

**RULE 210.1A Major New and Modified Stationary Source Review (MNSR) - Adopted: 1/11/18, Rescinded: 3/5/20, Adopted: 8/4/22**

**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 of a nonattainment pollutant;
2. Insure the applicant provides an analysis demonstrating that the Best Available Control Technology (BACT) has been proposed for each emissions unit included in each such 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 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 in the District that is major for a nonattainment pollutant, if the stationary source or modification is located anywhere in the designated nonattainment area.
2. Sources subject to this rule may also be subject to other District Rules and Regulations. For purposes of the implementation and enforcement of this rule, the provisions and requirements of this rule, including but not limited to the requirements for obtaining an Authority to Construct, application submittal and content, conditional approval, public participation, and granting an Authority to Construct, shall take precedence over any other such provisions and requirements in other District Rules and Regulations, including but not limited to District Rule 210.1. To the extent that other District Rules or Regulations may affect the stringency or applicability of this rule, such other Rules and Regulations shall not apply for purposes of the implementation or enforcement of this rule.
3. For purposes of this rule, the term “stationary source” does not refer to the source of emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216 of the Clean Air Act.

**II. Definitions**

The following terms shall have the meanings set forth below in this Section for the purposes of this rule. In addition, certain definitions are incorporated by reference as set forth below in this Section.

- 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. The 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. 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. Air Pollution Control Officer (APCO): The Air Pollution Control Officer of the Eastern Kern Air Pollution Control District.
- C. 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:
1. Any applicable standards set forth in District Rules and Regulations or 40 CFR Parts 60, 61, or 63;
  2. Any applicable emission limitation in the District's portion of the State Implementation Plan (SIP), including those with a future compliance date; or
  3. The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.
- 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 that 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 paragraph 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 the District's Rules and Regulations, whichever is earlier.
- a. The average rate shall include fugitive emissions to the extent quantifiable and include 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 an emission limitation that was legally enforceable during the consecutive 24-month period.
  - c. 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 that the Administrator proposed or promulgated under 40 CFR Part 63, then 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).
  - d. 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.
  - e. 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 paragraphs 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 (NESHAP).

G. Building, Structure, Facility, or Installation: All of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) 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, or a national lakeshore or seashore.
- J. Clean Air Act (CAA): The federal Clean Air Act, 42 U.S.C. 7401 et seq., as amended.
- K. Commence: As applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits, 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.

- L. Complete: In reference to a permit application, means that the application contains all of the information necessary for processing the application.
- M. 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.
- N. District: Eastern Kern Air Pollution Control District.
- O. Electric Utility Steam Generating Unit: Any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity, and more than 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.
- P. Emission Reduction Credit (ERC): Reductions of actual emissions from emissions units that are certified by a California air district in accordance with applicable district rules and issued by the air district in the form of ERC certificates.
- Q. Emissions Unit: Any part of a stationary source that emits or would have the PTE any regulated NSR 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 which has existed for less than two years from the date such emissions unit first operated.
  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.
- R. Federally Enforceable: All limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60, 61, and 63, requirements within 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 that is incorporated into the SIP and expressly requires adherence to any permit issued under such program.
- S. Federal Land Manager: With respect to any lands in the United States, the Secretary of the Department with authority over such lands.
- T. Fugitive Emissions: Emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

- U. Internal Emission Reductions: Emission reductions which have occurred or will occur at the same major stationary source where the proposed emissions increase will occur.
- V. Major Modification: Any physical change in or change in the method of operation of, a major stationary source, that would result in a significant emissions increase of a nonattainment pollutant and a significant net emissions increase of that pollutant from the major stationary source. Notwithstanding the definition of Net Emissions Increase, for purposes of determining whether a project at a major stationary source located in an area that has been designated as nonattainment for ozone per 40 CFR 81.305 would result in a significant net emissions increase, for volatile organic compounds or nitrogen oxides, the net emissions increase from the project shall be aggregated with all other net emissions increases from the stationary source that occurred during the last 5 consecutive calendar years, including the calendar year in which such increase occurred.
1. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.
  2. 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 12, 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 regulations approved pursuant to 40 CFR 51.165.
    - 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.

W. Major Stationary Source: Any stationary source of air pollutants, which emits, or has the PTE, 100 tpy or more of any nonattainment pollutant, except if one of the following lower emission thresholds is applicable:

1. For an area designated nonattainment for ozone, a source which emits, or has the PTE, VOC or NO<sub>x</sub> in any of the following amounts shall be considered a major stationary source:
  - a.  $\geq 100$  tpy in areas classified as “marginal” or “moderate”; or
  - b.  $\geq 50$  tpy in areas classified as “serious”; or
  - c.  $\geq 25$  tpy in areas classified as “severe”.
2. For an area designated nonattainment for PM<sub>10</sub> 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 PM<sub>10</sub> or its precursors NO<sub>x</sub>, SO<sub>2</sub>, or VOC.
3. Any physical change that would occur at a stationary source not qualifying as a major stationary source under paragraph 1 or 2 of this definition, if the change would constitute a major stationary source by itself under paragraph 1 or 2.
4. A major stationary source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone.
5. The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source is a categorical stationary source.

