

Eastern Kern Air Pollution Control District

Rule 210.1A MAJOR NEW AND MODIFIED STATIONARY SOURCE REVIEW (MNSR)

FINAL STAFF REPORT

January 11, 2018

Prepared by

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I. BOARD ADOPTION

Rule 210.1A, Major New and Modified Stationary Source Review (MNSR) was adopted by the Eastern Kern Air Pollution Control District's Governing Board its regular Board Meeting held January 11, 2018, at the Tehachapi Police Department Community Room, located at: 220 West "C" Street, Tehachapi, California and at the Ridgecrest City Hall, located at: 100 West California Avenue, Ridgecrest, California.

II. INTRODUCTION

Rule 210.1A, Major New and Modified Stationary Source Review (MNSR) is designed to:

- Provide for preconstruction review of any new major stationary source, or major modification of an existing major stationary source;
- Insure the applicant provides an analysis demonstrating Best Available Control Technology (BACT) has been proposed for each emission unit included in a new major stationary source, or major modification of an existing major stationary source; and
- Provide offsets for any significant net emissions increase of a nonattainment pollutant and its precursors from any new major stationary source, or major modification of an existing major stationary source.

On November 2, 2018 the District held a public rule development workshop at the Mojave Veteran's Building in Mojave, CA. At this workshop District staff presented proposed Draft Rule 210.1A. The District submitted copies of the proposed rule to the California Air Resources Board (CARB) and the Region IX office of the U.S. Environmental Protection Agency (EPA) in October for an initial review prior to the workshop. A 30-day public review and comment period followed the workshop ending December 4, 2017.

Appendix A is adopted Rule 210.1A, Major New and Modified Stationary Source Review (MNSR).

Appendix B is the District's Response to Comments following the November 2, 2017 public workshop held at the Mojave Veteran's Center in Mojave, CA.

III. BACKGROUND

In 2008, EPA adopted a more stringent 8-hour Ozone National Ambient Air Quality Standard (NAAQS) of 0.075 parts per million (ppm). While Indian Wells Valley met the new (2008) Ozone NAAQS, a portion of the District failed to meet the new standard and was classified as a Marginal nonattainment area, required to attain the new standard by July 20, 2015.

On May 4, 2016, EPA “bumped up” the District’s classification to Moderate nonattainment because the District did not meet the 2008 standard by the attainment date. Moderate nonattainment areas are required to attain the 2008 Ozone NAAQS by July 20, 2018.

According to photochemical modeling, completed by CARB, along with supplemental analyses, it was determined the District would not attain the 2008 Ozone NAAQS by July 20, 2018, but could attain by 2020. Therefore, the District requested EPA reclassify the nonattainment portion of the District to a Serious nonattainment area to allow additional time to attain the 2008 Ozone NAAQS. As a result, in July 2017, the District prepared, adopted, and submitted a 2008 Ozone attainment plan to satisfy the requirements for a Serious nonattainment area.

Upon adoption, Rule 210.1A will be submitted to the EPA for approval to meet the federal NSR permit program submittal requirements for a Serious Ozone nonattainment area. This submittal will also satisfy past requirements to submit a NSR program for Marginal and Moderate nonattainment areas.

The District will maintain Rule 210.1, New and Modified Stationary Source Review (NSR) in the SIP because it applies to new and modified sources at lower emission thresholds than Rule 210.1A. Additionally, under State law (SB 288) the District cannot relax NSR applicability requirements as long as the District remains classified as a non-attainment area.

IV. RULE DEVELOPMENT

Many of the District’s current rules are based on a “Serious” nonattainment designation due to the District’s previous Ozone attainment status, prior to the Eastern Kern/San Joaquin Valley APCD split. However, many deficiencies have been identified in the District’s current NSR rule because the U.S. EPA has promulgated several new provisions since the last amendment of Rule 210.1 (5/4/2000). This has led to compliance issues concerning the 2008 Ozone NAAQS for New Major Stationary Sources and Major Modifications to Major Stationary Sources. Following discussions with U.S.EPA Region IX and CARB, the District determined adopting a new NSR rule, which will apply to major sources, and retaining the current NSR rule for all other sources, would be the most streamlined approach to satisfy the 2008 Ozone NAAQS NSR requirements.

This staff report presents an overview of the key components of Rule 210.1A. Please see Appendix A for all requirements of Rule 210.1A.

V. APPLICABILITY

Rule 210.1A will apply to the proposed construction of any new major stationary source or any major modification to an existing major stationary source, if the stationary source or modification is major for a regulated NSR pollutant for which the area it is to be located in is designated nonattainment, as listed in 40 CFR 81.305.

Requirements of Rule 210.1A are applicable to all major stationary sources, which emit, or have the potential to emit (PTE) 100 tons per year (tpy), or more, of any regulated NSR pollutant or precursor, except if one of the following lower emission thresholds is applicable:

1. For an area designated nonattainment for ozone, a source with the PTE VOCs or NO_x in the following amounts shall be considered a major stationary source:
 - a. ≥100 tpy in areas classified as “marginal” or “moderate”; or
 - b. ≥50 tpy in areas classified as “serious”.
2. For an area designated nonattainment for PM₁₀ and classified as “serious,” a major stationary source is a stationary source which emits, or has the potential to emit, 70 tpy or more of PM₁₀.

A Major Modification is the physical change or change in method of operation of, a major stationary source, resulting in an increase in potential emissions of more than 100 tons per year of CO, 40 tpy of SO_x (as SO₂), 25 tpy of NO_x or VOCs, or 15 tpy of PM₁₀, when aggregated with all other creditable decreases and increases in emissions from the stationary source during the last 5 consecutive calendar years, including the calendar year the modification occurred.

VI. REQUIREMENTS

No new major stationary source or major modification to a major stationary source, shall begin actual construction without first obtaining an ATC issued pursuant to Rule 210.1A. Section III of Rule 210.1A contains compliance requirements associated with construction or major modification of a major stationary source, which include:

Calculations to Determine NSR Applicability	Best Available Control Technology
Projected Actual Emissions Test	Statewide Compliance
Secondary Emissions	Analysis of Alternatives
Application Submittal	Sources Impacting Class I Areas
Application Content	Application & Permit Fees

VII. EMISSIONS OFFSETS

Pollutant-specific emissions shall be offset with federally enforceable Emission Reduction Credit(s) (ERCs) or with internal emission reductions. ERCs are issued by the District in the form of ERC certificates for reductions of actual emissions from emission units certified by the District in accordance with applicable District rules.

ERCs from one or more sources may be used, alone or in combination with internal emission reductions, in order to satisfy offset requirements. Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may only be credited for offsets if such reductions are surplus, permanent, quantifiable, and federally enforceable.

Quantity of ERCs or internal emission reductions required to satisfy offset requirements are determined in tpy, rounded to the nearest one one-hundredth (0.01) tpy. When the offset requirement is triggered by construction of a new major stationary source, the amount of increased emissions shall be the sum of the PTE of all emissions units. When the offset requirement is triggered by a major modification of an existing major stationary source, the amount of increased emissions shall be the sum of the differences between the allowable emissions after the modification, and the actual emissions before the modification for each emissions unit.

The ratios listed in Table 1 shall be applied based on the areas designation for each pollutant, as applicable. The offset ratio is expressed as a ratio of emissions increases to emissions reductions.

Table 1. Federal Offset Ratio Requirements by Area Designation & Pollutant

Area Designation	Pollutant	Offset Ratio
Marginal Ozone Nonattainment Area	NO _x or VOC	1.0 to 1.0
Moderate Ozone Nonattainment Area	NO _x or VOC	1.0 to 1.15
Serious Ozone Nonattainment Area	NO _x or VOC	1.0 to 1.2
PM ₁₀ Nonattainment Area	PM ₁₀ , VOC, SO _x or NO _x	1.0 to 1.0

VIII. ADMINISTRATIVE REQUIREMENTS

The APCO shall consult with the Federal Land Manager on a proposed new major stationary source, or major modification of an existing major stationary source that may impact visibility in any Class I Area.

The APCO may require use of an air quality model to estimate the effects of a new or modified major stationary source. Analysis shall estimate the effects of the new or modified major stationary source, and verify the new or modified major stationary source will not prevent or interfere with attainment or maintenance of any ambient air quality standard. In making this determination the APCO shall take into account the mitigation of emissions through offsets pursuant to the rule and the impacts of transported pollutants on downwind pollutant concentrations. The APCO may impose, based on an air quality analysis, offset ratios greater than the requirements listed in Table 1.

IX. PRELIMINARY DECISION

Following acceptance of an application as complete, the APCO shall perform evaluations required to determine compliance with all applicable District, state and federal rules, regulations, or statutes and shall make a preliminary written decision as to whether an ATC should be approved, conditionally approved, or denied. The decision shall be supported by a succinct written analysis. The decision shall be based on the requirements in force on the date the application is deemed complete, except when a new federal requirement not yet incorporated into this rule applies to the new or modified source.

X. SOURCE OBLIGATIONS

Any owner or operator who constructs or operates a new major stationary source or major modification to an existing major stationary source, not in accordance with the application submitted pursuant to this rule, any changes to the application as required by the APCO, or with the terms of its ATC, shall be subject to enforcement action.

Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP or any other requirement under local, state, or federal law.

