

(A) Clean unit provisions for emissions units that are subject to BACT or LAER

The owner or operator of a major stationary source has the following option of using the clean unit test to determine whether emission increases at a clean unit are part of a NSR project that is a major modification according to the provisions in paragraph (A) of this rule.

(1) Applicability

The provisions of paragraph (A) of this rule apply to any emissions unit for which the director has issued a nonattainment NSR permit or a PSD permit within the past ten years.

(2) General provisions for clean units

The provisions under this paragraph apply to a clean unit.

- (a) Any NSR project for which the owner or operator begins actual construction after the effective date of the clean unit designation (as determined in accordance with paragraph (A)(4) of this rule) and before the expiration date (as determined in accordance with paragraph (A)(5) of this rule) will be considered to have occurred while the emissions unit was a clean unit.
- (b) If a NSR project at a clean unit does not cause the 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 or LAER and the NSR project would not alter any physical or operational characteristics that formed the basis for the BACT or LAER determination as specified in paragraph (A)(6)(d) of this rule, the emissions unit remains a clean unit.
- (c) If a NSR project causes the 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 or LAER or the NSR project would alter any physical or operational characteristics that formed the basis for the BACT or LAER determination as specified in paragraph (A)(6)(d) of this rule, then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions (unless the unit requalifies as a clean unit pursuant to paragraph (A)(3)(c) of this rule). If the owner or operator begins actual construction on the NSR project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(d) A NSR project that causes an emissions unit to lose its designation as a clean unit is subject to the applicability requirements of paragraphs (III)(4)(a) to (III)(4)(b) and paragraph (III)(4)(d) of rule 3745-31-01 of the Administrative Code as if the emissions unit is not a clean unit.

(e) Certain emissions units with PSD permits

For emissions units that meet the requirements under this paragraph, the BACT level of emission reductions and/or work practice requirements shall satisfy the requirement for LAER in meeting the requirements for clean units under paragraphs (A)(3) to (A)(8) of this rule. For these emissions units, all requirements for the LAER determination under paragraphs (A)(2)(b) and (A)(2)(c) of this rule shall also apply to the BACT permit terms and conditions. In addition, the requirements of paragraph (A)(7)(a)(ii) of this rule do not apply to emissions units that qualify for clean unit status under paragraph (A)(2)(e) of this rule.

(i) The emissions unit must have received a PSD permit within the last ten years and such permit must require the emissions unit to comply with BACT.

(ii) The emissions unit must be located in an area that was redesignated as nonattainment for the relevant pollutant(s) after issuance of the PSD permit and before October 28, 2004.

(3) Qualifying or re-qualifying to use the clean unit applicability test

An emissions unit automatically qualifies as a clean unit when the unit meets the criteria in paragraphs (A)(3)(a) and (A)(3)(b) of this rule. After the original clean unit designation expires in accordance with paragraph (A)(5) of this rule or is lost pursuant to paragraph (A)(2)(c) of this rule, such emissions unit may re-qualify as a clean unit under either paragraph (A)(3)(c) of this rule, or under the clean unit provisions in paragraph (B) of this rule. To re-qualify as a clean unit under paragraph (A)(3)(c) of this rule, the emissions unit must obtain a new nonattainment NSR permit or a PSD permit and meet all the criteria in paragraph (A)(3)(c) of this rule. The clean unit designation applies individually for each pollutant emitted by the emissions unit.

(a) Permitting requirement

The emissions unit must have received a nonattainment NSR permit or a PSD permit within the past ten years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

(b) Qualifying air pollution control technologies

Air pollutant emissions from the emissions unit must be reduced through the use of an air pollution control technology (which includes pollution prevention or work practices) that meets both the following requirements under this paragraph.

- (i) The control technology achieves the BACT or LAER level of emission reductions as determined through issuance of a nonattainment NSR permit or a PSD permit within the past ten years. However, the emissions unit is not eligible for clean unit designation if the LAER or BACT determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.
- (ii) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

(c) Re-qualifying for the clean unit designation

The emissions unit must obtain a new nonattainment NSR permit or a PSD permit that requires compliance with the current-day LAER or BACT, and the emissions unit must meet the requirements in paragraphs (A)(3)(a) and (A)(3)(b) of this rule.

(4) Effective date of the clean unit designation

The effective date of an emissions unit's clean unit designation (that is, the date on which the owner or operator may begin to use the clean unit test to determine whether a NSR project at the emissions unit is a major modification) is determined under paragraph (A)(4) of this rule.

