Subchapter E. NEW SOURCE REVIEW

Sec.

§ 127.201. General requirements.

(a) A person may not cause or permit the construction or modification of an air contamination facility in a nonattainment area or having an impact on a nonattainment area unless the Department or an approved local air pollution control agency has determined that the requirements of this subchapter have been met.

(b) The nonattainment area classification that applies for offset trading and offset ratio selection shall be the highest classification designated by the EPA Administrator in 40 CFR 81.339 (relating to Pennsylvania) or by operation of law.

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

(d) The NSR requirements of this subchapter apply to an owner or operator of a facility at which a net emissions increase that is significant would occur as determined in accordance with § 127.203a (relating to applicability determination). If an emissions increase meets or exceeds the applicable emissions rate that is significant as defined in § 121.1 (relating to definitions), the facility is subject to the permitting requirements under § 127.205 (relating to special permit requirements). An emissions increase subject to this subchapter must also be offset through the use of ERCs at the offset ratios specified in § 127.210 (relating to offset ratios). The generation, use, transfer and registration requirements for ERCs are listed in § § 127.206—127.209.

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

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

(g) $PM_{2.5}$ and PM-10 emissions include gaseous emissions from a facility or activity that condense to form PM at ambient temperatures, if present, in accordance with the following requirements:

(1) Beginning January 1, 2011, or an earlier date established by the Administrator of the EPA, condensable PM shall be accounted for in applicability determinations and for $PM_{2.5}$ and PM-10 emission limitations established in a plan approval or operating permit issued under this chapter.

(2) Compliance with emissions limitations for $PM_{2.5}$ and PM-10 issued prior to January 1, 2011, or an earlier date established by the Administrator, may not be based on condensable PM unless required by the terms and conditions of a plan approval, operating permit or the SIP.

(3) Applicability determinations made prior to January 1, 2011, or an earlier date established by the Administrator, without accounting for condensable PM may not be considered in violation of this subchapter unless the applicable plan approval, operating permit or SIP includes requirements for condensable PM.

§ 127.201a. Measurements, abbreviations and acronyms.

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

BACT—Best available control technology

BAT—Best available technology

CEMS—Continuous emissions monitoring system

CERMS—Continuous emissions rate monitoring system

CO—Carbon monoxide

CPMS—Continuous parametric monitoring system

ERC—Emission reduction credit

LAER—Lowest achievable emission rate

lb—Pounds

MACT—Maximum achievable control technology

MERC—Mobile emission reduction credit

$\mu g/m^3$—Micrograms per cubic meter

mg/m^3—Milligrams per cubic meter

NO_x—Nitrogen oxides

NSPS—New source performance standard

NSR—New source review

O_2—Oxygen

PAL—Plantwide Applicability Limit

PEMS—Predictive emissions monitoring system

PM—Particulate matter

$PM_{2.5}$—Particulate matter less than or equal to 2.5 micrometers

PM-10—Particulate matter less than or equal to 10 micrometers

RACT—Reasonably available control technology

SO_x—Sulfur oxides

TPY—Tons per year

VOC—Volatile organic compound

§ 127.202. Effective date.

(a) The special permit requirements in this subchapter apply to an owner or operator of a facility to which a plan approval will be issued by the Department after May 19, 2007, except for $PM_{2.5}$, which will apply after September 3, 2011.

(b) For SOx, $PM_{2.5}$, PM-10, lead and CO, this subchapter applies until a given nonattainment area is redesignated as an unclassifiable or attainment area. After a redesignation, special permit conditions remain effective until the Department approves a permit modification request and modifies the permit.

§ 127.203. Facilities subject to special permit requirements.

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

Pollutant	*Averaging time*				
	Annual	*24 (hours)*	*8 (hours)*	*3 (hours)*	*1 (hours)*
SO_2	1.0 µg/m^3	5 µg/m^3	-	25 µg/m^3	-
PM-10	1.0 µg/m^3	5 µg/m^3	-	-	-
CO	-	-	0.5 mg/m^3	-	2 mg/m^3
Lead	-	0.1 µg/m^3	-	-	-

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

(1) The applicability requirements in § 127.203a (relating to applicability determination) apply except as provided by this subsection. The requirements of this subchapter apply if the aggregated emissions determined according to subparagraph (i) or (ii) exceed 25 TPY of NO_x or VOCs.

(i) The proposed increases and decreases in emissions are aggregated with the other increases in net emissions occurring over a consecutive 5 calendar-year period, which includes the calendar year of the modification or addition which results in the emissions increase. The aggregated VOC or NO_x emissions must meet the applicability requirements in paragraph (2) or (3).