XI. ECONOMIC IMPACTS

Pursuant to California Health & Safety Code (CH&SC) §40920.6(a), the District is required to analyze the cost effectiveness of new rules or rule amendments that implement Best Available Retrofit Control Technology (BARCT) or all feasible measures. Rule 210.1A employs federal Best Available Control Technology (BACT) requirements but not BARCT or all feasible measures, and is therefore not subject to the cost effectiveness analysis mandate.

XII. ENVIRONMENTAL IMPACTS

Both the California Environmental Quality Act (CEQA) and ARB policy require an evaluation of the potential adverse environmental impacts of proposed projects. The intent of Rule 210.1A is to protect public health by reducing the public's exposure to potentially harmful regulated NSR pollutants and any precursors. An additional consideration is the impact that the rule may have on the environment. District has determined that no significant adverse environmental impacts should occur as a result of adopting Rule 210.1A.

Pursuant to the Section 15061, Subsections (2) & (3) of the CEQA Guidelines, staff will prepared and file a Notice of Exemption for this project upon adoption.

XIII. SOCIOECONOMIC IMPACTS

CHSC Section 40728.5 exempts districts with a population of less than 500,000 persons from the requirement to assess the socioeconomic impacts of proposed rules. Eastern Kern County population is below 500,000 persons.

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APPENDIX A

ADOPTED RULE 210.1A

**MAJOR NEW AND MODIFIED
STATIONARY SOURCE REVIEW (MNSR)**

**RULE 210.1A Major New and Modified Stationary Source Review (MNSR) - Adopted:
1/11/18**

I. Purpose and Applicability

A. Purpose: Purpose of this Rule is to:

1. Provide for preconstruction review of any new major stationary source, or major modification of an existing major stationary source;
2. Insure the applicant provides an analysis demonstrating Best Available Control Technology (BACT) has been proposed for each emission unit included in a new major stationary source, or major modification of an existing major stationary source; and
3. Provide offsets for any significant net emissions increase of a nonattainment pollutant and its precursors from any new major stationary source, or major modification of an existing major stationary source.

B. Applicability:

1. This Rule shall apply to the proposed construction of any new major stationary source or any major modification to an existing major stationary source, if the stationary source or modification is major for a regulated NSR pollutant for which the area it is to be located in is designated nonattainment, as listed in 40 CFR 81.305.
2. The provisions of District Rule 201 (Permits Required), Sections I and II and District Rule 208 (Standards for Granting Applications), Subsection I.A. shall not apply for purposes of the issuance of an authority to construct or permit to operate pursuant to this Rule.

II. Definitions

Unless the context otherwise requires, the following terms shall have the meanings set forth below for the purposes of this rule.

- A. Actual Emissions: Actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with this definition. This definition shall not apply for calculating whether a significant emissions increase has occurred. Instead, projected actual emissions and baseline actual emissions shall apply for those purposes.
1. In general, actual emissions as of a particular date shall equal the average rate, in tons per year (tpy), at which the emissions unit actually emitted the pollutant during a consecutive 24-month period, which precedes the particular date and which is representative of normal source operation. APCO shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating

hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

2. APCO may presume source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
 3. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the Potential to Emit (PTE) of the unit on that date.
- B. Allowable Emissions: Emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, hours of operation, or both) and the most stringent of the following:
- (a) Any applicable standards set forth in District Rules and Regulations and 40 CFR Parts 60, 61, or 63;
 - (b) Any applicable emission limitation in the District's portion of the State Implementation Plan (SIP), including those with a future compliance date; or
 - (c) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.
- C. APCO: Air Pollution Control Officer of Eastern Kern Air Pollution Control District.
- D. Baseline Actual Emissions: Rate of emissions, in tpy, of a regulated NSR pollutant, as determined in accordance with paragraphs 1 through 3 of this definition.
1. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tpy, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The APCO shall allow the use of a different time period upon a determination it is more representative of normal source operation.
 - a. The average rate shall include fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
 - b. The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.
 - c. When a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

- d. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tpy, and for adjusting this amount if required by section 1.b. of this definition.
 2. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tpy, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the APCO for a permit required under this Rule, whichever is earlier.
 - a. The average rate shall include fugitive emissions to the extent quantifiable.
 - b. The average rate shall include emissions associated with startups, shutdowns, and malfunctions.
 - c. The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.
 - d. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology (MACT) standard the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the District has taken credit for such emissions reductions in an attainment demonstration or maintenance plan, consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).
 - e. When a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.
 - f. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tpy, and for adjusting this amount if required by sections 2.c. and 2.d. of this definition.
3. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's PTE.

- E. Begin actual Construction: Initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to: installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.
- F. Best Available Control Technology (BACT): The most stringent emission limitation or control technique, based on the following:
1. Achieved in practice for such emissions unit, class, or category of source;
 2. Is contained in any SIP approved by U.S. EPA for such emissions unit, class or category of source. A specific limitation or control technique shall not apply if the owner or operator of the proposed emissions unit demonstrates to satisfaction of the APCO, such limitation or control technique is not currently achievable; or
 3. Any other emission limitation, control device, alternate basic equipment, or different fuel or process found by the APCO to be technologically feasible for such class or category of source or for a specific source, and cost-effective as determined by official District policy.

BACT shall not be determined to be less stringent than the emission control required by any applicable provision of local, state, or federal, law or regulation unless the applicant demonstrates to the APCO such limitations are not achievable. Application of BACT shall not result in the emission of any pollutant exceeding emissions limits contained in any applicable New Source Performance Standard (NSPS) or National Emission Standard for Hazardous Air Pollutants (NESHAPs).

- G. Building, Structure, Facility, or Installation: All pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) 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 (i.e., which have the same two-digit code) as described in either the Standard Industrial Classification (SIC) manual, 1972, as amended by the 1977 Supplement or the North American Industry Classification System (NAICS) manual.
- H. Categorical Stationary Source: Any stationary source of air pollutants that belongs to one of the following categories of stationary sources:

Coal cleaning plants (with thermal dryers);
Kraft pulp mills;
Portland cement plants;
Primary zinc smelters;
Iron and steel mills;
Primary aluminum ore reduction plants;
Primary copper smelters;
Municipal incinerators capable of charging more than 50 tons of refuse per day;

Hydrofluoric, sulfuric, or nitric acid plants;
 Petroleum refineries;
 Lime plants;
 Phosphate rock processing plants;
 Coke oven batteries;
 Sulfur recovery plants;
 Carbon black plants (furnace process);
 Primary lead smelters;
 Fuel conversion plants;
 Sintering plants;
 Secondary metal production plants;
 Chemical process plants-The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS-codes 325193 or 312140;
 Fossil-fuel boilers (or combination thereof) totaling more than 250 million Btu per hour heat input;
 Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 Taconite ore processing plants;
 Glass fiber processing plants;
 Charcoal production plants;
 Fossil fuel-fired steam electric plants of more than 250 million Btu/hour heat input; and

Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or 112 of the Act.

- I. Class I Area: Any area listed as Class I in 40 CFR Part 81 Subpart D, including Section 81.405, or an area otherwise specified as Class I in the legislation that creates a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore.
- J. Clean Coal Technology: Any technology, including technologies applied at the pre-combustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.
- K. Clean Coal Technology Demonstration Project: A project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2.5 billion for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the EPA. The federal contribution for a qualifying project shall be at least twenty percent of the total cost of the demonstration project.
- L. Commence: As applied to construction of a major stationary source or major modification, means the owner or operator has all necessary preconstruction approvals or permits, including an ATC, and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
 2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source, to be completed within a reasonable time.
- M. Complete: In reference to an application, the application contains all of the information necessary for processing the application.
- N. 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.
- O. District: Eastern Kern Air Pollution Control District.
- P. Electric Utility Steam Generating Unit: Any steam electric generating unit constructed for the purpose of supplying more than one-third of its potential electric output capacity, and more than 25 MW of electrical output, to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.
- Q. Emission Reduction Credit (ERC): Reductions of actual emissions from emission units certified by an air district in accordance with applicable district rules and are issued by the air district in the form of ERC certificates.
- R. Emissions Unit: Any identifiable source operation or piece of process equipment that is part of a major stationary source, including an electric utility steam generating unit, that emits or has PTE, any regulated NSR pollutant. For purposes of this rule, there are two types of emissions units as described in paragraphs 1 and 2 of this definition:
1. A “new emissions unit” is any emissions unit which is (or will be) newly constructed and existed for less than two years from the date such emissions unit first operated. For the purposes of this definition, the date an emissions unit first operated shall not be extended by any shakedown period established pursuant to paragraph 6 of the definition of Net Emissions Increase.
 2. An “existing emissions unit” is any emissions unit that does not meet the requirements in paragraph 1 of this definition. A replacement unit is an existing emissions unit.

