

**RULE XXX – NSR REQUIREMENTS FOR NEW AND MODIFIED MAJOR SOURCES
IN SO₂ NONATTAINMENT AREAS (ADOPTED ON *[INSERT ADOPTION DATE]*)**

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1 APPLICABILITY PROCEDURES

1.1 PRECONSTRUCTION REVIEW REQUIREMENTS

- (a) The preconstruction review requirements of this rule apply to the proposed construction of any new major stationary source or major modification in Guam that is major for a nonattainment pollutant, if the stationary source or modification is located anywhere in the designated nonattainment area, except:
 - (i) as provided in Section 9 of this rule; and
 - (ii) this rule's provisions requiring the application of the lowest achievable emission rate (LAER) and offsets do not apply for purposes of the 1971 sulfur dioxide (SO₂) NAAQS with respect to electric generating units in the Piti nonattainment area for the 1971 sulfur dioxide (SO₂) NAAQS, while this rule's provisions requiring the application of LAER and offsets do apply to such units for purposes of the 2010 SO₂ NAAQS.
- (b) Sources subject to this rule may also be subject to other GEPA 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 a nonattainment major NSR permit, application submittal and content, conditional approval, public participation, and granting a nonattainment major NSR permit, shall take precedence over any other such provisions and requirements in other GEPA Rules and Regulations. To the extent that other GEPA 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.

1.2 NONATTAINMENT MAJOR NSR PERMIT REQUIREMENT

No new major stationary source or major modification to which the requirements of this rule apply shall begin actual construction without first obtaining a nonattainment major NSR permit from the reviewing authority, pursuant to this rule.

1.3 EMISSION CALCULATION REQUIREMENTS TO DETERMINE NSR APPLICABILITY

1.3.1 New Major Stationary Sources

The definition of Major Stationary Source as incorporated by reference in Section 2 shall be used to determine if a new or modified stationary source is a new major stationary source.

1.3.2 Major Modifications

The provisions set out in paragraphs (a) through (e) below shall be used to determine if a proposed project will result in 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.

- (a) Except as otherwise provided in Section 1.4, 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.
- (b) 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 (c) through (e) of this Section. 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.
- (c) **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.
- (d) **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.
- (e) **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 (c) or (d) of this Section, as applicable, with respect to each emissions unit, equals or exceeds the significant amount for that pollutant.

1.4 MAJOR SOURCES WITH PLANT-WIDE APPLICABILITY LIMITATIONS (PAL)

For any major stationary source with a PAL permit for a nonattainment pollutant, the major stationary source shall comply with the requirements in Section 9 of this rule.

1.5 PROJECTS THAT RELY ON A PROJECTED ACTUAL EMISSIONS TEST

Except as otherwise provided in paragraph (g)(iii) of this Section, the provisions of this Section shall apply with respect to any nonattainment pollutant that is emitted from projects at existing emissions units located at a major stationary source, other than a source with a PAL permit, when there is a reasonable possibility, within the meaning of paragraph (g) of this Section, 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 (B)(1) through (B)(3) of the definition of *Projected Actual Emissions* to calculate projected actual emissions.

- (a) Before beginning actual construction of the project the owner or operator shall document and maintain a record of the following information:
 - (i) A description of the project;
 - (ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
 - (iii) 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 (B)(3) of the definition of *Projected Actual Emissions* and an explanation for why such amount was excluded, and any netting calculations, if applicable.
- (b) 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 (a) of this Section to the GEPA Administrator. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the GEPA Administrator concerning compliance with [this rule](#)~~Rule (insert this rule #)~~ before beginning actual construction. However, such owner or operator may be subject to the requirements of other GEPA Rules and Regulations, or other applicable requirements.
- (c) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by any emissions unit identified in paragraph (a)(ii) of this Section; 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 potential to emit that regulated NSR pollutant at such emissions unit.
- (d) If the emissions unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the GEPA Administrator within sixty days after the end of each calendar year during which records must be generated under paragraph (c) of this Section, setting out the unit's annual emissions during the calendar year that preceded submission of the report.
- (e) 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 GEPA Administrator if the annual emissions, in tpy, from the project identified in paragraph (a)(ii) of this Section 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 (B)(3) of the definition of *Projected Actual Emissions*) as documented and maintained pursuant to paragraph (a)(iii) of this Section. Such

report shall be submitted to the GEPA Administrator within sixty days after the end of such year. The report shall contain the following:

