

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

10

DECISION

TOPIC

**Notice of Intended Action: Chapters 20, 21, 22, 31 and 33: Air Quality
Program Rules –Nonattainment New Source Review**

The Department is requesting permission from the Commission to proceed with the rulemaking process and publish a Notice of Intended Action to amend Chapter 20 “Scope of Title-Definitions-Forms-Rules of Practice”, Chapter 21 “Compliance”, Chapter 22 “Controlling Pollution”, Chapter 31 “Nonattainment Areas” and Chapter 33 “Special Regulations and Construction Permit Requirements for Major Stationary Sources-Prevention of Significant Deterioration (PSD) of Air Quality” of 567 Iowa Administrative Code.

Reason for Rulemaking

The construction of new major sources of air pollution (or major modifications of existing sources of air pollution) in areas that are not in attainment with the National Ambient Air Quality Standards (NAAQS) is governed by federal Nonattainment New Source Review (NSR) regulations. The proposed rulemaking will adopt the nonattainment NSR regulations from 40 Code of Federal Regulations (CFR) 51.165 to incorporate federal review and permitting procedures that allow facilities to construct or modify existing sources. By adopting these regulations, the DNR will be able to issue permits in these areas. In Iowa, a portion of Council Bluffs is not in attainment with the lead NAAQS and a portion of Muscatine is in nonattainment with the SO₂ NAAQS.

Summary of Proposed Rule Changes

- Chapter 20: Revise the introductory paragraph to include updated information on the content of 567—Chapters 22 and 31 regarding the nonattainment NSR rules.
- Chapter 20: Revise the definition of excess emissions to update the references to the nonattainment NSR and prevention of significant deterioration (PSD) rules.
- Chapter 22: Update references to the nonattainment NSR and PSD rules. Remove references to outdated EPA guidance documents.
- Chapter 22: Rescind rule 22.5 and replace it with a new rule that requires applicable owners or operators of a stationary source to comply with the nonattainment NSR program rules in rule 31.20. The content of rule 22.5 is moved to 31.20 to streamline the administrative rules and make them more user-friendly. Rule 22.5 will continue to apply only to areas designated nonattainment on or before May 18, 1998. These provisions must be retained, as permits issued during previous nonattainment declarations remain in effect.
- Chapter 22: Update the list of attainment or unclassifiable areas in the state.

- Chapter 31: Revise the introductory paragraph to include background on nonattainment NSR rules and to note location of nonattainment NSR provisions for nonattainment areas in place on or before May 18, 1998.
- Chapter 31: Revise rule relating to conformity of general federal actions to Iowa’s SIP. Redundant language is also removed.
- Chapter 31: Adopt the federal nonattainment NSR rules. The federal regulations include instructions to the states that could be confusing for businesses if the federal regulations were adopted by directly referencing the federal regulations. The Department is proposing to adopt the bulk of EPA’s nonattainment rules in 40 CFR 51.165 into Chapter 31 and refer to actual plantwide applicability limits (40 CFR 51.165(f)) by reference. The content of 567—22.5(455B) is transferred to 567—31.20(455B) to streamline administrative rules and make them more user-friendly.
- Chapter 33: Revise the introductory paragraph to note location of nonattainment NSR rule provisions.

Affected Sources

Major sources of air pollution in the nonattainment areas will be affected by these rules. Griffin Pipe is the only major lead source located in the lead nonattainment area in Council Bluffs. Grain Processing Corporation, Monsanto, and Muscatine Power & Water are the major sources of SO₂ in the Muscatine SO₂ nonattainment area.

Major sources in an area designated as nonattainment with modifications or new projects that meet nonattainment pollutant-specific emissions thresholds will have to comply with the permitting requirements such as lowest achievable emission rate (LAER) and offsets. LAER requires the application of the most stringent emission limitation achievable, and often requires the installation of air pollution control equipment. Offsets are emission reductions from the facility or neighboring sources which must offset the emissions increase and provide a net air quality benefit.

Need for these Changes

To bring the areas back into “attainment” status, the state must complete a number of tasks. First, the DNR must submit to EPA a State Implementation Plan (SIP) revision that will demonstrate how each area will meet the NAAQS by the timelines specified in the Clean Air Act. Adopting the federal nonattainment NSR provisions is a required element of the SIP revision.

Implementation of the nonattainment NSR provisions in the Council Bluffs and Muscatine nonattainment areas will allow the existing major sources of air pollution in the nonattainment area to expand (if desired) while ensuring that the facility changes include controls and emissions offsets that will result in a net decrease in emissions in the nonattainment area. This will help assure that the areas continue to make progress towards attaining the NAAQS within the timeframes allowed under the Clean Air Act. Making enforceable emissions limitations from major sources in the area is also required to make adequate progress toward attainment. Attaining the NAAQS as expeditiously as possible in Council Bluffs and Muscatine will minimize the adverse economic impact that comes from a nonattainment designation.

Second, ambient air quality monitoring must show that this additional oversight required by these rules, and corresponding emissions reductions, have achieved the desired effect of bringing air quality back to within permissible levels.

Public Comments and Public Hearing

If the Commission approves the proposed rulemaking, the Notice of Intended Action will be published in the Iowa Administrative Bulletin on September 18, 2013. The Department will hold a public hearing on Monday, October 21, at 1:00 p.m. at the Air Quality Bureau offices. The Department will accept written public comments until 4:30 p.m. on October 21, 2013.

An administrative rule jobs impact statement and fiscal impact statement are attached.

Wendy Walker
Environmental Specialist Senior
Program Development Section, Air Quality Bureau
Memo date: August 5, 2013

ENVIRONMENTAL PROTECTION COMMISSION [567]
Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission (Commission) hereby gives Notice of Intended Action to amend Chapter 20 “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 21 “Compliance,” Chapter 22 “Controlling Pollution,” Chapter 31 “Nonattainment Areas” and Chapter 33 “Special Regulations and Construction Permit Requirements for Major Stationary Sources-Prevention of Significant Deterioration (PSD) of Air Quality” of 567 Iowa Administrative Code.

The proposed rulemaking will adopt regulations from 40 CFR 51.165 to incorporate federal review and permitting procedures that allow facilities to construct or modify existing sources in areas that are not in attainment with the National Ambient Air Quality Standards (NAAQS). The construction of new major sources of air pollution (or major modifications of existing sources of air pollution) in areas that are not in attainment with the NAAQS is governed by federal Clean Air Act Nonattainment New Source Review (NSR) regulations.

On November 22, 2011, the United States Environmental Protection Agency (EPA) designated portions of Council Bluffs as nonattainment for violating the 2008 lead NAAQS. On July 25, 2013, EPA designated portions of Muscatine as nonattainment for violating the 2010 sulfur dioxide (SO₂) NAAQS. To bring the areas back into “attainment” status, the state must complete a number of tasks. First, the Department must submit to EPA a State Implementation Plan (SIP) revision that will demonstrate how the area will meet the lead and SO₂ NAAQS by the timelines specified in the Clean Air Act. Adopting the federal nonattainment NSR provisions is a required element of the SIP revision. Attaining the lead and SO₂ NAAQS as expeditiously

as possible in Council Bluffs and Muscatine will minimize the adverse economic impact that comes from a nonattainment designation.

The Commission previously adopted requirements for nonattainment areas in rule 22.5. The provisions of rule 22.5 must be retained, as permits issued during previous nonattainment declarations remain in effect. In an effort to streamline administrative rules and make them more user-friendly, all nonattainment rules will be moved into Chapter 31. Existing rule 22.5 will become rule 31.20, and will apply only to areas designated nonattainment prior to May 18, 1998. The Department believes that retaining rule 22.5 (as new rule 31.20) will make the state's administrative rules for nonattainment NSR no more or less stringent than the rules in 40 CFR 51.165 based on the federal regulations that were in effect when an area was designated nonattainment. The requirements for areas designated nonattainment on or after May 18, 1998 are in rules 31.3-31.9. This ensures a clear delineation between the major nonattainment NSR rules that applied to areas designated nonattainment prior to May 18, 1998, and those that apply to areas designated nonattainment on or after May 18, 1998.

The Commission is proposing the following amendments:

Item 1 amends rule 567—20.1(455B, 17A) to add information on the content of 567—Chapters 22 and 31. Dates are added to the descriptions of Chapters 22 and 31. Rules for areas designated nonattainment are in Chapter 31.

Item 2 amends rule 567—20.2(455B) to revise the definition of excess emissions to update the references to the nonattainment NSR and prevention of significant deterioration (PSD) rules.

Item 3 amends subrule 22.1(1) to update the references to the nonattainment NSR and PSD rules.

Item 4 amends subrule 22.1(2) to update the reference to the nonattainment NSR rules.

Item 5 amends subparagraph 22.1(3)“b”(7) to update the references to the nonattainment NSR and PSD rules.

Item 6 amends subrule 22.1(4) to update the references to the nonattainment NSR and PSD rules.

Item 7 rescinds rule 567—22.5(455B) and replaces it with a new rule that requires applicable owners or operators of a stationary source to comply with the nonattainment NSR program rules in 567—31.20 (455B). The content of rule 567--22.5(455B) is moved to 567—31.20(455B).