(ii) The proposed increases and decreases in emissions are aggregated with other increases and decreases which occurred within 10 years prior to the date of submission of a complete plan approval application. If the aggregated emissions increase calculated using this subparagraph meets or exceeds the emissions rate that is significant, only the emissions offset requirements in § 127.205(3) (relating to special permit requirements) apply to the aggregated emissions.

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

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

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

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

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

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

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

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

(2) If a particular source or modification becomes a major facility or major modification solely by virtue of a relaxation in an enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant including a restriction on

hours of operation, the requirements of this subchapter also apply to the source or modification as though construction had not yet commenced on the source or modification.

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

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

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

(3) A proposed de minimis increase results in a net emissions increase calculated using emissions increases and decreases which occurred within 10 years prior to the date of submission of a complete plan approval application, which does not meet or exceed the emissions rate that is significant.

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

§ 127.203a. Applicability determination.

(a) The Department will conduct an applicability determination during its review of a plan approval application for the construction of a new major facility or modification at an existing major facility under this section. The owner or operator of the facility shall include in the plan approval application the estimate of an emissions increase in a regulated NSR pollutant from the project. The owner or operator shall calculate an emissions increase in a regulated NSR pollutant from a project in accordance with paragraph (1). The owner or operator shall calculate a net emissions increase in accordance with paragraph (1)(ii), if the emissions increase from a project equals or exceeds the applicable emissions rate that is ‘‘significant’’ as defined in § 121.1 (relating to definitions). If the emissions increase from a project does not exceed the listed applicable emissions rate that is significant, the owner or operator shall calculate the net emissions increase in accordance with paragraph (2).

(1) As part of the plan approval application, the owner or operator of the facility shall calculate whether a significant emissions increase and a significant net emissions increase will occur as a result of a physical change or change in the method of operation. The owner or operator of the facility shall use the procedures in subparagraph (i) to calculate the emissions increase in a regulated NSR pollutant due to the project, and the procedures in subparagraph (ii) to calculate the net emissions increase in a regulated NSR pollutant. 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. If the project causes a

significant emissions increase, the project is a major modification if it also results in a significant net emissions increase.

(i) The emissions increase in a regulated NSR pollutant due to the project will be the sum of the following:

(A) For existing emissions units, an emissions increase of a regulated NSR pollutant is the difference between the projected actual emissions and the baseline actual emissions for each unit, as determined in paragraphs (4) and (5). When calculating an increase in emissions that results from the particular project, exclude that portion of the unit's emissions following completion of the project that existing units could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that is also unrelated to the particular project, including all increased utilization due to product demand growth as specified in paragraph (5)(i)(C).

(B) For new emissions units, the emissions increase of a regulated NSR pollutant will be the potential to emit from each new emissions unit.

(ii) The net emissions increase for a regulated NSR pollutant emitted by a major facility will be the amount by which the sum of the following exceeds zero:

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

(B) Other increases and decreases in actual emissions at the major facility that are contemporaneous with the project and are otherwise creditable.

(I) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date 5 years before construction on the project commences and the date that construction on the project is completed.

(II) Baseline actual emissions for calculating increases are determined as specified under paragraph (4), except that paragraph (4)(i)(D) does not apply.

(2) As part of the plan approval application for a proposed de minimis emission increase, the owner or operator of the facility shall use subparagraphs (i) and (ii) to calculate the net emissions increase for a regulated NSR pollutant except $PM_{2.5}$ and $PM_{2.5}$ precursors. For a proposed de minimis increase in which the net emissions increase calculated using subparagraphs (i) and (ii) meets or exceeds the emissions rate that is significant, only the emissions offset requirements in this subchapter apply to the net emissions increase.

(i) The net emissions increase is the sum of the proposed de minimis increase due to the project and the previously determined increases in potential emissions or actual emissions and decreases in actual emissions that are contemporaneous with the project.

(ii) An increase or decrease is contemporaneous if it occurred within 10 years prior to the date of the Department's receipt of a complete plan approval application.

(3) An increase or a decrease is creditable for applicability determination purposes if it meets the following conditions:

(i) The Department has not relied on it in issuing a permit for the facility under this subchapter, for which the permit is in effect when the increase in emissions from the project occurs.

(ii) The increase is creditable to the extent that the new level of emissions exceeds the old level of emissions.

(iii) An actual emissions decrease is creditable if the following conditions are met:

(A) The ERC provisions in § 127.207(1) and (3)—(7) (relating to creditable emissions decrease or ERC generation and creation) have been complied with, and the decrease in emissions is Federally enforceable by the time construction begins on the project. The plan approval for the project will contain a provision specifying that the emissions decrease is Federally enforceable on or before the construction date.