- (a) Original clean unit designation, and emissions units that re-qualify as clean units by implementing a new control technology to meet current-day BACT or LAER

The effective date is the date the emissions unit's air pollution control technology is placed into service, or three years after the issuance date of the nonattainment NSR permit or a PSD permit, whichever is earlier, but no sooner than October 28, 2004.

- (b) Emissions units that re-qualify for the clean unit designation using an existing control technology

The effective date is the date the new nonattainment NSR permit or PSD permit is issued.

(5) Clean unit expiration

An emissions unit's clean unit designation expires (that is, the date on which the owner or operator may no longer use the clean unit test to determine whether a NSR project affecting the emissions unit is, or is part of, a major modification) according to the applicable paragraph (A)(5)(a) or (A)(5)(b) of this rule.

- (a) Original clean unit designation, and emissions units that re-qualify by implementing new control technology to meet current-day BACT or LAER

For any emissions unit that automatically qualifies as a clean unit under paragraphs (A)(3)(a) and (A)(3)(b) of this rule or re-qualifies by implementing new control technology to meet current-day BACT or LAER under paragraph (A)(3)(c) of this rule, the clean unit designation expires ten years after the effective date, or the date the equipment went into service, whichever is earlier; or, it expires at any time the owner or operator fails to comply with the provisions for maintaining clean unit designation in paragraph (A)(7) of this rule.

- (b) Emissions units that re-qualify for the clean unit designation using an existing control technology

For any emissions unit that re-qualifies as a clean unit under paragraph (A)(3)(c) of this rule, the clean unit designation expires ten years after the effective date; or, it expires any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in paragraph (A)(7) of this rule.

(6) Required Title V permit content for a clean unit

After the effective date of the clean unit designation, and in accordance with the provisions of the Title V permit program under Chapter 3745-77 of the Administrative Code, but no later than when the Title V permit is renewed, the Title V permit for the major stationary source must include the following terms and conditions under paragraph (A)(6) of this rule related to the clean unit.

- (a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant(s) for which this clean unit designation applies.
- (b) The effective date of the clean unit designation.

If this date is not known when the clean unit designation is initially recorded in the Title V permit (e.g., because the air pollution control

technology is not yet in service), the permit must describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is determined, the owner or operator must notify the director of the exact date. This specific effective date must be added to the source's Title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal.

(c) The expiration date of the clean unit designation.

If this date is not known when the clean unit designation is initially recorded into the Title V permit (e.g., because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is determined, the owner or operator must notify the director of the exact date. The expiration date must be added to the source's Title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal.

- (d) All emission limitations and work practice requirements adopted in conjunction with the BACT or LAER, and any physical or operational characteristics that formed the basis for the BACT or LAER determination (e.g., possibly the emissions unit's capacity or throughput).
- (e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation. (See paragraph (A)(7) of this rule.)
- (f) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so, as presented in paragraph (A)(7) of this rule.

(7) Maintaining the clean unit designation

To maintain the clean unit designation, the owner or operator must conform to all the restrictions listed under paragraph (A)(7) of this rule. Paragraph (A)(7) of this rule applies independently to each pollutant for which the emissions unit has the clean unit designation. That is, failing to conform to the restrictions for one pollutant affects clean unit designation only for that pollutant.

- (a) The clean unit must comply with the emission limitation(s) and/or work practice requirements adopted in conjunction with the LAER or BACT that is recorded in the nonattainment NSR permit or PSD permit, and subsequently reflected in the Title V permit.

(i) The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT or LAER determination (e.g., possibly the emissions unit's capacity or throughput).

(ii) The clean unit may not emit above a level that has been offset.

(b) The clean unit must comply with any terms and conditions in the Title V permit related to the unit's clean unit designation.

(c) The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

#### (8) Offsets and netting at clean units

Emissions changes that occur at a clean unit must not be included in calculating a significant net emissions increase (that is, must not be used in a netting analysis), or be used for generating offsets unless such use occurs before the effective date of the clean unit designation, or after the clean unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a clean unit. However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, then, the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

#### (9) Effect of redesignation on the clean unit designation

The clean unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if an existing clean unit designation expires, it must re-qualify under the requirements that are currently applicable in the area.

(B) Clean unit provisions for emissions units that achieve an emission limitation comparable to BACT or LAER.

The owner or operator of a major stationary source has the option of using the clean unit test to determine whether emissions increases at a clean unit are part of a NSR project that is a major modification according to the provisions under paragraph (B) of this rule.

