

*C. Changes to the Procedures for Calculating the Pre-Change Baseline Actual Emissions for Existing Emissions Units Other Than EUSGUs*

**1. Under Today's New Requirements, How Should I Calculate the Pre-Change Baseline Actual Emissions for an Existing Emissions Unit That Is Not an EUSGU?**

When you calculate the baseline actual emissions for an existing emissions unit (other than an EUSGU), you may select any consecutive 24 months of source operation within the past 10 years. Using the relevant source records for that 24-month period, including such information as the utilization rate of the equipment, fuels and raw materials used in the operation of the equipment, and applicable emission factors, you must be able to calculate an average annual emissions rate, in tpy, for each pollutant emitted by the emissions unit that is modified, or is affected by the modification.

The new requirements prohibit you from counting as part of the baseline actual emissions any pollution levels that are not allowed under any legally enforceable limitations and that apply at the time of the project. Therefore, you must identify the most current legally enforceable limits on your emissions unit. If these legally enforceable emission limitations and operating restrictions are more stringent than those that applied during the 24-month period, you must adjust downward the average annual emissions rate that you calculated from the consecutive 24-month period to reflect these current restrictions. (See section II.C.5 of this preamble for further discussion of the adjustment that you may need to make.)

In summary, when the average annual emissions rate that you originally calculated is still legally achievable (see discussion below), then your baseline actual emissions will be the same as the average annual emissions rate calculated from the 24-month period. If it is not, you must adjust it downward so that it does not reflect emissions that are no longer legally allowed.

**2. Can Existing Emissions Units (Other Than EUSGUs) Still Use a "More Representative Time Period" for Selecting the Baseline Actual Emissions?**

No, under today's new requirements neither you nor your reviewing authority will have the authority to select another period of time from which to calculate your baseline actual emissions. You must select a 24-month period within the 10-year period before the physical or operational change.

**3. From What Point in Time Is the 10-Year Look Back Measured?**

If you believe that you will need either a major or minor NSR permit to proceed with your proposed physical or operational change, then you must use the 10-year period immediately preceding the date on which you submit a complete permit application. If, however, you believe that the physical or operational change(s) you plan to make will not result in either a significant emissions increase from the project or a significant net emissions increase at your major stationary source (that is, your project will not be a major modification), and you are not otherwise required to obtain a minor NSR permit before making such change, then you must use the 10-year period that immediately precedes the date on which you begin actual construction of the physical or operational change.

**4. What if, for an Existing Emissions Unit (Other Than an EUSGU), I Do Not Have Adequate Documentation for Its Operation for the Past 10 Years?**

Your ability to use the full 10 years of the look back period will depend upon the availability of relevant data for the consecutive 24-month period you wish to select. The data must adequately describe the operation and associated pollution levels for the emissions units being changed. If you do not have the data necessary to determine the units' actual emission factors, utilization rate, and other relevant information needed to accurately calculate your average annual emissions rate during that period of time, then you must select another consecutive 24-month period within the 10-year look back period for which you have adequate data.

**5. For an Existing Unit (Other Than EUSGUs), When Must I Adjust My Calculation of the Pre-Change Baseline Actual Emissions?**

Today's amendments require you to adjust the average annual emissions rate derived from the selected 24-month period under certain circumstances. Specifically, you must adjust downward this average annual rate if any legally enforceable emission limitations, including but not limited to any State or Federal requirements such as RACT, BACT, LAER, NSPS, and National Emission Standards for Hazardous Air Pollutants (NESHAP), restrict the emissions unit's ability to emit a particular pollutant or to operate at levels that existed during the selected 24-month period from which you calculate the average annual emissions rate. For example, assume that during

the selected consecutive 24-month period you burned fuel oil and you were subjected to a sulfur limit of 2 percent sulfur (by weight). Today, you are only allowed to burn fuel oil with a sulfur content of 0.5 percent or less. Consequently, you would be required to adjust your preliminary calculation of baseline actual emissions for sulfur dioxide (SO<sub>2</sub>) (that is, substitute the lower sulfur limit into the emissions calculation, yielding a 75 percent reduction in the emissions rate from the initial calculation) to reflect the current restriction allowing only 0.5 percent sulfur in fuel oil. The original average annual utilization rate would not be adjusted unless a more stringent legally enforceable operational limitation has since been imposed that restricts that rate.

You must also adjust for legally enforceable emission limitations you may have voluntarily agreed to, such as limits you may have taken in your permit for netting, emissions offsets, or the creation of ERCs. Also, you must adjust your emissions from the 24-month period if a raw material you used during the baseline period is now prohibited. For example, you may have used a paint with a high solvent concentration during a portion of the consecutive 24-month period. Today, you are prohibited from using that particular paint. You must then adjust your emissions rate to reflect the raw material restriction.

**6. How Should I Calculate the Baseline Actual Emissions for Emissions Units (Other Than EUSGUs) That Use Multiple Fuels or Raw Materials?**

For an emissions unit that is capable of burning more than one type of fuel, you must relate the current emission factors to the fuel or fuels that were actually used during the selected 24-month period. For example, when calculating the baseline actual emissions for an emissions unit that burned natural gas for a portion of the 24-month period and fuel oil for the remainder, you must retain that fuel apportionment (for example, natural gas to fuel oil ratio), but you must also use the current legally enforceable emission factors for natural gas and fuel oil, respectively, to calculate the baseline actual emissions. If, however, you are no longer allowed or able to use one of those fuel types, then you must make your calculations assuming use of the currently allowed fuel for the entire 24-month period. You must use the same approach for emissions units that use multiple feedstock or raw materials, which may vary in use during the unit's ongoing production process.

**7. How Should I Calculate the Baseline Actual Emissions for Construction Projects That Involve Multiple Units?**

Today's new requirements require that you select the same single consecutive 24-month period within the 10-year look back period to calculate the baseline actual emissions for all existing emissions units that will be changed. See, for example, new § 52.21(b)(48)(ii)(e). The result will be that the baseline actual emissions for each affected pollutant will be based on the same consecutive 24-month period as well.

You will have the option to select the single 24-month period that best represents the collective level of operation (and emissions) for your existing emissions units.

If a particular existing emissions unit did not yet exist during the 24-month period you select to calculate the baseline actual emissions, you must count that emissions unit's emissions rate as zero for that full period of time. If an emissions unit operated for only a portion of the particular 24-month period that you select, you must calculate its average annual emissions rate using an emissions rate of zero for that portion of time when the unit was not in operation.

For new emissions units (a unit that has existed for less than 2 years) that will be changed by the project, the baseline actual emissions rate is zero if you have not yet begun operation of the unit, and is equal to the unit's PTE once it has begun to operate.

**8. Am I Able To Apply Today's Changes for Calculating the Baseline Actual Emissions to Other Major NSR Requirements?**

No, as stated in section II.A, you are only allowed to use the new baseline methodology in today's rule for three specific purposes involving existing emissions units as follows.

- For modifications, to determine a modified unit's pre-change baseline actual emissions as part of the new actual-to-projected-actual applicability test
- For netting, to determine the pre-change actual emissions of an emissions unit that underwent a physical or operational change within the contemporaneous period. You may select separate baseline periods for each contemporaneous increase or decrease.
- For PALs, to establish the PAL level.

If you determine that the modification of your source is a major modification, you must revert to using the existing definition of "actual emissions" to

determine your source's actual emissions on a particular date to satisfy all other NSR permitting requirements, including any air quality analyses (for example, compliance with NAAQS, PSD increments, AQRVs) and the amount of emissions offsets required.

For example, when you must determine your source's compliance with the PSD increments following a major modification, you must still use the allowable emissions from each emissions unit that is modified, or is affected by the modification. An existing source's contribution to the amount of increment consumed should be based on that source's actual emissions rate from the 2 years immediately preceding the date of the change, although the reviewing authority shall allow the use of another 2-year period if it determines that such period is more representative of that source's normal operation. See, for example, § 52.21(b)(21)(ii).

Also, any determination of the amount of emissions offset that must be obtained by a major modification subject to the nonattainment NSR requirements under § 51.165(a) should be based on calculations using the existing definitions of "actual emissions" and "allowable emissions." See new § 51.165(a)(3)(ii)(H).

**D. The Actual-to-Projected-Actual Applicability Test for Physical or Operational Changes to Existing Emissions Units Including EUSGUs**

**1. How are post-change actual emissions calculated under today's revised rule?**

Today, we are amending the major NSR rules to enable you to use an applicability test that is similar to the applicability test that currently applies to EUSGUs (that is, the actual-to-representative-actual-annual emissions test). The new test allows you to project the post-change emissions of all modified existing emissions units (including EUSGUs) in the same manner. That is, under today's new provisions for non-routine physical or operational changes to existing emissions units, rather than basing a unit's post-change emissions on its PTE, you may project an annual rate, in tpy, that reflects the maximum annual emissions rate that will occur during any one of the 5 (or in some circumstances 10) years immediately after the physical or operational change. The first year begins on the day the emissions unit resumes regular operation following the change and includes the 12 months after this date. This projection of the unit's annual emissions rate following the change is

defined as the "projected actual emissions" (see, for example, § 52.21(b)(48)), and will be based on your maximum annual rate in tons per year at which you are projected to emit a regulated NSR pollutant, less any amount of emissions that could have been accommodated during the selected 24-month baseline period and is not related to the change. Accordingly, you will calculate the unit's projected actual emissions as the product of: (1) The hourly emissions rate, which is based on the emissions unit's operational capabilities following the change(s), taking into account legally enforceable restrictions that could affect the hourly emissions rate following the change(s); and (2) the projected level of utilization, which is based on both the emissions unit's historical annual utilization rate and available information regarding the emissions unit's likely post-change capacity utilization. In calculating the projected actual emissions, you should consider both the expected and the highest projections of the business activity that you expect could be achieved and that are consistent with information your company publishes for business-related purposes such as a stockholder prospectus, or applications for business loans. From the initial calculation, you may then make the appropriate adjustment to subtract out any portion of the emissions increase that could have been accommodated during the unit's 24-month baseline period and is unrelated to the change. Once the appropriate subtractions have been made, the final value for the projected actual emissions, in tpy, is the value that you compare to the baseline actual emissions to determine whether your project will result in a significant emissions increase.