(B) The emissions decrease is such that when compared with the proposed emissions increase there is no significant change in the character of the emissions, including seasonal emission patterns, stack heights or hourly emission rates.

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

(D) An emissions decrease or an ERC generated at the facility may be used as a creditable decrease in a net emissions increase. The use of the ERCs in applicability determinations for netting purposes is limited to the period specified in paragraphs (1)(ii) and (2). A portion of an ERC generated at another facility, acquired by trade and incorporated in a plan approval for use at the facility, is not creditable as an emissions decrease.

(iv) An actual or potential emissions increase that results from a physical change in a facility occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(4) The following procedures apply in determining the baseline actual emissions for an existing emissions unit:

(i) For an existing emissions unit, baseline actual emissions are the average rate, in TPY, at which the unit emitted the regulated NSR pollutant during a consecutive 24-month period selected by the owner or the operator within the 5-year period immediately prior to the date a

complete plan approval application is received by the Department. The Department may approve the use of a different consecutive 24-month period within the last 10 years upon a written determination that it is more representative of normal source operation.

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

(B) The average rate is adjusted downward to exclude noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(C) The average rate is adjusted downward to exclude emissions that would have exceeded an emissions limitation with which the facility must currently comply, had the facility been required to comply with the limitations during the consecutive 24-month period. The baseline actual emissions is based on the emissions limitation in this subchapter or a permit limitation or other more stringent emissions limitation required by the Clean Air Act or the act, whichever is more restrictive.

(D) For a regulated NSR pollutant, when a project involves multiple emissions units, the same consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for all regulated NSR pollutants unless the owner or operator demonstrates, in writing, to the Department that a different consecutive 24-month period is more appropriate and the Department approves, in writing, the different consecutive 24-month period for a regulated NSR pollutant or pollutants.

(E) The average rate is not based on a consecutive 24-month period for which there is inadequate information for:

(I) Determining annual emissions, in TPY.

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

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

(ii) For a new emissions unit, the baseline actual emissions equal zero and thereafter, for all other purposes, shall equal the unit's potential to emit.

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

(A) Monitoring systems including:

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

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

(B) Other measurements and calculations including:

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

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

(-a-) The amount of materials used per unit of time, determined through measurements of parameters representing process conditions.

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

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

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

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

(5) Projected actual emissions is the maximum annual rate, in TPY, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit’s design capacity or its potential to emit of 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 facility. The following procedures apply in determining the projected actual emissions of a regulated NSR pollutant for an emissions unit, before beginning actual construction on the project:

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

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

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

(C) Exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following completion of the project that existing units could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that is also unrelated to the particular project, including any increased utilization due to product demand growth.

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

(iii) If the projected actual emissions for a regulated NSR pollutant are in excess of the baseline actual emissions, the following apply:

(A) The projected actual emissions for the regulated NSR pollutant must be incorporated into the required plan approval or the operating permit as an emission limit.

(B) The owner or operator shall monitor the emissions of the regulated NSR pollutant for which a limit is established in clause (A) and calculate and maintain a record of emissions, in TPY on a calendar year basis, for 5 years following resumption of regular operations after the change, or for 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at the emissions unit.

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

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

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

§ 127.204. Emissions subject to this subchapter.

(a) In determining whether a project exceeds the emission rate that is significant or the significance levels specified in § 127.203 (relating to facilities subject to special permit requirements), the potential to emit, actual emissions and actual emissions increase shall be determined by aggregating the emissions or emissions increases from contiguous or adjacent properties under the common control of a person or entity. The aggregation must include emissions resulting from the following: flue emissions, stack and additional fugitive emissions, material transfer, use of parking lots and paved and unpaved roads on the facility property, storage piles and other emission generating activities resulting from operation of the new or modified facility.

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

§ 127.205. Special permit requirements.

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

(1) A new or modified facility subject to this subchapter shall comply with LAER, except as provided in § 127.203a(a)(2) (relating to applicability determination). When a facility is composed of several sources, only sources which are new or which are modified shall be required to implement LAER. In addition, LAER applies to the proposed modification which results in an increase in emissions and to subsequent or previous modifications which result in emissions increases that are directly related to and normally included in the project associated with the proposed modification and which occurred within the contemporaneous period of the proposed emissions increase.

(i) A project that does not commence construction within 18 months of the date specified in the plan approval shall be reevaluated for its compliance with LAER before the start of construction.

(ii) A project that discontinues construction for 18 months or more after construction is commenced shall be reevaluated for its compliance with LAER before resuming construction.

(iii) A project that does not complete construction within the time period specified in the plan approval shall be reevaluated for its compliance with LAER.

