

I Mina'trentai Sais Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
361-36 (COR)	Sabina Flores Perez	AN ACT TO ADD A NEW ARTICLE 8 TO CHAPTER 1 OF TITLE 22, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO ADOPTING NEW SOURCE REVIEW RULE REQUIREMENTS (NSRR) FOR NEW AND MODIFIED MAJOR SOURCES IN SULFURE DIOXIDE (SO ₂) NONATTAINMENT AREAS TRANSMITTED BY THE GUAM ENVIRONMENTAL PROTECTION AGENCY.	11/15/22 11:26 a.m.						

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session

Bill No. 361-36 (COR)

Introduced by:

Sabina Flores Perez /SFP

AN ACT TO *ADD* A NEW ARTICLE 8 TO CHAPTER 1 OF TITLE 22, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO ADOPTING NEW SOURCE REVIEW RULE REQUIREMENTS (NSRR) FOR NEW AND MODIFIED MAJOR SOURCES IN SULFURE DIOXIDE (SO₂) NONATTAINMENT AREAS TRANSMITTED BY THE GUAM ENVIRONMENTAL PROTECTION AGENCY.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that the Clean Air Act requires compliance with National Ambient Air Quality
4 Standards (NAAQS) for criteria air pollutants which currently includes sulfur
5 dioxide (SO₂), carbon monoxide (CO), nitrogen dioxide (NO₂), Ozone (O₃), Lead
6 (Pb), and Particulate Matter (PM_{2.5} and PM₁₀). Furthermore, those areas not in
7 compliance with and not attaining NAAQS levels are designated by the United
8 States Environmental Protection Agency (USEPA) as nonattainment areas for the
9 particular pollutant(s).

10 *I Liheslatura* further finds that the United States Environmental Protection
11 Agency (USEPA) designated two (2) nonattainment areas on Guam. The Piti-
12 Cabras area of Guam was designated as not attaining the 2010 SO₂ Primary NAAQS
13 on January 9, 2018. The area of nonattainment is a 6.074-kilometer radius area from
14 a point between Units 1 and 2 and Units 3 and 4 of the Guam Power Authority (GPA)

1 Cabras Station. The other nonattainment area is a 3.5 kilometer or 2.2 mile radius
2 area from the Tanguisson power plant, although the plant is no longer operating.

3 *I Liheslatura* further finds that the Guam Environmental Protection Agency
4 (GEPA) must prepare a State Implementation Plan (SIP) revision to show attainment
5 of the standard within five (5) years of the effective designation date. Furthermore,
6 the adoption of the proposed New Source Review Rule Requirements (NSRR) is part
7 of the requirements of the SIP Revision.

8 *I Liheslatura* finds, as required by Part D of the Clean Air Act, that Guam is
9 required to show that it is in attainment by the year 2023. To this end, GEPA has
10 completed the baseline emissions inventory for 2020. In 2020, the emission
11 inventory for SO₂ for Guam was 9197.04 tons. The estimated emissions inventory
12 for SO₂ in 2023 is 3.336 tons - a reduction of 9,193.704 tons per year of SO₂. Once
13 the Guam Power Authority has commissioned the new combined cycle power plant
14 and decommissioned Cabras 1 and 2, Guam will be in full attainment for the 2010
15 SO₂ NAAQS.

16 *I Liheslatura* finds that Guam does not have local rules or regulations for the
17 review of new major sources and major source modifications in nonattainment areas.
18 Currently, USEPA conducts all reviews of new major sources or modifications to
19 major sources in attainment and nonattainment areas. Guam EPA administers an
20 approved air pollution control program under 40 CFR Part 69. As a requirement of
21 Part D of the Clean Air Act, Guam is required to promulgate and adopt a new local
22 SO₂ major source or major source modification nonattainment area NSRR.

23 *I Liheslatura* further finds that the NSRR will not increase the cost to the
24 regulated community, but it will shift the application payments from USEPA to
25 Guam EPA. Upon adoption of the NSRR, Guam EPA will accept all payments for
26 new major source and major modifications to major sources in SO₂ nonattainment
27 areas in Guam.

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- 4 § 1807. Public Participation.
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- 6 § 1809. Sulfur Oxides From Fuel Combustion.
- 7 § 1810. Invalidation.
- 8 § 1811. Effective Date for Referenced Federal Regulations.

