationary source status, unless the source belongs to one (1) of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers);

(2) Kraft pulp mills;

(3) Portland cement plants;

(4) Primary zinc smelters;

(5) Iron and steel mills;

(6) Primary aluminum ore reduction plants;

(7) Primary copper smelters;

(8) Municipal incinerators capable of charging more than two hundred fifty tons (250 T) of refuse per day;

(9) Hydrofluoric, sulfuric, or nitric acid plants;

(10) Petroleum refineries;

(11) Lime plants;

(12) Phosphate rock processing plants;

(13) Coke oven batteries;

(14) Sulfur recovery plants;

(15) Carbon black plants (furnace process);

(16) Primary lead smelters;

(17) Fuel conversion plants;

(18) Sintering plants;

(19) Secondary metal production plants;

(20) Chemical process plants;

(21) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units (250,000,000 Btus) per hour heat input;

(22) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels;

(23) Taconite ore processing plants;

(24) Glass fiber processing plants;

(25) Charcoal production plants;

(26) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units (250,000,000 Btus) per hour heat input; and

(27) Any other stationary source category which, as of August 7, 1980, is being regulated under §§ 111 or 112 of the Clean Air Act.

**By amending the definition of "modification" to read as follows:**

**Modification** – other than as used in § 205 of this title, any physical change in, or change in the method of operation of, a stationary source which increases or decreases the amount of any air pollutant emitted by the source, or which results in the emission of any air pollutant not previously emitted, except that the term shall not include the following:

(a) Routine maintenance, repair, or replacement;

(b) An increase in the hours of operation or in the production rate, unless the change would be prohibited under any federally enforceable permit condition established pursuant to § 204;

(c) Use of an alternative fuel or raw material if, prior to March 15, 1985, the affected facility was designed to accommodate the alternative use; and

(d) Decommissioning or removal.

**By deleting the definition of "Net Emissions Increase."**

**By adding a definition for "Particulate Matter 2.5 ($PM_{2.5}$)" to read as follows:**

**Particulate Matter 2.5 ($PM_{2.5}$)** – finely divided solid or liquid material, including condensable particulate, other than uncombined water, with an aerodynamic diameter less than or equal to a nominal two and a half micrometers (2.5 µm), emitted to the ambient air. When used in the context of ambient concentration, means particles with an aerodynamic diameter less than or equal to a nominal two and a half micrometers (2.5 µm) as measured by a reference method based on 40 C.F.R. part 50, appendix L, or an equivalent method designated in accordance with 40 C.F.R. part 53.

**By adding a definition for "Particulate Matter 10 ($PM_{10}$)" to read as follows:**

**Particulate Matter 10 ($PM_{10}$)** – particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (10 µm).

**By amending the definition of "Potential to emit" to read as follows:**

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

as part of its design only if the limitation or the effect it would have on emissions is enforceable as a practical matter. Secondary emissions do not count in determining the potential to emit of a stationary source.

**By adding a definition for "Project" as follows:**

**Project** – a physical change in, or change in the method of operation of, an existing major stationary source.

**SECTION 199 (DEFINITIONS), subsection 199.2, of CHAPTER 1 (GENERAL RULES), of TITLE 20 (ENVIRONMENT) of the DCMR is amended to add the following acronyms:**

| | |
|---|---|
| Best Available Control Technology | BACT |
| Lowest Achievable Emissions Rate | LAER |
| New Source Review | NSR |
| Particulate Matter 2.5 | $PM_{2.5}$ |

**SECTION 199 (DEFINITIONS), subsection 199.2, of CHAPTER 1 (GENERAL RULES), of TITLE 20 (ENVIRONMENT) of the DCMR is amended as follows:**

**The second definition for the acronym, "PM," which is currently defined as:**

particulate matter with an aerodynamic diameter

**is amended to read "$PM_{10}$" as follows:**

Particulate Matter 10

**SECTION 200 (GENERAL PERMIT REQUIREMENTS), of CHAPTER 2 (GENERAL AND NON-ATTAINMENT AREA PERMITS), of TITLE 20 (ENVIRONMENT) of the DCMR is amended to read as follows:**

**200 GENERAL PERMIT REQUIREMENTS**

200.1 A permit from the Department shall be obtained before any person shall cause, suffer, or allow the construction of a new stationary source, or the modification of an existing stationary source, or the installation or modification of any air pollution control device on a stationary source.

200.2 An operating permit shall be obtained from the Department before any person shall cause, suffer, or allow the operation of the following:

(a) Any major stationary source, for which a construction or modification permit is required under § 200.1; or

(b) Any source for which a construction or modification permit is required under § 200.1, and which construction or modification permit was subject to conditions which affect, or would affect, the operation of the source.

200.3 The Department may allow the temporary operation of a source for a period no longer than one (1) month. This period may be extended month to month, to enable the initial evaluation of the operation of a source or device granted a permit under § 200.1, or to enable the continued operation of a source for which an application for an operating permit under § 200.2 has been filed, but due to delays attributable to the Department the permit has not been issued. Any temporary operation of a source shall be in accordance with the requirements of this chapter.

200.4 Construction and operating permits, shall be valid for the period specified in the permit, but not to exceed five (5) years.

200.5 Each owner or operator of a stationary source or device for which a permit is required shall timely file with the Department the appropriate application, including applications for renewal of any construction or operating permit, if construction activities or operations are to continue beyond the expiration date of an existing permit.