- (i) The name, address, and telephone number of the major stationary source;
 - (ii) The annual emissions, as calculated pursuant to paragraph (c) of this Section; and
 - (iii) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).
- (f) The owner or operator of the source shall make the information required to be documented and maintained pursuant to this Section available for review upon a request for inspection by the GEPA Administrator or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).
- (g) A “reasonable possibility” under this Section occurs when the owner or operator calculates the project to result in either:
- (i) 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
 - (ii) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (B)(3) 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.
 - (iii) For a project in which a reasonable possibility occurs only within the meaning of paragraph (g)(ii), and not also within the meaning of (g)(i), the provisions of paragraphs (b) through (e) of this Section do not apply to the project.

1.6 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 4 must also be met for secondary emissions.

1.7 STATIONARY SOURCES

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.

1.8 ENVIRONMENTAL PROTECTION AGENCY DETERMINATION

Notwithstanding any other requirements of this rule governing the issuance of a nonattainment major NSR permit, the GEPA Administrator shall not issue a nonattainment major NSR permit 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.

2 DEFINITIONS

For the purposes of this rule, the definitions provided in paragraphs (a), (b), (c) and (d) below apply to the terms used in this rule. In the event of any discrepancy between the definitions specified in paragraphs (a), (b), (c), and (d), below, the definition in the paragraph that is listed first below shall control.

- (a) The definitions contained in 40 CFR 51.165(a)(1) shall apply, and are hereby incorporated by reference, with the exception of the definition of “Reviewing authority” at 40 CFR 51.165(a)(1)(xxxviii), which has the meaning specified in paragraph (b) below.

- (b) The following definitions shall also apply:

“*Clean Air Act (CAA)*” means the federal Clean Air Act, 42 U.S.C. 7401 *et seq.*, as amended.

“*Complete*” means, in reference to an application, that the application contains all of the information necessary for processing.

“*Emission reduction*” means reductions of actual emissions from emissions units.

“*GEPA*” means the Guam Environmental Protection Agency.

“*GEPA Administrator*” means the Administrator of the Guam Environmental Protection Agency or such Administrator's designee.

“*Internal emission reductions*” means emission reductions which have occurred or will occur at the same major stationary source where the proposed emissions increase will occur.

“*Nonattainment major NSR permit*” means an air pollution control permit, other than a PAL permit, that is issued in accordance with the requirements of this rule.

“*Nonattainment pollutant*” means any regulated NSR pollutant for which Guam, or a portion of Guam, has been designated as nonattainment, as codified in 40 CFR 81.353, as well as any precursor of such regulated NSR pollutant specified in 40 CFR 51.165(a)(1)(xxxvii)(C).

“*Permanent*” means an emission reduction which is federally enforceable for the life of a corresponding increase in emissions.

“Reviewing authority” means the GEPA Administrator.

“Shutdown” means the cessation of operation of any air pollution control equipment or process equipment for any purpose.

“Startup” means the setting into operation of any air pollution control equipment or process equipment for any purpose except routine phasing in of process equipment.

“State Implementation Plan (SIP)” means the State Implementation Plan approved or promulgated for Guam under section 110 or 172 of the Clean Air Act.

“Surplus” means the amount of emission reductions that are, at the time of use of an emission reduction, not otherwise required by federal or Guam law, not required by any legal settlement or consent decree, and not relied upon to meet any requirement related to the Guam State Implementation Plan (SIP). Examples of federal and Guam laws, and SIP-related requirements, include, but are not limited to, the following:

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

“Temporary source” means an emission source such as a pilot plant or a portable facility which will be located outside the nonattainment area after less than a cumulative total of 90 days of operation in any 12 continuous months.