Item 8 rescinds and reserves rule 567—22.6(455B). It also removes reference to an outdated EPA guidance document that is no longer used by the Department or the Commission.

Item 9 amends rule 567—22.7(455B) to update the list of attainment or unclassifiable areas in the state.

Item 10 amends subrule 22.105(5) to update the references to the nonattainment NSR and PSD rules.

Item 11 amends rule 567—31.1(455B) to revise the introductory paragraph.

Item 12 amends rule 567—31.2(455B) to update the federal regulations relating to conformity of general federal actions to Iowa’s SIP. The adoption by reference date is updated. Redundant language is also removed.

Item 13 adopts a new 567—31.3-31.20(455B) for the nonattainment NSR rules. The federal regulations include many instructions to the states that could be confusing for businesses if the federal regulations were adopted by directly referencing the federal regulations. The Department is proposing to adopt the bulk of EPA’s nonattainment rules in 40 CFR 51.165 into

Chapter 31 and refer to actual plantwide applicability limits (40 CFR 51.165(f)) by reference. The content of 567—22.5(455B) is transferred to 567—31.20(455B) to streamline administrative rules and make them more user-friendly.

Item 14 amends rule 567—33.1(455B) to include reference to rule 567--31.3(455B) in the introductory paragraph.

Jobs Impact Statement

After analysis and review, the Department has determined that jobs could be impacted. However, these amendments are implementing federally mandated regulations. This rule making does not impose any unnecessary regulations on Iowa businesses not required by federal law.

The Department is minimizing the impact of the federal regulations to the greatest extent possible by directly referencing federal regulations where possible. Further, nonattainment NSR rules that apply to nonattainment areas designated on or before May 18, 1998 are being combined in the same rule chapter as the nonattainment NSR rule provisions for new nonattainment areas. This action streamlines the nonattainment NSR rules and makes them more user-friendly.

Any person may make written suggestions or comments on the proposed rulemaking on or before 4:30 p.m. on October 21, 2013. Written comments should be directed to Wendy Walker, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa, 50324, fax (515) 242-5094, or by E-mail to wendy.walker@dnr.iowa.gov.

A public hearing will be held on October 21, 2013 at 1:00 p.m. in the conference rooms at the Department's Air Quality Bureau office located at 7900 Hickman Road, Windsor Heights, Iowa. All comments must be received no later than 4:30 p.m. on October 21, 2013.

Any person who intends to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact Wendy Walker at 515-281-6061, or by E-mail at wendy.walker@dnr.iowa.gov to advise of any specific needs.

The proposed rulemaking is intended to implement Iowa Code subsections 455B.133(1) and 455B.133(4).

The following amendments are proposed.

ITEM 1. Amend rule **567—20.1(455B)** to revise the introductory paragraph as follows:

567—20.1(455B,17A) Scope of title. The department has jurisdiction over the atmosphere of the state to prevent, abate and control air pollution, by establishing standards for air quality and by regulating potential sources of air pollution through a system of general rules or specific permits. The construction and operation of any new or existing stationary source which emits or may emit any air pollutant requires a specific permit from the department, unless exempted by the department.

This chapter provides general definitions applicable to this title and rules of practice, including forms, applicable to the public in the department's administration of the subject matter of this title.

Chapter 21 contains the provisions requiring compliance schedules, allowing for variances, and setting forth the emission reduction program. Chapter 22 contains the standards and procedures for the permitting of emission sources ~~and the special requirements for nonattainment areas~~. Chapter 23 contains the air emission standards for contaminants. Chapter 24 provides for the reporting of excess emissions and the equipment maintenance and repair requirements. Chapter 25 contains the testing and sampling requirements for new and existing sources. Chapter 26 identifies air pollution emergency episodes and the preplanned

abatement strategies. Chapter 27 sets forth the conditions political subdivisions must meet in order to secure acceptance of a local air pollution control program. Chapter 28 identifies the state ambient air quality standards. Chapter 29 sets forth the qualifications for an observer for reading visible emissions. Chapter 31 contains the conformity of general federal actions to the Iowa state implementation plan or federal implementation plan and requirements for areas designated nonattainment. Chapter 32 specifies requirements for conducting the animal feeding operations field study. Chapter 33 contains special regulations and construction permit requirements for major stationary sources and includes the requirements for prevention of significant deterioration (PSD). Chapter 34 contains provisions for air quality emissions trading programs.

All dates specified in reference to the Code of Federal Regulations (CFR) are the dates of publication of the last amendments to the portion of the CFR being cited.

ITEM 2. Amend rule **567—20.2(455B)**, definition of “*excess emission*” as follows:

“*Excess emission*” means any emission which exceeds ~~either the~~ any applicable emission standard prescribed in 567—Chapter 23 or rules 567—22.4(455B), 567—22.5(455B), 567—31.3(455B), 567—33.3(455B), or any emission limit specified in a permit or order.

ITEM 3. Amend subrule **22.1(1)** as follows:

22.1(1) Permit required. Unless exempted in subrule 22.1(2) or to meet the parameters established in paragraph “c” of this subrule, no person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon without first obtaining a construction permit, or conditional permit, or permit pursuant to rule 567—22.8(455B), or permits required pursuant to rules 567—22.4(455B), and 567—22.5(455B), 567—31.3(455B), and 567—

33.3(455B), as required in this subrule. A permit shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source or anaerobic lagoon.

ITEM 4. Amend subrule **22.1(2)** as follows:

22.1(2) Exemptions. The requirement to obtain a permit in 567—subrule 22.1(1) is not required for the equipment, control equipment, and processes listed in this subrule. The permitting exemptions in this subrule do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. Equipment, control equipment, or processes subject to ~~rule~~ rules 567—22.4(455B) or 567—33.3(455B), prevention of significant deterioration requirements, or ~~rule~~ rules 567—22.5(455B) or 567—31.3(455B), special requirements for nonattainment areas, may not use the exemptions from construction permitting listed in this subrule. Equipment, control equipment, or processes subject to 567—subrule 23.1(2), new source performance standards (40 CFR Part 60 NSPS); 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR Part 61 NESHAP); 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 63 NESHAP); or 567—subrule 23.1(5), emission guidelines, may still use the exemptions from construction permitting listed in this subrule provided that a permit is not needed to create federally enforceable limits that restrict potential to emit. If equipment is permitted under the provisions of rule 567—22.8(455B), then no other exemptions shall apply to that equipment.

Records shall be kept at the facility for exemptions that have been claimed under the following paragraphs: 22.1(2)“a” (for equipment > 1 million Btu per hour input), 22.1(2)“b,” 22.1(2)“e,” 22.1(2)“r” or 22.1(2)“s”. The records shall contain the following

information: the specific exemption claimed and a description of the associated equipment.

These records shall be made available to the department upon request.

The following paragraphs are applicable to 22.1(2)“g” and “i.” A facility claiming to be exempt under the provisions of paragraph “g” or “i” shall provide to the department the information listed below. If the exemption is claimed for a source not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project. If the exemption is claimed for a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the information listed below shall be provided to the department within 60 days of March 20, 1996. After that date, if the exemption is claimed by a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the source shall not operate until the information listed below is provided to the department:

- A detailed emissions estimate of the actual and potential emissions, specifically noting increases or decreases, for the project for all regulated pollutants (as defined in rule 567—22.100(455B)), accompanied by documentation of the basis for the emissions estimate;
- A detailed description of each change being made;
- The name and location of the facility;
- The height of the emission point or stack and the height of the highest building within 50 feet;
- The date for beginning actual construction and the date that operation will begin after the changes are made;

- A statement that the provisions of rules 567—22.4(455B), ~~and 567—22.5(455B),~~
567—31.3 (455B), and 567—33.3(455B), do not apply; and
- A statement that the accumulated emissions increases associated with each change under paragraph 22.1(2)“i,” when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction on the particular change commences), have not exceeded significant levels, as defined in 40 CFR 52.21(b)(23) as amended through ~~March 12, 1996,~~ October 20, 2010, and adopted in ~~rule~~ rules 567—22.4(455B) and 567—33.3(455B), and will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. This statement shall be accompanied by documentation for the basis of these statements.