The adjustment to the projected actual emissions allows you to exclude from your projection only the amount of the emissions increase that is not related to the physical or operational change(s). In comparing your projected actual emissions to the units' baseline actual emissions, you only count emissions increases that will result from the project. For example, as with the electric utility industry, you may be able to attribute a portion of your emissions increase to a growth in demand for your product if you were able to achieve this higher level of production during the consecutive 24-month period you selected to establish the baseline actual emissions, and the increased demand for the product is unrelated to the change.

For Clean Units, if a given project can be constructed and operated at a Clean Unit without causing the emissions unit

to lose its Clean Unit status, then no emissions increase will occur.

For new units, however, you must continue to calculate post-change emissions on the basis of a unit's PTE.

**2. Will My Projection of Projected Actual Emissions Become an Enforceable Emission Limitation as Suggested in the 1998 NOA?**

No, we did not adopt such a requirement. If you have an existing emissions unit and your project results in an increase in annual emissions that exceeds the baseline actual emissions by a significant amount, and differs from your projection of post-change emissions that you were required to calculate and maintain records of, then you must report this increase to your reviewing authority within 60 days after the end of the year. Since modified EUSGUs are required to report their post-change annual emissions to the reviewing authority annually, any occurrence of a significant increase will be covered under that report for the affected calendar year. See section II.D.6 of this preamble for a more detailed discussion of the reporting requirements.

**3. How Do I Determine How Long My Post-Change Emissions Will Be Tracked To Ensure That My Project Is Not a Major Modification?**

Generally, your projected actual emissions must be tracked against your facility's post-change emissions for 5 years following resumption of regular operations whether you are an EUSGU or other type of existing emissions unit. We will presume that any increases that occur after 5 years are not associated with the physical or operational changes. However, you may be required to track emissions for a longer period of time under the following circumstances. If you are an existing emissions unit and one of the effects of your physical or operational change(s) is to increase a unit's design capacity or PTE, you must track your emissions for a period of 10 years after the completion of the project. This extended period allows for the possibility that you could end up using the increased capacity more than you projected and such use might lead to significant emissions increases.

**4. What Are the Reporting and Recordkeeping Requirements for Projects?**

Reporting and recordkeeping for a project is required when three criteria are met: (1) You elect to project post-change emissions rather than use PTE; (2) there is a reasonable possibility that the project will result in a significant

emissions increase; and (3) the project will not constitute a major modification. In such circumstances, you must document and maintain a record of the following information: a description of the project; an identification of emissions units whose emissions could increase as a result of the project; the baseline actual emissions for each emissions unit; and your projected actual emissions, including any emissions excluded as unrelated to the change and the reason for the exclusion. In addition, if your project increase is significant, you must record your netting calculations if you use emissions reductions elsewhere at your major stationary source to conclude that the project is not a major modification. For covered projects, you must record this information before beginning actual construction. If you are an EUSGU, you must also send this information to your reviewing authority before beginning actual construction. Note, however, that if you chose to use potential emissions as your projection of post-change emissions, you are not required to maintain a record of this decision.

In addition, today's final rules require you to maintain emissions data for all emissions units that are changed by the project. You must maintain this information for 5 years, or 10 years if applicable. The information you must maintain may include continuous emissions monitoring data, operational levels, fuel usage data, source test results, or any other readily available information of sufficient accuracy for the purpose of determining an emissions unit's post-change emissions.

If you are an EUSGU, you must report this information to your reviewing authority within 60 days after the end of any year in which you are required to generate such information. Other existing units must report to the reviewing authority any increase in the post-change annual emissions rate when that rate: (1) Exceeds the baseline actual emissions by a significant amount, and (2) differs from the projection that was calculated before the change. See, for example, new § 52.21(r)(6)(iii).

In addition to the reporting requirements discussed above, you are also obligated to ensure that the necessary emissions information you are required to maintain is available for examination upon request by the reviewing authority or the general public.

**5. How Do Today's Changes Affect the Netting Methodology for Existing Emissions Units (Other Than EUSGUs)?**

If your calculations show that a significant emissions increase will

result from a modification, you have the option of taking into consideration any contemporaneous emissions changes that may enable you to "net out" of review, that is, show that the net emissions increase at the major stationary source will not be significant. The contemporaneous time period will not change under the Federal PSD program as a result of today's action. That is, creditable increases and decreases in emissions that have occurred between the date 5 years before construction of the particular change commences and the date the increase from that change occurs are contemporaneous. See § 52.21(b)(3)(ii). States will continue to have some discretion in defining "contemporaneous" for their own NSR programs.

Although we are not changing our definition of "contemporaneous," today's action allows existing emissions units (other than EUSGUs) to calculate the baseline actual emissions for each contemporaneous event using the 10-year look back period. That is, you can select any consecutive 24-month period during the 10-year period immediately preceding the change occurring in the contemporaneous period to determine the baseline actual emissions for each creditable emissions change. Generally, for each emissions unit at which a contemporaneous emissions change has occurred, you should use the 10-year look back period relevant to that change.<sup>19</sup> When evaluating emissions increases from multi-unit modifications, if more than one emissions unit was changed as part of a single project during the contemporaneous period, you may select a separate consecutive 24-month period to represent each emissions unit that is part of the project. In any case, the calculated baseline actual emissions for each emissions unit must be adjusted to reflect the most current emission limitations (including operational restrictions) applying to that unit. "Current" in the context of a contemporaneous emissions change refers to limitations on emissions and source operation that existed just prior to the date of the contemporaneous change.

**E. Clarifying Changes to WEPCO Provisions for EUSGUs**

The method you use to calculate the baseline actual emissions for an existing EUSGU to determine whether there is a

<sup>19</sup> Your ability to use the full 10 years for calculating any contemporaneous emissions change is contingent upon the availability of valid and sufficient source information for the selected 24-month period. See, for example, new § 52.21(b)(48)(ii)(f).

significant emissions increase from a physical or operational change at an EUSGU, and to determine whether a significant net emissions increase will occur at the major stationary source, will not change as a result of today's final rulemaking. The rule provides that for an existing EUSGU you may calculate the baseline actual emissions as the average annual emissions (tpy) of the emissions unit using any 2-year period out of the 5 years immediately preceding the modification. (This was set out as a presumption in the preamble for the 1992 WEPCO amendments.) This rule recognizes the ordinary variability in demand for electricity. See, for example, new § 52.21(b)(21)(ii).

For example, a cold winter or hot summer will result in high levels of demand while a relatively mild year will produce lower demand. By allowing a utility to use any consecutive 2 years within the past 5, the rule recognizes that electricity demand and resultant utility operations fluctuate in response to various factors such as annual variability in climatic or economic conditions that affect demand, or changes at other plants in the utility system that affect the dispatch of a particular plant. By allowing utilities to use as a baseline any consecutive 2 years in the last 5 years, these types of fluctuations in operations can be more realistically considered.

The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

In an August 6, 2001 letter,<sup>20</sup> we addressed the issue of whether combined cycle gas turbines (the gas turbines and waste heat recovery components) came within the definition of "electric utility steam generating units" for the purpose of determining whether such units are eligible to use the WEPCO "applicability test." The letter concluded that "steam generating units" include not only electric utility plants with boilers, but also plants with combined cycle gas turbines if the combined cycle gas turbine systems supply more than one-third of their potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Consequently, qualifying combined cycle gas turbines must also use the 2-in-5-years baseline method.

Finally, today's rules provide the same method for EUSGUs that will exist for all other existing emissions units to project post-change emissions following a physical or operational change to a unit. In the 1996 proposal, we proposed a range of options for addressing the applicability of changes that are made to existing emissions units, including the option of extending the actual-to-future-actual test, then available only to utilities, to all source categories. While we have decided to leave the WEPCO rules intact in most respects, we believe that it is reasonable and appropriate to establish a consistent method for sources to use for projecting the post-change emissions that will result from a physical or operational change to an existing emissions unit. Therefore, under today's new rules, the current method of basing the projection on the 2 years following the change to an EUSGU is being replaced with the method available to all other existing units, under which you project a unit's post-change emissions as the maximum annual rate that the unit will emit in any one of the 5 years following resumption of regular operations.

#### *F. The "Hybrid" Applicability Test for Projects Affecting Multiple Types of Emissions Units*

##### 1. When Does the Hybrid Applicability Test Apply to You?

The hybrid applicability test applies if you plan a project (or series of related projects) that will affect emissions units of two or more of the following types.

- Existing emissions units
- New emissions units
- Clean Units

##### 2. How Do I Determine Whether My Project Will Result in a Significant Emissions Increase Under the Hybrid Test?

For the first two types of emissions units listed above that are affected by the project, calculate the emissions increase as we have discussed previously in this preamble. That is, use the actual-to-projected-actual applicability test for existing units and the actual-to-potential test for new emissions units.