200.6 The Department may, after its review, review by EPA and affected states (as defined in 20 DCMR § 399), and after notice and opportunity for public comment and hearing as required by § 210, establish a source category permit covering a group of similar sources or emission units according to (a) through (h) of this subsection:

(a) Any source category permit shall comply with all requirements applicable to the source pursuant to the air quality regulations this title;

(b) During establishment of any source category permit, the Department shall establish criteria by which sources may qualify for the source category permit;

(c) The Department shall maintain records of the public comments and issues raised during the public participation process;

(d) A source category permit does not substitute for a permit required under chapter 3 of this title;

(e) A response to each source category permit application may not be provided, rather the source category permit may specify a reasonable period of time after which an application is deemed approved and the applicant may construct and operate under the source category permit;

(f) The applicant for a source category permit may be issued an individual permit or letter or other document indicating that the application has been approved or denied;

(g) If the Department provides an individual response, as provided in paragraph (f), the permittee shall retain the response and make it available on request to authorized officials of the Department; and

(h) Any established source category permit is subject to the expiration and renewal conditions found in § 200.4 and 200.5 and may be revised by following the same process as is used for original establishment of the permit.

200.7 Applications for permits shall be filed with the Department on the form or forms that the Department shall prescribe and shall be accompanied by the data, information, and analyses necessary or desirable to enable the Department to determine whether the requested permit should be issued or denied.

200.8 The Department may require, at any time, the submission of the data, information, and analyses that the Department may deem necessary or desirable, to allow the Department to determine whether a requested permit should be issued or denied, or an outstanding permit should be modified or revoked.

200.9 Applications for construction and operating permits may incorporate by reference data, information, and analyses otherwise available or provided to the Department, provided that the reference is clear and specific.

200.10 Each permit application shall be accompanied by a fee to be determined by the Department.

200.11 An application for a permit shall be signed in the following manner:

(a) If the applicant is a partnership, a general partner shall sign the application;

(b) If the applicant is a corporation, association, or cooperative, an officer shall sign the application;

(c) If the applicant is a sole proprietorship, the proprietor shall sign the application; and

(d) If the applicant is a government or governmental agency, department, or board, a senior executive of that government, agency, department, or board who has authority to sign shall sign the application.

200.12 No permit shall be required for any fuel burning equipment which has a capacity of five million British thermal units (5,000,000 Btus) or less per hour of heat input and which uses for fuel only gaseous fuels or distillate oils. This section shall not apply to sources subject to § 204.

200.13 The Department shall establish a schedule of fees for construction and operating permits. These fees shall be sufficient to cover the reasonable costs of reviewing and acting upon the application and the reasonable costs of implementing and enforcing the terms and conditions of the permit.

**SECTION 204 (PERMIT REQUIREMENTS FOR SOURCES AFFECTING NON-ATTAINMENT AREAS) of CHAPTER 2 (GENERAL AND NON-ATTAINMENT AREA PERMITS) of the DCMR is repealed and replaced with:**

**204 PERMIT REQUIREMENTS FOR MAJOR SOURCES LOCATED IN NON-ATTAINMENT AREAS (NEW SOURCE REVIEW)**

204.1 This section shall apply to the construction of any new major stationary source or any major modification at an existing major stationary source in an area designated as nonattainment under § 107(d)(1)(A)(i) of the Clean Air Act.

204.2 Permit applications submitted pursuant to this section shall include a control technology evaluation to demonstrate that any new major stationary source or major modification will meet the lowest achievable emission rate (LAER) for all new or modified emissions units, unless otherwise provided in this section.

204.3 Any permit application submitted pursuant to this section shall provide for creditable emission reduction offsets pursuant to this section. The application shall provide documentation adequate for the Department to assess the validity of the proposed offsets.

204.4 Any new major stationary source or major modification to be constructed in an area designated as nonattainment shall comply with LAER as determined by the Department and set forth in a preconstruction permit issued pursuant to this section.

204.5 Any new major stationary source or major modification to be constructed in a nonattainment area shall not begin actual construction without a permit issued by the Department that incorporates the applicable control technology and offset requirements as specified in § 204.18 and 204.19.

204.6 Before applying for a permit to construct, the owner or operator shall determine applicability pursuant to the provisions below and submit this determination with the permit application:

(a) A project is a major modification for a regulated NSR pollutant as defined in § 299;

(b) Determine whether the emissions increases from the project are significant as defined in § 299 by summing the potential to emit from each new emissions unit and the difference between the potential to emit for each existing unit affected by the project after the change and the actual emissions prior to the change;

(c) Determine whether the project results in a significant net emissions increase as defined in § 299;

(d) An emissions unit is considered affected by the project if an emissions increase from the unit would occur as a result of the project, regardless of whether a physical change or change in the method of operation will occur at the particular emissions unit; and

(e) Subsection 204.17 pertains to projects that result in a significant increase in a regulated NSR pollutant, but do not result in a significant net emissions increase.

204.7 Any major stationary source subject to a Plantwide Applicability Limit (PAL) for a regulated NSR pollutant shall comply with the requirements set forth in § 208.

204.8 For sources and modifications subject to any preconstruction review program, the baseline for determining credit for emissions reductions is the emissions limit under the State Implementation Plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(a) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within the designated nonattainment area; or

(b) The State Implementation Plan does not contain an emissions limitation for that source or source category.

204.9 In determining offset credits, the following provisions shall also apply:

(a) Where the emissions limit under the State Implementation Plan provides for greater emissions than the potential to emit of the source, offset credits will be granted only for control below the potential to emit;

(b) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable State Implementation Plan for

the type of fuel being burned at the time the application to construct is filed:

(1) If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date; and

(2) The Department should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches; and

(c) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are surplus, permanent, quantifiable, and federally enforceable:

(1) The shutdown or curtailment is creditable only if it occurred on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment, unless an earlier cutoff date has been specified in the plan;

(2) In no event may credit be given for shutdowns that occurred prior to August 7, 1977; and

(3) For purposes of this subsection, the Department may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current existing emissions the emissions from such previously shutdown or curtailed sources.