The written statement shall contain certification by a responsible official as defined in rule 567—22.100(455B) of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

ITEM 5. Amend subparagraph **22.1(3)“b”(7)** as follows:

b. Construction permit applications. Each application for a construction permit shall be submitted to the department on the form “Air Construction Permit Application.” Final plans and specifications for the proposed equipment or related control equipment shall be submitted with the application for a permit and shall be prepared by or under the direct supervision of a professional engineer licensed in the state of Iowa in conformance with Iowa Code section 542B.1, or consistent with the provisions of Iowa Code section 542B.26 for any full-time

employee of any corporation while doing work for that corporation. The application for a permit to construct shall include the following information:

- (1) A description of the equipment or control equipment covered by the application;
- (2) A scaled plot plan, including the distance and height of nearby buildings, and the location and elevation of existing and proposed emission points;
- (3) The composition of the effluent stream, both before and after any control equipment with estimates of emission rates, concentration, volume and temperature;
- (4) The physical and chemical characteristics of the air contaminants;
- (5) The proposed dates and description of any tests to be made by the owner or operator of the completed installation to verify compliance with applicable emission limits or standards of performance;
- (6) Information pertaining to sampling port locations, scaffolding, power sources for operation of appropriate sampling instruments, and pertinent allied facilities for making tests to ascertain compliance;
- (7) Any additional information deemed necessary by the department to determine compliance with or applicability of rules 567—22.4(455B), ~~and 567—22.5(455B)~~, 567—31.3(455B), and 567—33.3(455B); and
- (8) Application for a case-by-case MACT determination. If the source meets the definition of construction or reconstruction of a major source of hazardous air pollutants, as defined in paragraph 22.1(1)“b,” then the owner or operator shall submit an application for a case-by-case MACT determination, as required in subparagraph 23.1(4)“b”(1), with the construction permit application. In addition to this paragraph, an application for a case-by-case MACT determination shall include the following information:

1. The hazardous air pollutants (HAP) emitted by the constructed or reconstructed major source, and the estimated emission rate for each HAP, to the extent this information is needed by the permitting authority to determine MACT;

2. Any federally enforceable emission limitations applicable to the constructed or reconstructed major source;

3. The maximum and expected utilization of capacity of the constructed or reconstructed major source, and the associated uncontrolled emission rates for that source, to the extent this information is needed by the permitting authority to determine MACT;

4. The controlled emissions for the constructed or reconstructed major source in tons/yr at expected and maximum utilization of capacity to the extent this information is needed by the permitting authority to determine MACT;

5. A recommended emission limitation for the constructed or reconstructed major source consistent with the principles set forth in 40 CFR Part 63.43(d) as amended through December 27, 1996;

6. The selected control technology to meet the recommended MACT emission limitation, including technical information on the design, operation, size, estimated control efficiency of the control technology (and the manufacturer's name, address, telephone number, and relevant specifications and drawings, if requested by the permitting authority);

7. Supporting documentation including identification of alternative control technologies considered by the applicant to meet the emission limitation, and analysis of

cost and non-air quality health environmental impacts or energy requirements for the selected control technology;

8. An identification of any listed source category or categories in which the major source is included.

(9) A signed statement that ensures the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application. A signed statement shall not be required for rock crushers, portable concrete or asphalt equipment used in conjunction with specific identified construction projects which are intended to be located at a site only for the duration of the specific, identified construction project.

ITEM 6. Amend subrule **22.1(4)** as follows:

22.1(4) Conditional permits. The owner or operator of any new or modified major stationary source may elect to apply for a conditional permit in lieu of a construction permit. Electric power generating facilities with a total capacity of 100 megawatts or more are required to apply for a conditional permit.

a. Applicability determination. If requested in writing, the director will make a preliminary determination of nonattainment applicability pursuant to rules 567—22.4(455B), ~~and 567—22.5(455B)~~, 567—31.3(455B), and 567—33.3(455B), based upon the information supplied by the requester.

b. Conditional permit applications. Each application for a conditional permit shall be submitted to the department in writing and shall consist of the following items:

(1) The results of an air quality impact analysis which characterizes preconstruction air quality and the air quality impacts of facility construction and operation. A quality assurance

plan for the preconstruction air monitoring where required in accordance with 40 Code of Federal Regulations Part 58 as amended through July 18, 1997, shall also be submitted.

(2) A description of equipment and pollution control equipment design parameters.

(3) Preliminary plans and specifications showing major equipment items and location.

(4) The fuel specifications of any anticipated energy source, and assurances that any proposed energy source will be utilized.

(5) Certification that the preliminary plans and specifications for the equipment and related control equipment have been prepared by or under the direct supervision of a professional engineer registered in the state of Iowa in conformance with Iowa Code chapter 542B.

(6) An estimate of when construction would begin and when construction would be completed.

(7) Any additional information deemed necessary by the department to determine compliance with or applicability of rules 567—22.4(455B), ~~and 567—22.5(455B)~~, 567—31.3(455B), and 567—33.3(455B).

ITEM 7. Rescind rule **567—22.5(455B)** and replace with the following **new** rule, as follows:

567—22.5(455B) Special requirements for nonattainment areas. As applicable, the owner or operator of a stationary source shall comply with the rules for requirements for the nonattainment NSR program as set forth in 567—Chapter 31.20 (455B).

ITEM 8. Rescind and reserve rule **567—22.6**, as follows:

~~567—22.6(455B) Nonattainment area designations.~~ Section 107(d) of the federal Clean Air Act, 42 U.S.C. §7457(d), requires each state to submit to the Administrator of the federal Environmental Protection Agency a list of areas that exceed the national ambient air quality standards, that are lower than those standards, or that cannot be classified on the basis of current data. A list of Iowa's nonattainment area designations is found at 40 CFR Part 81.316 as amended through January 5, 2005. The commission uses the document entitled "Criteria for Revising Nonattainment Area Designations"[†] (June 14, 1979) to determine when and to what extent the list will be revised and resubmitted. **Reserved.**

[†] Filed with Administrative Rules Coordinator, also available from the department.

ITEM 9. Amends **subrule 22.7(1)** as follows:

22.7(1) Applicability. The owner or operator of any source located in an area with attainment or unclassified status (as published at 40 CFR §81.316 amended ~~January 5, 2005~~May 21, 2012) or located in an area with an approved state implementation plan (SIP) demonstrating attainment by the statutory deadline may apply for an alternative set of emission limits if:

- a. The applicant is presently in compliance with EPA approved SIP requirements, or
- b. The applicant is subject to a consent order to meet an EPA approved compliance schedule and the final compliance date will not be delayed by the use of alternative emission limits.

ITEM 10. Amend **subparagraph 22.105(1)“a”(3)** as follows:

22.105(1) Duty to apply. For each source required to obtain a Title V permit, the owner or operator or designated representative, where applicable, shall present or mail a complete and timely permit application in accordance with this rule to the following locations: Iowa

Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324 (two copies); and U.S. EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101 (one copy); and, if applicable, the local permitting authority, which is either Linn County Public Health Department, Air Quality Division, 501 13th Street NW, Cedar Rapids, Iowa 52405 (one copy); or Polk County Public Works, Air Quality Division, 5885 NE 14th Street, Des Moines, Iowa 50313 (one copy). Alternatively, an owner or operator may submit a complete and timely application through the electronic submittal format specified by the department.

a. Timely application. Each owner or operator applying for a Title V permit shall submit an application as follows:

(1) Initial application for an existing source. The owner or operator of a stationary source that was existing on or before April 20, 1994, shall make the first time submittals of a Title V permit application to the department by November 15, 1994. However, the owner or operator may choose to defer submittal of Part 2 of the permit application until December 31, 1995. The department will mail notice of the deadline for Part 2 of the permit application to all applicants who have filed Part 1 of the application by October 17, 1995.

(2) Initial application for a new source. The owner or operator of a stationary source that commenced construction or reconstruction after April 20, 1994, or that otherwise became subject to the requirement to obtain a Title V permit after April 20, 1994, shall submit an application to the department within 12 months of becoming subject to the Title V permit requirements.

(3) Application related to 112(g), PSD or nonattainment. The owner or operator of a stationary source that is subject to Section 112(g) of the Act, that is subject to rule 567—22.4(455B) or 567—33.3(455B) (prevention of significant deterioration (PSD)), or that is subject

to rule 567—22.5(455B) or 567—31.3(455B) (nonattainment area permitting) shall submit an application to the department within 12 months of commencing operation. In cases in which an existing Title V permit would prohibit such construction or change in operation, the owner or operator must obtain a Title V permit revision before commencing operation.

Item 11. Amend rule **567—31.1(455B)** as follows:

567—31.1(455B) Permit requirements relating to nonattainment areas. ~~Special construction permit requirements in nonattainment areas are contained in rules 567—22.5(455B) and 22.6(455B). This rule implements the major nonattainment new source review (NSR) program contained in Part D of Title I of the federal Clean Air Act and as promulgated under 40 CFR 51.165 as amended through March 30, 2011, and 40 CFR 51 Appendix S as amended through July 1, 2011. A list of Iowa's nonattainment area designations is found at 40 CFR Part 81.316 as amended through May 21, 2012.~~

This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part D of Title I of the Clean Air Act as amended on November 15, 1990. The nonattainment NSR program applies only in areas that do not meet the national ambient air quality standards (NAAQS).

Section 107(d) of the federal Clean Air Act, 42 U.S.C. §7457(d), requires each state to submit to the Administrator of the federal Environmental Protection Agency a list of areas that exceed the NAAQS, that are lower than those standards, or that cannot be classified on the basis of current data.

Rules for nonattainment areas designated after May 18, 1998 are in 567—31.3 through 567—31.10. Requirements for nonattainment areas designated on or before May 18, 1998 are in

567—31.20. A list of Iowa’s nonattainment area designations is found at 40 CFR 81.316 as amended through May 21, 2012.