(iv) A project that is constructed in phases shall be reevaluated for its compliance with LAER if there is a delay of greater than 18 months beyond the projected and approved commencement date for each independent phase.

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

(3) Each modification to a facility which meets the requirements of and is subject to this subchapter shall offset, in accordance with § § 127.203, 127.203a and 127.210 (relating to facilities subject to special permit requirements; applicability determination; and offset ratios), the total of the net increase. Emissions offsets shall be required for the entire net emissions

increase which occurred over the contemporaneous period except to the extent that emissions offsets or other reductions were previously applied against emissions increases in an earlier applicability determination.

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

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

(6) In the case of a new or modified facility which is located in a nonattainment area, and within a zone, identified by the EPA Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, emissions of a pollutant resulting from the proposed new or modified facility may not cause or contribute to emission levels which exceed the allowance permitted for the pollutant for the area from new or modified facilities in the SIP.

(7) The Department may determine that the BAT requirements of this chapter are equivalent to BACT or LAER.

§ 127.206 ERC general requirements.

(a) Emissions reductions or ERCs banked prior to January 1, 1991, may not be used as ERCs for emission offsets or netting purposes.

(b) The EQB may, by regulation and upon notice in the Pennsylvania Bulletin and opportunity for public comment, proportionally reduce the quantity of registered ERCs not previously included in a plan approval, or may halt transfer activity, in a nonattainment area or throughout this Commonwealth only as necessary when the other measures required by the Clean Air Act and the act may fail to achieve NAAQS or SIP requirements.

(c) ERCs shall be proportionally reduced prior to use in a plan approval in an amount equal to the reductions that the generating facility is or would have been required to make in order to comply with new requirements promulgated by the Department or the EPA, which apply to the generating facility after the ERCs were created.

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

(1) The application for a plan approval demonstrates that the proposed facility either has or will secure the appropriate ERCs which are suitable for use at the specific facility. The ERCs shall be identified in a Department approved and Federally enforceable permit condition for the ERC generating source. The permit condition will provide that the ERCs are properly generated, certified by the Department and processed through the registry no later than the date approved by the Department for commencement of operation of the proposed new or modified facility.

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

(e) ERCs generated by the over control of emissions by an existing facility will not expire for use as offsets. The use of these ERCs in applicability determinations for netting purposes is limited to the period specified in § 127.203a(a)(1) (relating to applicability determination).

(f) ERCs generated by the curtailment or shutdown of a facility which are not included in a plan approval and used as offsets will expire for use as offsets 10 years after the date the facility ceased emitting the ERC generating emissions. The use of these ERCs in applicability determinations for netting purposes is limited to the period specified in § 127.203a(a)(1).

(g) The expiration date of ERCs may not extend beyond the 10-year period allowed by subsection (f), if the ERCs are included in a plan approval but are not used and are subsequently reentered in the registry.

(h) ERCs which are included in a plan approval issued by the Department for a new or modified facility which is never operated may be reentered in the registry if the ERCs are no longer required by the plan approval. Applicable discounts in subsections (b) and (c) shall be applied when the ERCs are reentered in the registry.

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

(j) ERCs may not be entered into the ERC registry until the emissions reduction generating the ERCs has been certified by the Department in accordance with the criteria for ERC generation and creation contained in § 127.207 (relating to creditable emissions decrease or ERC generation and creation).

(k) A major facility which, due to reductions in the maximum allowable emissions rates, including reductions made to generate ERCs, no longer meets the criteria in § 127.203 (relating to facilities subject to special permit requirements) will continue to be treated as a major facility.

(l) ERCs may not be traded to facilities under different ownership until the emissions reduction generating the ERCs is made Federally enforceable.

(m) ERCs may not be created for an emissions reduction previously used in an applicability determination for netting purposes nor for an emissions decrease used to create an alternative emissions limitation.

(n) ERCs transferred from one facility to another may not be transferred to a third party, unless the transfer of the ERCs is processed by the Department through the ERC registry system.

(o) Except as provided under § 127.210 (relating to offset ratios), an ERC created for a regulated criteria pollutant shall only be used for offsetting or netting an emissions increase involving the same criteria pollutant unless approved in writing by the Department and the EPA.

(p) The owner or operator of a source or facility which has registered ERCs with the Department may not exceed the emissions limitation or violate other permit conditions established in generating the ERCs.

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

(r) Emission reductions occurring at a facility after April 5, 2005, but prior to September 3, 2011, may be used to generate ERCs in accordance with this subchapter, if a complete ERC registry application is submitted to the Department by September 3, 2012.

§ 127.207. Creditable emissions decrease or ERC generation and creation.