Clean Units are discussed fully in section V of this preamble. If a given project can be constructed and operated at a Clean Unit without causing the emissions unit to lose its Clean Unit status, no emissions increase shall be deemed to occur at that Clean Unit. If a given project would cause the emissions unit to lose its Clean Unit status, then the increase in emissions should be calculated as if the emissions unit is not a Clean Unit.

After you calculate the emissions increase for each relevant unit, total the increases across all the emissions units of all types. If this total emissions increase equals or exceeds the level defined as significant for the regulated NSR pollutant in question, the project will result in a significant emissions increase for that pollutant. You'll find the regulatory language for determining whether a project will result in a significant emissions increase at §§ 51.165(a)(2)(vii)(D), 51.166(a)(7)(vi)(d), and 52.21(a)(2)(vi)(d).

In section II.C.8 of this preamble, we indicate that the baseline actual emissions for all units that are not EUSGUs that are changed by a project must be calculated based on the same consecutive 24-month period within the previous 10 years. The same principle applies under the hybrid test, but it can be slightly more complicated if both EUSGUs and non-EUSGUs are involved. In this case, you must use the same baseline period for all emissions units affected by the project. This baseline period must be selected so as to meet the requirements for both EUSGUs and non-EUSGUs. Thus, you must select a 2-year period out of the previous 5 years for your baseline period, as required for EUSGUs (and within the requirements for non-EUSGUs). If you wish to use another period that you believe is more representative (as allowed for EUSGUs), the entire period must fall within the previous 10 years (as required for non-EUSGUs).

##### 3. How Do I Determine the Net Emissions Increase From My Project Under the Hybrid Test?

If you conclude that a significant emissions increase will result from the proposed project, you have the option of taking into consideration any contemporaneous emissions changes that may enable you to "net out" of review, that is, show that the net emissions increase at the major stationary source will not be significant. The netting analysis is carried out under the hybrid test just as it is under the other applicability tests. Refer to section II.D.7 of this preamble for a discussion of netting methodology.

#### *G. Legal Basis for Today's Action*

The Act defines modification for the purposes of PSD and nonattainment NSR through cross-reference to the NSPS definition of "modification." The NSPS definition states that a modification "means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air

<sup>20</sup> Letter from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Patrick M. Raheer, August 6, 2001.

pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." CAA section 111(a)(4), 42 U.S.C. 7411(a)(4). The Act is silent, however, on the issue of how one is to determine whether a physical or operational change increases the amount of any air pollutant emitted by the source.

Accordingly, EPA is exercising its discretion in interpreting and providing clarity to this issue. We believe that the rules set forth today are "a permissible construction of the statute." *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 843-4 (1984). The reviewing court should defer to it. *Id.* at 837.

In the NSPS program, we determine whether there has been an "increase in any air pollutant emitted" by the source by comparing its maximum hourly achievable emissions before and after the change. EPA and the courts have recognized, however, that the NSR programs and the NSPS programs have different goals,<sup>21</sup> and thus, we have utilized different emissions tests in the NSR programs. Prior to today, the regulations applied an actual-to-future-actual applicability test for EUSGUs and an actual-to-potential applicability test for all other emissions units. Today, we are establishing a new applicability test for calculating emissions increases for "Clean Units" and an actual-to-projected-actual applicability test for all other emissions units. We believe that establishing an actual-to-projected-actual applicability test for all emissions units is a reasonable interpretation of the phrase "increase of any pollutant emitted."<sup>22</sup>

#### H. Response to Comments and Rationale for Today's Actions

We received numerous comments on our proposed rule regarding the calculation of the baseline actual emissions and the actual-to-future-actual test. Some of the significant comments and our responses to them are provided below. A complete set of comments and our responses can be found in the Technical Support Document located in the docket for this rulemaking.

##### 1. Why Are We Extending the Look Back Period for Determining the Baseline Actual Emissions to 10 Years?

Most commenters generally support our proposal to allow owners and

operators to use a 10-year look back period to determine the baseline actual emissions for modifications at any existing emissions unit. Commenters have various reasons for supporting or opposing the proposed approach. Many supporters agree that extending the baseline look back period to 10 years would simplify current regulations and provide certainty to sources who otherwise would have to demonstrate to the reviewing authority that a period other than the 2 years immediately preceding the proposed change was more representative of normal source operation. Some commenters support the proposal because it would prevent the perceived confiscation of underused capacity at sources that have had low utilization rates for an extended period. These commenters agree that a 10-year look back period is more likely to afford a source a baseline actual emissions calculation that best reflects representative source operating conditions and would also account for fluctuations in the business cycle.

Some commenters criticize the proposed 10-year look back period as being too long. These commenters recommend either a 5-year or 2-year look back period. One of these commenters states that the 10-year look back creates the opportunity for a source to increase production to the 10-year maximum, and prevents the State or local air regulators from addressing the increase in emissions. Thus, the commenter believes that sources would be allowed to use historic emissions levels that are higher than current levels to establish the baseline actual emissions. Some commenters add that the proposed change would not reduce program complexity.

Some commenters believe that instead of extending the period for establishing baseline actual emissions, the test for establishing modifications should be changed. According to the commenters, the problem is not that the current system does not go back far enough to set a fair actual emissions baseline, but that the methodology does not account for the fact that most emissions units are operating at an activity level much lower than the allowed activity level. The commenters believe that many of the real problems associated with the current major modification applicability test would be eliminated if the procedure was modified in an equitable manner.

A commenter also adds that EPA may also want to include provisions that prevent a source from applying the new definition of actual emissions in a way that would retroactively enable the source to reverse a previous major

modification determination and to eliminate any emissions reduction previously required for that major modification.

We continue to believe that it is reasonable and appropriate to adopt the new method for establishing a modified unit's baseline actual emissions. It is important to understand the difference between the purpose of the new procedure, which uses the 10-year look back, and the existing procedure under the pre-existing definition of "actual emissions" at § 52.21(b)(21)(ii), which generally requires the use of an average annual emissions rate based on the 2-year period immediately preceding a particular date. The latter procedure is designed to estimate a source's actual emissions at a particular time and continues to be appropriate for such things as estimating a source's impact on air quality for PSD increment consumption.

On the other hand, the new baseline procedure is specifically designed to allow a source to consider a full business cycle in determining whether there will be an emissions increase from a physical or operational change. Generally, a source's operations over a business cycle cover a range of operating (and emissions) levels—not simply a single level of utilization. The new procedure recognizes that market fluctuations are a normal occurrence in most industries, and that a source's operating level (and emissions) does not remain constant throughout a source's business cycle. The use of a 24-month period within the past 10 years to establish an average annual rate is intended to adjust for unusually high short-term peaks in utilization.

Consequently, the new procedure ensures that a source seeking to make changes at its facility at a time when utilization may not be at its highest can use a normal business cycle baseline by allowing the source to identify capacity actually used in order to determine an average annual emissions rate from which to calculate any projected actual emissions resulting from the change.

With respect to the commenters' general concerns that a 10-year look back period is too long, we sought to better understand what time period best represents an industry's normal business cycle. Therefore, we contracted for a study of several industries in 1997.<sup>23</sup> This study found that, for the

<sup>21</sup> See, for example, WEPCO Rule, 57 FR 32316 ("fundamental distinctions between the technology-based provisions of NSPS and the air quality-based provisions of NSR"). See also *ASARCO Inc. v. EPA*, 578 F.2d 319 (D.C. Cir. 1978).

<sup>22</sup> The explanation of the applicability test for "Clean Units" is discussed in section V.

<sup>23</sup> "Business Cycles in Major Emitting Source Industries." Eastern Research Group; September 25, 1997. This study examined the business fluctuations for nine source categories described as CAA major emitting sources. Industry business cycles were examined using industry output data

industries analyzed, business cycles differ markedly by industry, and may vary greatly both in duration and intensity even within a particular industry. Nevertheless, we concluded from the study that 10 years of data is reasonable to capture an entire industry cycle. Comments from various industries support a conclusion that a 10-year look back period is a fair and representative time frame for encompassing a source's normal business cycle.

We believe that the use of a 10-year look back period will help provide certainty to the process and eliminate the ambiguity and confusion that occurred when an applicant and the reviewing authority disagreed on what time frame provides the period most representative of normal source operation. The new requirements also provide certainty to the look back period, since there is no opportunity to select another period of time outside this 10-year period. (See additional discussion in section II.E.2.) In addition, we have placed certain restrictions on when the full 10-year look back period may be used. (See section II.E.3.)

With regard to the concern that industry may try to apply the new requirements retroactively to undo current restrictions on existing sources, we want to reiterate that the new procedures do not apply retroactively to existing NSR permits or changes that sources have made in the past. Prior applicability determinations on major modifications and the control requirements that currently apply to sources remain valid and enforceable and have to be adjusted for in the calculation of baseline actual emissions. However, as part of the transition process for implementing the new provisions, we do intend to allow permit applicants to withdraw any permit applications submitted for review under the part 52 Federal PSD permit program so that they may re-evaluate their projects in light of the new requirements. States may allow for the same type of transition process under their own NSR programs.