- S. Federally-Enforceable: All limitations and conditions enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60, 61, and 63, requirements within the SIP, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program incorporated into the SIP and expressly requires adherence to any permit issued under such program.
- T. Federal Land Manager: With respect to any lands in the United States, the Secretary of the Department with authority over such lands.
- U. Fugitive Emission: Emission which could not reasonably pass through a stack, chimney, vent, or other functionally-identical opening.
- V. Internal Emission Reductions: Emission reductions which occur at the same major stationary source as the proposed emission increase will occur.
- W. Identical Replacement: Total or partial replacement of an emissions unit where the replacement unit is the same as the original emissions unit in all respects except for serial number.
- X. Major Modification: Any physical change or change in method of operation of, a major stationary source, resulting in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source. All emission increase determinations for volatile organic compounds (VOCs) and nitrogen oxides (NOx) shall be aggregated with all other creditable decreases and increases in emissions from the stationary source during the last 5 consecutive calendar years, including the calendar year the increase occurred.
1. A physical change or change in the method of operation shall not include:
 - a. Routine maintenance, repair, and replacement;
 - b. Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
 - c. Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;
 - d. Use of an alternative fuel at a steam generating unit, to the extent that the fuel is generated from municipal solid waste;
 - e. Use of an alternative fuel or raw material by a stationary source which:

- i. 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 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I; or
 - ii. The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I.
 - f. 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 CFR 52.21 or regulations approved pursuant to 40 CFR part 51 subpart I;
 - g. Any change in ownership at a stationary source;
 - h. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided the project complies with:
 - i. The SIP, and
 - ii. Any other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated.
 - 2. Fugitive emissions of a major stationary source shall not be included in determining for any of the purposes of this rule, whether a particular physical change or change in the method of operation is a major modification, unless the source is a categorical stationary source.
- Y. Major Stationary Source: Any stationary source which emits, or has PTE 100 tpy, or more, of any regulated NSR pollutant or precursor, except if one of the following lower emission thresholds is applicable:
- 1. For an area designated nonattainment for ozone, a source with the PTE VOCs or NO_x in the following amounts shall be considered a major stationary source:
 - a. ≥ 100 tpy in areas classified as “marginal” or “moderate” ; or
 - b. ≥ 50 tpy in areas classified as “serious”.
 - 2. For an area designated nonattainment for PM₁₀ and classified as “serious,” a major stationary source is a stationary source which emits, or has the potential to emit, 70 tpy or more of PM₁₀.
- Z. Necessary Preconstruction Approvals or Permits: Permits or approvals required under air quality control laws and regulations that are part of the SIP or federal air quality control laws and regulations, including any permits issued pursuant to this rule.

AA. Net Emissions Increase: For the purposes of this rule, any regulated NSR pollutant emitted by a major stationary source, by which:

1. The amount by which the sum of the following exceeds zero:
 - a. The increase in emissions from a particular physical change, or change in the method of operation, at a stationary source as calculated pursuant to Section III.A; and
 - b. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. For the purposes of this paragraph, baseline actual emissions for calculating increases and decreases shall be determined as provided in the definition of Baseline Actual Emissions, excluding paragraphs 1.c and 2.e of that definition.
2. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:
 - a. The date five years before construction on the particular change commences; and
 - b. The date the increase from the particular change occurs.
3. An increase or decrease in actual emissions is creditable only if it is contemporaneous and the APCO has not relied on it in issuing a permit for the source under this rule, or any other regulation approved by the Administrator pursuant to 40 CFR Part 51 Subpart I or 40 CFR Part 52.21, which permit is in effect when the increase in actual emissions from the particular change occurs.
4. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
5. A decrease in actual emissions is creditable only to the extent that:
 - a. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
 - b. It is enforceable as a practical matter at and after the time actual construction on the particular change begins;
 - c. The APCO has not relied on it in issuing any permit under any other regulations approved pursuant to 40 CFR Part 51, Subpart I, nor has the District relied on it in demonstrating attainment or reasonable further progress; and
 - d. It has approximately the same qualitative significance for public health and welfare as attributed to the increase from the particular change.

6. 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, or any new emissions unit that replaces an existing emissions unit and requires shakedown, becomes operational only after a reasonable shakedown period, not to exceed 180 days.
 7. Paragraph 2 of the definition of Actual Emissions shall not apply for determining creditable increases and decreases or after a change.
- BB. Nonattainment Major New Source Review (MNSR) Program: A major source preconstruction permit program that has been approved by the Administrator and incorporated into the District's portion of the SIP, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI. Any permit issued under such a program is a major NSR permit.
- CC. Nonattainment pollutant: Any regulated NSR pollutant and any precursors of such pollutants which have been designated "nonattainment" for the District as codified in 40 CFR 81.305.
- DD. PM_{2.5}: Particulate matter with an aerodynamic diameter smaller than or equal to a nominal 2.5 microns. Gaseous emissions which condense to form PM_{2.5} shall also be counted as PM_{2.5}.
- EE. PM₁₀: Particulate matter with an aerodynamic diameter smaller than or equal to a nominal 10 microns. Gaseous emissions which condense to form PM₁₀ shall also be counted as PM₁₀.
- FF. Permanent: An emission reduction which is federally enforceable for the life of a corresponding increase in emissions.
- GG. Potential to Emit (PTE): Maximum capacity of an emissions unit 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 types or amounts of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the PTE of a stationary source.
- HH. Predictive Emissions Monitoring System (PEMS): All 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, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate on a continuous basis.
- II. Prevention of Significant Deterioration (PSD) Permit: Any permit issued under a major source preconstruction permit program that has been approved by the Administrator to implement the requirements of 40 CFR 51.166 or 40 CFR 52.21. Any permit issued under such a program is a major NSR permit.

JJ. Project: A physical change in, or change in the method of operation of, an existing stationary source.

KK. Projected Actual Emissions: Maximum annual rate, in tpy, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the design capacity or PTE of any emissions unit for that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

1. In determining the projected actual emissions (before beginning actual construction), the owner or operator of the major stationary source:
 - a. Shall consider all relevant information, including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the county, state or federal regulatory authorities, and compliance plans under the SIP; and
 - b. Shall include fugitive emissions to the extent quantifiable; and
 - c. Shall include emissions associated with startups, shutdowns, and malfunctions; and
 - d. Shall exclude, only for calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and are also unrelated to the particular project, including any increased utilization due to product demand growth; or
 - e. In lieu of using the method set out in paragraphs 1.a. through 1.d. of this definition, the owner or operator of the major stationary source may elect to use the emissions unit's PTE in tpy.

LL. Real: As it pertains to emission reductions, emissions that were actually emitted.

MM. Regulated NSR Pollutant: Any pollutant for which a NAAQS has been promulgated and any constituents or precursors identified by the Administrator, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. For the purposes of NSR, the Administrator identified volatile organic compounds (VOCs) and nitrogen oxides (NOx) as precursors to ozone in all ozone nonattainment areas, and VOCs, NOx, and sulfur oxides (SOx) as precursors to PM₁₀ in all PM₁₀ nonattainment areas.

PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM₁₀ in nonattainment

major NSR permits. Compliance with emissions limitations for PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable state implementation plan.

- NN. Replacement Unit: An emissions unit for which all the criteria listed in paragraphs 1 through 4 of this definition are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit replaced.
1. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.
 2. The emissions unit is identical to, or functionally equivalent to, the replaced emissions unit.
 3. The replacement does not alter the basic design parameters of the process unit.
 4. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.
- OO. Secondary Emissions: Emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.
- PP. Shutdown: The cessation of operation of any air pollution control equipment or process equipment for any purpose.
- QQ. Significant: In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:
40 tpy of VOCs or nitrogen oxides in areas classified as “marginal” or “moderate”;
25 tpy of VOCs or nitrogen oxides in areas classified as “serious” or “severe”;
PM₁₀: 15 tpy.
- RR. Significant Emissions Increase: For a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.
- SS. Startup: Setting into operation of any air pollution control equipment or process equipment for any purpose except routine phasing in of process equipment.

TT. Surplus: Amount of emission reductions that are, at the time of generation and at time of use of an ERC, not otherwise required by federal, state, or local law, not required by any legal settlement or consent decree, and not relied upon to meet any requirement related to the SIP. However, emission reductions required by a state statute, that provides that the subject emission reductions shall be considered surplus may be considered surplus for purposes of this Rule if those reductions meet all other applicable requirements. Examples of federal, state, and local laws, and of SIP-related requirements, include, but are not limited to, the following:

1. The federally-approved California SIP;
2. Other adopted state air quality laws and regulations not in the SIP, including but not limited to, any requirement, regulation, or measure that:
 - a. The District or the state has included on a legally-required and publicly-available list of measures scheduled for adoption by the District or the State in the future; or
 - b. Is the subject of a public notice distributed by the District or the State regarding an intent to adopt such revision;
3. Any other source- or source-category specific regulatory or permitting requirement, including, but not limited to, Reasonable Available Control Technology (RACT), New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Best Available Control Measures (BACM), Best Available Control Technology (BACT), and the Lowest Achievable Emission Rate (LAER); and
4. Any regulation or supporting documentation required by the Federal Clean Air Act (FCAA) but is not contained or referenced in 40 CFR Part 52, including but not limited to: Assumptions used in attainment and maintenance demonstrations, including Reasonable Further Progress (RFP) demonstrations and milestone demonstrations, any proposed control measure identified as potentially contributing to an enforceable near-term emissions reduction commitment, assumptions used in conformity demonstrations, and assumptions used in emissions inventories.

UU. Temporary source: Temporary emission sources such as pilot plants, and portable facilities which will be terminated or located outside the District after less than a cumulative total of 90 days of operation in any 12 continuous months.

VV. Temporary clean coal technology demonstration project: A clean coal technology demonstration project operated for a period of 5 years or less, and which complies with the SIP for the state in which the project is located and other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated.

WW. Volatile organic compounds (VOC): Any compound containing at least one atom of carbon except for exempt compounds listed in District Rule 102, Definitions.

III. Requirements

No new major stationary source or major modification to a major stationary source, to which the requirements of this rule apply, shall begin actual construction without first obtaining an ATC issued pursuant to this rule.

A. Calculations to Determine NSR Applicability

The following provisions shall be used to determine if a proposed project will result in a new major stationary source or a major modification to an existing major stationary source. These provisions shall not be used to determine the quantity of offsets required for a project subject to the requirements of this rule.