A creditable emissions decrease or ERC generation and creation may occur under the following conditions:

(1) A creditable emissions decrease or ERC shall be surplus, permanent, quantified and Federally enforceable as follows:

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

(ii) *Permanent*. A creditable emissions decrease or ERC generated from emissions reductions which are Federally enforceable through an operating permit or a revision to the SIP and assured for the life of the corresponding increase, whether unlimited or limited in duration, are considered permanent. Emissions limitations and other restrictions imposed on a permit as a result of a creditable emissions decrease or ERC generation shall be carried over into each successive permit issued to that facility. MERCs and other ERCs generated pursuant to an

approved economic incentive program shall be permanent within the time frame specified by the program.

(iii) *Quantified*. A creditable emissions decrease or ERC shall be quantified in a credible, workable and replicable method consistent with procedures promulgated by the Department and the EPA.

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

(2) Except as provided in § 127.206(r) (relating to ERC general requirements), an ERC registry application shall be submitted to the Department within 2 years of the initiation of an emissions reduction used to generate ERCs. For deactivated sources or facilities the following also apply:

(i) The owner or operator of an ERC-generating source or facility shall submit a written notice to the Department within 1 year after the deactivation of a source or facility to request preservation of the emissions in the inventory.

(ii) Within 2 years after ERC-generating emission reductions are initiated, the owner or operator of a source or facility that is covered under a maintenance plan submitted to the Department in accordance with § 127.11a or § 127.215 (relating to reactivation of sources; and reactivation) may permanently deactivate the source or facility and submit an ERC registry application to the Department if the emissions are preserved in the inventory.

(3) An ERC registry application must include the following information:

(i) The name of the owner and operator of the source or facility.

(ii) The intended use of the ERCs, including information as to whether the ERCs are to be used for netting, internal offsetting or trading purposes.

(iii) The intended or actual date of initiation of emission reductions.

(iv) A description of the emission reduction techniques used to generate the ERCs.

(v) Full characterization of the emissions reductions using a protocol approved by the Department, including the following:

(A) Requirements and methods specified by EPA emission regulations and trading policies.

(B) Information concerning tests and related emission quantification methods specified in Chapter 139 (relating to sampling and testing) and other Department and EPA approved test methods and sampling procedures.

(C) The amounts, rates, hours, seasonal variations, annual emission profile and other data necessary to determine the ambient impact of the emissions.

(D) Compliance and verification methods.

(vi) Other information required by the Department to properly certify the ERCs.

(vii) For an ERC generating source or facility located outside of this Commonwealth, the name of the Pennsylvania agent authorized to accept service of process, and a statement that the applicant accepts the jurisdiction of this Commonwealth for purposes of regulating the ERCs registered with the Department.

(4) In establishing the baseline used to calculate a creditable emissions decrease or ERC, the Department will consider emission characteristics and operating conditions which include, at a minimum, the emission rate, capacity utilization, hours of operations and seasonal emission rate variations, in accordance with the following:

(i) The baseline emissions rate will be determined as follows:

(A) The average actual emissions or allowable emissions, whichever is lower, shall be calculated over the 2 calendar years immediately preceding the emissions reduction which generates the creditable emissions decrease or ERC.

(B) When the Department determines that the 2-year period immediately preceding the emissions reduction is not representative of the normal emission rates or characteristics of the existing facility, the Department may specify a different 2-year period if that period of time or other conditions are representative of normal operations occurring within the preceding 5 calendar years. If the existing facility has been in operation for fewer than 2 years, the Department will determine the baseline emissions rate based on a shorter representative period when the facility was in operation.

(ii) The baseline emissions rate may not exceed the emissions in the emission statements required by Chapter 135 (relating to reporting of sources), for which fees have been paid.

(iii) The baseline emissions rate will not exceed the allowable emissions rate including RACT requirements in force at the time the ERC registry application is submitted. The allowable emissions rate will be based on the emissions limitation in this article or a permit limitation or another more stringent emissions limitation required by the Clean Air Act or the act, whichever is more restrictive. The Department will consider only complete applications and will apply the requirements in effect at that time in determining the emission reduction achieved.

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

(i) Shutdown of an existing facility occurring after January 1, 1991, pursuant to the issuance of a new permit or permit modification which is not otherwise required to comply with the Clean Air Act or the act.

(ii) Permanent curtailment in production or operating hours of an existing facility operating in accordance with a new permit or a permit modification if the curtailment results in an actual emissions reduction and is not otherwise required to comply with the Clean Air Act or the act.

(iii) Improved control measures, including improved control of fugitive emissions, which decrease the actual emissions from an existing facility to less than that required by the most stringent emissions limitation required by the Clean Air Act or the act and which is reflected in a new permit or a permit modification.