“Tons per year (tpy)” means annual emissions in tons.

- (c) The definitions contained in 40 CFR 51.100 shall apply, and are hereby incorporated by reference.

3 APPLICATION REQUIREMENTS

3.1 APPLICATION SUBMITTAL

The owner or operator of any proposed new major stationary source or major modification required to obtain a nonattainment major NSR permit pursuant to this rule shall submit a complete application to obtain a nonattainment major NSR permit to the GEPA Administrator and include in the application submittal the information listed in Section 3.2 as well as the demonstrations listed in Sections 3.3-3.5. Designating an application complete for purposes of permit processing does not preclude the GEPA Administrator from requesting or accepting any additional information.

3.2 APPLICATION CONTENT

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

- (a) Identification of the applicant, including contact information.
- (b) Identification of address and location of the new or modified source.
- (c) 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.
- (d) 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.
- (e) A projected schedule for commencing construction and operation for all emissions units included in the new source or modification.
- (f) A projected operating schedule for each emissions unit included in the new source or modification.
- (g) A determination as to whether the new source or modification will result in any secondary emissions.
- (h) 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).
- (i) 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).

- (j) The calculations, pursuant to Section 1.3, used to determine applicability of this rule, including the emission calculations (increases or decreases) for each project that occurred during the contemporaneous period.
- (k) The calculations, pursuant to Section 4.3 (offset), used to determine the quantity of offsets required for the new source or modification.
- (l) Identification of existing emission reduction credits 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.
- (m) If applicable, a description of how performance testing will be conducted, including test methods and a general description of testing protocols.

3.3 LOWEST ACHIEVABLE EMISSION RATE (LAER)

The applicant shall submit an analysis demonstrating that LAER 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.

3.4 CERTIFICATION OF 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 Guam 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.

3.5 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.

3.6 APPLICATION FEES

The applicant shall pay the applicable fees specified in the applicable GEPA fee rules for air pollution emission sources.

4 EMISSIONS OFFSETS

4.1 OFFSET REQUIREMENTS

- (a) The emission increases of a nonattainment pollutant for which the new stationary source or modification is classified as major, shall be offset with federally enforceable emission reductions or with internal emission reductions.

- (b) Emission reductions from one or more sources may be used, alone or in combination with internal emission reductions, in order to satisfy offset requirements.
- (c) 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
- (d) The shutdown or curtailment occurred after the last day of the base year for the attainment plan for the specific pollutant; or
- (e) 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.

4.2 TIMING

- (a) Internal emission reductions used to satisfy an offset requirement must be federally enforceable prior to the issuance of the nonattainment major NSR permit, which relies on the emission reductions.
- (b) Except as provided by paragraph (c) of this Section, the decrease in actual emissions used to generate emission reductions or internal emission reductions must occur no later than the commencement of operation of the new or modified major stationary source.
- (c) 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 GEPA Administrator 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.

4.3 QUANTITY

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

- (a) The unit of measure for offsets, emission reductions, 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.
- (b) The quantity of emission reductions or internal emission reductions required shall be calculated as the product of the amount of increased emissions, as determined in accordance with paragraph (c) of this Section, and the offset ratio, as determined in accordance with paragraph (d) of this Section.
- (c) The amount of increased emissions shall be determined as follows:

- (i) 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.
- (ii) 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.
- (iii) The amount of increased emissions includes fugitive emissions.
- (d) An offset ratio of 1:1 shall be used for each pound of SO₂ permitted to be emitted.