204.10 No emissions credit may be allowed for replacing one (1) hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds," 42 *Fed. Reg.* 35314 (July 8, 1977).

204.11 All emission reductions claimed for offset credit shall be federally enforceable.

204.12 Procedures relating to the permissible location of offsetting emissions shall be followed which are at least as stringent as those set out in 40 C.F.R. part 51, appendix S, § IV.D.

204.13 Credit for an emissions reduction can be claimed to the extent that the Department has not relied on it in issuing any permit under regulations approved pursuant to 40 C.F.R. part 51, subpart I, or the District has not relied on it in demonstrating attainment or reasonable further progress.

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

204.15 The provisions of § 204 do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions to the extent quantifiable are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the categories listed under the definition of major stationary source in § 199.1.

204.16 The following provisions apply to any owner or operator subject to the air quality regulations of this title:

(a) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, state or federal law; and

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

204.17 For any project that would result in a significant emissions increase, but is not considered a major modification:

(a) Before submitting a permit application for such a project, the owner or operator shall document and maintain a record of the following information:

(1) A description of the project;

(2) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(3) The applicability analysis used to determine the project is not a major modification for any regulated NSR pollutant, including the actual emissions, the potential to emit after the project, and the netting analysis;

(b) The owner or operator shall provide a copy of the information set out in paragraph (a) to the Department with a permit application submitted pursuant to § 200.1; and

(c) The owner or operator of the source shall make the information required in paragraph (a) available for review upon the Department's request.

204.18 The permit shall require that in meeting the emissions offset requirements for ozone nonattainment areas, the ratio of total actual emission reductions of VOC or $NO_X$ to the emissions increase of VOC or $NO_X$ shall be at least one and three tenths to one (1.3:1).

204.19 The permit shall require that in meeting the emissions offset requirements for all other nonattainment areas, the ratio of total actual emission reductions of any pollutant to the emissions increase of that pollutant shall be at least one to one (1:1).

204.20 Requirements of this chapter applicable to major stationary sources and major modifications of $PM_{10}$ shall also apply to major stationary sources and major modifications of $PM_{10}$ precursors, except where the Administrator determines that such sources do not contribute significantly to $PM_{10}$ levels that exceed the $PM_{10}$ ambient standards in the area.

204.21 In meeting the emissions offset requirements of § 204.8 through 204.14, the emissions offsets obtained shall be for the same regulated NSR pollutant, except as provided in § 204.22.

204.22 The Department may allow the offset requirements in § 204.8 through 204.14 for direct $PM_{2.5}$ emissions or precursors of $PM_{2.5}$ to be satisfied by offsetting reductions in direct $PM_{2.5}$ emissions or emissions of any $PM_{2.5}$ precursor, using a ratio approved by the Department following public notice and comment and approval by EPA.

**SECTION 206 (NOTICE AND COMMENT PRIOR TO PERMIT ISSUANCE) of CHAPTER 2 (GENERAL AND NON-ATTAINMENT AREA PERMITS) of TITLE 20 (ENVIRONMENT) of the DCMR is repealed and replaced with:**

**206 [RESERVED]**

**CHAPTER 2 (GENERAL AND NON-ATTAINMENT AREA PERMITS) of TITLE 20 (ENVIRONMENT) of the DCMR is amended by adding a new section 208 to read as follows:**

## 208 PLANTWIDE APPLICABILITY LIMIT (PAL) PERMITS FOR MAJOR SOURCES

208.1 The Department may approve the use of a Plantwide Applicability Limit (PAL) for any existing major stationary source if the PAL meets the requirements in this section.

208.2 The Department shall not approve the use of a PAL for VOC or $NO_x$ for any major stationary source in an extreme ozone nonattainment area.

208.3 Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit is not a major modification for the PAL pollutant and does not have to be approved through the nonattainment New Source Review program in § 204.

208.4 Any major stationary source operating under a PAL permit shall continue to comply with all applicable federal, state or local requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL permit, excluding any enforceable emissions limitations that the source used to avoid applicability with the requirements of the District's NSR program under § 204 and 206, except as modified through normal permit modification processes under chapter 2 or chapter 3 of this title.

208.5 As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Department for approval:

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

(b) Calculations of the PAL baseline emissions, with supporting documentation, for all emissions units at the source;

(c) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by § 208.33; and

(d) Any other information requested by the Department.

208.6 The Department may establish a PAL at a major stationary source, provided that at a minimum, the following requirements are met:

(a) The PAL shall impose an emission limitation that is federally enforceable and enforceable as a practical matter, for the entire major stationary source, with compliance to be determined as follows:

(1) For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL (a twelve (12) month average, rolled monthly); and

(2) For each month during the first eleven (11) months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL;

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in § 208.8;

(c) The PAL shall be set in accordance with the requirements of § 208.9;

(d) The PAL permit shall contain all the requirements in § 208.10;

(e) Each PAL shall regulate emissions of only one (1) pollutant;

(f) Each PAL shall have a term of no more than five (5) years; and

(g) The PAL permit shall contain monitoring, recordkeeping, and reporting conditions consistent with § 208.24 through 208.35.

208.7 At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 C.F.R. § 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

208.8 PALs for existing major stationary sources shall be established, renewed, or increased through a public participation procedure that is consistent with 40 C.F.R. §§ 51.160 and 51.161 and § 210, including the following:

(a) The Department shall provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30) day period for submittal of public comment; and

(b) The Department shall address all material comments before taking final action on the permit.