(iv) New technology and materials or new process equipment modifications which are not otherwise required by the Clean Air Act or the act.

(v) The incidental emissions reduction of nonhazardous air pollutants resulting from statutorily required reductions of hazardous air pollutants, or the emissions reduction of nonhazardous air pollutants which are incidental to the excess early emissions reduction of hazardous air pollutants listed in section 112(b)(1) of the Clean Air Act (42 U.S.C.A. § 7412(b)(1)), if the reduction meets the other requirements of this section.

(vi) Notwithstanding the requirements in paragraph (2), a MERC program, airport emission reduction credits program or another Economic Incentive Program which meets the requirements of this subchapter and which is approved by the EPA as a SIP revision.

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

(I) The program shall be consistent with the Clean Air Act and the act.

(II) ERCs shall be quantifiable and enforceable at both the Federal and State levels.

(III) ERCs shall be consistent with SIP attainment and RFP demonstrations.

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

(V) ERCs shall be permanent within the time frame specified by the program.

(B) The program shall contain the following elements:

(I) A clearly defined purpose and goals and an incentive mechanism that can rationally be related to accomplishing the goals.

(II) A clearly defined scope, which identifies affected sources and assures that the program will not interfere with other applicable regulatory requirements.

(III) A program baseline from which projected program results, including quantifiable emission reductions, can be determined.

(IV) Credible, workable and replicable procedures for quantifying emissions or emission-related parameters.

(V) Source requirements, including those for monitoring, recordkeeping and reporting, that are consistent with specified quantification procedures and allow for compliance certification and enforcement.

(VI) Projected program results and methods for accounting for compliance and program uncertainty.

(VII) An implementation schedule, administrative system and enforcement provisions adequate for ensuring Federal and State enforceability of the program.

(VIII) Audit procedures to evaluate program implementation and track results.

(IX) Reconciliation procedures to trigger corrective or contingency measures to make up a shortfall between the projected emissions reduction and the emissions reduction actually achieved.

(6) Methods for initial quantification of ERCs and verification of the required emissions reduction include the following:

(i) The use of existing continuous emission monitoring data, operational records and other documentation which provide sufficient information to quantify and verify the required emissions reduction.

(ii) For a facility which does not have Department approved data collection or quantification procedures to characterize the emissions, the use of prereduction and postreduction emission tests. Emission tests used to establish emission data shall be conducted in accordance with the requirements and procedures specified in 40 CFR Part 51, Appendix S (relating to emission offset interpretive ruling) and Chapter 139 (relating to sampling and testing), and other applicable Federal and state requirements.

(iii) For facilities for which emissions rates vary over time, a Department approved alternative method for quantifying the reduction and ensuring the continued emissions reduction, if the method is approved by the EPA.

(7) The reduced emissions limitation of the new or modified permit of the source or facility generating the creditable emissions decrease or ERC shall be continuously verified by Department, local air pollution control agency or other State approved compliance monitoring

and reporting programs. Onsite inspections will be made to verify shutdowns. If equipment has not been dismantled or removed, the owner or operator shall on an annual basis certify in writing to the Department the continuance of the shutdown.

§ 127.208. ERC use and transfer requirements.

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

(1) The registry system established by § 127.209 (relating to ERC registry system) shall be used to transfer ERCs, with the Department's approval, directly from an existing source or facility where the ERCs were generated to the proposed facility.

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

(3) For the pollutants regulated under this subchapter, the facility shall demonstrate to the satisfaction of the Department that the ERCs proposed for use as offsets will provide, at a minimum, ambient impact equivalence to the extent equivalence can be determined and that the use of the ERCs will not interfere with the overall control strategy of the SIP.

(4) ERCs shall include the same conditions, limitations and characteristics, including seasonal and other temporal variations in emission rate and quality, as well as the maximum allowable emission rates the emissions would have had if emitted by the generator, unless equivalent ambient impact is assured through other means.

(5) ERCs may be obtained from or traded in another state, which has reciprocity with the Commonwealth for the trading and use of ERCs, only upon the approval of both the Commonwealth and the other state through SIP approved rules and procedures, including an EPA approved SIP revision. ERCs generated in another state may not be traded into or used at a facility within this Commonwealth unless the ERC generating facility's ERCs are enforceable by the Department.

(6) ERCs may not be transferred to and used in an area with a higher nonattainment classification than the one in which they were generated.

(7) A facility proposing new or increased emissions shall demonstrate that sufficient offsetting ERCs at the ratio specified in § 127.210 (relating to offset ratios) have been acquired from within the nonattainment area of the proposed facility.