Item 12. Amend rule **567—31.2(455B)** as follows:

567—31.2(455B) Conformity of general federal actions to the Iowa state implementation plan or federal implementation plan. The federal regulations relating to determining conformity of general federal actions to state or federal implementation plans, 40 CFR 93.150, 93.152-93.165, ~~Subpart B~~, as amended through ~~December 21, 1993~~April 5, 2010, are adopted by reference ~~except 40 CFR 93.151.~~

~~**31.2(1)** Section 93.160(f) is modified to read:~~

~~(f) Written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitment must be fulfilled.~~

~~**31.2(2)** Section 93.160(g) is modified to read:~~

~~(g) After February 22, 1995, and EPA’s approval of the corresponding state implementation plan change, any agreements, including mitigation measures, necessary for a conformity determination will be both state and federally enforceable. Enforceability through the Iowa state implementation plan will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.~~

Item 13. Add new rules **567—31.3-31.20(455B)** as follows:

567—31.3(455B) Nonattainment New Source Review rules for areas designated nonattainment on or after May 18, 1998.

31.3(1) Definitions. For the purpose of nonattainment new source review, the following definitions shall apply:

“Act” shall mean the Clean Air Act, 42 U.S.C. Sections 7401, et seq. as amended through November 15, 1990.

“Actual emissions” shall mean:

a. The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs “a” and “b”, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under rule 31.9. Instead, the definitions of projected actual emission and baseline actual emissions shall apply for those purposes.

b. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

c. The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

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

“Administrator” shall mean the administrator for the United States Environmental Protection Agency (EPA) or designee.

“Allowable emissions” shall mean the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally

enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

a. The applicable standards set forth in 567—subrules 23.1(2) through 23.1(5) (new source performance standards, emissions standards for hazardous air pollutants, and federal emissions guidelines) or an applicable federal standard not adopted by the state, as set forth in 40 CFR Parts 60, 61 and 63;

b. The State Implementation Plan (SIP) emissions limitation including those with a future compliance date; or

c. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

“*Baseline actual emissions*”, for the purposes of this rule shall mean the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs “a” through “d”.

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subparagraph “a”(2) of this definition.

b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under this rule or under a plan approved by the Administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of subparagraph 31.3(3) “b”(7).

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subparagraphs “b”(2) and “b”(3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph “a”, for other existing emissions units in accordance with

the procedures contained in paragraph “b”, and for a new emissions unit in accordance with the procedures contained in paragraph “c”.

“*Begin actual construction*” shall mean, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

“*Best available control technology (BACT)*” shall mean an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 567—subrules 23.1(2) through 23.1(5) (standards for new stationary sources, federal standards for hazardous air pollutants, and federal emissions guidelines), or federal regulations as set forth in 40 CFR Parts 60, 61 and 63 but not yet adopted by the state. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work

practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

“Building, structure, facility, or installation” shall mean all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same *Major Group* (*i.e.* , which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

“CFR” means the Code of Federal Regulations, with standard references in this chapter by title and part, so that “40 CFR 51” or “40 CFR Part 51” means “Title 40 Code of Federal Regulations, Part 51.”

“Clean coal technology” shall mean any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

“Clean coal technology demonstration project” shall mean a project using funds appropriated under the heading “Department of Energy-Clean Coal Technology,” up to a

total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the EPA. The federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project. “*Commence*”, as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

b. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

“*Construction*” shall mean any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

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

“*Continuous emissions rate monitoring system (CERMS)*” shall mean the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

“*Continuous parameter monitoring system (CPMS)*” shall mean all of the equipment necessary to meet the data acquisition and availability requirements of this rule, to monitor

process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis. “*Electric utility steam generating unit*” shall mean any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

“*Emissions unit*” shall mean any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this rule, there are two types of emissions units as described in paragraphs “a” and “b”.

a. A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than 2 years from the date such emissions unit first operated.

b. An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (a) of this definition. A replacement unit is an existing emissions unit.

“*Federal Land Manager*” shall mean, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

“*Federally enforceable*” shall mean all limitations and conditions which are enforceable by the EPA Administrator and the department, including those federal requirements not yet adopted by the state, developed pursuant to 40 CFR parts 60, 61, and 63; requirements within 567—subrules 23.1(2) through 23.1(5); requirements within the SIP, any permit

requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, as amended through October 20, 2010, including operating permits issued under an EPA-approved program that is incorporated into the SIP and expressly requires adherence to any permit issued under such program.

“Fugitive emissions” shall mean those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

“Lowest achievable emission rate” or *“(LAER)”* shall mean, for any source, the more stringent rate of emissions based on the following:

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

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

“Major modification” shall mean any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.

a. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

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

(1) Routine maintenance, repair and replacement.

(2) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) Use of an alternative fuel by reason of an order or rule section 125 of the Act;

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

(5) Use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or § 51.166; or the source is approved to use under any permit issued under regulations approved pursuant to this rule;

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR part 51 subpart I or 40 CFR 51.166.

(7) Any change in ownership at a stationary source.

(8) Reserved.

(9) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the SIP, and other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

c. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under rule 31.9 of this chapter for a PAL for that pollutant. Instead, the definition at 567—31.9 shall apply.

d. For the purpose of applying the requirements of subrule 31.3(8) to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to subpart 2, part D, title I of the Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

e. Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the Act.

“Major stationary source” shall mean:

a. Any stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the Act, according to definitions in 567—31.3(1).

(1) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.

(2) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

(3) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area.

(4) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.

(5) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the Administrator as amended through [effective date of these rules]).

(6) 70 tons per year of PM-10 in any serious nonattainment area for PM-10;

b. For the purposes of applying the requirements of subrule 31.3(8) to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the following emission thresholds apply in areas subject to subpart 2 of part D, title I of the Act:

(1) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(2) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(3) 100 tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(4) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(5) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(6) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or

c. Any physical change that would occur at a stationary source not qualifying under 567—31.3(1) as a major stationary source, if the change would constitute a major stationary source by itself.

d. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

e. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: Coal cleaning plants (with thermal dryers); Kraft pulp mills; Portland cement plants; Primary zinc smelters; Iron and steel mills; Primary aluminum ore reduction plants; Primary copper smelters; Municipal incinerators capable of charging more than 250 tons of refuse per day; Hydrofluoric, sulfuric, or nitric acid plants; Petroleum refineries; Lime plants; Phosphate rock processing plants; Coke oven batteries; Sulfur recovery plants; Carbon black plants (furnace process); Primary lead smelters; Fuel conversion plants; Sintering plants; Secondary metal production

plants; Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140; Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input; Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels; Taconite ore processing plants; Glass fiber processing plants; Charcoal production plants; Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

“*Necessary preconstruction approvals or permits*” shall mean those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the SIP.

“*Net emissions increase*” shall mean, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero: the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated according to the applicability requirements of paragraph 31.3(2)“b”; and any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases shall be determined as provided in the “baseline actual emissions” definition, except that “a”(3) and “b”(4) shall not apply.

a. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs

between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs;

b. An increase or decrease in actual emissions is creditable only if:

(1) The increase or decrease in actual emissions occurs within the contemporaneous time period, as noted in paragraph “a” of this definition; and

(2) The department has not relied on the increase or decrease in actual emissions in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(3) Reserved.

c. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

d. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(3) The department has not relied on a decrease in actual emissions in issuing any permit under regulations approved pursuant to 40 CFR part 51 subpart I or has not relied on a decrease in actual emissions in demonstrating attainment or reasonable further progress;

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

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

f. Actual emissions shall not apply for determining creditable increases and decreases or after a change.

“*Nonattainment major new source review (NSR) program*” shall mean a major source preconstruction permit program that has been approved by the EPA Administrator and incorporated into the plan to implement the requirements of this rule, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI as amended on October 25, 2012. Any permit issued under such a program is a major NSR permit.

“*Pollution prevention*” shall mean any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. “Pollution prevention” does not mean recycling (other than certain “in-process recycling” practices), energy recovery, treatment, or disposal.

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

would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

“*Predictive emissions monitoring system (PEMS)*” shall mean all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

“*Prevention of Significant Deterioration (PSD) permit*” shall mean any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

“*Project*” shall mean a physical change in, or change in the method of operation of, an existing major stationary source.

“*Projected actual emissions*” shall mean, the maximum annual rate, in tons per year, 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 stationary source. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

a. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved plan; and

b. Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

c. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

d. In lieu of using the method set out in paragraphs “a” through “c”, may elect to use the emissions unit's potential to emit, in tons per year.

“Reasonable period” shall mean an increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

“Regulated NSR pollutant” shall mean the following:

- a. Nitrogen oxides or any volatile organic compounds;
- b. Any pollutant for which a national ambient air quality standard has been promulgated;

c. Any pollutant that is identified as a constituent or precursor of a general pollutant listed under paragraphs “a” or “b”, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

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

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

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

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

d. $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures.

“*Replacement unit*” shall mean an emissions unit for which all the criteria listed in paragraphs “a” through “d” of this definition are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

a. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1) as amended through December 16, 1975, or the emissions unit completely takes the place of an existing emissions unit.

b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

c. The replacement does not alter the basic design parameters of the process unit.

d. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

“Reviewing authority” shall mean the department of natural resources.