Finally, we considered whether we should change the length of the look back period for EUSGUs for establishing the actual emissions baseline period to be consistent with the 10-year look back period we are adopting for other existing emissions units. The data we collected to support the 1992 rule changes show that allowing EUSGUs to use any 2-year period out of the

preceding 5 years is a sufficient period of time to capture normal business cycles at an EUSGU. We do not believe that any information received during the public comment period for this final rule adequately supports a different conclusion. Thus, we have decided to retain the 2-in-5-years baseline period for EUSGUs. However, for consistency with the baseline period for other existing emissions units, we have specified that the 2-year period is a consecutive 24-month period.

## 2. Why Do the New Requirements Not Provide Discretion for the Reviewing Authority To Consider Another Time Period More Representative of Normal Operation for Non-EUSGUs?

Several commenters oppose our proposed elimination of the reviewing authority's discretion to allow a different representative period (outside of the 10-year period), because they argue certain sources (for example, emissions units placed in cold reserve due to reduced demand) require this flexibility. Some commenters say the discretion should be given to the reviewing authority, while other commenters wanted the discretion given directly to source owners and operators. Instead of the discretion to use an alternate period, one commenter prefers that all sources should be required to show that they have selected a representative period that precedes the most recent 2-year period.

We believe that use of a fixed 10-year look back period provides the desired clarity and certainty to the process of selecting an appropriate utilization/emissions level that is representative of a source's normal operation. A bounded 10-year look back provides certainty to the regulated community that may be undermined by an option to allow an unbounded alternative period as well.

## 3. Why Are We Placing Restrictions on the Use of a 10-Year Look Back for Setting the Baseline Actual Emissions?

Numerous commenters responded to our concern that many sources might lack accurate records for the full 10-year look back period, and to our request for comments on the need to condition the full use of the 10-year period upon the accuracy and completeness of available data, as well as the need to establish specific criteria for accuracy, completeness, and recordkeeping when using older data. A number of commenters generally support limiting full use of the 10-year look back period to situations in which adequate emissions and/or capacity utilization data are available. Some commenters also recommend that EPA issue

minimum criteria to reduce the number of case-by-case determinations and help reviewing authorities avoid debates with sources on what constitutes sufficient data.

On the other hand, one commenter recommends that we not adopt a variable look back period based on the quality of the older data because it would "add considerable uncertainty and protracted debate to the process. . . ." If, however, we choose to limit the look back period based on the quality of older data, then this commenter and several others prefer provisions allowing for case-by-case decisions by State or local reviewing authorities over specific criteria established by EPA.

Today's amendments condition the full use of the new 10-year look back period on the accuracy and completeness of your records of emissions and capacity utilization, with respect to the 24-month period you select, for any emissions unit that undergoes a physical or operational change. See, for example, new § 52.21(b)(48)(f). As with all emissions calculations, accuracy and completeness are central elements for applicability determinations. In many cases, sources presently maintain accurate records on emissions and operations for only 3 to 5 years. Thus, we think it is appropriate to limit use of the full 10-year look back period when you do not have adequate data for the time period you wish to select. However, this limitation should be alleviated over time as sources begin to maintain records for longer periods to accommodate the 10-year look back opportunity.

We also agree that adequacy of any given data should be left to the case-by-case judgment of individual reviewing authorities. The type of data necessary to determine emissions will vary drastically from source category to source category and from process to process within a source category. At this time, we are not able to issue generic criteria that would apply to all types of industries.

We are further restricting your use of the 10-year look back for emissions units that are located in nonattainment areas and OTRs. In such cases, you are precluded from using any portion of the 10-year look back that precedes November 15, 1990—the date of the 1990 CAA Amendments—to establish baseline actual emissions for those units. This limit on the use of the 10-year look back is consistent the intent of the 1996 NPRM, which was originally proposed to apply to the use of the 10-year look back for any modification of an existing facility in a nonattainment

for the years 1982 to 1994 inclusive, based on the Office of Management and Budget's SIC codes for individual industries (OMB, 1987).

for calculating the baseline actual emissions relevant to the contemporaneous emissions change cannot include a date prior to November 15, 1990. It should be pointed out, however, that for modifications involving emissions of volatile organic compounds (VOC) in areas classified as "extreme," the statutory language is clear that the increase in emissions resulting from the change is not required to be a significant increase, but rather that "any increase" that is projected using the new actual-to-projected-actual applicability test will trigger the applicable NSR requirements.

*b. Will the Longer Look Back Period Related to the Baseline Actual Emissions Protect Short-term Increments and NAAQS?*

Some commenters express concerns that the opportunity to take credit for older baseline actual emissions would result in adverse environmental consequences. One commenter specifically indicates that the proposed baseline actual emissions determination process, involving a 10-year look back, would allow significant increases in emissions to escape the ambient impact requirements otherwise required by NSR.

Today's new rule modifies the way your NSR applicability determinations are made for changes made to existing emissions units. The new rule does not affect the way in which a source's ambient air quality impacts are evaluated. Compliance with the NAAQS is accomplished with air quality dispersion models using maximum allowable emission limitations (or federally enforceable permit limits) combined with operating factors, which consider either design capacity or actual operating factors averaged over the most recent 2 years of operation, from all modeled sources.<sup>24</sup> In addition, any increase in actual emissions, based on the existing definition of "actual emissions," consumes PSD increment whether it occurs through normal source operation or as a result of a physical or operational change. As mentioned earlier, the existing definition of "actual emissions" continues to apply with regard to all NSR requirements other than the new source applicability tests. See, for example, new § 52.21(b)(21)(i). Thus, we do not believe there is a basis for

concluding that the use of a longer look back period for determining a modified emissions unit's baseline actual emissions (for purposes of determining whether a physical or operational change will result in a significant emissions increase) will cause any adverse environmental impacts.

**6. Why Was the Contemporaneous Period for Netting Not Also Changed to a 10-Year Look Back Period?**

In the 1996 NPRM, we indicated that we were not proposing to extend the 5-year contemporaneous period along with the proposed 10-year look back period associated with the establishment of baseline actual emissions. See 61 FR 38259 (July 23, 1996). We did, however, solicit comments on the effect of the differing look back periods and any reasons why these periods should be the same. Commenters responded in a variety of ways to our request, with no clear consensus as to whether it would be appropriate to establish a uniform look back period. One commenter supports the 10-year contemporaneous period for reasons of consistency. Other commenters believe that it was reasonable to use two different time frames. Some commenters support retaining the 5-year contemporaneous period because changing it could have adverse effects on existing permit determinations. Several commenters support the selection of a different contemporaneous time frame than the existing 5-year period, but they differ in their recommendations for changing it. One suggests giving the source the option of choosing either a 10-year or 5-year contemporaneous period. Another commenter believes that a 1-year period would reduce confusion. Finally, another commenter proposes a 5-year contemporaneous period that would not mandate that 5 consecutive years be considered.

We do not believe that there is a compelling reason to change the existing 5-year contemporaneous period. The look back periods serve different purposes and need not be the same in order to effectively implement the NSR program objectives. States retain the flexibility in defining a different contemporaneous period under SIP-approved NSR programs, and may use that flexibility to adjust the contemporaneous period if they believe that a different period is more appropriate for their purposes under the new applicability requirements. See, for example, § 51.166(b)(3)(ii). Therefore, under today's new requirements, we have not changed the 5-year contemporaneous period under the

Federal PSD program. It should be noted that for purposes of determining the baseline actual emissions of a contemporaneous change in emissions from an emissions unit that was an existing unit at the time of the contemporaneous change, the new requirements authorize a source to use the 10-year look back period.

**7. Why Was the Demand Growth Exclusion Retained?**

When we proposed to expand the scope of the WEPCO rulemaking to cover modifications at any existing emissions unit, we solicited comment on whether the demand growth exclusion (currently available only to EUSGUs) should also be available to all source categories. In 1998, we noted that there were problems that could arise with the demand growth exclusion. 63 FR 39860-39861 (July 24, 1998). Accordingly, we solicited comment on this new position.

Several regulatory agency and environmental commenters support the total elimination of the demand growth exclusion. These commenters maintain that a facility's post-change emissions increases due to demand growth could not be disassociated from those that resulted directly from the physical or operational change. These commenters believe the demand growth exclusion would be difficult to enforce. The demand growth exclusion would, they claim, also be burdensome because it would require projections, estimates, and post-modification evaluations of increased emissions to determine whether the increases were the result of increased demand.

On the other hand, numerous industry commenters oppose eliminating the demand growth provisions, stating that market factors do independently cause emissions increases absent physical and operational changes. These commenters maintain that when projected increased capacity utilization is in response to an independent factor, such as demand growth, the increased utilization cannot be said to result from the change and therefore may rightfully be excluded from the projection of the emissions unit's future-actual emissions. They further argue that such increases should not be included in post-change emissions even in the absence of a demand growth exclusion, as the increases would not be the result of the physical or operational changes that were made. Consequently, these commenters state that the proposed demand growth exclusion simply makes that principle explicit and eliminates confusion as to how emissions should

<sup>24</sup> Guidance for modeling NAAQS compliance under the PSD program is set forth in EPA's Guideline on Air Quality Models contained in appendix W of 40 CFR part 51. This guidance is incorporated by reference both in the Federal PSD regulations and in the minimum requirements for SIPs under the part 51 PSD regulations.

be calculated. The same commenters who support retaining demand growth provisions for utilities also believe these provisions should be extended to non-utilities.