208.9 The initial PAL level for a major stationary source shall be established as follows:

(a) The initial PAL shall be the sum of:

(1) The significant level for the PAL pollutant as defined in § 299.1 or under the Clean Air Act, whichever is lower; and

(2) The PAL baseline emissions of the PAL pollutant for each emissions unit at the source at the time the application is submitted, except that PAL baseline emissions from any emissions unit that has been permanently shut down shall not be included in establishing the PAL;

(b) The Department shall establish a future effective PAL adjustment in the PAL permit to reflect a reduction (in tons per year) for any applicable federal or state regulatory requirement with a future compliance date; and

(c) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the twenty-four (24) month period, in lieu of adding the baseline actual emissions as specified in paragraph (a), the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

208.10 The PAL must contain, at a minimum, the following information:

(a) The PAL pollutant and the applicable source-wide emission limitations in tons per year and their effective dates;

(b) The PAL permit effective date and the expiration date of the PAL;

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with § 208.16 through 208.18 before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period but it shall remain in effect until final action is taken by the Department on the application for renewal;

(d) A requirement that emission calculations for compliance purposes must include any noncompliant emissions in excess of any emissions

limitations, emissions associated with startup and shutdown, fugitive emissions, to the extent quantifiable, and emissions associated with upsets or malfunctions;

(e) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of § 208.15;

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total as required by § 208.33;

(g) A requirement that the major source owner or operator monitor all emissions units in accordance with the provisions under § 208.24 through 208.32;

(h) A requirement to retain the records required under § 208.33 and 208.34 on site (such records may be retained in an electronic format);

(i) A requirement to submit the reports required under § 208.35 by the required deadlines; and

(k) Any other requirements that the Department deems necessary to implement and enforce the PAL.

208.11 The Department shall specify a PAL effective period of no more than five (5) years.

208.12 During the PAL effective period, the Department must reopen the PAL permit to:

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

(b) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets;

(c) Revise the PAL to reflect an increase in the PAL as provided under § 208.23;

(d) Reduce the PAL if the Department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public; and

(e) Reduce the PAL to reflect newly applicable requirements (for example, NSPS) with compliance dates after the PAL effective date.

208.13 The Department shall reopen a chapter 3 operating permit with a PAL for cause consistent with § 303.6 and 303.7 of this title.

208.14 Except for the permit reopening for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements in § 208.8.

208.15 Any PAL that is not renewed in accordance with the procedures in § 208.16 shall expire at the end of the PAL effective period, and the following requirements shall apply:

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

(1) Within the time frame specified for PAL renewals in § 208.16, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL;

(2) If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under § 208.16, such distribution shall be made as if the PAL had been adjusted; and

(3) The Department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emission units, as the Department determines is appropriate;

(b) Each emissions unit(s) shall comply with the allowable emission limitation on a twelve (12) month rolling basis;

(c) The Department may approve the use of monitoring systems (source testing, and emission factors) other than continuous emissions monitoring system (CEMS), continuous emissions rate monitoring system (CERMS), predictive emissions monitoring system (PEMS) or continuous parameter monitoring system (CPMS) to demonstrate compliance with the allowable emission limitation;

(d) Until the Department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subparagraph (a)(3) of this subsection, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation;

(e) Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in § 199.1 of this title; and

(f) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements (Lowest Achievable Emissions Rate (LAER), Best Achievable Control Technology (BACT), Reasonably Available Control Technology (RACT), and New Source Performance Standards (NSPS)) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that were established pursuant to § 208.4, but were eliminated by the PAL in accordance with the provisions in § 208.3.

208.16 The Department shall follow the procedures specified in § 208.8 in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Department.

208.17 A major stationary source owner or operator shall submit a timely application to the Department to request renewal of a PAL. A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the Department takes final action on the application for renewal.

208.18 The application to renew a PAL permit shall contain the following information:

(a) The information required in § 208.5;

(b) A proposed PAL level;

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

(d) Any other information the owner or operator wishes the Department to consider in determining the appropriate level for renewing the PAL; and

(e) Additional information as requested by the Department to make a determination on the renewal request.

208.19 If the emissions level calculated in accordance with § 208.9 is equal to or greater than eighty percent (80%) of the PAL level, the Department may renew the PAL at the same level without considering the factors set forth in § 208.20. However, in no case may any such adjustment fail to comply with § 208.21.

208.20 The Department may set the PAL at a level that it deems to be more representative of the source's PAL baseline emissions determined from the date of the renewal application, or that the Department determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Department's written rationale.

208.21 Notwithstanding § 208.19 and 208.20 above:

(a) If the potential to emit of the major stationary source is less than the PAL, the Department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(b) The Department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of § 208.23 (increasing a PAL).

208.22 If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or the source's Title V permit renewal, whichever occurs first.

208.23 The Department may increase a PAL emission limitation following the provisions below:

(a) The owner or operator of the major stationary source shall:

(1) Submit a complete application to request an increase in the PAL limit for a PAL major modification. The following requirements shall apply:

(A) Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the

major stationary source's emissions to equal or exceed its PAL;

(B) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the PAL baseline emissions of the small emissions units, plus the sum of the PAL baseline emissions of the significant and major emissions units assuming application of LAER, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL; and

(C) The level of control that would result from the application of LAER on each significant or major emissions unit shall be determined by conducting a new LAER analysis at the time the application is submitted, unless the emissions unit is currently obligated to comply with a LAER requirement that was established within the preceding five (5) years. In such a case, the assumed control level for that emissions unit shall be equal to level of LAER with which that emissions unit must currently comply;

(2) Obtain a major NSR permit for all emissions unit(s) identified in § 208.23(a)(1)(A) regardless of the magnitude of the emissions increase resulting from them (that is, no significance levels apply); and

(3) The emissions unit(s) in subparagraph (2) shall comply with any emissions requirements resulting from the major NSR process (for example, LAER or BACT), even though they have also become subject to the PAL or continue to be subject to the PAL;

(b) The PAL permit shall 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;

(c) The Department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the PAL baseline emissions of the significant and major emissions units, plus the sum of the PAL baseline emissions of the small emissions units; and

(d) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of § 208.8.