4.4 EMISSION REDUCTION REQUIREMENTS

- (a) Internal emission reductions or emission reductions s used to satisfy an offset requirement shall be:
 - (i) Real, surplus, permanent, quantifiable, and federally enforceable; and
 - (ii) Surplus at the time of issuance of the nonattainment major NSR permit containing the offset requirements.
- (b) Permitted sources whose emission reductions are used to satisfy offset requirements must appropriately amend or cancel their nonattainment major NSR permit or other air pollution control permit, where applicable, to reflect their newly reduced potential to emit, including practicably enforceable conditions to limit their potential to emit.
- (c) Emission reductions must be obtained from the same nonattainment area.
- (d) The use of emission reductions shall not provide:
 - (i) Authority for, or the recognition of, any pre-existing vested right to emit any regulated NSR pollutant;
 - (ii) Authority for, or the recognition of, any rights that would be contrary to applicable law; or
 - (iii) An exemption to a stationary source from any emission limitations established in accordance with federal or Guam laws, rules, and regulations.

4.5 RESTRICTIONS ON TRADING POLLUTANTS

- (a) The emission offsets obtained shall be for the same regulated NSR pollutant.

5 ADMINISTRATIVE REQUIREMENTS

5.1 AMBIENT AIR QUALITY STANDARDS

The GEPA Administrator may require the use of an air quality model to estimate the effects of a new or modified stationary source. The analysis shall estimate the effects of

the new or modified stationary source, and verify that the new or modified stationary source will not prevent or interfere with the attainment or maintenance of any ambient air quality standard. In making this determination, the GEPA Administrator 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 GEPA Administrator may impose, based on an air quality analysis, offset ratios greater than the requirements of paragraph (d) of Section 4.3.

5.2 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.

5.3 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 (GEP) or by any other dispersion technique, except as provided in 40 CFR 51.118(b). For the purposes of this Section, the definitions in 40 CFR 51.100 shall apply.

- (a) Before the GEPA Administrator issues a nonattainment major NSR permit under this rule to a source with a stack height that exceeds GEP stack height, the Control Officer shall notify the public of the availability of the demonstration study and provide opportunity for a public hearing.
- (b) 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 GEPA Administrator prior to any emission limit being established.
- (c) The provisions of Section 5.3 do not restrict, in any manner, the actual stack height of any stationary source or facility.

6 NONATTAINMENT MAJOR NSR PERMIT – DECISION

6.1 PRELIMINARY DECISION

Following acceptance of an application as complete, the GEPA Administrator shall perform the evaluations required to determine if the proposed new major stationary source or major modification will comply with all applicable GEPA, Guam, and federal rules, regulations, or statutes, including but not limited to the requirements under Section 3 of this rule, and shall make a preliminary written decision as to whether a nonattainment major NSR permit 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.

6.2 NONATTAINMENT MAJOR NSR PERMIT – PRELIMINARY DECISION REQUIREMENTS

- (a) Prior to issuance of a preliminary written decision to issue a nonattainment major NSR permit for a new major stationary source or major modification, the GEPA Administrator shall determine:
 - (i) That each emissions unit(s) that constitutes the new source or modification will not violate any applicable requirement of the Guam SIP; and
 - (ii) That the emissions from the new or modified stationary source will not interfere with the attainment or maintenance of any applicable national ambient air quality standard; and
 - (iii) That the emission limitation for each emissions unit that constitutes the new source or modification specifies LAER for such units.

If the GEPA Administrator 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 GEPA Administrator may instead prescribe a design, operational or equipment standard. In such cases, the GEPA Administrator 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 nonattainment major NSR permit 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

- (iv) The quantity of emission reductions or internal emission reductions required to offset the new source or modification, pursuant to Section 4.3; and
- (v) That all emission reductions or internal emission reductions required for the new source or modification have been identified and have been made federally enforceable or legally and practicably enforceable; and
- (vi) That the quantity of emission reductions or internal emission reductions determined under paragraph (b) of Section 4.3 will be surrendered prior to commencing operation.

- (b) Temporary sources and emissions resulting from the construction phase of a new source are exempt from paragraphs (a)(iv), (v) and (vi) of this Section.