Under today's new requirements, you will be allowed to apply the causation provision as originally contained in the WEPCO amendments. Both the statute and implementing regulations indicate that there should be a causal link between the proposed change and any post-change increase in emissions, that is, " \* \* any physical change or change in the method of operation *that would result in a significant net emissions increase* \* \* \*" [emphasis added]. See, for example, existing § 52.21(b)(2)(i). Consequently, under today's new rules, when a projected increase in equipment utilization is in response to a factor such as growth in market demand, you may subtract the emissions increases from the unit's projected actual emissions if: (1) The unit could have achieved the necessary level of utilization during the consecutive 24-month period you selected to establish the baseline actual emissions; and (2) the increase is not related to the physical or operational change(s) made to the unit. See for example, new § 52.21(b)(41)(ii)(c).

On the other hand, demand growth can only be excluded to the extent that the physical or operational change is not related to the emissions increase. Thus, even if the operation of an emissions unit to meet a particular level of demand could have been accomplished during the representative baseline period, but the increase is related to the changes made to the unit, then the emissions increases resulting from the increased operation must be attributed to the project, and cannot be subtracted from the projection of projected actual emissions.

#### 8. Should Increases in Plant Utilization Be Reviewed as Potential Major Modifications?

Many commenters argue that emissions increases resulting from increased utilization should not be subjected to review as major modifications. They insist that EPA's policy and rules have always allowed increases in capacity utilization without triggering a modification, and not allowing utilization increases will limit new capacity to new emissions units instead of promoting increased efficiency at existing emissions units. One commenter argues that these sorts of changes do not require any sort of applicability determination and that Congress never anticipated that the NSR program would hamper a source's

ability to increase utilization up to the original design capacity.

We believe that an increase in utilization should not trigger the major NSR requirements unless it is related to a physical or operational change. As explained earlier, the CAA only applies the major NSR requirements to emissions increases that are the result of a physical or operational change. Thus, we do not believe that the major NSR requirements should apply to a utilization increase unless the increase is related to the modification. Under today's final rules, you may exclude emissions related to an increase in utilization if you were able to accommodate the increase in utilization during the 24-month period you select to establish your baseline actual emissions and the increased utilization is not related to the change.

#### 9. Why Must You Track Physical or Operational Changes That Increase a Unit's Design Capacity or Potential To Emit Post-Change Actual Emissions for a Longer Period of Time?

We raised this issue in the 1998 NOA. Several commenters support applying what we then termed the "actual-to-enforceable-future-actual" test to increases in design capacity or PTE because it would be inappropriate to automatically assume that such increases will affect normal operations, which would require the actual-to-potential test. They say that these types of modifications are common and do not generally increase emissions because they improve efficiency and add control devices.

One commenter explains that it is not uncommon for an emissions unit's capacity to be increased so as to speed up normal operations without increasing production, and that projected actual emissions could easily be calculated on the basis of past operating experience. On the other hand, another commenter indicates that it is very expensive to increase design capacity. Therefore, it can be assumed that a company would use the additional capacity as soon as it becomes available.

Several regulatory agency commenters support the use of the actual-to-potential test for modifications that increase design capacity or PTE. One of these commenters stated that such modifications would alter an emissions unit's normal operation and make previous actual emissions "unreliable and irrelevant."

We do not believe that every modification that includes added capacity or an increase in the PTE is intended for full use of that new

capacity or PTE. Such actions could well be intended to enhance current operations without resulting in increased production or operation. Therefore, under today's new requirements, you are not required to count the emissions increase that would result from full use of new capacity or PTE if you conclude that: (1) Such capacity or PTE will not be fully utilized, and (2) the emissions increase resulting from that portion of the capacity that will be used will not result in a significant emissions increase from the modification or a significant net emissions increase at the source. The new requirements include a provision that requires you to monitor the emissions from the project for 10 years following the resumption of regular operation of the emissions units modified. The 10-year period reflects our determination that this time frame best captures the normal business cycle for industry in general. Thus, in situations where your proposed project will in fact add new capacity or PTE to an existing emissions unit, yet you determine that the objective of the physical or operational change is not to use the increased capacity, your calculation of representative projected actual emissions may reflect this. However, you must maintain adequate information for 10 years following the completion of the project to track the actual annual emissions from the units associated with the project. This represents a special condition that supersedes the normal 5-year period for the recordkeeping requirements being adopted today. During the 10-year period, you must report to your reviewing authority within 60 days after any year if the annual emissions, in tpy, from the project exceed the baseline actual emissions by a significant amount for the regulated NSR pollutant and if such emissions differ from the preconstruction projection.

#### 10. Does the Actual-To-Projected-Actual Applicability Test Apply to Netting?

We did not specifically request comment on this issue in the 1996 proposal. Nonetheless, we received several comments that assert that use of different methods to compute an emissions increase and determine a net emissions increase would result in "absurd results" and require two separate accounting records. Other commenters oppose using the actual-to-future-actual test for netting. One commenter says that the sole purpose of the actual-to-future-actual test was to determine if an emissions increase will occur. One commenter says we should go further and revise the definition of

"contemporaneous" to limit it to project activities (vs. plantwide) and reduce credits for shutdowns and curtailments.

As stated previously, we did not specifically request comment on this issue and we are not promulgating amendments to the netting regulations, on this point, at this time.

#### 11. Should We Impose an Enforceable Projected Actual Emissions Level?

Some commenters on our 1996 proposal support the establishment of an enforceable limitation on the modified source's projected future emissions level. Other commenters support our specific proposal in the 1998 NOA to use the projected actual emissions as a temporary cap for the emissions units involved in the project, that is, an enforceable 10-year emissions level.

On the other hand, many other commenters oppose the concept, citing various reasons for their opposition. These included concerns that it would become a *de facto* baseline for any additional permitting and create additional enforcement liability, usurp State prerogatives, be inconsistent with the CAA, and require enforceable restrictions for too long. A few State and local air reviewing agencies indicate that they do not have the resources to adequately administer a program that would require permits to be issued for every physical or operational change at a major stationary source.

Today's new requirements follow the 1996 proposal. You will not be required to make the projected actual emissions projection through a permitting action. After considering the comments received, we are concerned that such a requirement may place an unmanageable resource burden on reviewing authorities. We also believe that it is not necessary to make your future projections enforceable in order to adequately enforce the major NSR requirements. The Act provides ample authority to enforce the major NSR requirements if your physical or operational change results in a significant net emissions increase at your major stationary source.

#### 12. Why Are Modified Sources That Are Not Considered Major Modifications Not Required To Submit Annual Reports of Actual Emissions Under the New Requirements?

Several commenters support our proposal to require sources to track post-change emissions for a 5-year period so that there is a factual finding as to whether emissions from the modified units actually increased. These commenters believe that the

requirement to track emissions is a needed safeguard and that it should not be too difficult to track various operating parameters. They add that non-utilities should be able to track emissions as well as utilities. Finally, commenters who oppose the proposed 10-year enforceable limit support retaining the 5-year tracking period in its place.

Many other commenters object to the burden that tracking would impose in the absence of any additional environmental benefit. Some commenters suggest ways to reduce the burden, such as not requiring sources to report emissions unless there is a problem or reducing the tracking period to 2 or 3 years. Another industry commenter suggests that we require an up-front notification to the reviewing authority whenever the actual-to-future-actual applicability test is used.

We agree with those commenters who recommend that you should be required to track emissions for a period of time following a modification. Thus, we have retained our proposed requirement to maintain annual emissions information for a period of 5 years following resumption of regular operations after the change. As discussed previously, we expanded this requirement to 10 years for changes that increase an emissions unit's capacity or its potential to emit a regulated NSR pollutant. However, although we proposed a requirement for annual emissions reporting, we have concluded that the combination of the recordkeeping requirements of this rule, along with a requirement to report to the reviewing authority any annual emissions that exceed your baseline actual emissions by a significant amount for the regulated NSR pollutant and differ from your preconstruction projection, is an equally effective way to ensure that a reviewing authority can receive the information necessary to enforce the major NSR requirements. Moreover, your reviewing authority has the authority to request emissions information from you at any time to determine the status of your post-change emissions.

In response to the concern that these requirements might impose unnecessary burdens, we have also included further limits. First, you are only required to keep records if you elect to use the actual-to-projected-actual applicability test to calculate your emissions increase from the project. Second, you are only required to keep the records if there is a reasonable possibility that your project might result in a significant emissions increase. Finally, you only need keep those records for projects that are not major modifications.

We also considered requiring you to submit an up-front notification to your reviewing authority, but concluded that this would result in an unnecessary paperwork burden. (EUSGUs, however, will be required to submit a copy of their projections to reviewing authorities before beginning actual construction.) We anticipate that a large majority of the projects that are not major modifications may nonetheless be required to undergo a permit action through States' minor NSR permit programs. In such cases, the minor NSR permitting procedures could provide an opportunity to ensure that your reviewing authority agrees with your emission projections. Requiring a separate notification would not provide the reviewing authority with any additional information in such circumstances. Accordingly, we believe today's requirements provide reviewing agencies with the ability to obtain all the information necessary to ensure compliance.

#### 13. Why Are We Promulgating Different Reporting Requirements for Existing Emissions Units Than for EUSGUs?

Today we are finalizing slightly different requirements for EUSGUs than other industries. In 2000, boilers and turbines with greater than 25 MWe or 250 mmBTU/hr of generating capacity represented 76 percent of this nation's emissions of nitrogen oxides (NO<sub>x</sub>) and 85 percent of this nation's emissions of SO<sub>2</sub> from stationary sources.<sup>25</sup>

In view of the disproportionate amount of emissions generated by EUSGUs compared to other industry sectors, we believe that it is appropriate for reviewing authorities to have information on construction and modification activities at EUSGUs readily available. Accordingly, we are requiring EUSGUs to provide a copy of their emissions projection to the reviewing authority before beginning actual construction of a project. We are also requiring them to report their post-change annual emissions for every year they are required to generate them. This approach also makes sense because it focuses the limited resources of both sources and agencies on the sources that matter most.