208.24 Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time;

(a) Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation;

(b) The information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit;

(c) The PAL monitoring system must employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in § 208.25 through 208.32 and must be approved by the Department;

(d) Notwithstanding the paragraph above, the owner or operator may employ an alternative monitoring approach that meets the requirements of this section if approved by the Department; and

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

208.25 The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in § 208.26 through 208.32:

(a) Mass balance calculations for activities using coatings or solvents and sulfur dioxide calculations for fuel burning sources;

(b) CEMS;

(c) CPMS or PEMS; or

(d) Emission factors.

208.26 An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(a) 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;

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

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

208.27 An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable Performance Specifications found in 40 C.F.R. part 60, appendix B; and

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

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

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

(b) Each CPMS or PEMS must sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval that the Department approves, while the emissions unit is operating.

208.29 An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

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

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

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

208.30 A source owner or operator must record and report maximum potential to emit without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data,

unless another method for determining emissions during such periods is specified in the PAL permit.

208.31 Notwithstanding the requirements in § 208.26 through 208.30, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Department shall, at the time of permit issuance:

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

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

208.32 All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the Department. Such testing must occur at least once every five (5) years after issuance of the PAL.

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

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

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

(b) Each annual certification of compliance pursuant to chapter 3 of this title and the data relied on in certifying the compliance.

208.35 The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Department in accordance with the applicable Title V operating permit program in chapter 3 of this title. The reports shall meet the following requirements:

(a) The semiannual report shall be submitted to the Department within thirty (30) days of the end of each reporting period. This report shall contain the following information:

(1) The identification of owner and operator and the permit number;

(2) Total annual emissions (tons per year) based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to § 208.33 and 208.34;

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

(4) A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period;

(5) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero (0) and span checks), and any corrective action taken;

(6) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by § 208.30; and

(7) A signed statement by the responsible official (as defined by the applicable Title V operating permit program in chapter 3 of this title) certifying the truth, accuracy, and completeness of the information provided in the report;

(b) The major stationary source owner or operator shall promptly submit reports of any deviations or exceedances of the PAL requirements, including periods where no monitoring is available;

(c) The deviation reports required under paragraph (b) shall be submitted in accordance with § 302.1(c)(3)(C) of this title and shall contain the following information:

(1) The identification of owner and operator and the permit number;

(2) The PAL requirement that experienced the deviation or that was exceeded;

(3) Emissions resulting from the deviation or the exceedance; and

(4) A signed statement by the responsible official (as defined by the applicable Title V operating permit program in chapter 3 of this

title) certifying the truth, accuracy, and completeness of the information provided in the report; and

(d) The owner or operator shall submit to the Department the results of any revalidation test or method within three (3) months after completion of such test or method.

208.36 If any provision of this section, or the application of such provision to any person of circumstance, is held invalid, the remainder of this section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**CHAPTER 2 (GENERAL AND NON-ATTAINMENT AREA PERMITS) of TITLE 20 (ENVIRONMENT) of the DCMR is amended by adding a new section 209 to read as follows:**

**209 PERMIT REQUIREMENTS FOR NON-MAJOR STATIONARY SOURCES (MINOR NEW SOURCE REVIEW)**

209.1 Effective January 1, 2014, except as specified in § 209.2, the requirements of this section are applicable to any source required to obtain a permit under § 200 to construct a new stationary source, modify an existing stationary source, or install or modify an air pollution control device on a stationary source that results in collateral emission increases, for a project that:

(a) Is not required to comply with the requirements of either § 204 or § 208; and

(b) Results in an increase of the potential to emit rate equal to or greater than five tons per year (5 Tpy) from an individual unit of any of the following:

(1) Total volatile organic compounds (VOCs);

(2) Nitrogen oxides (NOx);

(3) Sulfur dioxide ($SO_2$);

(4) Particulate matter less than ten (10) microns in aerodynamic diameter ($PM_{10}$);

(5) Fine particulate matter less than two and a half (2.5) microns in aerodynamic diameter ($PM_{2.5}$); and

(6) An aggregate of any of the hazardous air pollutants (HAPs) listed in §112(b) of the Clean Air Act.

209.2 Any source applying for a permit under § 200 not meeting the applicability requirements specified in § 209.1 shall submit, with their application, sufficient documentation to show that the proposed source does not meet those applicability requirements.

209.3 Any source meeting the applicability requirements specified in § 209.1 shall, relative to each pollutant for which it meets the applicability requirement, be controlled by operating emission control technologies or pollution prevention methodologies that limit emissions to the atmosphere meeting one (1) or more of the following requirements:

(a) The lowest achievable emission rate (LAER);

(b) The best available control technology (BACT);

(c) For an air contaminant that is a HAP, the requirements of a maximum achievable control technology (MACT) or other standard resulting from a residual risk determination promulgated under 40 C.F.R. part 63 or, where applicable, a more stringent standard adopted under this title;

(d) An emission control technology or pollution prevention methodology approved in advance by the Department for a similar source pursuant to this section; or

(e) An emission control technology or pollution prevention methodology approved by the Department, on a case-by-case basis, pursuant to § 209.4.