“Secondary emissions” shall mean emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this rule, “secondary emissions” must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. “Secondary emissions” include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction of operation of the major stationary source of major modification. “Secondary emissions” do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

“Significant emissions increase” shall mean, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

“*Significant*” shall mean:

a. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant Emission Rate

- (1) Carbon monoxide: 100 tons per year (tpy)
- (2) Nitrogen oxides: 40 tpy
- (3) Sulfur dioxide: 40 tpy
- (4) Ozone: 40 tpy of volatile organic compounds or nitrogen oxides
- (5) Lead: 0.6 tpy
- (6) PM10: 15 tpy
- (7) PM2.5: 10 tpy of direct PM2.5 emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless the department demonstrates to EPA’s satisfaction that the emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area’s ambient PM_{2.5} concentrations.

b. Notwithstanding the significant emissions rate for ozone significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to subpart 2, part D, title I of the Act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

c. For the purposes of applying the requirements of subrule 31.3(8) to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an

ozone transport region, the significant emission rates and other requirements for volatile organic compounds in paragraphs “a”, “b”, and “e” shall apply to nitrogen oxides emissions.

d. Notwithstanding the significant emissions rate for carbon monoxide, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the department has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

e. Notwithstanding the significant emissions rates for ozone under paragraphs “a” and “b”, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the Act shall be considered a significant net emissions increase.

“*Stationary source*” shall mean any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

“*Temporary clean coal technology demonstration project*” shall mean a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

“*Volatile organic compounds*” or “(VOC)” shall mean any compound included in the definition of “volatile organic compounds” found 40 CFR 51.100(s) through January 21, 2009.

31.3(2) *Applicability procedures.*

a. This subrule adopts a preconstruction review program to satisfy the requirements of sections 172(c)(5) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under subpart C of 40 CFR part 81 as amended on July 20, 2012, and shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment under section 107(d)(1)(A)(i) of the Act, if the stationary source or modification would locate anywhere in the designated nonattainment area.

b. Each plan shall use the specific provisions of subparagraphs (1) through (6) of this subrule. Deviations from these provisions will be approved only if the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in subparagraphs (1) through (6) of this subrule.

(1) Except as otherwise provided in paragraphs “*c*” and “*d*”, and consistent with the definition of major modification, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.*, the first step of the process) will occur depends upon the

type of emissions units being modified, according to subparagraphs "b"(3) through "b"(6). The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) *Actual-to-projected-actual applicability test for projects that only involve existing emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

(4) *Actual-to-potential test for projects that only involve construction of a new emissions unit(s).* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) Reserved.

(6) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subparagraphs "b"(3) through "b"(4) of this subrule as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

c. The plan shall require that for any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under rule 31.9.

31.3(3) Creditable offsets.

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

(1) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(2) The SIP does not contain an emissions limitation for that source or source category.

b. Providing that:

(1) Where the emissions limit under the SIP allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

(2) For an existing fuel combustion source, credit shall be based on the allowable emissions under the SIP for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The department should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches,

(3) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if: such reductions are surplus, permanent, quantifiable, and federally enforceable; and the shutdown or curtailment

occurred after the last day of the base year for the SIP planning process. For purposes of this subparagraph, the department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements above may be generally credited only if: the shutdown or curtailment occurred on or after the date the construction permit application is filed; or the applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of 31.3(3)“b”(3).

(4) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's “Recommended Policy on Control of Volatile Organic Compounds” (42 FR 35314, July 8, 1977;)

(5) All emission reductions claimed as offset credit shall be federally enforceable;

(6) Procedures relating to the permissible location of offsetting emissions shall be followed which are at least as stringent as those set out in 40 CFR part 51 Appendix S section IV.D as amended on October 25, 2012.

(7) Credit for an emissions reduction can be claimed to the extent that the department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR part 51

subpart I or the State has not relied on it in demonstration attainment or reasonable further progress.

(8) Reserved.

(9) Reserved.

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

31.3(4) The department may provide that the provisions of this subrule do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories: Coal cleaning plants (with thermal dryers); kraft pulp mills; portland cement plants; primary zinc smelters; iron and steel mills; primary aluminum ore reduction plants; primary copper smelters; municipal incinerators capable of charging more than 250 tons of refuse per day; hydrofluoric, sulfuric, or nitric acid plants; petroleum refineries; lime plants; phosphate rock processing plants; coke oven batteries; sulfur recovery plants; carbon black plants (furnace process); primary lead smelters; fuel conversion plants; sintering plants; secondary metal production plants; chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140; fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input; petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels; taconite ore processing plants; glass fiber

processing plants; charcoal production plants; fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

31.3(5) *Enforceable procedures.*

a. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the plan and any other requirements under local, State or Federal law.

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

31.3(6) Except as otherwise provided in paragraph “*f*” of this subrule, the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph “*f*”, 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 the definition of “projected actual emissions”, paragraphs “*a*” through “*c*” for calculating projected actual emissions. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs “*a*” through “*f*” of this subrule.

a. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(1) A description of the project;

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

(3) 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 the definition of “projected actual emissions”, paragraph “*c*”, and an explanation for why such amount was excluded, and any netting calculations, if applicable.

b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph “*a*” to the department. Nothing in paragraph “*b*” shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

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 is emitted by any emissions units identified in subparagraph “*a*”(2); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 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 such emissions unit.

d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under paragraph “*c*” setting out the unit's annual emissions during the year that preceded submission of the report.

e. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in paragraph “*a*”, exceed the baseline actual emissions (as documented and maintained under subparagraph “*a*”(3)), by a significant amount for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained under subparagraph “*a*”(3). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

- (1) The name, address and telephone number of the major stationary source;
- (2) The annual emissions as calculated pursuant to paragraph “*c*” of this subrule; and
- (3) 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. A “reasonable possibility” under this subrule occurs when the owner or operator calculates the project to result in either:

(1) A projected actual emissions increase of at least 50 percent of the amount that is a “significant emissions increase,” (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(2) A projected actual emissions increase that, added to the amount of emissions excluded under the definition of “projected actual emission”, paragraph “*c*”, sums to at least 50 percent of the amount that is a “significant emissions increase,” (without reference to the amount that is a

significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this subparagraph, and not also within the meaning of subparagraph (1), then paragraphs “b” through “e” do not apply to the project.

31.3(7) The owner or operator of the source shall make the information required to be documented and maintained pursuant to this subrule available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii) as amended October 6, 2009.

31.3(8) The requirements of this subrule applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the EPA Administrator has granted a NO_x waiver applying the standards set forth under section 182(f) of the Act and the waiver continues to apply.

31.3(9) *Offset Ratios.*

a. In meeting the emissions offset requirements of subrule 31.3(3), the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in paragraphs “b” through “d”.

b. The plan shall require that in meeting the emissions offset requirements of subrule 31.3(3) ozone nonattainment areas that are subject to subpart 2, part D, title I of the Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

- (1) In any marginal nonattainment area for ozone—at least 1.1:1;
- (2) In any moderate nonattainment area for ozone—at least 1.15:1;

(3) In any serious nonattainment area for ozone—at least 1.2:1;

(4) In any severe nonattainment area for ozone—at least 1.3:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

(5) In any extreme nonattainment area for ozone—at least 1.5:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

c. Notwithstanding the requirements of subrule 31.3(9) for meeting the requirements of subrule 31.3(3), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to subpart 2, part D, title I of the Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to subpart 2, part D, title I of the Act.

d. In meeting the emissions offset requirements of subrule 31.3(3) for ozone nonattainment areas that are subject to subpart 1, part D, title I of the Act (but are not subject to subpart 2, part D, title I of the Act, including 8-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1:1.

31.3(10) The requirements of this rule applicable to major stationary sources and major modifications of PM-10 shall also apply to major stationary sources and major modifications of PM-10 precursors.

31.3(11) In meeting the emissions offset requirements of subrule 31.3(3), the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this subrule. The offset requirements in subrule

31.3(3)for direct PM_{2.5} emissions or emissions of precursors of PM_{2.5} to be satisfied by offsetting reductions in direct PM_{2.5} emissions or emissions of any PM_{2.5} precursor if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

31.4(1) Sources shall comply with the requirements of section 110(a)(2)(D)(i) of the Act for any new major stationary source or major modification as defined in subrule 31.3(1). The definitions in subrule 31.3(1) for “major stationary source” and “major modification” planning to locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to section 107 of the Act, apply when that source or modification would cause or contribute to a violation of any national ambient air quality standard.

31.4(2) A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

Pollutant	Annual	Averaging time (hours)			
		24	8	3	1
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			
PM _{2.5}	0.3 µg/m ³	1.2 µg/m ³			
NO ₂	1.0 µg/m ³				
CO			0.5 mg/m ³		2 mg/m ³

31.4(3) A proposed major source or major modification subject to rule 567— 31.4(455B) may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard. In the absence of such emission reductions, the proposed construction permit application shall be denied.

31.4(4) The requirements of rule 567—31.4(455B) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment pursuant to section 107 of the Act.

31.5 - 31.8 *Reserved.*

31.9 *Actuals PALs.* Except as provided in subrule 31.9(1), the provisions for actuals PALs as specified in 40 CFR 51.165(f) as amended through March 30, 2011, are adopted by reference.