(1) Applicability

The provisions of paragraph (B) of this rule apply to emissions units which do not qualify as clean units under paragraph (A) of this rule, but which are achieving a level of emission control comparable to BACT or LAER, as determined by the director in accordance with paragraph (B) of this rule.

(2) General provisions for clean units

The provisions under paragraph (B)(2) of this rule apply to a clean unit (designated under this paragraph (B) of this rule).

- (a) Any NSR project for which the owner or operator begins actual construction after the effective date of the clean unit designation (as determined in accordance with paragraph (B)(5) of this rule) and before the expiration date (as determined in accordance with paragraph (B)(6) of this rule) will be considered to have occurred while the emissions unit was a clean unit.
- (b) If a NSR project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to paragraph (B)(4) of this rule) to be comparable to BACT or LAER, and the NSR project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emission control comparable to BACT or LAER as specified in paragraph (B)(8)(d) of this rule, the emissions unit remains a clean unit.
- (c) If a NSR project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to paragraph (B)(4) of this rule) to be comparable to BACT or LAER, or the NSR project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT or LAER as specified in paragraph (B)(8)(d) of this rule, then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions (unless the unit re-qualifies as a clean unit pursuant to paragraph (B)(3)(d) of this rule). If the owner or operator begins actual construction on the NSR project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

- (d) A NSR project that causes an emissions unit to lose its designation as a clean unit is subject to the applicability requirements of paragraphs (A)(1) to (A)(4) and paragraph (A)(6) of this rule as if the emissions unit were never a clean unit.

(3) Qualifying or re-qualifying to use the clean unit applicability test

An emissions unit qualifies as a clean unit when the unit meets the criteria in paragraphs (B)(3)(a) to (B)(3)(c) of this rule. After the original clean unit designation expires in accordance with paragraph (B)(6) of this rule or is lost pursuant to paragraph (B)(2)(c) of this rule, such emissions unit may re-qualify as a clean unit under either paragraph (B)(3)(d) of this rule, or under the clean unit provisions in paragraph (A) of this rule. To re-qualify as a clean unit under paragraph (B)(3)(d) of this rule, the emissions unit must obtain a new permit issued pursuant to the requirements in paragraphs (B)(7) and (B)(8) of this rule and meet all the criteria in paragraph (B)(3)(d) of this rule. The director will make a separate clean unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a clean unit.

(a) Qualifying air pollution control technologies

Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology (which includes pollution prevention or work practices) that meets both the following requirements under paragraph (B)(3)(a) of this rule.

- (i) The owner or operator has demonstrated that the emissions unit's control technology is comparable to BACT or LAER according to the requirements of paragraph (B)(4) of this rule. However, the emissions unit is not eligible for the clean unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type (e.g., if the BACT or LAER determinations to which it is compared have resulted in a determination that no control measures are required).
- (ii) The owner or operator made an investment to install the control technology.

For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

(b) Impact of emissions from the unit

The director must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality related value (such as visibility) that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(c) Date of installation

An emissions unit may qualify as a clean unit even if the control technology, on which the clean unit designation is based, was installed before October 28, 2004. However, for such emissions units, the owner or operator must apply for the clean unit designation within two years after October 28, 2004. For technologies installed after October 28, 2004, the owner or operator must apply for the clean unit designation at the time the control technology is installed.

(d) Re-qualifying as a clean unit

The emissions unit must obtain a new permit (pursuant to requirements in paragraphs (B)(7) and (B)(8) of this rule) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day BACT or LAER, and the emissions unit must meet the requirements in paragraphs (B)(3)(a)(i) and (B)(3)(b) of this rule.

(4) Demonstrating control effectiveness comparable to BACT or LAER

The owner or operator may demonstrate that the emissions unit's control technology is comparable to BACT or LAER for purposes of paragraph (B)(3)(a) of this rule according to either paragraph (B)(4)(a) or (B)(4)(b) of this rule. Paragraph (B)(4)(c) of this rule specifies the time for making this comparison.