6.3 NONATTAINMENT MAJOR NSR PERMIT CONTENTS

- (a) A nonattainment major NSR permit for a new major stationary source or major modification shall contain terms and conditions:
 - (i) which ensure compliance with all applicable requirements and which are enforceable as a legal and practical matter.
 - (ii) sufficient to ensure that the major stationary source or major modification will achieve LAER in accordance with paragraphs (b) and (c) of this Section.
- (b) A new major stationary source shall achieve LAER for each nonattainment pollutant for which the source is classified as major.
- (c) A major modification shall achieve LAER for each nonattainment pollutant for which the modification would result in a significant net emissions increase. This requirement applies to each proposed emissions unit at which a net emissions increase in the nonattainment pollutant would occur as a result of a physical change, or change in the method of operation of the emissions unit.

6.4 NONATTAINMENT MAJOR NSR PERMIT – FINAL DECISION

- (a) Prior to making a final decision to issue a nonattainment major NSR permit for a new major stationary source or major modification, the GEPA Administrator shall consider all written comments that are 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 nonattainment major NSR permit conditions. The GEPA Administrator shall make all comments available, including the GEPA Administrator's response to the comments, for public inspection in the same locations where the GEPA Administrator made preconstruction information relating to the proposed source or modification available.
- (b) The GEPA Administrator shall deny any application for a nonattainment major NSR permit if the GEPA Administrator finds the new source or modification would not comply with the standards and requirements set forth in GEPA or federal rules or regulations.
- (c) The GEPA Administrator shall make a final decision whether to issue or deny the nonattainment major NSR permit after determining that the nonattainment major NSR permit will or will not ensure compliance with all applicable emission standards and requirements.
- (d) The GEPA Administrator shall notify the applicant in writing of the final decision and make such notification available for public inspection at the same location where the GEPA Administrator made preconstruction information and public comments relating to the source available.

6.5 ONGOING PERMIT REQUIREMENTS

The applicable terms and conditions of an issued nonattainment major NSR permit shall remain in effect to govern source operation. Such terms and conditions shall be included in any renewal or extension of the permit and any successive air pollution control permit or renewal or extension thereof subsequently issued by the GEPA Administrator for the same emission units.

6.6 TECHNOLOGY CLEARINGHOUSE

Within 30 days of the issuance of any permit under this Rule, the GEPA Administrator shall submit control technology information from the permit to the Administrator for the purposes listed in section 173(d) of the CAA.

7 SOURCE OBLIGATIONS

7.1 ENFORCEMENT

Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this rule, any changes to the application as required by the GEPA Administrator, or the terms of its nonattainment major NSR permit or a renewal or extension thereof, shall be subject to enforcement action.

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

7.3 COMPLIANCE

Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under Guam or federal law.

7.4 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.

8 PUBLIC PARTICIPATION

After the GEPA Administrator has made a preliminary written decision to issue a nonattainment major NSR permit for a new major stationary source or major modification, as specified in Sections 6.1 and 6.2, the GEPA Administrator shall:

- (a) Publish, in at least one newspaper of general circulation in Guam, a notice stating the preliminary decision of the GEPA Administrator, noting how pertinent information can be obtained, including how the public can access the information specified in Section 8(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 nonattainment major NSR permit and a copy or summary of other materials, if any, considered in making the preliminary written decision.
- (c) Send a copy of the notice of public comment to the applicant, EPA Region 9, any persons requesting such notice and any other interested parties such as: the Mayor ~~chief executives~~ of the villages where the source would be located; the Guam Land Use Commission, ~~any comprehensive regional land use planning agency~~, and any Federal Land Manager 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 GEPA Administrator's judgment such a hearing is warranted. The GEPA Administrator shall give notice of any public hearing at least 30 days in advance of the hearing.

9 PLANT-WIDE APPLICABILITY LIMITS (PAL)

The GEPA Administrator shall issue a Plant-wide Applicability Limit (PAL) permit according to the provisions contained in 40 CFR 51.165(f)(1) through (14). The provisions of 40 CFR 51.165(f)(1) through (14), are hereby incorporated by reference.

10 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.

11 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 (*insert either date of adoption or July 1, 2020*).