### III. CMA Exhibit B

In addition to the proposed changes based on the 1992 WEPCO amendments (see section II of this preamble), the 1996 proposal package included alternative regulatory language that would enable you to determine whether

<sup>25</sup> Information supporting these values can be found in the docket for today's rulemaking.

area or OTR. See 61 FR 38259 (July 23, 1996). However, because we are now beyond the point where the November 15, 1990 limit is relevant to modifications, we are only applying this limitation in the netting context with respect to emissions units changed within the contemporaneous period.

#### 4. Why Were Changes Made to the Proposed Approach for Establishing Baseline Actual Emissions Using a 10-Year Look Back?

Commenters raise specific questions about how to use the 10-year look back to calculate an emissions unit's baseline actual emissions. Several commenters are concerned about how the utilization rate would be considered in the calculation. For example, some commenters support the proposal to allow sources to use their highest capacity achieved during any consecutive 12 months, because it provides improved flexibility in establishing a capacity level that is representative of normal operations. However, other commenters object to using the 12 months with the highest utilization. These commenters argue that the use of production rates can be unworkable because there is not always a clear relationship between production rate and emissions. In addition, reliable records may not be available to determine the highest production rates. As an alternative, commenters suggest using emissions from any 12-month period in the preceding 10 years, adjusted to reflect current rules, or allowing the source to use any 12-month period of its choice.

A related issue raised by commenters is whether to require any current Federal, State, or voluntary limit to be included in the establishment of the baseline actual emissions. Some commenters say these provisions would penalize sources that complied with other regulatory requirements or chose to implement pollution prevention programs. Commenters are particularly concerned that sources be given credit for voluntary reductions. However, other commenters support including all of these factors in the baseline to better represent actual emissions and avoid inconsistencies between emissions units that have permits and those that do not. Commenters also raise specific questions about how the calculation would include the effect of other emission limitations.

As described earlier, we have decided to require the use of a consecutive 24-month period within the 10-year look back instead of the proposed 12-month period to calculate the baseline actual emissions for any emissions unit that

undergoes a physical or operational change, or is affected by such change. The longer 24-month period allows you to reference levels of utilization achieved in the past, but also eliminates the potential problem associated with short-term peaks that do not truly represent the unit's normal operation. In this respect, the use of a 24-month period is consistent with the pre-existing approach for calculating actual emissions.

With respect to commenters' concerns about being required to use the period of highest utilization, our reference in the proposal preamble to selecting the period of highest utilization was based on our general assumption that the period of maximum utilization also represents the period of highest pollution levels for the unit of concern. However, you are not required to select the period of highest utilization. The choice of which consecutive 24-month period within the 10-year window to use is up to you. The two restrictions on the selection of the appropriate consecutive 24-month period, as described earlier, are the availability of adequate and complete source records for the unit of concern and the limit on using dates earlier than November 15, 1990 for contemporaneous emissions changes in nonattainment areas and OTRs.

We agree with the concerns expressed by some commenters that the baseline actual emissions calculated from the consecutive 24-month period selected could yield a higher pollution level than a unit is currently allowed to emit. We do not believe that we should allow a source to take credit for baseline actual emissions that exceed the current, legally allowable emissions rate. Consequently, the new requirements require you to determine whether any legally enforceable limitations currently exist that would prevent the affected unit from emitting a pollutant at the levels calculated from the 24-month baseline period. The approach that we have adopted allows you to reference plant capacity that has actually been used, but not pollution levels that are not legally allowed at the time the modification is to occur. You will be required to make adjustments for voluntary reductions that you may have taken only to the extent that the reductions resulted from conditions that are legally enforceable limitations.

#### 5. How Does the Change in the Baseline Period Affect Related Requirements Regarding Protection of Air Quality?

##### *a. How Does the Extended Baseline Period Conform With the Special Modification Provisions Under Sections 182(c) and (e) of the Act?*

Most commenters feel the proposed extension of the look back period fits within the design and intent of the special modification procedures set forth in sections 182(c) and (e) of the Act, applicable in serious, severe, and extreme ozone nonattainment areas. However, one commenter representing State and local air pollution control agencies considers the new requirements to be in significant conflict with the special modification procedures contained in those sections of the Act. The commenter indicates that this conflict could be resolved by deferring to relevant requirements for modifications in serious, severe, and extreme areas. The commenter adds that while NSR programs are tools to attain and maintain compliance with the NAAQS, they should not be available to undermine specific statutory and SIP requirements designed to resolve nonattainment problems.

We disagree with the commenter's concern that the use of a 10-year look back period to implement sections 182(c) and (e) of the Act for purposes of establishing a modified unit's baseline emissions will undermine any statutory or SIP requirements designed to address nonattainment problems. The two sections establish special procedures for determining whether a proposed modification of a major stationary source of ozone in a serious, severe, or extreme ozone nonattainment area will be subject to major NSR under part D of the Act. The Act is silent on the issue of how one is to determine whether a physical or operational change increases the amount of a pollutant for a changed emissions unit. We believe, therefore, that we have the authority to establish a regulatory procedure for making the required determinations concerning emissions increases resulting from physical or operational changes.

In light of the fact that the 10-year look back period may be used for emissions units (other than EUSGUs) that are involved in contemporaneous emissions changes (for netting purposes), it should be noted that the new requirements prohibit the use of the look back period earlier than November 15, 1990. Consequently, for emissions units whose contemporaneous emissions changes occurred before November 15, 2000, the consecutive 24-month period selected

your facility has undertaken a modification based on the facility's pre-change and post-change potential emissions instead of its actual emissions. This action was part of the settlement of a challenge to our 1980 NSR regulations by CMA and other industry petitioners. The exact language we proposed was set forth in Exhibit B to the Settlement Agreement, which is contained in the docket for this rulemaking.

Under this method, sources may calculate emissions increases and decreases based on the actual emissions method or the unit's pre-change and post-change potential emissions, measured in terms of hourly emissions (that is, pounds of pollutant per hour). Sources could use this potential-to-potential test for NSR applicability, as well as for calculating offsets, netting credits, and other ERCs.

We proposed to make several changes to the NSR regulations. First, we proposed to add the following exclusion to the definition of "major modification":

A major modification shall be deemed not to occur if one of the following occurs: (a) there is no significant net increase in the source's PTE (as calculated in terms of pounds of pollutant emitted per hour); or (b) there is no significant net increase in the source's actual emissions.

Second, we proposed to delete all references to "actual emissions" in the definition of "net emissions increase" and added language indicating that all references to "increase in emissions" and "decreases in emissions" in the definition of "net emissions increases" "shall refer to changes in the source's PTE (as calculated in terms of pounds of pollutant emitted per hour) or in its actual emissions." Third, we proposed to modify the applicability baseline by eliminating the reference to the 2-year baseline period and to a method for determining actual emissions during the representative period. Finally, we proposed to provide express authorization for sources to use potential emissions in calculating offsets and in creating ERCs.

We also indicated in the preamble for the 1996 proposed rulemaking that if we promulgated the Exhibit B settlement as a final rule, the Exhibit B rules would need to be updated to reflect other rule changes since 1980, as well as relevant provisions of the 1990 Amendments.

Before proposing the Exhibit B language, we did a preliminary analysis of the impact on the NSR program of the Exhibit B changes. These changes would provide maximum flexibility to existing facilities with respect to determining if a significant net emissions increase

would result from a physical or operational change. However, we also expressed concern about the environmental consequences associated with the Exhibit B provisions. For one, you could modernize your aging facilities (restoring lost efficiency and reliability while lowering operating costs) without undergoing preconstruction review, while increasing annual pollution levels as long as hourly potential emissions did not change. Also, Exhibit B would allow your facilities to generate netting credits and ERCs for offsets based on potential hourly emissions, even if never actually emitted. This could sanction greater actual emissions increases to the environment, often from older facilities, without any preconstruction review. In addition, actual emissions increases resulting from unreviewed projects could go largely undocumented until a PSD review is performed by a new or modified facility that ultimately must undergo review. By that time, however, a violation of an increment could have unknowingly occurred. We were also concerned that Exhibit B would ultimately stymie major new source growth by allowing unreviewed increases of emissions from modifications of existing sources to consume all available increment in PSD areas.

In our analysis supporting the 1996 proposal, we were unable to reach any conclusions as to the magnitude of any environmental impacts beyond noting that the effects would vary from State to State depending on how much cumulative difference exists between the unused potential emissions and actual emissions in a given inventory of sources and on the extent to which any unused potential emissions have been used in attainment demonstrations. However, our analysis did show that typical source operation frequently does result in actual emissions that are below allowable emission levels.

We received many comments in response to the 1996 proposal regarding CMA Exhibit B. Some commenters believe the potential-to-potential test appropriately focuses on the significant emissions changes that could produce an adverse environmental impact. Several other commenters believe that a potential-to-potential test would be environmentally detrimental. These commenters believe that CMA Exhibit B represents a substantial weakening of the PSD program with large increases in actual emissions, which in itself could lead to a significant deterioration of air quality. They also express concerns regarding the creation of paper credits and other impacts on the broader air

quality planning process. One commenter states that the potential-to-potential test would conflict with SIPs that are based on actual emissions, threaten a State's efforts to make reasonable further progress (RFP) demonstrations, and interfere with emission credits relied on by SIPs. These commenters also cite the following concerns.