(a) Comparison to previous BACT or LAER determinations

United States environmental protection agency maintains an on-line database of previous determinations of reasonably available control technology (RACT), BACT, and LAER in the RACT/BACT/LAER clearinghouse (RBLC). The emissions unit's control technology is presumed to be comparable to LAER if it achieves an emission limitation that is at least as stringent as any one of the five best-performing similar sources for which a LAER determination has been made within the preceding five years, and for which information has been entered into the RBLC. The emissions unit's control technology is presumed to be comparable to BACT if it achieves an emission limitation that is equal to or better than the average of the emission limitations achieved by all the sources for which a

BACT or LAER determination has been made within the preceding five years and entered into the RBLIC, and for which it is technically feasible to apply the BACT or LAER control technology to the emissions unit. The director shall also compare this presumption to any additional BACT or LAER determinations of which it is aware, and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to BACT or LAER is correct.

(b) The substantially-as-effective test

The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT or LAER. In addition, any other person may present evidence related to whether the control technology is substantially as effective as BACT or LAER during the public participation process required under paragraph (B)(7) of this rule. The director shall consider such evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as BACT or LAER.

(c) Time of comparison

(i) Emissions units with control technologies that are installed before October 28, 2004

The owner or operator of an emissions unit whose control technology is installed before October 28, 2004 may, at its option, either demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT or LAER requirements that applied at the time the control technology was installed, or demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT or LAER requirements. The expiration date of the clean unit designation will depend on which option the owner or operator uses, as specified in paragraph (B)(6) of this rule.

(ii) Emissions units with control technologies that are installed after October 28, 2004

The owner or operator must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT or LAER requirements.

(5) Effective date of the clean unit designation

The effective date of an emissions unit's clean unit designation (that is, the date on which the owner or operator may begin to use the clean unit test to determine whether a NSR project involving the emissions unit is a major modification) is the date that the permit required by paragraph (B)(7) of this rule is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

(6) Clean unit expiration

If the owner or operator demonstrates that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT or LAER requirements that applied at the time the control technology was installed, then the clean unit designation expires ten years from the date that the control technology was installed. For all other emissions units, the clean unit designation expires ten years from the effective date of the clean unit designation, as determined according to paragraph (B)(5) of this rule. In addition, for all emissions units, the clean unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in paragraph (B)(9) of this rule.

(7) Procedures for designating emissions units as clean units

The director shall designate an emissions unit a clean unit only by issuing a permit that conforms with the requirements of this chapter including requirements for public notice of the proposed clean unit designation and opportunity for public comment. Such permit must also meet the requirements in paragraph (B)(8) of this rule.

(8) Required permit content

The permit required by paragraph (B)(7) of this rule shall include the terms and conditions set forth under paragraph (B)(8) of this rule. Such terms and conditions shall be incorporated into the major stationary source's Title V permit in accordance with the provisions of the Chapter 3745-77 of the Administrative Code, but no later than when the Title V permit is renewed.

- (a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant(s) for which this designation applies.
- (b) The effective date of the clean unit designation

If this date is not known when the director issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is known, then the owner or operator must notify the director of the exact date.

This specific effective date must be added to the source's Title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal.

(c) The expiration date of the clean unit designation

If this date is not known when the director issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is known, then the owner or operator must notify the director of the exact date. The expiration date must be added to the source's Title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal.

- (d) All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to BACT or LAER, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emission control comparable to BACT or LAER (e.g., possibly the emissions unit's capacity or throughput).
- (e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its clean unit designation. (See paragraph (B)(9) of this rule.)
- (f) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so, as presented in paragraph (B)(9) of this rule.

(9) Maintaining clean unit designation

To maintain the clean unit designation, the owner or operator must conform to all the restrictions listed under paragraph (B)(9) of this rule. Paragraph (B)(9) of this rule applies independently to each pollutant for which the director has designated the emissions unit a clean unit. That is, failing to conform to the restrictions for one pollutant affects the clean unit designation only for that pollutant.

- (a) The clean unit must comply with the emission limitation(s) and/or work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to BACT or LAER.

- (b) The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to BACT or LAER (e.g., possibly the emissions unit's capacity or throughput).
- (c) The clean unit may not emit above a level that has been offset.
- (d) The clean unit must comply with any terms and conditions in the Title V permit related to the unit's clean unit designation.
- (e) The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(10) Offsets and netting at clean units

Emissions changes that occur at a clean unit must not be included in calculating a significant net emissions increase (that is, must not be used in a netting analysis), or be used for generating offsets, unless such use occurs before October 28, 2004 or after the clean unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a clean unit. However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the emissions unit's new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(11) Effect of redesignation on the clean unit designation

The clean unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if a clean unit's designation expires or is lost pursuant to paragraphs (A)(2)(c) and (B)(2)(c) of this rule, it must re-qualify under the requirements that are currently applicable.

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