(8) If the facility proposing new or increased emissions demonstrates that ERCs are not available in the nonattainment area where the facility is located, ERCs may be obtained from

another nonattainment area if the other nonattainment area has an equal or higher classification and if the emissions from the other nonattainment area contribute to an NAAQS violation in the nonattainment area of the proposed facility. In addition, the requirements of paragraph (3) shall be satisfied.

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

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

(11) An owner or operator of a facility shall acquire ERCs for use as offsets from an ERC generating facility located within the same nonattainment area, except that the Department may allow the owner or operator to obtain ERCs generated in another nonattainment area if the following exist:

(i) The other area has an equal or higher nonattainment classification than the area in which the facility is located.

(ii) Emissions from the other area contribute to a violation of the NAAQS in the nonattainment area in which the facility is located.

(12) An owner or operator of a facility that is subject to allowance-based programs in this article may generate, create, transfer and use ERCs in accordance with this subchapter and applicable provisions in Chapter 145 (relating to interstate pollution transport reduction).

§ 127.209. ERC registry system.

(a) The Department will establish an ERC registry system to track ERCs which have been created, transferred and used in accordance with the requirements of this subchapter. Prior to registration of the ERCs, the Department will review and approve the ERC registry application to verify compliance with this subchapter. Registration of the ERCs in the registry system will constitute certification that the ERCs satisfy the requirements of this subchapter and are available for use.

(b) The Department will maintain supporting documentation, including plan approval or permit decisions, registry applications and other items required to sufficiently characterize the emissions, which will allow the Department and potential users to determine if the ERCs are suitable for use at a specific facility.

(c) As part of the NSR process, the Department will provide the EPA and the public with notice of a plan approval or operating permit proposing to use ERCs.

(d) The Department will process each ERC registry application, permit modification and plan approval application, including those involving netting transactions, through the registry system to verify the information and to ensure that the requirements of § § 127.206—127.208 (relating to ERC general requirements; creditable emissions decrease or ERC generation and creation; and ERC use and transfer requirements) have been met, including the requirement that the required reductions have been made and certified before registry entries or changes are made.

(e) Registry operations and procedures are as follows:

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

(2) The registry will list ERCs by criteria pollutants and identify the nonattainment areas in which the ERCs were generated. The registry will identify ERCs that are available for use and that are in use.

(3) The ERC creation date entered in the registry will reflect the anticipated date of emissions reduction and will be amended as necessary to reflect the actual emissions reduction date.

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

(i) The registry will identify the remaining ERCs available for use, if any, after the transaction. The ERC expiration date will be included for ERCs generated under § 127.207(5)(i) and (ii).

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

§ 127.210. Offset ratios.

(a) The emissions offset ratios for NSR purposes and ERC transactions subject to the requirements of this subchapter must be in an amount equal to or greater than the ratios specified in the following table:

Required Emission Offsets For Existing Sources, Expressed in Tons per Year

Pollutant/Area	*Flue Emissions*	*Fugitive Emissions*
PM-10 and SO_x	1.3:1	5:1
Volatile Organic Compounds		
Ozone Classification Areas		
Severe Areas	1.3:1	1.3:1

Serious Areas	1.2:1	1.3:1
Moderate Areas	1.15:1	1.3:1
Marginal/Incomplete Data Areas	1.15:1	1.3:1
Transport Region	1.15:1	1.3:1
NO_x		
Ozone Classification Areas		
Severe Areas	1.3:1	1.3:1
Serious Areas	1.2:1	1.2:1
Moderate Areas	1.15:1	1.15:1
Marginal/Incomplete Data Areas	1.15:1	1.15:1
Transport Region	1.15:1	1.15:1
Carbon Monoxide		
Primary Nonattainment Areas	1.1:1	1.1:1
Lead	1.1:1	1.1:1
$PM_{2.5}$		
$PM_{2.5}$ Nonattainment Area		
$PM_{2.5}$	1:1	1:1
$PM_{2.5}$ Precursors		
SO_2	1:1	1:1
NO_x	1:1	1:1

(b) In complying with the emissions offset requirements of this subchapter, the emission offsets obtained shall be of the same NSR regulated pollutant unless interpollutant offsetting is authorized for a particular pollutant in accordance with subsection (c).

(c) The Department may, based on a technical assessment, establish interpollutant trading ratios for offsetting $PM_{2.5}$ emissions or $PM_{2.5}$ precursor emissions in a specific nonattainment area or geographic area in this Commonwealth. The interpollutant trading ratios shall be subject to public review and comment for at least 30 days prior to submission to the EPA for approval as a SIP revision.

(d) If the EPA promulgates $PM_{2.5}$ interpollutant trading ratios in 40 CFR Part 51 (relating to requirements for preparation, adoption, and submittal of implementation plans), the ratios will be adopted and incorporated by reference.