1. A project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases: A significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.
2. The procedure for calculating (before beginning actual construction) whether a significant emissions increase will occur depends upon the type of emissions units being added or modified as part of the project, according to paragraphs 3 through 5 of this Subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source is contained in the definition of Net Emissions Increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.
3. **Actual-to-Projected-Actual Applicability Test for Projects that Only Involve Existing Emissions Units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.
4. **Actual-to-Potential Test for Projects that Only Involve Construction of a New Emissions Unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the PTE from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

5. **Hybrid Test for Projects that Involve Multiple Types of Emissions Units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs 3 or 4 of this Subsection, as applicable, with respect to each emissions unit, equals or exceeds the significant amount for that pollutant.

B. Projected Actual Emissions Test

The provisions of this Subsection shall apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units located at a major stationary source if the owner or operator has determined the project is not a major modification, but has a projected emission increase of at least 50% of the amount of a “significant emission increase,” as defined in this rule; and the owner or operator elects to use the method specified in paragraphs 1.a. through 1.d. of the definition of Projected Actual Emissions to calculate emission increases from the project .

1. Before beginning actual construction of the project the owner or operator shall document and maintain a record of the following information:
 - a. A description of the project;
 - b. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
 - c. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 1.d. of the definition of Projected Actual Emissions and an explanation for why such amount was excluded, and any netting calculations, if applicable.
2. If the emissions unit is an existing emissions unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph 1 of this Subsection to the APCO. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the APCO before beginning actual construction, except such owner or operator may be subject to the requirements of District Rule 201 (Permits Required), or other applicable requirements.
3. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and are emitted by any emissions unit identified in paragraph 1.b. of this Subsection; and calculate and maintain a record of the annual emissions (in tpy on a calendar year basis) for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or PTE of the regulated NSR pollutant at such emissions unit.

4. If the emissions unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the APCO within sixty days after the end of each calendar year during which records must be generated under paragraph 3 of this Subsection, setting out the unit's annual emissions during the calendar year that preceded submission of the report.
5. If the emissions unit is an existing emissions unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the APCO if the annual emissions, in tpy, from the project identified in paragraph 1.b. of this Subsection exceed the baseline actual emissions by a significant amount for that regulated NSR pollutant, and if such emissions differ from the projected actual emissions (prior to exclusion of the amount of emissions under the definition of Projected Actual Emissions) as documented and maintained pursuant to paragraph 1.c. of this Subsection. Such report shall be submitted to the APCO within sixty days after the end of such year. The report shall contain the following:
 - a. The name, address, and telephone number of the major stationary source;
 - b. The annual emissions, as calculated pursuant to paragraph 3 of this Subsection; and
 - c. Any other information the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).
6. The owner or operator of the source shall make the information required to be documented and maintained pursuant to this Subsection available for review upon a request for inspection by the APCO or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).
7. A "reasonable possibility" under this Subsection occurs when the owner or operator calculates the project to result in either:
 - a. A projected actual emissions increase of at least 50 percent of the amount of a "significant emissions increase," as defined in this rule (without reference to the amount of a significant net emissions increase), for the regulated NSR pollutant; or
 - b. A projected actual emissions increase that, added to the amount of emissions excluded under paragraph 1.d. of the definition of Projected Actual Emissions, sums to at least 50 percent of the amount of a "significant emissions increase," as defined in this rule (without reference to the amount of a significant net emissions increase), for the regulated NSR pollutant.
 - c. For a project for which a reasonable possibility occurs only within the meaning of Subsection 7.b. and not also within the meaning of Subsection 7.a., the provisions of paragraphs 2 through 5 of this Subsection do not apply to the project.

C. Secondary Emissions

Secondary emissions shall not be considered in determining whether a stationary source would qualify as a major stationary source. If a stationary source is subject to this rule on the basis of the direct emissions from the stationary source, the requirements of Section IV. (Emissions Offsets), but no other provisions of this rule, must also be met for secondary emissions.

D. Application Submittal

The owner or operator of any proposed project determined to be a major stationary source or major modification of a major stationary source pursuant to this rule, shall submit a complete application for an Authority to Construct (ATC) on forms provided by the District and include the demonstrations listed in Sections III.F. – III.I. Designating an application complete for purposes of permit processing does not preclude the APCO from requesting or accepting any additional information.

E. Application Content

At a minimum, an application for an ATC shall contain the following information related to the proposed project:

1. The location of the project and an identification and description of all emission points, including information regarding all regulated NSR pollutants emitted by all emission units included in the project.
2. A process description of all activities, including design capacity, which may generate emissions of regulated NSR pollutants in sufficient detail to establish the basis for the applicability of standards and fees.
3. A projected schedule for commencing construction and operation for all emission units included in the project.
4. A projected operating schedule for each emissions unit included in the project.
5. A determination as to whether the project will result in any secondary emissions.
6. The emission rates of all regulated NSR pollutants, including fugitive and secondary emission rates, if applicable. The emission rates must be described in tons per year and for such shorter-term rates as are necessary to establish compliance using the applicable standard reference test method or other methodology specified (i.e., grams/liter, ppmv or ppmw, lbs/MMBtu).
7. The calculations on which the emission rate information are based, including fuel specifications, if applicable and any other assumptions used in determining the emission rates (e.g., HHV, sulfur content of natural gas).

8. The calculations, pursuant to Subsection III.A., used to determine applicability of this rule, including the emission calculations (increases or decreases) for each project that occurred during the contemporaneous period.
9. The calculations, pursuant to Section IV. (Emissions Offsets), used to determine the quantity of offsets required for the proposed project.
10. Identification of existing ERCs or identification of internal emission reductions, including related emission calculations and proposed permit modifications required to ensure emission reductions meet the offset integrity criteria of being real, surplus, quantifiable, permanent and federally enforceable or enforceable as a practical matter.
11. If applicable, a description of how performance testing will be conducted, including test methods and a general description of testing protocols.

F. Best Available Control Technology (BACT)

The applicant shall submit an analysis demonstrating BACT has been proposed for each emission unit included in the project which emits an NSR regulated pollutant, for which the area the project is to be located in has been classified as nonattainment by EPA, and for which the new stationary source or modification is classified as major.

G. Statewide Compliance

The applicant shall demonstrate each existing major stationary source owned or operated by the applicant in the State is in compliance with all applicable emission limitations and standards under the CAA or is in compliance with an expeditious compliance schedule which is federally enforceable.

H. Analysis of Alternatives

The applicant shall submit an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source that demonstrates, the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

I. Sources Impacting Class I Areas

The applicant of a proposed new major source or major modification to a major source that may affect visibility of a Class I area shall provide the APCO with an analysis of impairment to visibility that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the project, as required by 40 CFR Section 51.307(b)(2) and 40 CFR Section 51.166(o).

J. Application & Permit Fees

The applicant shall pay all applicable fees pursuant to District Series 300 Rules.

IV. Emissions Offsets

A. Offset Requirements

1. Pollutant-specific emissions shall be offset with federally enforceable ERCs or with internal emission reductions.
2. ERCs from one or more sources may be used, alone or in combination with internal emission reductions, in order to satisfy offset requirements.
3. Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may only be credited for offsets if such reductions are surplus, permanent, quantifiable, and federally enforceable; and
 - a. The shutdown or curtailment occurred after the last day of the base year for the attainment plan for the specific pollutant; or
 - b. The projected emissions inventory used to develop the attainment plan explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

B. Timing

1. Internal emission reductions used to satisfy an offset requirement must be federally enforceable prior to the issuance of an ATC, which relies on the emission reductions.
2. Except as provided by paragraph 3 of this Subsection, the decrease in actual emissions used to generate ERCs or internal emission reductions must occur by no later than the commencement of operation of the new major stationary source, or major modification of an existing major stationary source.
3. Where the new emission unit is a replacement for an emission unit being shut down in order to provide the necessary offsets, the APCO may allow up to one hundred eighty (180) calendar days for shakedown or commissioning of the new emission unit before the existing emission unit is required to cease operation.

C. Offset Quantity

The quantity of ERCs or internal emission reductions required to satisfy offset requirements shall be determined in accordance with the following:

1. The unit of measure for offsets, ERCs, and internal emission reductions shall be tpy. All calculations and transactions shall use emission rate values rounded to the nearest one one-hundredth (0.01) tpy.

2. The quantity of ERCs or internal emission reductions required shall be calculated as the product of the amount of increased emissions, as determined in accordance with paragraph 3 of this Subsection, and the offset ratio, as determined in accordance with paragraph 4 of this Subsection.
3. The amount of increased emissions shall be determined as follows:
 - a. When the offset requirement is triggered by the construction of a new major stationary source, the amount of increased emissions shall be the sum of the PTE of all emissions units.
 - b. When the offset requirement is triggered by a major modification of an existing major stationary source, the amount of increased emissions shall be the sum of the differences between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.
 - c. The amount of increased emissions includes fugitive emissions if the stationary source is one of the categorical sources.
4. The ratios listed in Table 1 shall be applied based on the areas designation for each pollutant, as applicable. The offset ratio is expressed as a ratio of emissions increases to emissions reductions.

