

units are typically not implicated. You have the ability to choose the 24-month baseline period that accommodates the integrated operations of this limited set of emissions units. Moreover, the baseline actual emissions are only used as a measure to determine whether a project will trigger major NSR review. It is not used as an enforceable restriction on the ability of the emissions units to operate.

In contrast, setting a PAL involves all of the emissions units at the major stationary source. Selecting a single 24-month period that accommodates the integrated operations of all of these emissions units is more difficult and will often involve emission units that start up or shut down after the baseline period. Moreover, establishing a baseline actual emissions of zero is an unrealistic reflection of how the emissions unit will be operated and could require you to unreasonably restrict operations at the major stationary source to ensure you comply with the PAL.

We also considered but rejected several other approaches. First, we considered requiring you to use the immediately preceding 24 months to establish an average annual emissions rate for such emissions units, or requiring all existing emissions units to follow this approach. However, as discussed in the December 31, 2002 preamble (67 FR 80191), this approach does not account for normal fluctuations in operations and may not be representative of source operations.

We also considered making no adjustments for either shut down emissions units or newly constructed emissions units, but this approach seemed to be least representative of a major stationary source's current operations. And finally, we considered allowing you to select different 24-month periods for each existing emissions unit at the major stationary source or allowing you to select any 24-month period since operations began for the recently constructed emissions units.

We believe that the former approach would unnecessarily complicate the procedures for establishing PALs and allow you to inappropriately maximize source-wide emissions. The latter approach has some advantage in that it provides a measure of past emissions; however, we rejected this approach in favor of using the PTE of the emissions unit. This is because we believe that most emissions units that have been constructed after the baseline period are likely to have undergone major or minor

NSR review.<sup>9</sup> Thus, the PTE of the emissions unit reflects requirements to comply with recent control technology requirements and other emission limitations that are representative of how you intend to actually operate the emissions unit. The past emissions of such emissions units, when measured over a shortened period of time, may not be representative of intended operations.

In view of all of these considerations, we believe that including the PTE of the emissions unit in the PAL baseline is the most appropriate measure of actual operations of such emissions units for the purpose of establishing an enforceable limitation on your operations. We believe such a provision falls within the discussion of PALs in the proposed rule. Nevertheless, we request comment on this approach, the approaches we rejected, and any other method for assessing emissions from these emissions units.

### 3. Elimination of Synthetic Minor Limits [(r)(4) Limits]

A synthetic minor limit is a limit that is included in a permit by a reviewing authority at the request of a source to reduce the potential to emit (PTE) of a facility or emissions unit below a level that would otherwise subject the facility or emissions unit to some regulatory requirement. Such limits are often used by a facility to reduce emissions below a level that would subject a project to the major NSR requirements. (They are also used for similar purposes under other regulatory programs.)

Under the major NSR program, we refer to these emission or operational limitations as (r)(4) limits because provisions relating to these types of restrictions are contained in paragraph (r)(4) of the Federal Prevention of Significant Deterioration (PSD) Program. See 40 CFR 52.21(r)(4). Similar provisions are contained in the requirements for State programs. See 40 CFR 52.165(a)(5)(ii), 51.166(r)(2).

In the December 31, 2002 final rule, we specified that a reviewing authority can eliminate (r)(4) limits for a PAL pollutant if you previously took these limits to avoid major NSR. In the absence of a PAL, relaxation of such

limits would cause you to determine major NSR applicability as if construction had not yet commenced on the new or modified emissions units. See 40 CFR 52.165(a)(5)(ii), 51.166(r)(2), 52.21(r)(4). Under a PAL, such limits may be relaxed or removed without triggering major NSR for the PAL pollutant. 67 FR 80210; 40 CFR 165(f)(1)(iii)(C), 166(w)(1)(ii)(c), 52.21(aa)(1)(ii)(c). The (r)(4) limits do not reappear upon PAL expiration. 67 FR 80209; 40 CFR 51.165(f)(9)(v), 51.166(w)(9)(v), 52.21(aa)(9)(v). Instead, they are reapportioned, along with the PAL, among the existing emissions units. We believe the approach adopted in the final rules reflect the purpose of a PAL, which is to maximize operational flexibility without sacrificing environmental protection.

We view the PAL as the functional substitute for any unit-specific (r)(4) limits that you may have taken to reduce emissions below a level that would subject a project to major NSR requirements. Both the PAL and the (r)(4) limits serve to keep you from triggering major NSR. Emissions from emissions units with (r)(4) limits are incorporated into the PAL at a level that is at or, in most cases, below those limits. Therefore, the PAL is an effective substitute for those limits. More importantly, we believe that removal of these limits is essential to allow you to benefit from the operational flexibility and corresponding environmental benefits that the PAL is intended to provide.

We considered reinstating (r)(4) limits if a PAL expires. However, we rejected this approach because we recognize that you may have made changes to the emissions unit or associated operations, and it may not be practical to return the emissions unit to its pre-PAL operations. Instead, the final rules ensure that the (r)(4) limitations that are incorporated into the PAL continue to play a role after PAL expiration, although not in the same form.

Before a PAL expires, you must submit a proposal for distributing the PAL among individual emissions units or groups of emissions units. The reviewing authority will make the final decision on PAL emissions distribution. Following expiration, you must ensure that the individual emissions units or groups of emissions units comply with their limits as assigned by the reviewing authority. In this way, the emission restrictions associated with an (r)(4) limitation are accounted for after PAL expiration. However, the new emission limitation(s) would not be subject to the requirements of 40 CFR 52.21(r)(4).

<sup>9</sup>In 1997, we conducted an informal review of several State minor NSR programs. While this report is still considered draft, it provides a good overview of the types of requirements contained in many State minor NSR requirements and serves to confirm our belief that many projects that are not subject to major NSR review will be required to comply with requirements under State minor NSR programs. We have included a copy of this draft report in the docket for today's action and invite comment on whether this document accurately reflects State or local requirements.