§ 127.211. [Reserved].

§ 127.212. Portable facilities.

(a) An owner or operator of a portable SOx, PM-10, lead or CO facility subject to this subchapter which will be relocated within 6 months of the commencement of operation to a location within an attainment area which does not have an impact on a nonattainment area at or above the significance levels contained in § 127.203 (relating to facilities subject to special

permit requirements) shall be exempt from this subchapter. An owner or operator of a facility which subsequently returns to a location where it is subject to this subchapter shall comply with this subchapter.

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

§ 127.213. Construction and demolition.

(a) Emissions from construction or demolition activities will be exempt from § 127.205 (relating to special permit requirements) if BACT is used during the construction or demolition period.

(b) Emissions from construction and demolition activities may not be considered under § 127.203a (relating to applicability determination).

§ 127.214. [Reserved].

§ 127.215. Reactivation.

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

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

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

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

(4) The permittee shall comply with the terms and conditions of the following:

(i) Maintenance plan while the facility is deactivated.

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

(5) The permittee with an approved reactivation plan shall notify the Department in writing at least 30 days prior to reactivation of the facility.

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

(c) For a facility which is deactivated in accordance with subsection (a), ERCs may be created only if an ERC registry application is filed within 2 years of deactivation.

§ 127.216. Circumvention.

Regardless of the exemptions provided in this subchapter, an owner or other person may not circumvent this subchapter by causing or allowing a pattern of ownership or development, including the phasing, staging, delaying or engaging in incremental construction, over a geographic area of a facility which, except for the pattern of ownership or development, would otherwise require a permit or submission of a plan approval application.

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

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

§ 127.218. PALs.

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

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

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

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

(i) A major modification for the PAL pollutant.

(ii) Subject to this subchapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) When establishing the actual PAL level, for a PAL pollutant, one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant.

(3) Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level.

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

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

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

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

(2) The effective date and the expiration date.

(3) A requirement that if the owner or operator of a major facility applies to renew a PAL in accordance with subsection (k) before the end of the PAL effective period, the PAL permit does not expire at the end of the PAL effective period. The PAL permit remains in effect until the Department issues a revised PAL permit.

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

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

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

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

(8) A requirement that the owner or operator retain the records required under subsection (n) and that they be retrievable onsite.

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

(10) A requirement that the emissions from a new source that requires a plan approval shall be the minimum attainable through the use of BAT. A physical change or change in method of operation at an existing emissions unit will not be subject to BAT requirements of this chapter unless the emissions unit is modified so that the fixed capital cost of new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new emissions unit.

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

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

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

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

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

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

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

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

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

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

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

(A) A NAAQS or PSD increment violation.

(B) An adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal land manager and for which information is available to the general public.

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

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

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

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

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

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

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

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

(5) The owner or operator of the major facility shall continue to comply with any State or Federal applicable requirements including BAT, BACT, RACT or NSPS that may have applied either during the PAL effective period or prior to the PAL effective period except for those emissions limitations that had been established under § 127.203(e)(2), but were eliminated by the PAL in accordance with the provisions in subsection (a)(3)(iii).

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

(1) The Department will follow the procedures specified in subsection (e) in approving a request to renew a PAL permit for a major facility, and will provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment in accordance with the applicable public notice requirements in § § 127.44, 127.424 and 127.521. During the public review, a person may propose a PAL level for the major facility for consideration by the Department.

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

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

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

(ii) A proposed PAL level.

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

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

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

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

(ii) The Department may set the PAL at a level that it determines to be more representative of the facility's baseline actual emissions or that it determines to be appropriate considering air

quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the facility's voluntary emissions reductions or other factors specifically identified by the Department in its written rationale.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements in paragraph (5) and must be approved in writing by the Department.

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

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

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

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

(ii) CEMS.

(iii) CPMS or PEMS.

(iv) Emission factors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) The following requirements apply to recordkeeping:

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

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

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

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

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

(1) The owner or operator of a major facility shall submit semiannual monitoring reports and prompt deviation reports to the Department in accordance with the Title V operating permit requirements of Subchapters F and G (relating to operating permit requirements; and Title V operating permits).

(2) The semiannual reports must:

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

(ii) Contain the following information:

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

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

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

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

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

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

(G) A statement signed by a responsible official of the company that owns or operates the facility certifying the truth, accuracy and completeness of the information provided in the report.

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

(i) Be submitted to the Department promptly. A report submitted under Subchapter G satisfies this reporting requirement.

(ii) Contain the following information:

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

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

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

(D) A statement signed by a responsible official of the company that owns or operates the facility certifying the truth, accuracy and completeness of the information provided in the report.

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

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