X. National Ambient Air Quality Standards (NAAQS): Those standards established pursuant to Section 109 of the CAA.

Y. 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.

Z. Net Emissions Increase: For the purposes of this rule, with respect to any regulated NSR pollutant emitted by a major stationary source:

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 Subsection III.C; 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 that 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 51.165, 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 that 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 that 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 becomes operational only after a reasonable shakedown period, not to exceed 180 days.
7. Paragraph 1 of the definition of Actual Emissions shall not apply for determining creditable increases and decreases or after a change.

- AA. 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.
- BB. Nonattainment pollutant: Any regulated NSR pollutant for which the District, or portion of the District, has been designated as nonattainment, as codified in 40 CFR 81.305, as well as any precursor of such regulated NSR pollutant identified in the definition of Regulated NSR Pollutant.
- CC. NO<sub>x</sub>: Means Nitrogen Oxides.
- DD. PM<sub>10</sub>: Particulate matter with an aerodynamic diameter smaller than or equal to a nominal 10 microns. Gaseous emissions which condense to form PM<sub>10</sub> at ambient temperatures shall also be counted as PM<sub>10</sub>.
- EE. Permanent: An emission reduction which is federally enforceable for the life of a corresponding increase in emissions.
- FF. Potential to Emit (PTE): Maximum capacity of an emissions unit or stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the 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.
- GG. 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.
- HH. Project: A physical change in, or change in the method of operation of, an existing major stationary source.
- II. 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 that 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.

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

KK. Regulated NSR Pollutant: Any pollutant for which a NAAQS has been promulgated and any constituents or precursors identified in this definition, 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, VOC and NO<sub>x</sub> are identified as precursors to ozone in all ozone nonattainment areas, and VOC, NO<sub>x</sub>, and SO<sub>2</sub> are identified as precursors to PM<sub>10</sub> in all PM<sub>10</sub> nonattainment areas.

PM<sub>10</sub> 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 PM<sub>10</sub> in nonattainment major NSR permits. Compliance with emissions limitations for PM<sub>10</sub> issued prior to January 1, 2011, shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable state implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this rule unless the applicable implementation plan required condensable particulate matter to be included.

LL. 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 that is 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.

MM. 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.

NN. Shutdown: The cessation of operation of any air pollution control equipment or process equipment for any purpose.

OO. 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 VOC or NO<sub>x</sub> in ozone nonattainment areas classified as “marginal” or “moderate”;  
 25 tpy of VOC or NO<sub>x</sub> in ozone nonattainment areas classified as “serious” or “severe”; or  
 15 tpy of PM<sub>10</sub>, 40 tpy of SO<sub>2</sub>, 40 tpy of NO<sub>x</sub>, or 40 tpy of VOC in PM<sub>10</sub> nonattainment areas.

PP. Significant Emissions Increase: For a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

QQ. SO<sub>2</sub>: Means Sulfur dioxide.

RR. Startup: Setting into operation of any air pollution control equipment or process equipment for any purpose except routine phasing in of process equipment.

SS State Implementation Plan (SIP): The State Implementation Plan approved or promulgated for the State of California under Section 110 or 172 of the Clean Air Act.

TT Stationary Source: Any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

UU. Surplus: The 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 California 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, Reasonably 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 that is required by the CAA 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, including 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.

VV. Temporary source: An emissions source such as a pilot plant or a portable facility 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.

WW Tons per year (tpy): Annual emissions in tons.

XX. The definitions contained in 40 CFR 51.100 shall apply, and are hereby incorporated by reference. In the event of any discrepancy between a definition contained in 40 CFR 51.100 and any definition specified above, the definition specified above shall control.

YY The definitions contained in 40 CFR 51.301 shall apply, and are hereby incorporated by reference. In the event of any discrepancy between a definition contained in 40 CFR 51.300 and any definitions specified above or incorporated by reference above, the definition above shall control.

### **III. Applicability and Related Requirements**

A. 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 by the District pursuant to this rule.

#### **B. Calculations to Determine NSR Applicability for New Major Stationary Sources**

The definition of Major Stationary Source as incorporated in Section II of this rule shall be used to determine if a new or modified stationary source is a new major stationary source. Different pollutants, including individual precursors, are not summed to determine applicability of a major stationary source.