31.9(1) The following portions of actual PALs in 40 CFR 51.165(f) are modified as follows:

a. 40 CFR 51.165(f)(2) Definitions. The definitions in paragraphs (f)(2)(i) through (xi) of this section shall be applicable to actuals PALS for purposes of paragraphs (f)(1) through (15) of this section. Any terms not defined in paragraphs (f)(2)(i) through (xi) shall have the meaning prescribed by rule 567—31.3(455B) of this section or the meaning prescribed by the Act.

b. 40 CFR 51.165(f)(8)(ii)(B) The reviewing authority shall have discretion to reopen the PAL permit for the following:

c. 40 CFR 51.165(f)(10)(ii) Application deadline. A major stationary source owner or operator shall submit a timely application to the reviewing authority to request renewal of a PAL. In order to be considered timely, the application shall be submitted at least 6 months prior to, but

not earlier than 18 months prior to, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

d. 40 CFR 51.165(f)(15)(i) Each PAL shall comply with the requirements contained in paragraphs (f)(1) through (15) of this section.

e. 40 CFR 51.165(f)(15)(ii) Any PAL issued prior to the [effective date of these rules] may be superseded with a PAL that complies with the requirements of paragraphs (f)(1) through (15) of this section.

31.10 If any provision of rules 567—31.3(455B) through 567—31.9(455B), or the application of such provision to any person or circumstance, is held invalid, the remainder of these rules, 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.

567—31.11 to 31.19 Reserved.

567—31.20 Special requirements for nonattainment areas designated prior to May 18, 1998 (formerly adopted in 567 — 22.5(455B)).

31.20(1) Definitions.

a. “Major stationary source” means any of the following:

(1) Any stationary source of air contaminants which emits, or has the potential to emit, 100 tons per year or more of any regulated air contaminant;

(2) Any physical change that would occur at a stationary source not qualifying under subparagraph (1) as a major stationary source, if the change would constitute a major stationary source by itself;

(3) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as “marginal” or “moderate,” 50 tpy or more in areas classified as “serious,” 25 tpy or more in areas classified as “severe” and 10 tpy or more in areas classified as “extreme”; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the Clean Air Act, that requirements under Section 182(f) of the Clean Air Act do not apply;

(4) For ozone transport regions established pursuant to Section 184 of the Clean Air Act, sources with potential to emit 50 tpy or more of volatile organic compounds;

(5) For carbon monoxide nonattainment areas that both are classified as “serious” and in which there are stationary sources which contribute significantly to carbon monoxide levels, sources with the potential to emit 50 tpy or more of carbon monoxide; or

(6) For particulate matter (PM-10), nonattainment areas classified as “serious,” sources with the potential to emit 70 tpy or more of PM-10.

A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

b. “Major modification” means any physical change in or change in the method of operation of a major stationary source, that would result in a significant net emission increase of any regulated air contaminant.

(1) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

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

Routine maintenance, repair, and replacement;

Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Co-ordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act;

Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act;

Any change in ownership at a stationary source; or

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

Use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before December 21, 1976, unless such change would be prohibited by any enforceable permit condition.

An increase in the hours of operation or in the production rate, unless such change is prohibited under any enforceable permit condition.

c. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have

on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

The provisions of this paragraph do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

Coal cleaning plants (with thermal dryers);

Kraft pulp mills;

Portland cement plants;

Primary zinc smelters;

Iron and steel mills;

Primary aluminum ore reduction plants;

Primary copper smelters;

Municipal incinerators capable of charging more than 250 tons of refuse per day;

Hydrofluoric, sulfuric, or nitric acid plants;

Petroleum refineries;

Lime plants;

Phosphate rock processing plants;

Coke oven batteries;

Sulfur recovery plants;

Carbon black plants (furnace process);

Primary lead smelters;

Fuel conversion plants;

Sintering plants;

Secondary metal production plants;

Chemical process plants;

Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

Taconite ore processing plants;

Glass fiber processing plants;

Charcoal production plants;

Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act, 42 U.S.C. § § 7401 et seq.

d. "Lowest achievable emission rate" means, for any source, that rate of emissions based on the following, whichever is more stringent:

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

(2) The most stringent emission limitation which is achieved in practice by such class or category of source.

This term, applied to a modification, means the lowest achievable emission rate for the new or modified emission units within the stationary source.

This term may include a design, equipment, material, work practice or operational standard or combination thereof.

In no event shall the application of this term permit a proposed new or modified stationary source to emit any regulated air contaminant in excess of the amount allowable under applicable new source standards of performance.

e. "Secondary emissions" means emissions which occur or could occur as a result of the construction or operation of a major stationary source or major modification, but do not necessarily come from the major stationary source or major modification itself. For purposes of this rule, secondary emissions must be specific and well-defined, must be quantifiable, and must affect the same general nonattainment area as the stationary source or modification which causes the secondary emission. Secondary emissions may include, but are not limited to:

Emissions from barges or trains coming to or from the new or modified stationary source;
and

Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification

f. (1) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

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

(3) An increase or decrease in actual emissions is creditable only if the director has not relied on it in issuing a permit for the source under this rule which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emissions is creditable only to the extent that:

The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

It is an enforceable permit condition at and after the time that actual construction on the particular change begins;

The director has not relied on it in issuing any other permit;

Such emission decreases have not been used for showing reasonable further progress; and
It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

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

g. "Emissions unit or installation" means an identifiable piece of process equipment.

h. "Reconstruction" will be presumed to have taken place where the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of new source performance standards (see 567–subrule 23.1(2)). A reconstructed stationary source will be treated as a new stationary source for purposes of this rule. In determining lowest achievable emission rate for a reconstructed stationary source, the definitions in the new source performance standards shall be taken into account in assessing whether a new source performance standard is applicable to such stationary source.

i. "Fixed capital cost" means the capital needed to provide all the depreciable components.

j. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

k. "Significant" means in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

PM10: 15 tpy

l. "Allowable emissions" means the emissions rate calculated using the maximum rated capacity of the source (unless the source is subject to an enforceable permit condition which restricts the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) Applicable standards as set forth in 567–Chapter 23;

(2) Any applicable state implementation plan emissions limitation, including those with a future compliance date; or

(3) The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

m. "Enforceable permit condition" for the purpose of this rule means any of the following limitations and conditions: requirements developed pursuant to new source performance standards, prevention of significant deterioration standards, emission standards for hazardous air pollutants, requirements within the state implementation plan, and any permit requirements established pursuant to this rule, or under conditional, construction or Title V operating permit rules.

n. (1) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with subparagraphs (2) to (4) below.

(2) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's

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

(3) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

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

o. "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

p. "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

q. "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the state implementation plan.

r. "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework

and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

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

31.20(2) Applicability. Areas designated as attainment, nonattainment, or unclassified are as listed in 40 CFR § 81.316 as amended through March 19, 1998.

a. The requirements contained in rule 567–31.20(455B) shall apply to any new major stationary source or major modification that, as of the date the permit is issued, is major for any pollutant for which the area in which the source would construct is designated as nonattainment.

b. The requirements contained in rule 567–31.20(455B) shall apply to each nonattainment pollutant that the source will emit or has the potential to emit in major amounts. In the case of a modification, the requirements shall apply to the significant net emissions increase of each nonattainment pollutant for which the source is major.

c. Particulate matter. If a major source or major modification is proposed to be constructed in an area designated nonattainment for particulate matter, then emission offsets must be achieved prior to startup.

If a major source or major modification is proposed to be constructed in an area designated attainment or unclassified for particulate matter, but the modeled (EPA-approved guideline model) worst case ground level particulate concentrations due to the major source or major modification in a designated particulate matter nonattainment area is equal to or greater than five micrograms per cubic meter (24-hour concentration), or one microgram per cubic meter (annual arithmetic mean), then emission offsets must be achieved prior to startup.

d. Sulfur dioxide. If a major source or major modification is proposed to be constructed in an area designated nonattainment for sulfur dioxide, then emission offsets must be achieved prior to startup.

If a major source or major modification is proposed to be constructed in an area designated attainment or unclassified for sulfur dioxide, but the modeled (EPA-approved guideline model) worst case ground level sulfur dioxide concentrations due to the major source or major modification in a designated sulfur dioxide nonattainment area is equal to or greater than 25 micrograms per cubic meter (three-hour concentration), five microgram per cubic meter (24-hour concentration), or one microgram per cubic meter (annual arithmetic mean), then emission offsets must be achieved prior to startup.

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

31.20(3) Emission offsets.

a. Emission offsets shall be obtained from the same source or other sources in the same nonattainment area, except that the required emissions reductions may be obtained from a source in another nonattainment area if:

(1) The other area, which must be nonattainment for the same pollutant, has an equal or higher nonattainment classification than the nonattainment area in which the source is located, and

(2) Emissions from such other nonattainment areas contribute to a violation of a National Ambient Air Quality Standard in the nonattainment area in which the proposed new or modified source would construct.

b. Emission offsets for any regulated air contaminant in the designated nonattainment area shall provide for reasonable further progress toward attainment of the applicable National Ambient Air Quality Standards and provide a positive net air quality benefit in the nonattainment area.

c. The increased emissions of any applicable nonattainment air pollutant allowed from the proposed new or modified source shall be offset by an equal or greater reduction, as applicable, in the total tonnage and impact of actual emissions, as stated in subrule 31.20(4), of such air pollutant from the same or other sources. For purposes of subrule 31.20(3), actual emissions shall be determined in accordance with subparagraphs 31.20(1)“n” (1) and (2).

d. All emissions reductions claimed as offset credit shall be federally enforceable prior to, or upon, the issuance of the permit required under this rule and shall be in effect by the time operation of the permitted new source or modification begins.

e. Proposals for emission offsets shall be submitted with the application for a permit for the major source or major modification. All approved emission offsets shall be made a part of the

permit and shall be deemed a condition of expected performance of the major source or major modification.