Table 1. Federal Offset Ratio Requirements by Area Designation & Pollutant

Area Designation	Pollutant	Offset Ratio
Marginal Ozone Nonattainment Area	NO _x or VOC	1.0 to 1.0
Moderate Ozone Nonattainment Area	NO _x or VOC	1.0 to 1.15
Serious Ozone Nonattainment Area	NO _x or VOC	1.0 to 1.2
PM ₁₀ Nonattainment Area	PM ₁₀ , SO _x , NO _x , or VOC	1.0 to 1.0

D. Offsets Criteria

1. Internal emission reductions or ERCs used to satisfy an offset requirement shall be:
 - a. Real, surplus, permanent, quantifiable, and federally enforceable; and
 - b. Surplus at the time of issuance of the ATC containing the offset requirements.
2. Permitted sources whose emission reductions are used to satisfy offset requirements must appropriately amend or cancel their ATC or PTO to reflect their new reduced PTE, including practicably enforceable conditions to limit their PTE.

3. Emission reductions must be obtained from the same nonattainment area, except the APCO may allow emission reductions from another nonattainment area if the following conditions are met:
 - a. The other area has an equal or higher nonattainment classification than the area in which the source is located; and
 - b. Emissions from such other area contribute to a violation of the NAAQS in the nonattainment area in which the source is located.
4. The use of ERCs shall not provide:
 - a. Authority for, or the recognition of, any pre-existing vested right to emit any regulated NSR pollutant;
 - b. Authority for, or the recognition of, any rights that would be contrary to applicable law; or
 - c. An exemption to a stationary source from any emission limitations established in accordance with federal, state, or county laws, rules, and regulations.

E. Restrictions on Trading Pollutants

1. For the purposes of satisfying the offset requirements the APCO may approve inter-pollutant emission offsets for precursor pollutants on a case by case basis, except for PM 2.5, which is subject to paragraph 4 of this Subsection. In such cases, the APCO shall impose, based on an air quality analysis, emission offset ratios in addition to the requirements of Table 1. Inter-pollutant emission offsets must receive written approval by the U.S. EPA.
2. PM10 emissions shall not be allowed to offset NOx or VOC emissions in an ozone nonattainment area.
3. In no case shall the compounds excluded from the definition of VOCs be used as offsets for VOCs.
4. Inter-pollutant offsets between PM2.5 and PM2.5 precursors are not allowed unless modeling has been used to demonstrate appropriate PM2.5 inter-pollutant offset ratios as approved in a PM2.5 Attainment Plan.

V. Administrative Requirements

A. Visibility

The APCO shall consult with the Federal Land Manager on a proposed new major stationary source, or major modification of an existing major stationary source that may impact visibility in any Class I Area, in accordance with 40 CFR 51.307.

B. Ambient Air Quality Standards

The APCO may require use of an air quality model to estimate the effects of a new major stationary source, or major modification of an existing major stationary source. Analysis shall estimate the effects and verify the new major stationary source, or major modification of the major stationary source will not prevent or interfere with attainment or maintenance of any ambient air quality standard. In making this determination the APCO shall take into account the mitigation of emissions through offsets pursuant to this rule and the impacts of transported pollutants on downwind pollutant concentrations. The APCO may impose, based on an air quality analysis, offset ratios greater than the requirements listed in Table 1.

C. Air Quality Models

All estimates of ambient concentrations required pursuant to this rule shall be based on applicable air quality models, databases, and other requirements specified in 40 CFR Part 51, Appendix W (“Guideline on Air Quality Models”). Where an air quality model specified is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis. Written approval from the EPA must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment.

D. Stack Height Procedures

The degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in 40 CFR 51.118(b). For the purposes of Section V.D, the definitions in 40 CFR 51.100 shall apply.

VI. Preliminary Decision

Following acceptance of an application as complete, the APCO shall perform evaluations required to determine compliance with all applicable District, state and federal rules, regulations, or statutes and shall make a preliminary written decision as to whether an ATC should be approved, conditionally approved, or denied. The decision shall be supported by a succinct written analysis. The decision shall be based on the requirements in force on the date the application is deemed complete, except when a new federal requirement not yet incorporated into this rule applies to the new or modified source.

A. ATC Preliminary Decision

Prior to issuance of a preliminary written decision to issue an ATC for a new major stationary source, or major modification of an existing major stationary source, the APCO shall determine that:

1. Each emissions unit(s) that constitutes the project will not violate any applicable requirement of the District's portion of the SIP; and

2. Emissions from the new major stationary source, or major modification of an existing major stationary source will not interfere with attainment or maintenance of any applicable NAAQS; and
3. The emission limitation for each emission unit that constitutes the project specifies BACT for such units, as defined in this rule.

If the APCO determines technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the APCO may instead prescribe a design, operational or equipment standard. In such cases, the APCO shall make its best estimate as to the emission rate that will be achieved and must specify that rate in the application review documents.

Any permits issued without an enforceable numerical emission standard must contain enforceable conditions which assure the design characteristics or equipment will be properly maintained or the operational conditions will be properly performed so as to continuously achieve the assumed degree of control. Such conditions shall be enforceable as emission limitations by private parties under section 304 of the CAA. The term "emission limitation" shall also include such design, operational, or equipment standards; and

4. The quantity of ERCs or internal emission reductions required to offset the project, pursuant to Section IV.C.2; and
5. All ERCs or internal emission reductions required for the proposed project have been identified and they have been made federally enforceable or legally and practicably enforceable; and
6. The quantity of ERCs or internal emission reductions determined pursuant to Section IV.C.2 will be surrendered prior to commencing operation.
7. Temporary emission sources, such as pilot plants, portable facilities which will be relocated outside of the nonattainment area after a short period of time (not to exceed 12 months), and emissions resulting from the construction phase of a new source, are exempt from paragraphs 4, 5 and 6 of this Subsection.

B. ATC Contents

1. An ATC for a new major stationary source or major modification to a major stationary source shall contain terms and conditions:
 - a. Which ensure compliance with all applicable requirements and which are enforceable as a legally and practicable matter.
 - b. Sufficient to ensure the major stationary source or major modification will achieve BACT in accordance with paragraphs 2 and 3 of this Subsection.

2. A new major stationary source shall achieve BACT for each nonattainment pollutant for which it would have PTE levels, which equal or exceed the major source threshold for that nonattainment pollutant.
3. A major modification shall achieve BACT for each nonattainment pollutant for which it would result in a significant emissions increase and significant net emissions increase at the stationary source. This requirement applies to each proposed emissions unit at which the emissions increases in the pollutant would occur as a result of a physical change, or change in the method of operation, in the emissions unit.

C. ATC Final Decision

1. Prior to making a final decision to issue an ATC for a new major stationary source, or major modification of an existing major stationary source, the APCO shall consider all written comments submitted within 30 days after the notice of public comment is published and all comments received at any public hearing(s) in making a final determination on the approvability of the application and make all comments available, including the District's response to the comments, for public inspection in the same locations where the District made available preconstruction information relating to the proposed source or modification.
2. APCO shall deny any application for an ATC if APCO determines project does not comply with the standards and requirements set forth in District, state, or federal rules or regulations.
3. APCO shall make a final decision whether to issue or deny the ATC proposed in the preliminary decision after determining the ATC will or will not ensure compliance with all applicable emission standards and requirements.
4. APCO shall notify the applicant in writing of the final decision and make such notification available for public inspection at the same location where the District made available preconstruction information and public comments relating to the source.

VII. Source Obligations

A. Enforcement

Any owner or operator who constructs or operates a new major stationary source or major modification to an existing major stationary source, not in accordance with the application submitted pursuant to this rule, any changes to the application as required by the APCO, or with the terms of its ATC, shall be subject to enforcement action.

B. Termination

Approval to construct shall terminate if construction is not commenced within eighteen months after receipt of such approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time.

The APCO may extend the 18-month period once upon a satisfactory showing of good cause why an extension is justified. This provision does not apply to the time period between construction of approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date.

C. Compliance

Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP or any other requirement under local, state, or federal law.

D. Relaxation in Enforcement Limitations

At such time that a particular stationary 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 stationary source or modification otherwise to emit a pollutant, then the requirements of this rule shall apply to the stationary source or modification as though construction had not yet commenced on the stationary source or modification.

VIII. Public Participation

After APCO has made a preliminary written decision to issue an ATC for a new major stationary source, or major modification of an existing major stationary source, as specified in Sections VI.A. and VI.B., the APCO shall:

- A. Publish in at least one newspaper of general circulation in the District a notice stating the preliminary decision of the APCO, noting how pertinent information can be obtained, and inviting written public comment for a 30-day period following the date of publication. The notice shall include the time and place of any hearing that may be held, including a statement of procedure to request a hearing (unless a hearing has already been scheduled).
- B. No later than the date the notice of the preliminary written determination is published, make available in at least one location in each region in which the proposed source would be constructed, a copy of all materials the applicant submitted, a copy of the preliminary decision, a copy of the proposed permit and a copy or summary of other materials, if any, considered in making the preliminary written decision.
- C. Send a copy of the notice of public comment to the applicant, EPA Region 9, any persons requesting such notice and any other interested parties such as: Any other State or local air pollution control agencies, the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency, and any State, Federal Land Manager, or Indian Governing body whose lands may be affected by emissions from the source or modification.

- D. Provide opportunity for a public hearing for persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations, if in the APCO 's judgment such a hearing is warranted. The APCO shall give notice of any public hearing at least 30 days in advance of the hearing.