#### **C. Calculations to Determine NSR Applicability for Major Modifications**

Except as otherwise provided in Subsection III.D., the provisions in paragraphs 1-5 of this Subsection shall be used to determine if a proposed project will result in a major modification to an existing major stationary source. Different pollutants, including individual precursors, are not summed to determine applicability of a major modification. 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 nonattainment 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 nonattainment 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 nonattainment pollutant is projected to occur if the sum of the difference between the potential to emit 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 nonattainment 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.

D. Projects that Rely on a Projected Actual Emissions Test

Except as otherwise provided in paragraph 7.c. of this Subsection, the provisions of this Subsection shall apply with respect to any nonattainment pollutant that is emitted from projects at existing emissions units located at a major stationary source, when there is a reasonable possibility, within the meaning of paragraph 7 of this Subsection, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, 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 projected actual emissions.

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 concerning compliance with District Rule 210.1A before beginning actual construction. However, 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. 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 specified under paragraph 1.d. of 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 that is a "significant emissions increase," as defined in this rule (without reference to the amount that is 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 that is a “significant emissions increase,” as defined in this rule (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant.
- c. For a project in which a reasonable possibility occurs only within the meaning of paragraph 7.b. of this Subsection and not also within the meaning of paragraph 7.a. of this Subsection, the provisions of paragraphs 2 through 5 of this Subsection do not apply to the project.

E. 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 direct emissions from the stationary source, the requirements of Section V (Emissions Offsets) must also be met for secondary emissions.

**IV. Application Requirements**

A. Application Submittal

The owner or operator of any proposed new major stationary source or major modification of a major stationary source required to obtain an Authority to Construct pursuant to this rule, shall submit a complete application for an Authority to Construct (ATC) on forms provided by the District and include in the application submittal the information listed in Subsection IV.B. as well as the demonstrations listed in Subsections IV.C. – IV.F. Designating an application complete for purposes of permit processing does not preclude the APCO from requesting or accepting any additional information.

B. Application Content

At a minimum, an application for an ATC shall contain the following information related to the proposed new major stationary source or major modification:

1. Identification of the applicant, including contact information.
2. Identification of address and location of the new or modified source.
3. An identification and description of all emission points, including information regarding all regulated NSR pollutants emitted by all emissions units included in the new source or modification.
4. 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.
5. A projected schedule for commencing construction and operation for all emissions units included in the new source or modification.

6. A projected operating schedule for each emissions unit included in the new source or modification.
7. A determination as to whether the new source or modification will result in any secondary emissions.
8. The emission rates of all regulated NSR pollutants, including fugitive and secondary emission rates, if applicable. The emission rates must be described in tpy 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).
9. The calculations on which the emission rate information is based, including fuel specifications, if applicable and any other assumptions used in determining the emission rates (e.g., HHV, sulfur content of natural gas).
10. The calculations, pursuant to Subsection III.B. or III.C., used to determine applicability of this rule, including the emission calculations (increases or decreases) for each project that occurred during the contemporaneous period.
11. The calculations, pursuant to Section V. (Emissions Offsets), used to determine the quantity of offsets required for the proposed new source or modification.
12. 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.
13. If applicable, a description of how performance testing will be conducted, including test methods and a general description of testing protocols.

C. Best Available Control Technology (BACT)

The applicant shall submit an analysis demonstrating that BACT has been proposed for each emissions unit included in the new major stationary source or major modification that emits a nonattainment pollutant, for which the new stationary source or modification is classified as major.

D. Statewide Compliance

The applicant shall submit a certification that each existing major stationary source owned or operated by the applicant (or any entity controlling, controlled by, or under common control with 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.

E. 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.

F. Sources Impacting Class I Areas

The applicant for a proposed new major source or major modification to a major source that may affect visibility of any Mandatory Class I Federal 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 source or modification, as required by 40 CFR Section 51.307(b)(2).

G. Application & Permit Fees

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

V. Emissions Offsets

A. Offset Requirements

1. The emissions increases of a nonattainment pollutant for which the new stationary source or modification is classified as major 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 emissions 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 emissions units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.
4. No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except that emissions credit may be allowed for the replacement with those compounds listed as having negligible photochemical reactivity in 40 CFR 51.100(s).