209.4 A case-by-case determination pursuant to § 209.3(e) shall be performed by completing the following steps:

(a) Identify and evaluate a list of air pollution technologies and pollution prevention methodologies that may be applied to the source including, but not limited to, technologies and methodologies used for similar sources, innovative control technologies, modification of the process or process equipment, other pollution prevention measures, and combinations of the above measures;

(b) Arrange the measures on the list in descending order of air pollution control effectiveness; and

(c) Chose and propose the top-rated measure on the list not eliminated from consideration as a result of one (1) of the following demonstrations:

(1) Where a demonstration can be and is made that this measure is technically infeasible, based on physical, chemical, or engineering

principles, and/or technical difficulties that would prevent the successful application of the measure;

(2) Where a demonstration can be and is made that this measure has adverse environmental effects (for example effects on water or land, HAP emissions, or increased environmental hazards) when compared with its air contaminant emission reduction benefits, which would make use of this measure unreasonable;

(3) Where a demonstration can be and is made that this measure should be eliminated from consideration based on its calculated economic impacts using the techniques in the latest edition of EPA's Control Cost Manual, where the total and incremental costs of the top measure are greater than the total and incremental costs of the proposed measure(s) and that the extra costs, when compared with the air contaminant emission reduction benefits resulting from the top measure would make use of the top measure unreasonable; or

(4) Where a demonstration can be and is made that this measure should be eliminated from consideration based on its energy impacts such as establishment that it relies on fuels that are not reliably available; or that the energy consumed by the top measure is greater than that consumed by the proposed measure(s), and that the extra energy used, when compared with the air contaminant emission reduction benefits resulting from the top measure would make use of that measure unreasonable.

209.5 Any application submitted pursuant to the requirements of this section shall contain the following:

(a) The control technology or pollution prevention methodology proposed to be installed and operated to meet the requirements of § 209.3;

(b) The list, if this method was chosen, generated pursuant to § 209.4;

(c) Any demonstration(s) performed pursuant to § 209.4(c); and

(d) Any additional information that the Department requests in order to complete an evaluation of the proposal.

**CHAPTER 2 (GENERAL AND NON-ATTAINMENT AIR PERMITS) of TITLE 20 (ENVIRONMENT) of the DCMR is amended by adding a new section 210 to read as follows:**

## 210 NOTICE AND COMMENT PRIOR TO PERMIT ISSUANCE

210.1 Before issuing a permit under this chapter, the Department shall prepare a draft permit and provide adequate notice to ensure that the affected community and the general public have reasonable access to the application and draft permit information.

210.2 With the exception of any information that the Department deems is confidential, the Department shall make available for public inspection:

(a) The application for a permit and any additional information that the Department requests;

(b) The Department's analysis of the application, including, where required or deemed appropriate, an ambient air quality analysis, a regulatory review, and a control technology review; and

(c) The draft permit or justification for denial.

210.3 The Department shall publish a notice regarding the draft permit or denial in the *D.C. Register* and shall make the information in § 210.2 available for public inspection at the Department's office. In addition, the Department shall use at least one (1) of the following procedures to ensure appropriate means of notification:

(a) Mail or e-mail a copy of the notice to persons on a mailing list that the Department develops consisting of those persons who have requested to be placed on such a mailing list;

(b) Post the notice on the Department's website;

(c) Publish the notice in a newspaper of general circulation in the area affected by the source;

(d) Provide copies of the notice for posting at one (1) or more locations in the area affected by the source, such as post offices, libraries, community centers, or other gathering places in the community; or

(e) Employ other means of notification as appropriate.

210.4 The notice shall include the following information at a minimum:

(a) Identifying information of the source, including the name and address of the facility, and the name and telephone number of the facility manager or other contact person;

(b) For preconstruction permits (including source category permits), the regulated NSR pollutants to be emitted, the affected emissions units, and the emission limitations for each affected emissions unit;

(c) For preconstruction permits, the emissions change involved in the permit action;

(d) The name, address, and telephone number of a contact person in the Department from whom additional information may be obtained;

(e) Locations and times of availability of the information in § 210.2; and

(f) A statement that any person may submit written comments, a written request for a public hearing, or both, on the draft permit action within thirty (30) days from the date of the public notice.

210.5 By mail or e-mail, a copy of the notice shall be sent to the applicant, the EPA, through Region III, and to all Affected States (as defined in 20 DCMR § 399) for the following permits:

(a) All NSR permits issued pursuant to § 204; and

(b) All source category permits, when initially issued.

**SECTION 299 (DEFINITIONS AND ABBREVIATIONS), SUBSECTION 299.1, of CHAPTER 2 (GENERAL AND NON-ATTAINMENT AREA PERMITS) of TITLE 20 (ENVIRONMENT) of the DCMR is amended as follows:**

**The lead-in language in § 299.1 is amended to read as follows:**

299.1 The meanings ascribed to the definitions and abbreviations appearing in § 199.1 and 199.2 of this title shall apply to any terms in this chapter not defined below. However, the following definitions shall apply to the terms as used in this chapter:

**By adding the definition for "Emissions unit" to read as follows:**

**Emissions unit** – means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant following paragraphs (a) and (b) below:

(a) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two (2) years from the date such emissions unit first operated. Any emissions unit that is constructed or installed for the purpose of replacing an existing unit, or any emissions unit that is relocated from another stationary source for the purpose of replacing an existing unit, shall be considered a new emissions unit at the time of replacement and until two (2) years from the date such new unit commenced operation; and

(b) An existing emissions unit is any emissions unit that is not a new emissions unit.

**By adding the definition for "Major emissions unit" to read as follows:**

**Major emissions unit** – any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined for a major stationary source in § 199.1 of this title.