- E. If the project includes an emissions stack whose good engineering practice stack height exceeds the height allowed by 40 CFR 51.100(ii) (1) or (2), the notice required by Section VIII.A. shall include information notifying the public of the availability of the demonstration study and shall provide an opportunity for a public hearing on the demonstration study. For the purposes of this section, the definitions in 40 CFR 51.100 shall apply.

IX. Invalidation

If any provision of this rule or the application of such provision to any person or circumstance, is held invalid, the remainder of this rule 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.

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APPENDIX B

ADOPTED RULE 210.1A

**MAJOR NEW AND MODIFIED
STATIONARY SOURCE REVIEW (MNSR)**

RESPONSE TO COMMENTS

Appendix B - Response to Comments

On November 2, 2017 the District held a public rule development workshop at the Mojave Veteran's Building in Mojave, CA to present proposed Draft Rule 210.1A, Major New and Modified Stationary Source Review (MNSR). The District submitted copies of the proposed rule to the California Air Resources Board (CARB) and the Region IX office of the U.S. Environmental Protection Agency (EPA) in October for an initial review prior to the workshop.

Upon completion of review CARB and EPA offered comments and suggested changes to District staff regarding proposed Draft Rule 210.1A.

Industry representatives present at the 11/2/2017 workshop asked various questions regarding the proposed Draft Rule. However, the District received no written comments or concerns from industry or the public during the 30-day comment period.

Appendix B is separated into three sections based on CARB comments, EPA comments, and Industry comments. No public comments were received.

I. CARB COMMENTS

The following changes were made to the 11/2/2017 proposed Draft of Rule 210.1A in response to CARB comments.

1. **CARB:** *Definition X (Fugitive Emissions) of Section II looks like it has language for the definition of "Functionally Identical", and there is no definition for "Functionally Identical". Can you clarify?*

District staff: An early version of the draft rule had a definition for "Functionally Identical". It was determined the definition was not needed so it was removed from the rule. However a few sentences did not get deleted in the draft that went to workshop. The mistake has been corrected.

II. EPA COMMENTS

The following changes were made to the 11/2/2017 proposed Draft of Rule 210.1A in response to EPA comments.

1. **EPA:** *Can the District include language in the Background Section of the Staff Report that is more specific about the District's attainment status to date. Please included language about the submittal being made to satisfy NSR permit program requirements for a marginal, moderate and serious NA area.*

District staff: Such language has been included in the Adoption Staff Report of Rule 210.1A and will also be included in the Final Staff Report.

Appendix B - Response to Comments

- EPA:** *EPA lawyer requests revising language in Section I.B, Applicability from ...NSR pollutant for which the area it is to be located in is designated nonattainment... to NSR pollutant for which the area in which it is to be located is designated nonattainment...*

District staff: The language in Section I.B, Applicability has been revised accordingly.

- EPA:** *While I don't think that these general permitting requirements conflict [District Rules 201 and 208] with the provisions of this rule, my attorney asked me to identify the overlapping ones and exclude them from rule applicability for clarity. Note for some District's that have already made submittal, they actually conflict. Thus my attorney wants to address this issue.*

District staff: Section I.B, Applicability has been revised to include the following: "The provisions of District Rule 201 (Permits Required), Sections I and II and District Rule 208 (Standards for Granting Applications), Subsection I.A. shall not apply for purposes of the issuance of an authority to construct or permit to operate pursuant to this Rule".

- EPA:** *Additional language needs to be added to the Regulated NSR Pollutant definition. Change the term "APCO" to "Administrator". The Administrator is the only one who has formally identified the precursors for NAAQS, therefore this needs to remain Admin. To keep the definition valid.*

While EPA's reg's have not been updated to state this specifically, it needs to be stated somewhere in the rule and I think this is the best place. In Rule 210.1, it is included in the definition of precursor, But this rule does not provide a definition for the term precursor, they are all included here.

In my earlier comments, I suggested removing this provision if the rule was only going to apply to ozone, and not PM10. But in several places in the rule, you have retained various PM10 related provisions. If you plan on retaining the other PM10 reference, then you must include this provision as well.

Also, if you retain the PM10 provisions, I strongly suggest adding something to your staff report stating you are submitting the rule as an update to your current NSR rules, as it pertains to PM10 (and Ozone for that matter.)

In fact, as I now think of it, we should probably add something to the applicability to state that for federal purposes, the provisions of Rule 201.1A supersede the provisions/requirements of Rule 210.1, for purposes of your federal NA NSR major source program. We could then state that Rule 210.1 remains applicable for all other sources requiring an ATC.

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District staff: APCO has been changed to Administrator and the following language has been included in the Rule:

...VOCs, NOx, and sulfur oxides (SOx) as precursors to PM10 in all PM10 nonattainment areas.

PM10 emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM10 in nonattainment major NSR permits. Compliance with emissions limitations for PM10 issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable state implementation plan.

5. **EPA:** *Combining the definitions of the terms significant and significant emission increase does not work as written. The modifiers are incorrect. It would be tricky to fix it, I've tried. My strong recommendation is to retain the CFR language (i.e., what you had before). As currently written, this would likely be a disapproval issue.*

District staff: Definition for "Significant" has been added and definition for Significant Emissions Increase has been revised. (See Appendix A for changes).

6. **EPA:** *Add "The location of the project" to Section III.E.1. to make clear that this section satisfies the requirements of 51.160(c)(2), which states that the location of the project must be provided.*

District staff: *"The location of the project" has been added to Section II.E.1.*

7. **EPA:** *VOC is a PM10 precursor in the current NSR rule. Please add VOC to Table 1, Federal Offset Ratio Requirements by Area Designation & Pollutant.*

District staff: *Table 1 has been updated.*

8. **EPA:** *Remove "Existing" from Section V.B. Major mods can only occur at major sources, therefore the word "existing" is not needed.*

District staff: "Existing" has been removed from Section V.B.

9. **EPA:** *Add language for “Stack Height Procedures” as Section V.D.*

District staff: The following language has been added as as Section V.D. Stack Height Procedures: The degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in 40 CFR 51.118(b). For the purposes of Section V.D, the definitions in 40 CFR 51.100 shall apply.

10. **EPA:** *Other sections go to letters and not numbers for the paragraphs. Should these [Section VIII] be A, B, C? Also add a section that pertains to Stack Height requirements pursuant to 40 CFR 51.100(ii) (1) or (2).*

District staff: Section VIII 1-4 has been corrected to A-D and the following language has been added for “E”: If the project includes an emissions stack whose good engineering practice stack height exceeds the height allowed by 40 CFR 51.100(ii) (1) or (2), the notice required by Section VIII.A. shall include information notifying the public of the availability of the demonstration study and shall provide an opportunity for a public hearing on the demonstration study. For the purposes of this section, the definitions in 40 CFR 51.100 shall apply.

III. INDUSTRY COMMENTS

Edwards Airforce Base (Edwards AFB) provided the following comments for the 11/2/2017 proposed Draft of Rule 210.1A.

1. **Edwards AFB:** We recommend that a clarification in the applicability section be made that this rule only applies to nonattainment pollutants over the major modification threshold and all other pollutants and modifications not classified as major in this rule must follow Rule 210.1 – New and Modified Stationary Source Review (NSR). A suggestion to add the following to clarify the applicability: *“This Rule shall apply to the proposed construction of any new major stationary source or any major modification to an existing major stationary source, if the stationary source or modification is major for a regulated NSR **nonattainment** pollutant, for which the area it is to be located in is designated nonattainment as listed in 40 CFR 81.305. **“Those portions of a modification or new stationary source that concern any other pollutant not considered major for a regulated nonattainment pollutant shall comply with Rule 210-1 – New and Modified Stationary Source Review.**”*

District staff: EPA had a similar comments (see EPA comments 2 and 4 above). Additionally, Section I.B. (Applicability) of the rule has been revised. See Appendix A for proposed language.

Appendix B - Response to Comments

- 2. Edwards AFB:** We suggest using the term “regulated nonattainment pollutant” in place of “regulated NSR pollutant” throughout the document in order to help clarify that the regulated pollutants under this rule are those that are contributors to the NAAQS nonattainment status. We consider “regulated NSR pollutant” to be ambiguous as New Source Review (NSR) could apply to either Rule 210.1-NSR, this Rule 210.1A-MNSR, or the federal state permit program for New Source Review (NSR) under 40 CFR 51 Subpart I. Additionally, we propose to modify the definition of “regulated NSR pollutant” as follows to aid in this clarification. A suggestion for the definition of “regulated nonattainment pollutant” is outlined below as we interpret the intent of this rule.

*“Regulated NSR Nonattainment Pollutant: Any pollutant for which a NAAQS has been promulgated **under 40 CFR 51, Subpart I and as codified in 40 CFR 81.305**, and any constituents or precursors identified by the APCO, provided that such constituent or precursor pollutant may only be regulated under NSR **40 CFR 51 Subpart I**, as part of regulation of the general pollutant. For the purposes of NSR **this rule**, the APCO identified volatile organic compounds (VOCs) and nitrogen oxides (NOx) as precursors to ozone in all ozone nonattainment areas.”*

District staff: Section I.B. (Applicability) and Definition MM Regulated NSR Pollutant of the rule have both been revised and expanded pursuant to discussions with EPA. See Appendix A for proposed language.

- 3. Edwards AFB:** We propose using the same baseline period of 3 years for actual emissions as already codified in Rule 210.1 NSR. The applicant is already required to collect and quantify baseline emissions for 3 years for all pollutants under Rule 210.1 NSR. It would be additional effort to prepare a second set of calculations for a 24 month time period for the sole purpose of meeting this rule. This may create confusion and errors in permit applications, especially if attempting to compare the baseline calculations from Rule 210.1 NSR to the baseline calculations in Rule 210.1A MNSR. Finally, a 3 year average would be more representative of actual operations than a 2 year average, as some operations are cyclical and do not operate every year or even every 2 years.