31.20(4) Acceptable emission offsets.

a. Equivalence. The effect of the reduction of emissions must be measured or predicted to occur in the same area as the emissions of the major source or major modification. It can be assumed that, if the emission offsets are obtained from an existing source on the same premises or in the immediate vicinity of the major source or major modification and if the air contaminant disperses from substantially the same stack height, the emissions will be equivalent and may be offset. Otherwise, an adequate dispersion model must be used to predict the effect. If the reduction accomplished at the source is as specified in subrule 31.20(3) and if the effect of the reduction is measured or predicted to occur in the same area as the emissions of the major source or major modification, the effect of the reduction at the measured or predicted point does not have to exactly offset the effect of the major source or major modification.

b. Offset ratio. Rescinded IAB 2/14/96, effective 3/20/96.

c. Control of uncontrolled existing sources. If control equipment is proposed for a presently uncontrolled existing source for which controls are not required by rules, then credit may be allowed for any reduction below the source's potential to emit. The reduction shall be proposed at the time of permit application. Any such reductions which occurred prior to January 1, 1978, shall not be accepted for offsets.

d. Greater control of existing sources. If more effective control equipment for a source already in compliance with the SIP allowable level is proposed to offset the emissions of the major source or major modification in or affecting a nonattainment area, then the difference in the emissions between the actual level on January 1, 1978, and the new level can be credited for

offsets. (This does not allow credit to be granted for any reductions in actual emissions required by the SIP subsequent to January 1, 1978.)

For example, if a cyclone that is being used to meet a SIP emission standard is emitting X1 lbs/hr and if it is to be replaced by a bag filter emitting X2 lbs/hr, an emission offset equal to (X1 - X2) lbs/hr may be allowed toward the total required reduction.

e. Fugitive dust offsets. Credits may be allowed for permanent control of fugitive dust. EPA's "Technical Guidance for Control of Industrial Process Fugitive Particulate Emissions (EPA-450/3-77-010, March 1977) shall be used as a guide to estimate reduction from fugitive dust controls on traditional sources. Traditional source means a source category for which a particulate emission standard has been established in 567-subrule 23.1(2), 567-paragraph 23.3(2)"a" or "b" or 567-23.4(455B). The emission factors shall be modified to reflect realistic reductions. This would correspond to a consideration of particles in the less than 3 micron size range and the effectiveness of the fugitive dust control method.

f. Fuel switching credits. Credit may be allowed for fuel switching provided there is a demonstration by the applicant that supplies of the cleaner fuel will be available to the applicant for a minimum of five years. The demonstration must include, as a minimum, a written contract with the fuel supplier that the fuel will not be interrupted. The permit for the existing source shall be amended to provide for maintaining those offsets resulting from the fuel switching before offset credit will be granted.

g. Reduction credits. Credit for an emissions reduction can be claimed to the extent that the administrator and the department have not: (1) relied on it in issuing any permit under regulations approved pursuant to 40 CFR Parts 51 (amended through April 9, 1998), 55 (amended through August 4, 1997), 63 (amended through December 28, 1998), 70 (amended

through November 26, 1997), or 71 (amended through October 22, 1997); (2) relied on it in demonstrating attainment or reasonable further progress; or (3) the reduction is not otherwise required under the Clean Air Act. Incidental emissions reductions which are not otherwise required under the Act shall be creditable as emissions reductions for such purposes if such emissions reductions meet the requirements of subrule 31.20(3).

h. Derating of equipment. If the emissions from a major source or major modification are proposed to be offset by reducing the operating capacity of another existing source, then credit may be allowed for this provided proper documentation (such as stack test results) showing the effect on emissions due to derating is submitted. The permit for the existing source must be amended to limit the operating capacity before offsets will be allowed.

i. Shutdown or curtailment.

(1) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are surplus, permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the plan, and if such date is on or after the date of the most recent emissions inventory or attainment demonstration. However, in no event may credit be given for shutdowns which occurred prior to January 1, 1978. For purposes of this paragraph, the director may consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current existing emissions the emissions from such previously shutdown or curtailed sources. The work force shall be notified of the proposed curtailment or shutdown by the source owner or operator.

(2) The reductions described in subparagraph 31.20(4)“i”(1) may be credited in the absence of any approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions in 31.20(4)“i”(1) are observed.

j. External emission offsets. If the emissions from the major source or major modification are proposed to be offset by reduction of emissions from a source not owned or operated by the owner or operator of the major source or major modification, then credit may be allowed for such reductions provided the external source’s permit is amended to require the reduced emissions or a consent order is entered into by the department and the existing source. Consent orders for external offsets must be incorporated into the SIP and be approved by EPA before offset credit may be granted.

31.20(5) Banking of offsets in nonattainment areas. If the offsets in a given situation are more than required by 31.20(3) the amount of offsets that is greater than required may be banked for the exclusive use or control of the person achieving the reduction, subject to the limitations of this subrule. If the person achieving the reduction is not an individual, an authorized representative of the person must release control of the banked emissions in writing before another person, other than the commission, can utilize the banked emissions. The banking of offsets creates no property right in those offsets. The commission may proportionally reduce or cancel banked offsets if it is determined that reduction or cancellation is necessary to demonstrate reasonable further progress or to attain the ambient air quality standards. Prior to reduction or cancellation, the commission shall notify the person who banked the offsets.

31.20(6) Control technology review.

a. Lowest achievable emission rate. A new or modified major source in a nonattainment area shall comply with the lowest achievable emission rate.

b. For phased construction projects, the determination of the lowest achievable emissions rate shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to the commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of the LAER for the source.

c. State implementation plan, new source performance standards, and emission standards for hazardous air pollutants. A major stationary source or major modification shall meet each applicable emissions limitation under the state implementation plan and each applicable emissions standard of performance under 40 CFR Parts 60 (amended through November 24, 1998), 61 (amended through October 14, 1997), and 63 (amended through December 28, 1998).

31.20(7) *Compliance of existing sources.* If a new major source or major modification is subject to rule 567–31.20(455B), then all major sources owned or operated by the applicant (or by any entity controlling, controlled by, or under common control by the applicant) in Iowa shall be either in compliance with applicable emission standards or under a compliance schedule approved by the commission.

31.20(8) *Alternate site analysis.* The permit application shall contain a submittal of an alternative site analysis. Such submittal shall include analysis of alternative sites, sizes, production processes and environmental control techniques for the proposed source. The analysis must demonstrate that benefits of the proposed source significantly outweigh the environmental and social costs that would result from its location, construction or modification. Such analysis shall be completed prior to permit issuance.

31.20(9) *Additional conditions for permit approval.*

a. For the air pollution control requirements applicable to subrule 31.20(6), the permit shall require the source to monitor, keep records, and provide reports necessary to determine compliance with and deviations from applicable requirements.

b. The state shall not issue the permit if the administrator has determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed stationary source or modification is to be constructed.

31.20(10) *Public availability of information.* No permit shall be issued until notice and opportunity for public comment are made available in accordance with the procedure described in 40 CFR 51.161 (as amended through November 7, 1986).

Item 14. Amend rule **567—33.1(455B)** as follows:

567—33.1(455B) Purpose. This chapter implements the major New Source Review (NSR) program contained in Part C of Title I of the federal Clean Air Act as amended on November 15, 1990, and as promulgated under 40 CFR 51.166 and 52.21 as amended through July 20, 2011. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part C of the Clean Air Act as amended on November 15, 1990. In areas that do not meet the national ambient air quality standards (NAAQS), the nonattainment NSR program applies. The requirements for the nonattainment NSR program are set forth in 567—22.5(455B), ~~and 567—22.6(455B)~~, 567—31.20(455B), and 567—31.3(455B). In areas that meet the NAAQS, the PSD program applies. Collectively, the nonattainment NSR and PSD programs are referred to as the major NSR program.

Date

Chuck Gipp, Director

**Administrative Rules
JOBS IMPACT STATEMENT**

1. BACKGROUND INFORMATION

Agency:	Iowa Department of Natural Resources / Environmental Protection Commission
IAC Citation:	567 IAC Chapters 20, 21, 22, 31 and 33
Agency Contact:	Wendy Walker at (515) 281-6061
Statutory Authority:	Iowa Code section 455B.133 and U.S. Clean Air Act 110 (a)(2)(I) [42 USC 7410]; Clean Air Act 171-193 [42 USC 7501-7515]

Objective:	The proposed rulemaking will adopt regulations from 40 CFR 51.165 to incorporate federal review and permitting procedures that allow facilities to construct or modify existing sources in areas that are not in attainment with the National Ambient Air Quality Standards (NAAQS).
Summary:	The construction of new major sources of air pollution (or major modifications of existing major sources of air pollution) in areas that are not in attainment with the NAAQS is governed by federal Clean Air Act Nonattainment New Source Review (NSR) regulations. In Iowa, a portion of Council Bluffs is not in attainment with the lead NAAQS and a portion of Muscatine is not in attainment with the sulfur dioxide (SO ₂) NAAQS. By adopting these regulations, the DNR will be able to issue permits in these areas.