## 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 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 emissions unit is a replacement for an emissions unit that is 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 emissions unit before the existing emissions 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 potential to emit 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.
4. The ratios listed in Table 1 shall be applied based on the area's highest classification 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 Classification & Pollutant**

<b>Area Designation</b>	<b>Pollutant</b>	<b>Offset Ratio</b>
Marginal Ozone Nonattainment Area	NO <sub>x</sub> or VOC	1.0 to 1.1
Moderate Ozone Nonattainment Area	NO <sub>x</sub> or VOC	1.0 to 1.15
Serious Ozone Nonattainment Area	NO <sub>x</sub> or VOC	1.0 to 1.2
Severe Ozone Nonattainment Area	NO <sub>x</sub> or VOC	1.0 to 1.3
PM <sub>10</sub> Nonattainment Area	PM <sub>10</sub> , SO <sub>2</sub> , NO <sub>x</sub> , 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 newly reduced potential to emit, including practicably enforceable conditions to limit their potential to emit.
3. Emission reductions must be obtained from the same nonattainment area; however, 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. The emission offsets obtained shall be for the same regulated NSR pollutant.
2. In no case shall the compounds excluded from the definition of VOC be used as offsets for VOC.

### VI. Administrative Requirements

#### A. Visibility

1. The APCO shall provide written notice and conduct any necessary review and consultation with the Federal Land Manager regarding any proposed new major stationary source, or major modification of an existing major stationary source that may impact visibility in any Mandatory Class I Federal Area, in accordance with the applicable requirements of 40 CFR 51.307.
2. The APCO may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the APCO deems necessary and appropriate.

#### 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 Subsection V.C.4., 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 public notification and the opportunity for public comment given.

#### 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).

1. Before the Control Officer issues an Authority to Construct under this rule to a source with a stack height that exceeds good engineering practice (GEP) stack height, the Control Officer shall notify the public of the availability of the demonstration study and provide opportunity for a public hearing.
2. Any field study or fluid model used to demonstrate GEP stack height and any determination concerning excessive concentration must be approved by the EPA and the Control Officer prior to any emission limit being established.
3. The provisions of Subsection VI.D. do not restrict, in any manner, the actual stack height of any stationary source or facility.

E. Environmental Protection Agency Determination

Notwithstanding any other requirements of this rule governing the issuance of an Authority to Construct, the APCO shall not issue an Authority to Construct to a new major stationary source or major modification subject to the requirements of this rule if the federal Environmental Protection Agency has determined that the SIP is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of Title I, Part D of the Clean Air Act.

**VII. Authority to Construct - Decision**

Following acceptance of an application as complete, the APCO shall perform evaluations required to determine if the proposed new major stationary source or major modification will comply with all applicable District, state and federal rules, regulations, or statutes, including but not limited to the requirements under Section IV of this rule, 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 Requirements

1. 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:
  - a. Each emissions unit(s) that constitutes the new source or modification will not violate any applicable requirement of the District's portion of the SIP; and
  - b. 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
  - c. The emission limitation for each emissions unit that constitutes the new source or modification specifies BACT for such units.

If the APCO determines that 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 Authority to Construct issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained or that the operational conditions will be properly performed 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

- d. The quantity of ERCs or internal emission reductions required to offset the new source or modification, pursuant to Section V.C.2; and
  - e. All ERCs or internal emission reductions required for the proposed new source or modification have been identified and have been made federally enforceable or legally and practicably enforceable; and
  - f. The quantity of ERCs or internal emission reductions determined pursuant to Section V.C.2 will be surrendered prior to commencing operation.
2. Temporary sources and emissions resulting from the construction phase of a new source are exempt from paragraphs 1.d., 1.e., and 1.f. of this Section.

#### 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 legal and practical 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 the source is classified as major.
3. A major modification shall achieve BACT for each nonattainment pollutant for which the modification would result in a significant emissions increase and significant net emissions increase. This requirement applies to each proposed emissions unit at which a net emissions increases in the nonattainment pollutant would occur as a result of a physical change, or change in the method of operation, of 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 of public notification and all comments received at any public hearing(s) in making a final determination on the approvability of the application and the appropriate ATC conditions. The District shall make all comments available, including the District's response to the comments, for public inspection in the same locations where the District made preconstruction information relating to the proposed source or modification available.
2. APCO shall deny any application for an ATC if APCO finds that the new source or modification would 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 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 preconstruction information and public comments relating to the source available.

### D. Permit to Operate

The applicable terms and conditions of an issued Authority to Construct shall be included in any Permit to Operate (PTO) subsequently issued by the APCO for the same emissions units.

## VIII. 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 the terms of its ATC or PTO, 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 Enforceable 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 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.

**IX. Public Participation**

After APCO has made a preliminary written decision to issue or deny an ATC for a new major stationary source, or major modification of an existing major stationary source, as specified in Subsections VII.A. and VII.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, including how the public can access the information specified in Subsection IX. B., 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 ATC 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.

**X. 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.

**XI. Effective Date for Referenced Federal Regulations**

All references and citations in this rule to Title 40 of the Code of Federal Regulations (CFR) refer to the referenced federal regulation as in effect on (August 4, 2022).

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