District staff: Under a strictly federal rule (which R210.1A is), the source may use ANY 24 month period out of the last 10 years (except for electric generating facilities, which only get to look back 5 yrs), to pick their baseline period. While the length of time is different, the use of any 24 month period is intended to allow the source to pick the business cycle that is most representative of normal operations. So I would consider explaining that the new rule provides additional flexibility than the current rule and that this rule will only apply if the source is a major source (a PTE greater than 50 tpy of VOC or NOx and 70 tpy of PM10) and makes a modification of at least 25 tpy for VOC or NOx, or a 15 tpy increase for PM10. Otherwise the requirements of Rule 210.1A do not apply.

To answer the question more directly, changing it to 3 years would be a problem, because source can use 2 out of 10 years, not just the last 3 years.

Appendix B - Response to Comments

4. **Edwards AFB:** We recommend that all other emissions definitions use the same baseline as in the previous definitions in Rule 210.1 NSR for the same reasons as noted above. This applies to actual emissions.

District staff: Please response to comment 3 above.

5. **Edwards AFB:** We recommend the definition for Continuous Emissions Monitoring System (CEMS), Continuous Emissions Rate Monitoring System (CERMS), Continuous Parameter Monitoring System (CPMS), and Predictive Emissions Monitoring System (PEMS) as they are not referred to anywhere else in this Rule.

District staff: These three definitions were originally included in a previous draft of the rule that considered including Plant-wide Applicability Limits (PALs). The three definitions have been removed.

6. **Edwards AFB:** We believe that the definition of “emission unit” may contain a typing error as it implies that only electric utility steam generating units are subject to MNSR. We suggest the following to clarify the definition.

*“Emissions Unit: Any **identifiable source operation or piece of process equipment, such as an article or machine, that is part of a major stationary source that emits or has PTE, any regulated NSR nonattainment pollutant and includes an electric utility steam generating unit. For purposes of this rule, there are two types of emissions units as described in paragraphs 1 and 2 of this definition:***

1. *A “new emissions unit” is any emissions unit which is (or will be) newly constructed and existed for less than two years from the date such emissions unit first operated. For the purposes of this definition, the date an emissions unit first operated shall not be extended by any shakedown period established pursuant to paragraph 6 of the definition of Net Emissions Increase.*
2. *An “existing emissions unit” is any emissions unit that does not meet the requirements in paragraph 1 of this definition. A replacement unit is an existing emissions unit.”*

District staff: This definition has been revised/clarified.

7. **Edwards AFB:** We believe a typo occurred in the definition of “X. Fugitive Emissions”. The language in items 1 through 4 of definition X appear to be associated with a unit replacement definition and not with fugitive dust. If so we recommend adding the appropriate replacement heading for items 1 through 4.

District staff: This was a typo and corrected (See CARB comment 1).

8. **Edwards AFB:** We recommend the definition of “functionally-identical replacement” be added from Rule 210.1 NSR to aid in determining the qualifications of a replacement unit. Although the definition of an identical replacement is in Rule 210.1A MNSR, the identical replacement definition may be too strict in many circumstances. The definition of a functionally-identical replacement is more practical as many equipment manufacturers may produce the same equipment under a different model number than it was sold under in previous years.

“Functionally-Identical Replacement: routine maintenance, repair, replacement or modification of an emissions unit where:

- 1. The replacement unit performs an identical function as the unit being replaced;*
- 2. Maximum rating of the replacement unit is not greater than the unit replaced;*
- 3. Potential to emit of the replacement unit will not be greater than the replaced emissions unit when both are operated at the same permit conditions; and*
- 4. The replacement unit has the same or greater degree of control for each pollutant as the unit being replaced.*
- 5. The replacement may be subject to approval by the APCO and upon determination that such replacement will not cause any further detriment to air quality than the existing emission unit.”*

District staff: A definition for Functionally Identical was proposed in an early draft of the rule but was removed because the term “Functionally Identical” was not used anywhere in the rule; similar to your comment regarding exclusion of definitions for CEMS, CERMS, and CPMS.

9. **Edwards AFB:** We recommend the definition of “Major Modification” follow the template already developed in Rule 210.1 NSR where only the relevant terms defining “major” are defined under “major modification”. In addition, the definition of “modification” should be added with the items that define a modification. A suggestion to use the following to clarify the definition follows.

“Major Modification: Any physical change or change in method of operation of a major stationary source, resulting in a significant emissions increase, as defined in this rule or determined to be significant under 40 CFR 51 Subpart I, of a regulated NSR nonattainment pollutant and a significant net emissions increase of that pollutant from the major stationary source. All emission increase determinations for NOx and VOC shall be aggregated with all other creditable decreases and increases in emissions from the stationary source during the last 5 consecutive calendar years, including the calendar year the increase occurred.

Modification: A modification shall include construction/installation of a new emissions unit; any change in hours of operation or change in production rate or change in method of operation of an existing emissions unit necessitating a change in permit conditions. Unless previously limited by a permit condition, the following shall not be considered modifications and shall not be subject to provisions of this Rule:

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1. A physical change or change in the method of operation shall not include:
 - a. Routine maintenance, repair, and replacement; **Construction of an identical replacement or a functionally-identical replacement provided the APCO determines there is no increase in maximum rating, and potential to emit any affected pollutant will not be greater from the new emissions unit than from the replaced emissions unit. Approval for a functionally identical replacement shall be requested and obtained in writing;**
 - b. Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
 - c. Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;
 - d. Use of an alternative fuel at a steam generating unit, to the extent that the fuel is generated from municipal solid waste;
 - e. Use of an alternative fuel or raw material by a stationary source which:
 - i. 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 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I; or
 - ii. The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I.
 - f. 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 CFR 52.21 or regulations approved pursuant to 40 CFR part 51 subpart I;
 - g. Any change in ownership at a stationary source;
 - h. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided the project complies with:
 - i. The SIP, and
 - ii. Any other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated.
2. **Any change of ownership of an existing emissions unit with a valid Permit to Operate;**
3. **Any transfer of location of an emissions unit with a valid Permit to Operate and within a stationary source.**
4. **Fugitive emissions of a major stationary source shall not be included in determining for any of the purposes of this rule, whether a particular physical change or change in the method of operation is a major modification, unless the source is a categorical stationary source.”**

District staff: Language for the definition “Major Modification” comes directly from the EPA (this is what EPA has requested). If the definition is change, it could present an approvability issue and not be included in the SIP.

10. **Edwards AFB:** We recommend the definition of “major stationary source” be renamed to avoid confusion with the designation of major stationary source in Rule 210.1 – NSR. The term major stationary source is defined in Rule 210.1 – NSR as any stationary source with a potential to emit of 50 tons or more per year of any affected pollutant. While the definition of “major stationary source” in Rule 210.1A-MNSR is defined below, it appears to relax the major source classification standard to 100 tpy from 50 tpy from the “major stationary source” listed in Rule 210.1-NSR. In order to reconcile the difference, we suggest using the term “Nonattainment Major Stationary Source” throughout the document, or another term which differentiates this classification from “major stationary source” under Rule 210.1-NSR. An alternative to modify the definition in Rule 210-NSR for consistency may not be feasible, therefore, using a different term may be the best solution.

*“Nonattainment Major Stationary Source: Any stationary source which emits, or has PTE 100 tpy, or more, of any regulated NSR **nonattainment** pollutant or precursor, except if one of the following lower emission thresholds is applicable:*

1. *For an area designated nonattainment for ozone, a source with the PTE VOCs or NOx in the following amounts shall be considered a **nonattainment** major stationary source:*
 - a. *≥100 tpy in areas classified as “marginal” or “moderate”;* or
 - b. *≥50 tpy in areas classified as “serious”.*
2. *For an area designated nonattainment for PM10 and classified as “serious,” a **nonattainment** major stationary source is a stationary source which emits, or has the potential to emit, 70 tpy or more of PM10.”*

District staff: All revisions to Rule 210.1, following 9/12/1979, have not been included in the SIP. This includes the last amendment (5/4/2000), which was submitted as a SIP revision in 2000. EPA cannot act on the rule due to deficiencies and out of date/incorrect definitions and terms; and has asked the District to withdraw the SIP submittal request. The withdraw request will be made to EPA as part of the SIP submittal package for Rule 210.1A. Rule 210.1 (NSR) will continue to be enforce locally as part of the District’s minor source program.

11. **Edwards AFB:** We recommend using the acronym “MNSR” instead of “NSR” for the term “nonattainment major new source review (MNSR) Program” in order to distinguish this program from the NSR program regulated under Rule 210.1-NSR. Additionally, we would like to clarify the definition of “Nonattainment Major New Source Review (MNSR) Program” as notated below in order to distinguish this “NSR” program from the “NSR” program in Rule 210.1.

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*“Nonattainment Major New Source Review (MNSR) Program: A major source preconstruction permit program that has been approved by the Administrator and incorporated into the District’s portion of the SIP, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI. Any permit issued under such a program is **qualifies as a major NSR permit as defined in 40 CFR 51, Subpart I.**”*

District staff: The “M” has been added to “MNSR”.