- The potential-to-potential test would allow sources to escape the major modification provisions and could virtually eliminate NSR in most modification cases.

- Once a facility has proceeded without NSR based on actual emissions, it would be difficult to take an enforcement action years later that would successfully require that facility to retrofit LAER and obtain offsets retrospectively.

We agree that a potential-to-potential test for major NSR applicability could lead to unreviewed increases in emissions that would be detrimental to air quality and could make it difficult to implement the statutory requirements for state-of-the-art controls.

After consideration, we believe some of the comments in support of Exhibit B have merit. As noted by commenters who supported the CMA Exhibit B proposal, a potential-to-potential test could simplify and improve the NSR process. According to commenters, the CMA Exhibit B approach would have the following benefits.

- Limit the scope of the program to encompass only those significant physical changes that Congress intended to cover

- Reduce unnecessary NSR costs and delays and improve compliance and enforcement

- Lower the cost of the NSR process by reducing the complexity of the NSR applicability determinations

- Facilitate applicability decisions at the plant level

The commenters also say that the CMA Exhibit B approach is more equitable than the existing actual-to-potential approach, which results in the capture of a source's unused capacity. These commenters prefer the potential-to-potential test because it would allow utilization increases. This provision is especially useful for sources in cyclical industries where using existing capacity is critical. Sources in sectors where utilization and demand are closely related would also benefit.

Our own concerns, coupled with the concerns expressed by some commenters, have caused us to reject the use of the Exhibit B regulatory changes for general purposes of determining whether a proposed

physical or operational change would result in a major modification. For the reasons stated above, we do not believe that a potential-to-potential approach is acceptable for major NSR applicability as a general matter. However, we agree with the commenters in part—some of the benefits of a potential-to-potential approach are desirable. We believe that in more limited circumstances a “potential-to-potential”-like approach would be acceptable. Therefore, we are promulgating two new applicability provisions that capture the benefits of a potential-to-potential approach but still have the necessary safeguards to ensure environmental protection—PALs, and the Clean Unit Test.

Today's rules provide for a PAL based on plantwide actual emissions. If you keep the emissions from your facility below a plantwide actual emissions cap, then you need not evaluate whether each change might be subject to the major NSR permitting when you make alterations to the facility or individual emissions units. The cumulative actual emissions become the *de facto* potential emissions for the plant, and you may emit up to the permitted level without going through major NSR, even if you are making changes to the facility. The PAL allows you to make changes quickly by allowing you to alter your facility without first going through major NSR review. It thus limits the number and complexity of NSR applicability determinations, and reduces unnecessary costs and delays. It also allows a plant manager to authorize changes, as long as the emissions remain under the permitted level, without first obtaining reviewing authority review. Furthermore, it provides an incentive to use state-of-the-art controls and install new, lower emitting equipment, which will allow sources to increase utilization. In return for the flexibility a PAL allows, you must monitor emissions from all of your emissions units under the PAL. Therefore, the PAL ensures good controls and protection of air quality. We believe there are other mechanisms for establishing PALs that would achieve beneficial results. For example, we believe PALs based on allowable emissions would produce flexibility and assure environmental protection, provided affected sources had adequate safeguards. Therefore, we intend in the near future to propose a rule that would adopt PALs based on allowable emissions.

Analogous to what the PAL does for facilities, the Clean Unit Test sets emission limitations or work practice requirements in conjunction with BACT, LAER, or Clean Unit

determinations and identifies any physical or operational characteristics that formed the basis for the BACT, LAER, or Clean Unit determination for a particular unit. The Clean Unit Test recognizes that if you go through major NSR review (including air quality review) and install BACT or LAER or comparable technology, then you may make any subsequent changes to the Clean Unit without triggering an additional major NSR review, as long as there is no need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT, LAER, or Clean Unit determination or to alter any physical or operational characteristics that formed the basis for the BACT, LAER, or Clean Unit determination. Therefore, for Clean Units, given that the permit is based on a determination that is protective of air quality, the new test would deem there is no emissions increase as a result of any physical change or change in the method of operation. With these provisions, sources will have improved certainty and flexibility, reduced burden, and opportunity for utilization increases without compromising air quality. Like the PAL, the Clean Unit includes necessary safeguards by requiring enforceable permit terms and conditions to ensure environmental protection.

#### IV. Plantwide Applicability Limitations

##### A. Introduction

Today we are adopting a final rule for a PAL option that is based on the baseline actual emissions<sup>26</sup> from major stationary sources. A PAL is an optional approach that will provide you, the owners or operators of major stationary sources, with the ability to manage facility-wide emissions without triggering major NSR. We believe the added flexibility of a PAL allows you to respond rapidly to market changes consistent with the goals of the NSR program.

The final rules we are adopting today also benefit the public and the environment. Reviewing authorities, usually States, can only establish a PAL by using a public process that affords citizens the opportunity to comment

<sup>26</sup> In our 1996 proposal we used the term “actual emissions,” while today we are using the term “baseline actual emissions.” This change in terminology is consistent with the regulatory changes discussed in section II of today's preamble. Despite this change in terminology, there may be places in this section of the preamble where we still use the phrase “actual emissions.” In such cases we are either discussing PALs established under the old regulatory provisions, or summarizing and responding to comments received on the 1996 proposal.

upon the proposed PAL. This process is designed to assure local communities that air emissions from your major stationary source will not exceed the facility-wide cap set forth in the permit unless you first meet the major NSR requirements. We believe that a PAL provides a more complete perspective to the public because in setting a PAL, your reviewing authority accounts for all current processes and all emissions units together and reflects the long-term maximum amount of emissions it would allow from your source. Moreover, to comply with a PAL you must meet monitoring requirements prescribed in the rules that ensure that both your reviewing authority and the public have sufficient information from which to determine plantwide compliance. Additionally, through the final PAL regulations, we are promoting voluntary improvements in pollution controls by creating an incentive for you to control existing and new emissions units to maintain a maximum amount of operational flexibility under the PAL. Most importantly, for pollutants subject to a PAL, we are prohibiting serial, small, unrelated emissions increases,<sup>27</sup> which otherwise can occur under our existing regulations.

If you choose to use it, we believe you will benefit from the PAL option because you will have increased operational flexibility and regulatory certainty, a simpler NSR applicability approach, and fewer administrative burdens. To comply with a PAL, you need to ensure that there are no emissions increases from your major stationary source, as measured against the PAL. For you to do that, there is no need for you to quantify

<sup>27</sup> Under our current NSR program, you can make physical changes or changes in the method of operation without triggering major NSR applicability, provided the individual changes do not result in significant net emissions increases. We have interpreted this requirement to permit you to make unrelated changes that, standing alone, do not result in significant emissions increases and to allow such changes to occur without considering whether other contemporaneous emissions increases render the change significant. Over time you could undertake numerous unrelated projects without triggering major NSR, provided the individual projects did not increase emissions by a significant amount, thus allowing source-wide emissions to increase over time without requiring any emissions controls for these individual projects. For example, a large chemical plant that is located in an ozone attainment area adds a new product line in 2001 and properly avoids PSD (including the BACT requirement) by limiting the VOC emissions increase to 39 tpy. Later, in 2003 the plant adds a different product line and also properly avoids PSD by limiting VOC emissions from the new line to 39 tpy. For this example, two process lines at the same plant with total potential emissions (78 tpy) above the 40 tpy VOC significant level under PSD were properly permitted over a 3-year period without BACT applying to either new product line.

contemporaneous emissions increases and decreases for individual emissions units. Through the PAL we are allowing you to make timely changes to react to market demand and providing you additional certainty regarding the level of emissions at which your source will be required to undergo major NSR. The benefit to you is that you will not have to make numerous applicability decisions using different baselines. Also, in some situations where you would have been unable to "net out" a new project in the major NSR program, under a PAL you can begin construction on your new project without obtaining a major NSR permit, which can take from a few months up to 2 years. In addition, because you may make emissions reductions at emissions units under the PAL to create room for growth at other units, through the PAL we are providing a strong incentive for you to employ innovative control technologies and pollution prevention measures, to create voluntary emissions reductions to facilitate economic expansion.

#### B. Relevant Background

##### 1. What Is a PAL and How Does a PAL Compare to Other Major NSR Requirements and Netting?

The concept of a PAL is simple. Under the Act, you are not subject to major NSR unless you make a "modification," which by definition cannot occur without an emissions increase. CAA section 111(a)(4). A PAL is a source-wide cap on emissions and is one way of making sure that emissions increases from your major stationary source do not occur.