2. JOB IMPACT ANALYSIS

<i>__Fill in this box if impact meets these criteria:</i>
<input type="checkbox"/> No Job Impact on private sector jobs and employment opportunities in the State.
<input type="checkbox"/> Job Impact cannot be determined.

Fill in this box if impact meets either of these criteria:

- Positive Job Impact on private sector jobs and employment opportunities in the State.
 Negative Job Impact on private sector jobs and employment opportunities in the State.

Description and quantification of the nature of the impact the proposed rule will have on private sector jobs and employment opportunities:

After analysis and review, the DNR has determined that jobs could be impacted. However, the facilities that could be affected by this rulemaking are unable to quantify at this time what impact, if any, implementation of these federal rules would have on jobs and operating expenses. The extent of impacts to jobs and operating expenses will be dependent on whether the emissions from a project would be increased enough to trigger applicability of the nonattainment permitting rules for lead or SO₂. For projects that would trigger a review under the nonattainment permitting rules, the DNR will assist facilities in a manner similar to Prevention of Significant Deterioration (PSD) program to implement the federal rules.

These amendments are implementing federally mandated regulations and the State of Iowa is only implementing the federal regulations. This rule making does not impose any unnecessary regulations on Iowa businesses not required by federal law. The DNR is proposing to adopt the applicable EPA nonattainment rules in 40 CFR 51.165 into Chapter 31 and refer to actual plantwide applicability limits (40 CFR 51.165(f)) by reference. This approach allows the DNR to simplify and clarify the federal language while ensuring the State is no more stringent than the federal government. The portions of the regulations not adopted by reference are primarily provisions that the State cannot adopt by reference, i.e., instructions to the State rather than instructions to the permit holder.

The need to adopt these rule changes

On November 22, 2011, EPA designated portions of Council Bluffs as nonattainment for violating the 2008 lead NAAQS. On July 25, 2013, EPA announced the designation of a portion of Muscatine as nonattainment for violating the 2010 SO₂ NAAQS. To bring the area back into “attainment” status, the state must complete a number of tasks.

First, the DNR must submit to EPA a State Implementation Plan (SIP) revision that will demonstrate how the area will meet the lead NAAQS by the timelines specified in the Clean Air Act. Adopting the federal nonattainment NSR provisions is a required element of the SIP revision. Implementation of the nonattainment NSR provisions in the Council Bluffs nonattainment area will, in addition to allowing the existing lead source in the nonattainment area to expand (if desired), ensure that the facility changes include controls and emissions offsets that will result in a net decrease in lead emissions in the nonattainment area. This will help assure that the area continues to make progress towards attaining the lead NAAQS within the timeframes allowed under the Clean Air Act. Making enforceable emissions limitations from lead sources in the area is also required to make adequate progress toward attainment. Attaining the lead NAAQS as expeditiously as possible in Council Bluffs will minimize the adverse economic impact that comes from a nonattainment designation.

The lead SIP revision was due on June 30, 2013. DNR anticipates completion of the SIP by the fall of 2013. The SO₂ SIP revision will be due in April 2015. Second, ambient air quality monitoring must show that this additional oversight required by these rules, and corresponding emissions reductions, have achieved the desired effect of bringing air quality back to within permissible levels.

Categories of jobs and employment opportunities that are affected by the proposed rule:

Facilities that are considered major sources of the nonattainment pollutant in the areas designated by EPA as nonattainment will be affected by this rule. Major sources located near the nonattainment area that may significantly contribute to air quality violations in the nonattainment area would also be affected.
<i>Number of jobs or potential job opportunities:</i>
This cannot be determined at this time.
<i>Regions of the state affected:</i>
The proposed rulemaking would apply to the designated nonattainment areas in portions of Council Bluffs and Muscatine.
<i>Additional costs to the employer per employee due to the proposed rule: (if not possible to determine, write "Not Possible to Determine.")</i>
It is not possible to determine costs on a per employee basis for this rulemaking.

3. COST-BENEFIT ANALYSIS

The Agency has taken steps to minimize the adverse impact on jobs and the development of new employment opportunities before proposing a rule. See the following Cost-Benefit Analysis:

Direction: Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of less intrusive or expensive methods that exist for achieving the purpose of the proposed rule. This requires you to examine alternatives to the proposed rule. If no other less intrusive or expensive method exists for achieving the purpose of the proposed rule, say "No other less intrusive or expensive method exists for achieving the purpose of the proposed rule."

For purposes of this analysis, a "cost" means a reasonably identifiable, significant, direct or indirect, economic impact that is expected to result from implementation of and compliance with a rule, and a "benefit" means a reasonably identifiable and quantifiable positive effect or outcome that is expected to result from implementation of a rule.

No other less intrusive or expensive method exists for achieving the purpose of the proposed rule.

FISCAL IMPACT

Please see the Fiscal Impact Statement for an identification and description of costs the Department anticipates state agencies, local governments, the public, and the regulated entities, including regulated businesses and self-employed individuals, will incur from implementing and complying with the proposed rule.

**Administrative Rules
FISCAL IMPACT STATEMENT**

Date: July 24, 2013

Agency: Department of Natural Resources / Environmental Protection Commission
IAC Citation: 567 IAC Chapters 20, 21, 22, 31 and 33
Agency Contact: Wendy Walker at (515) 281-6061

Summary of the Rule:
 The construction of new major sources of air pollution (or major modifications of existing sources of air pollution) in areas that are not in attainment with the National Ambient Air Quality Standards (NAAQS) is governed by federal Clean Air Act Nonattainment New Source Review (NSR) regulations. The proposed rulemaking will adopt regulations from 40 CFR 51.165 to incorporate federal review and permitting procedures that allow facilities to construct or modify existing sources.

In Iowa, a portion of Council Bluffs is not in attainment with the lead NAAQS and a portion of Muscatine is not in attainment with the sulfur dioxide (SO₂) NAAQS. By adopting these regulations, the DNR will be able to issue permits in these areas.

Fill in this box if the impact meets any of these criteria:

No Fiscal Impact to the State.
 Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years.
 Fiscal Impact cannot be determined.

Brief Explanation: The DNR will not need any additional revenue to implement these rules.

Fill in the form below if the impact meets this criteria:

Fiscal Impact of \$100,000 annually or \$500,000 over 5 years.

* Fill in the rest of the Fiscal Impact Statement form.

Impact Criteria:

Impact Criteria Explanation:

<i>Estimated Impact to the State by Fiscal Year</i>		
	Year 1 (FY 2013)	Year 2 (FY 2014)
Revenue by Each Source:		
GENERAL FUND	\$0	\$0
FEDERAL FUNDS	\$0	\$0
Other (specify)	\$0	\$0

TOTAL REVENUE	\$0	\$0
Expenditures:		
GENERAL FUND	\$0	\$0
FEDERAL FUNDS	\$0	\$0
Other (specify) Air Contaminant Fee/Unknown	\$0	\$0
TOTAL EXPENDITURES	\$0	\$0
NET IMPACT	\$0	\$0
<p><input checked="" type="checkbox"/> This rule is required by State law or Federal mandate. Please identify the state or federal law:</p> <p>The nonattainment NSR program is mandated by the Clean Air Act § 110 (a)(2)(I), §171-193, and under authority of Iowa Code subsections 455B.133(1), and 455B.133(4).</p> <p><input type="checkbox"/> Funding has been provided for the rule change. Please identify the amount provided and the funding source:</p> <p><input checked="" type="checkbox"/> Funding has not been provided for the rule. Please explain how the agency will pay for the rule change:</p> <p>The state currently only has one nonattainment area where this rule would apply. The DNR will utilize existing resources.</p>		
<p>Fiscal impact to persons affected by the rule: These requirements apply only to permitting in nonattainment areas. Facilities in an area designated as nonattainment with modifications or new projects that meet nonattainment pollutant-specific emissions thresholds will have to comply with the permitting requirements such as lowest achievable emission rate (LAER) and offsets. LAER requires the application of the most stringent emission limitation achievable, and often requires the installation of air pollution control equipment. Offsets are emission reductions from the facility or neighboring sources which must offset the emissions increase and provide a net air quality benefit.</p> <p>Major sources located near the nonattainment area that may significantly contribute to air quality violations in the nonattainment area would also be required to reduce the impact of their emissions on the nonattainment area if they undertake modifications or new projects that meet pollutant-specific emissions thresholds.</p>		
<p>Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6): Counties or other Local Governments that construct new emission units or modify existing emissions units will be impacted in the same manner as described above for industrial and commercial facilities located in or near a nonattainment area.</p>		
<p>* If additional explanation is needed, please attach extra pages.</p> <p>Agency Representative preparing estimate: Wendy Walker Telephone Number: 515-281-6061</p>		