12. **Edwards AFB:** We recommend replacing the term “stationary source” with “emissions unit” in the definition of “potential to emit (PTE)”. A “stationary source” can be a collection of “emissions units”, whereas, an “emissions unit” is a discrete piece of equipment or process. Potential to emit applies to emission units and can be applied to stationary sources as a summation of all associated emission units. The description of a modification refers to emissions units instead of stationary source as well. The recommended changes should be made as below:

*“Potential to Emit (PTE): Maximum capacity of **an stationary source emission unit** 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 types or amounts 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 **incorporated into the applicable permit as a federally enforceable permit condition.** Secondary emissions do not count in determining the PTE of a stationary source.”*

District staff: “Stationary source” has been replaced with “emissions unit”.

13. **Edwards AFB:** Currently there do not appear to be any exemptions for complying with BACT in this rule. It is understood that this rule intends to implement BACT for those pollutants that are not in attainment (NO_x and VOC). However, this rule does not clarify that BACT is not required for those pollutants that are in attainment or unclassified status. Furthermore, there are certain circumstances that BACT would not be required under the federal program or the current NSR program. Portable TSE is one example. We recommend that a list of exemptions to BACT similar to Rule 210.1- NSR be listed in this rule. A similar list of exemptions is approved in San Joaquin Valley Air Pollution Control District (SJVAPCD) Rule 2201 – New and Modified Stationary Source Review, which satisfies the federal NSR standard for major sources in an extreme nonattainment area. We suggest the following revision to capture BACT exemptions:

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- “1. The applicant shall submit an analysis demonstrating BACT has been proposed for each emission unit included in the project which emits an NSR regulated **nonattainment** pollutant, for which the area the project is to be located in has been classified as nonattainment by EPA, and for which the new stationary source or modification is classified as major.*
- 2. BACT shall be proposed for modifications or emissions units which do not emit a regulated nonattainment pollutant defined by this rule, but are required to comply with the applicable BACT requirements of Rule 210.1-New and Modified Stationary Source Review.*
- 3. For modifications or emission units which do not emit a regulated nonattainment pollutant as defined by this rule and qualify for exemption under Rule 210.1, BACT shall not be required for the following:*
 - a. A new emissions unit or modification of an existing emissions unit for carbon monoxide in attainment areas (compliance with applicable PSD requirements is necessary);*
 - b. A cargo carrier;*
 - c. A new emissions unit or modification of an existing emissions unit resulting in a voluntary reduction in emissions for the sole purpose of generating emission reduction credits. This exemption applies only to the pollutant qualifying for emission reduction credits;*
- 4. BACT shall not be required for the following situations exempted by this rule:*
 - a.. Temporary replacement emissions units;*
 - b. Modifications solely consisting of administrative changes to the permit, including changes to emissions monitoring components, instruments, or replacement of components of an emission unit which have no effect on the quantity of affected pollutants emitted from an emission unit;*
 - c. A new emissions unit or modification of an existing emissions unit if such installation or modification is solely for the purpose of effecting compliance with District, state, or federal air pollution control laws, regulations, or orders, as approved by the Control Officer, provided there is no increase in potential to emit. This exemption only applies to the affected pollutant regulated by the applicable prohibitory rule, unless the prohibitory rule specifically exempts emissions of other affected pollutants from the requirements;*
 - d. Portable internal combustion engines used by the Department of Defense or National Guard exclusively for military tactical support or other federal emergency purposes.*

District staff: Provisions of this Rule only apply to construction of any new major stationary source or any major modification to an existing major stationary source (as defined in the Rule). Equipment that is already considered exempt would not be subject to this rule as its emissions would not trigger any of the thresholds. Therefore, the District does not believe there is a need to include a list of exemptions in the Rule.

14. **Edwards AFB:** Currently there do not appear to be any exemptions from requiring emission offsets in this rule. There also does not appear to be a finite quantity of emissions which would require offsets, except for a significant emissions increase as defined under this Rule for rule applicability. We recommend implementing emission offset exemptions that are already recognized under Rule 210.1-NSR. For example, offsets should not be required for a transfer of location within the same stationary source as there is realistically no change in emissions from that source. We believe that all of the following exemptions do not cause a significant increase in emissions or should be exempt due to other regulatory requirements. A similar list of exemptions is also approved in SJVAPCD Rule 2201 – New and Modified Stationary Source Review. Further explanation of the minor impact of emission on these exempt categories is explained below the suggested text.

“4. Offsets shall not be required in the following cases:

- a. Emergency equipment not operated more than 200 hours per year (excluding routine maintenance/service startups subject to a separate hourly limitation), as approved by the Control Officer. To qualify for exemption, an emergency electrical generator cannot be operated as part of any utility voluntary reduction program.*
- b. Temporary emissions sources not operated more than a cumulative total of 90 days in any 12 continuous months within the District. To qualify for exemption, a temporary emissions unit with a valid Permit to Operate may not operate more than 45 days at any one location in the District within a 12-month period, and may not replace an emissions unit more than 45 days at any one stationary source within a 12 month period. The owner or operator of equipment exempted by this provision shall maintain records of dates of operation at each stationary source.*
- c. Portable equipment registered in accordance with CARB regulations under 13 CCR 2450-2465, Portable Equipment Registration Program (PERP) or 13 CCR 2420 Off road Compression Ignition Engines and Equipment. Portable internal combustion engines used by the Department of Defense or National Guard exclusively used for military tactical support or other federal emergency purposes.*
- d. On-site soil or groundwater decontamination performed by, under the jurisdiction of, or pursuant to the requirements of an authorized health officer, agricultural commissioner, fire protection officer, or other authorized government officers.*
- e. Transfer of location within the District of an existing stationary source with valid Permits to Operate to a new location provided the:*
 - 1) transferred equipment would not constitute an addition to an existing stationary source;*
 - 2) no change in offset ratio would occur if the source previously required offsets;*
 - 3) the permitted emission of any affected pollutant will not be greater at the new location; and*
 - 4) there will be no adverse public health impact created.*

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- e. Installation of a new emissions unit or modification of an existing emissions unit if such installation or modification is solely for the purpose of effecting compliance with District, state, or federal air pollution control laws, regulations, or orders, as approved by the Control Officer, provided there is no increase in potential to emit. This exemption applies only to the affected pollutant regulated by the applicable prohibitory rule unless the prohibitory rule specifically exempts emissions of other affected pollutants from Rule 210.1 requirements;*
- f. Modifications solely consisting of administrative changes to a permit, including changes to emissions monitoring components, instruments, or replacement of components of an emission unit having no effect on the quantity of pollutants emitted;*
- g. Notwithstanding provisions of this section the Control Officer shall not grant exemption from offsets for any emissions increases interfering with implementation of the latest adopted Air Quality Attainment Plan.*

Temporary emissions sources are exempt from offsets by their inherent nature of being temporary and therefore, any attempt to quantify offsets would not meet the offset criteria of being permanent under Rule 201.1 Section IV. The limitation of 45 days of operation should restrict emissions from a temporary source from becoming significant. Also, temporary replacement units may sometimes be necessary when a vital piece of equipment breaks down and cannot be fixed immediately. The emissions from this type of temporary replacement should be equivalent to the unit it replaced for that time period and in effect have no emission increases. Therefore, temporary emission sources have no significant emission increases and can be exempted from offsets.

Portable engines may have emissions, but are not typically regulated under the permit program according to Rule 202 Section I.D. These engines are regulated under California Air Resources Board (CARB) and are required to meet fleet and emission and standards under the Portable Equipment regulations. CARB frequently revises these regulations for compliance with state and federal air quality goals and manages appropriate registration fees. As these engines are portable and are transported anywhere within the state, the application of offsets would not be equally portioned across the state and could not satisfy the offset criteria for in Rule 201.1A. For these reasons, we recommend a portable engine exemption from offsets.

Emergency equipment is limited to 200 hours of operation and are subject to CARB Airborne Toxic Control Measures (ATCM) and BACT, which limit the amount of emissions generated from emergency equipment to a minor amount that does not qualify as a significant emissions increase (unless several sources are combined into one project). The optimum operating conditions for emergency equipment is not operating more than necessary for maintenance (which varies between 25 – 100 hrs per year depending on classification in the ATCM).

Appendix B - Response to Comments

After considering this actual emission rate, the cost of any offsets for this emission unit is 5 to 8 times higher than the emissions from the unit. To illustrate, a new emergency engine rated greater than 750 hp is required to meet a NO_x limit of 1.5 g/bhp-hr and operate less than 200 hours in an emergency and less than 50 hours for maintenance. The potential emissions from this unit would be 495 pounds of NO_x per year and the offsets (1.2 ratio) required for this unit would be 594 pounds of NO_x. The actual emissions from this engine operating at only 40 hours per year is 99 pounds per year. These emissions are well below the significant emissions threshold and would not be subject to offsets or this rule, except by inclusion in another project. Therefore, we suggest that emergency engines be exempted from requiring offsets in this rule.

Groundwater or soil decontamination projects may have emissions that are typically below the significant emissions threshold and can require BACT depending on the nature of the pollutant. Similar to the exemption for new or modified units installed for the purpose of meeting air quality regulations, soil or water decontamination projects are required emission units by legal obligations and regulations. The burden of providing offsets for these projects may inhibit the owner from complying with legal obligations to protect and clean up the environment. Therefore, we recommend that these types of projects are exempt from offsets.

Other exemptions proposed above are mostly administrative in nature and do not generate emissions increases.

District staff: Please see District Staff response to comment 13.