**By amending the definition of "Major modification" to read as follows:**

**Major modification** – any physical change in or change in the method of operation of a major stationary source that would result in a significant emission increase and a significant net emissions increase of a regulated NSR pollutant from the major stationary source:

(a) Any emissions increase that is significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone;

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

(1) Routine maintenance, repair, and replacement. In determining whether an activity at a facility constitutes routine maintenance, repair, and replacement, the owner or operator shall consider the nature, extent, purpose, frequency, and cost of the work to be performed. Routine maintenance, repair, and replacement activities are narrow in scope, do not result in increased capacity, occur with regular frequency, and involve limited expense;

(2) Use of an alternative fuel raw material by reason of an order under §§ 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. §§ 791, *et seq*. (2006)) (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (16 U.S.C. §§ 791a, *et seq*. (2006));

(3) Use of an alternative fuel by reason of an order or rule under § 125 of the Clean Air Act;

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

(5) Use of an alternative fuel or raw material by a stationary source which;

(A) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976 pursuant to 40 C.F.R. § 52.21 or under regulations approved pursuant to 40 C.F.R. part 51, subpart I or 40 C.F.R. § 51.166; or

(B) The source is approved to use under any permit issued pursuant to §§ 204 or 208;

(6) A change that only consists of an increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 C.F.R. § 52.21 or regulations approved pursuant to 40 C.F.R. part 51, subpart I or 40 C.F.R.§ 51.166; or

(7) Any change in ownership at a stationary source; and

(c) This definition shall not apply with respect to a particular pollutant when the major stationary source is complying with the requirements under § 208 for a PAL for that pollutant. Instead, the definition for PAL major modification in § 299.1 shall apply.

**By adding the definition of "Net emissions increase" to read as follows:**

**Net emissions increase** – is as follows:

(a) With respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of subparagraphs (1) and (2) below exceeds zero (0):

(1) The emissions increase from the project, determined according to the following:

(A) The emissions increase from the project is determined by summing the potential to emit from each new emissions unit and the difference between the potential to emit for each existing unit affected by the project after the change and the actual emissions prior to the change; and

(B) An emissions unit is considered affected by the project if an emissions increase from the unit would occur as a result of the project, regardless of whether a physical change or change in the method of operation will occur at the particular emissions unit; and

(2) Any other increases and decreases in emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable;

(b) An increase or decrease in emissions is contemporaneous with the increase from the project only if it occurs during the period of five (5) consecutive calendar years before and including the date of submittal of the application and continuing until operation commences;

(c) An increase or decrease in emissions is creditable only if the Department or other reviewing authority has not relied on it in issuing a permit for the source under this

section, which permit is in effect when the increase in emissions from the particular change occurs;

(d) An increase in emissions is creditable to the extent that the new level of allowable emissions exceeds the old level of actual emissions for the contemporaneous change;

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

(f) A decrease in emissions is credible, to the extent that:

(1) The old level of actual emissions exceeds the new level of allowable emissions;

(2) The new level of allowable emissions is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(3) The Department has not relied on it in issuing any permit under regulations approved pursuant to 40 C.F.R. part 51, subpart I or the State has not relied on it in demonstrating attainment or reasonable further progress; and

(4) The decrease in emissions has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(g) Actual emissions for calculating increases and decreases under this paragraph shall be determined as defined in § 199.1 of this title.

**By adding the definition for "Plantwide applicability limit (PAL)" to read as follows:**

**Plantwide applicability limit (PAL)** – an emission limitation, expressed in tons per year, for a pollutant at a major stationary source that is federally enforceable and enforceable as a practical matter established source-wide in accordance with § 208.

**By adding the definition for "PAL baseline emissions" to read as follows:**

**PAL baseline emissions** – the rate of emissions, in tons per year, of a single regulated NSR pollutant:

(a) For any emissions unit that was an existing emissions unit during the PAL baseline period, PAL baseline emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during the PAL baseline period;

(1) The average rate shall include fugitive emissions to the extent quantifiable and any authorized emissions associated with startup and shutdown;

(2) The average rate shall not include excess emissions or emissions associated with upsets or malfunctions;

(3) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the PAL baseline period;

(4) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the PAL baseline period; and

(5) The average rate shall not be based in any period for which there is inadequate information either for determining emissions, in tons per year, or for adjustments required by subparagraphs (1) through (4) above; and

(b) For any existing emissions unit that was not an existing emissions unit during the PAL baseline period but commenced operation during or after the selected PAL baseline period, the PAL baseline emissions shall equal the allowable emissions or the potential to emit, whichever is lower;

(c) For a new emissions unit, PAL baseline emissions shall equal zero (0); and

(d) PAL baseline emissions shall be determined by measurement, calculations, estimations, or recordkeeping in the order of the following preferences:

(1) Continuous Emission Monitoring System (CEMS) data integrated to annual emissions using flow meters and conversion factors;

(2) Predictive Emissions Monitoring System (PEMS);

(3) Other Measurements and Calculations:

(A) Stack emissions:

(i) Determine hourly emissions by stack emission testing;

(ii) Determine annual operating hours using hour meter records; and

(iii) Calculate annual emissions using hourly emissions and annual operating hours; or

(iv) Determine emissions per heat input by stack emission testing;

(v) Determine amount of fuel combusted in a year using fuel flow meter record and calculate annual heat input; and

(vi) Calculate annual emissions using emissions per heat input and annual heat input;

(B) Mass balance:

(i) Determine the amount of materials used through measurements in the process;

(ii) Calculate emissions per mass of material used using mass balance techniques;

(iii) Determine amount of material used in a year; and

(iv) Calculate annual emissions using emissions per mass of material and amount of material used in a year;