The existing regulations require "major modifications" to undergo NSR, and the existence of a "significant net emissions increase" at the facility is a necessary prerequisite to a "major modification." See, for example, §§ 52.21(b)(2) & (3); see also *Chevron v. Natural Resources Defense Council*, 467 U.S. 837, 863-64 (1984). Under our current system, we determine whether a "significant net emissions increase" occurs at your major stationary source by focusing initially on the change to the emissions unit(s) and then broadening the analysis to include other changes within the source. In order to determine whether there is a "significant net emissions increase" under major NSR as revised today, you must establish a pre-change baseline for each change, project the actual level of emissions after the change, calculate the creditable emissions increases and decreases that have occurred that are contemporaneous with the change, and determine whether the change would

result in a significant net emissions increase. We refer to this applicability process as "netting" under the major NSR regulations. Both you and reviewing authorities have maintained that the netting rules are unnecessarily complex and burdensome, and have urged us to craft rules that link NSR applicability to compliance with a predictable source-wide emissions cap. We are responding to that request with the PAL concept. A PAL is a voluntary,<sup>28</sup> source-specific, straightforward, flexible approach to account for changes, including alterations to existing emissions units and the addition of new emissions units, at your existing major stationary sources. Complying with the PAL ensures that there are no emissions increases that trigger major NSR. If your emissions of the PAL pollutant remain below the PAL, and you comply with all other PAL requirements, whatever changes occur at your plant will not be subject to major NSR for the PAL pollutant. Our July 23, 1996 proposal contains a thorough discussion of the proposed PAL concept and the background information used to develop the proposal.

##### 2. Why Does EPA Believe That PALs Will Benefit the Environment?

Over the past several years, we have allowed use of major stationary source-wide emissions caps to demonstrate compliance with major NSR in a select number of pilot projects. We recently reviewed six of these innovative air permitting efforts and found substantial benefits associated with the implementation of permits containing emissions caps (among other types of permit terms offering greater flexibility than major NSR permitting programs).<sup>29</sup> Specifically, we reviewed on-site records to track utilization of these flexible permit provisions, to assess how well the permits are working and any emissions reductions achieved, and to determine if there were any economic benefits of the permits.

Overall, we found that significant environmental benefits occurred for each of the permits reviewed. In particular, the six flexible permits established emissions cap-based frameworks that encouraged emissions reductions and pollution prevention,

even though such environmental improvements were not an explicit requirement of the permits. We found that in a cap-based program, sources strive to create enough headroom for future expansions by voluntarily controlling emissions. For instance, one company lowered its actual VOC emissions over threefold in becoming a synthetic minor source (that is, 190 tpy to 56 tpy). Other companies lowered their actual VOC emissions by as much as 3600 tpy by increasing capture, by using voluntary pollution prevention and other voluntary emissions control measures, and by reducing production rates.

Participants reported that having the ability to make rapid, iterative changes to optimize process performance in ways that minimize emissions, and that reduce the administrative "friction" (time delays and uncertainty) associated with making operational and equipment changes, encourages facilities to make changes that improve yields and reduce per-unit emissions. It is also critical for responding to product development needs and market demand, and for maintaining overall competitiveness.

Reviewing authorities consistently reported that the permits worked well and proved beneficial, and that there was a reduction in the number of case-by-case permitting actions they needed to undertake. Specifically, we found that flexible permit provisions (for example, emissions caps) are enforceable as a practical matter by using a mixture of mass balance-based equations, CEMS, and parameter monitoring. No emissions cap exceedances or violations of the monitoring provisions were experienced by any of the pilot sources. In addition, the monitoring and reporting approaches worked well and were generally of higher quality and of more extensive scope than those directly required by individual applicable requirements.

Based on the results of these pilot projects, we believe that PALs will over time tend to shift growth in emissions to cleaner units, because the growth will have to be accommodated under the PAL cap. Specifically, we expect that PALs will encourage you to undertake such projects as: replacing outdated, dirty emissions units with new, more efficient models; installing voluntary emissions controls; and researching and implementing improvements in process efficiency and use of pollution prevention technologies, so that you can maintain maximum operational flexibility. We also expect that you and the reviewing authority will need to devote substantially fewer resources to

<sup>28</sup> The term "voluntary" means that you have the option of entering into a PAL, rather than voluntary compliance with a PAL that is in place. Once you have a permit with PAL requirements, you must comply with the requirements.

<sup>29</sup> Results of our study are reported in "Evaluation of the Implementation Experience with Innovative Air Permits." A complete copy of this report is located in the docket for today's rulemaking.

discussing and reviewing whether major NSR applies to individual changes. Thus, overall, we believe that PALs will prove to be as beneficial to the environment as they are to you and your reviewing authority.

### 3. What Did We Propose for PALs?

On July 23, 1996, we proposed to amend the NSR regulations to specifically authorize PALs and to clarify the methodology under which you can obtain a PAL. Under the proposal, your reviewing authority could have elected to include provisions in its SIP to allow you to apply for a permit that based your source's major NSR applicability on compliance with a pollutant-specific, source-wide emissions cap. We proposed that a facility's PAL would generally be based on source-wide "actual emissions" plus an operating margin of emissions less than a significant emissions increase. We also sought comment on the circumstances under which it would be appropriate to use something other than actual (for example, "allowable") emissions to set the PAL.

On July 24, 1998, we published a notice in the **Federal Register** seeking further comment on how the PAL regulations could be reconciled with several environmental and legal concerns. The notice discussed how the PAL alternative fits within the Act's requirements for determining if changes at existing sources are subject to major NSR. Today we are adopting final regulations that address the issues and comments raised in the 1998 notice and the 1996 proposal.

#### C. Final Regulations for Actuals PALs

Today's action establishes final regulatory provisions for actuals PALs. We are placing these requirements in the major NSR rules for nonattainment areas at § 51.165(f), and in the PSD regulations (applicable in attainment and unclassifiable areas) at §§ 51.166(w) and 52.21(aa).

The PAL option adopted today provides you with a voluntary alternative for determining NSR applicability. Actuals PALs are rolling 12-month emissions caps (that is, tpy limits) that include all conditions necessary to make the limitation enforceable as a practical matter. Through the regulations, we are allowing PALs on a pollutant-specific basis and are also allowing you to opt for actuals PALs for more than one pollutant at your existing major stationary sources. You must continue to apply the major NSR applicability provisions to air pollutants at your source for which you have no PAL.

This section sets forth the specific requirements for actuals PALs. The section addresses the following items: (1) The process used to establish a PAL and the public participation requirements; (2) how the PAL level is determined; (3) how long a PAL is effective and what happens when a PAL expires; (4) can a PAL be terminated before the end of its effective period; (5) how a PAL is renewed; (6) how a PAL can be increased during the effective period; (7) circumstances that would cause your PAL to be adjusted during the PAL effective period; (8) whether a PAL can eliminate enforceable emission limitations previously taken to avoid major NSR; (9) the compliance requirements and monitoring, recordkeeping, reporting, and testing (MRRT) requirements that the permit must contain for emissions units under your PAL; (10) the process for incorporating conditions of the PAL into your title V operating permit; and (11) an example of how an actuals PAL would work under the regulations finalized today.

#### 1. What Are the Permit Application Requirements, What Is the Process Used To Establish a PAL, and What Are the Public Participation Requirements?

Under today's final rules, you must submit a complete application to your reviewing authority requesting a PAL. The application, at a minimum, must include a list of all emissions units, their size (major, significant, or small); the Federal and State applicable requirements, emission limitations and work practice requirements that each emissions unit is subject to; and the baseline actual emissions for the emissions units at the source (with supporting documentation). The calculation of baseline actual emissions must include fugitive emissions to the extent they are quantifiable. The reviewing authority must establish a PAL in a federally enforceable permit (for example, a "minor" NSR construction permit, a major NSR permit, or a SIP-approved operating permit program). To comply with our final regulations, the reviewing authority must provide an opportunity for public participation when issuing a PAL permit. This process must be consistent with the requirements at § 51.161 and include a minimum of a 30-day period for public notice and opportunity for public comment on the proposed permit. Where the PAL is established in a major NSR permit, major NSR public participation procedures apply. When establishing a PAL, you must comply with all applicable requirements of the

reviewing authority's minor NSR program, including modeling to ensure the protection of the ambient air quality. Additionally, you must meet all applicable title V operating permit requirements. When adding new emissions units under a PAL, you must comply with the reviewing authority's minor NSR permit requirements for public notice, review, and comment. In contrast, when adding new emissions units that will require an increase in a PAL, you must comply with the reviewing authority's major NSR permit requirements for public notice, review, and comment.

#### 2. How Is the Level of the PAL Determined?

We calculate the PAL level for a specific pollutant by summing the baseline actual emissions of the PAL pollutant for each emissions unit at your existing major stationary source, and then adding an amount equal to the applicable significant level for the PAL pollutant under § 52.21(b)(23) or under the CAA, whichever is lower.

You must first identify all your existing emissions units (greater than 2 years of operating history) and new emissions units (less than 2 years of operating history since construction). When establishing the actuals PAL level, you must calculate the baseline actual emissions from existing emissions units that existed during the 24-month period as described below. The baseline actual emissions will equal the average rate, in tpy, at which your emissions units emitted the PAL pollutant during a consecutive 24-month period, within the 10-year period immediately preceding the application for a PAL. Consistent with today's final rules, you will have broad discretion to select any consecutive 24-month period in the last 10 years to determine the baseline actual emissions. Only one consecutive 24-month period may be used to determine the baseline actual emissions for such existing emissions units. For any emissions unit (currently classified as existing or new) that is constructed after the 24-month period, emissions equal to its PTE must be added to the PAL level. Additionally, for any emissions unit that is permanently shut down or dismantled<sup>30</sup> since the 24-month

<sup>30</sup> The key determination to be made is whether an emissions unit is "permanently shut down." This issue is discussed in the Administrator's response to a petition objecting to an operating permit for a facility in Monroe, Louisiana. See *Monroe Electric Generating Plant*, Petition No. 6-99-2 (Adm'r 1999). A copy of this decision is in the docket. In general, we explained in our "reactivation policy" that whether or not a