(C) Emission Factors:

(i) Using generally recognized and accepted emission factors such as AP-42, determine hourly emissions;

(ii) Determine annual operating hours using hour meter records; and

(iii) Calculate annual emissions using hourly emissions and annual operating hours; or

(iv) Using generally recognized and accepted emission factors such as AP-42, determine emissions per heat input unit;

(v) Determine amount of fuel combusted in a year using fuel flow meter record and calculate annual heat input; and

(vi) Calculate annual emissions using emissions per heat input and annual heat input; or

(4) Instances where measurements of operating hours or fuel combusted (hour meter or fuel flow meter) are not available, annual emissions can be calculated using available records (such as production records, fuel consumption records, fuel purchase receipts, laboratory reports on fuel analysis, and third party records such as electric bills);

(A) Determine hourly emissions using stack emission tests, mass balance or emission factors;

(B) Determine annual hours of operation using production records; and

(C) Calculate annual emissions using hourly emissions and annual hours of operation; or

(D) Determine emissions per heat input unit using stack emission tests, mass balance or emission factors;

(E) Determine amount of fuel combusted in a year records and calculate annual heat input; and

(F) Calculate annual emissions using emissions per heat input and annual heat input.

**By adding the definition for "PAL baseline period" to read as follows:**

**PAL baseline period** – the two (2) consecutive calendar years immediately prior to the year the application for a PAL is submitted. The Department may allow the use of a different consecutive twenty-four (24) month period within the last five (5) years upon a determination that the operations during that period would be more representative of normal source operations.

**By adding the definition for "PAL effective date" to read as follows:**

**PAL effective date** – generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant. The PAL limit that was in effect prior to the change shall remain in effect until the new PAL is effective.

**By adding the definition for "PAL major modification" to read as follows:**

**PAL major modification** – notwithstanding the definitions for major modification and net emissions increase in § 199.1, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level greater than the PAL.

**By adding the definition for "PAL pollutant" to read as follows:**

**PAL pollutant** – the pollutant for which a PAL is established at a major stationary source.

**By adding the definition for "Predictive emissions monitoring system (PEMS)" as follows:**

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

**By adding a definition for "Regulated NSR (new source review) pollutant" as follows:**

**Regulated NSR (new source review) pollutant** – is the following:

(a) Nitrogen oxides or any volatile organic compounds;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is a constituent or precursor of a general pollutant listed under paragraphs (a) or (b) above, provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant;

(d) Precursors identified by the Administrator for purposes of NSR are the following:

(1) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;

(2) Sulfur dioxide is a precursor to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas;

(3) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas, unless the Department demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations; and

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

(e) $PM_{2.5}$ emissions and $PM_{10}$ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures, determined in accordance with the following:

(1) Such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and $PM_{10}$ in nonattainment major NSR permits; and

(2) Compliance with emissions limitations for $PM_{2.5}$ and $PM_{10}$ shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

**By adding the definition for "Significant" as follows:**

**Significant** – in reference to a significant emissions increase, a significant net emissions increase, or the potential of a stationary source or emissions unit to emit a significant amount of a regulated NSR pollutant, a rate of emissions that would equal or exceed any of the following:

(a) Carbon monoxide: one hundred tons per year (100 Tpy);

(b) Ozone - Nitrogen oxides or VOCs: twenty-five (25) Tpy;

(c) Sulfur dioxide: forty (40) Tpy;

(d) Lead: six-tenths (0.6) Tpy;

(e) $PM_{10}$: fifteen (15) Tpy;

(f) $PM_{2.5}$: ten (10) Tpy;

(g) For the purposes of applying the requirements of this section, where applicable, to a major stationary source of a $PM_{10}$ precursor located in a $PM_{10}$ nonattainment area, the significant emission rate for a $PM_{10}$ precursor is forty (40) Tpy or more of that precursor;

(h) For the purposes of applying the requirements of this section, the significant emission rate for a $PM_{2.5}$ precursor is forty (40) Tpy of sulfur dioxide emissions and forty (40) Tpy of nitrogen oxide emissions;

(i) Notwithstanding the significant emissions rate for carbon monoxide stated above, significant for carbon monoxide in a serious nonattainment area is fifty (50) Tpy, provided the Department has determined that the applicable stationary source contributes significantly to carbon monoxide levels in that area;

(j) Notwithstanding the significant emissions rates for ozone stated above, significant for volatile organic compounds in an extreme nonattainment area for ozone is any amount above zero; and

(k) Notwithstanding the above paragraphs, any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within six and twenty-one hundredths miles (6.21 m.), or ten kilometers (10 km), of any Class I area, and have an impact on the area equal to or greater than one microgram per cubic meter (1 $\mu g/m^3$) over a twenty-four hour (24 hr) average.

**By adding the definition for "Significant emissions increase" to read as follows:**

**Significant emissions increase** – for a regulated NSR pollutant, an increase in emissions that is significant (as defined in this section) for that pollutant.

**By adding the definition for "Significant emissions unit" to read as follows:**

**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 significant level (as defined under "significant" in this subsection or in the Clean Air Act, whichever is lower) for that PAL pollutant.

**By adding the definition for "Small emissions unit" to read as follows:**

**Small emissions unit** – an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level (as defined under "significant" in this subsection or in the Clean Air Act, whichever is lower) for that PAL pollutant.

**By adding the definition for "Source category permit" to read as follows:**

**Source category permit** – a preconstruction or operating permit issued by the Department that may be applied to a number of similar emissions units or sources. A source category permit may be written to address a single emissions unit, a group of the same type of emissions units, or an entire minor source.