9 **§ 1800. Applicability Procedures.**

10 **§ 1800.1. Preconstruction Review Requirements.**

11 (a) The preconstruction review requirements of this rule apply to the
12 proposed construction of any new major stationary source or major modification in
13 Guam that is major for a nonattainment pollutant, if the stationary source or
14 modification is located anywhere in the designated nonattainment area, except:

- 15 (1) as provided in §1809 of this rule; and
- 16 (2) this rule’s provisions requiring the application of the lowest
17 achievable emission rate (LAER) and offsets do not apply for purposes of the
18 1971 sulfur dioxide SO₂ NAAQS with respect to electric generating units in
19 the Piti nonattainment area for the 1971 SO₂ NAAQS, while this rule’s
20 provisions requiring the application of LAER and offsets do apply to such
21 units for purposes of the 2010 SO₂ NAAQS.

22 (b) Sources subject to this rule may also be subject to other GEPA rules
23 and regulations. For purposes of the implementation and enforcement of this rule,
24 the provisions and requirements of this rule, including, but not limited to, the
25 requirements for obtaining a nonattainment major NSR permit, application submittal
26 and content, conditional approval, public participation, and granting a nonattainment
27 major NSR permit, shall take precedence over any other such provisions and
28 requirements in other GEPA rules and regulations. To the extent that other GEPA

1 rules or regulations may affect the stringency or applicability of this rule, such other
2 rules and regulations shall not apply for purposes of the implementation or
3 enforcement of this rule.

4 **§ 1800.2. Nonattainment Major NSR Permit Requirement.**

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

9 **§ 1800.3. Emission Calculation Requirements to Determine NSR**
10 **Applicability.**

11 (a) New Major Stationary Sources. The definition of Major
12 Stationary Source as incorporated by reference in § 1802 shall be used to
13 determine if a new or modified stationary source is a new major stationary
14 source.

15 (b) Major Modifications. The provisions set out in Subsections (1)
16 through (5) of this Section shall be used to determine if a proposed project
17 will result in a major modification. These provisions shall not be used to
18 determine the quantity of offsets required for a project subject to the
19 requirements of this rule.

20 (1) Except as otherwise provided in § 1800.4, a project is a
21 major modification for a nonattainment pollutant if it causes two (2)
22 types of emissions increases: a significant emissions increase and a
23 significant net emissions increase. The project is not a major
24 modification if it does not cause a significant emissions increase. If the
25 project causes a significant emissions increase, then the project is a
26 major modification only if it also results in a significant net emissions
27 increase.

1 (2) The procedure for calculating (before beginning actual
2 construction) whether a significant emissions increase will occur
3 depends upon the type of emissions units being added or modified as
4 part of the project, according to Subsections (3) through (5) of this
5 Section. The procedure for calculating (before beginning actual
6 construction) whether a significant net emissions increase will occur at
7 the major stationary source is contained in the definition of *Net*
8 *Emissions Increase*. Regardless of any such preconstruction
9 projections, a major modification results if the project causes a
10 significant emissions increase and a significant net emissions increase.

11 (3) Actual-to-Projected-Actual Applicability Test for Projects
12 that Only Involve Existing Emissions Units. A significant emissions
13 increase of a nonattainment pollutant is projected to occur if the sum of
14 the difference between the Projected Actual Emissions and the baseline
15 actual emissions, for each existing emissions unit, equals or exceeds the
16 significant amount for that pollutant.

17 (4) Actual-to-Potential Test for Projects that Only Involve
18 Construction of a New Emissions Unit(s). A significant emissions
19 increase of a nonattainment pollutant is projected to occur if the sum of
20 the difference between the potential to emit from each new emissions
21 unit following completion of the project and the baseline actual
22 emissions of these units before the project equals or exceeds the
23 significant amount for that pollutant.

24 (5) Hybrid Test for Projects that Involve Multiple Types of
25 Emissions Units. A significant emissions increase of a nonattainment
26 pollutant is projected to occur if the sum of the emissions increases for
27 each emissions unit, using the method specified in Subsections (3) or

1 (4) of this Section, as applicable, with respect to each emissions unit,
2 equals or exceeds the significant amount for that pollutant.

3 **§ 1800.4. Major Sources with Plant-Wide Applicability Limitations**
4 **(PAL).**

5 For any major stationary source with a PAL permit for a nonattainment
6 pollutant, the major stationary source shall comply with the requirements in § 1809
7 of this rule.

8 **§ 1800.5. Projects That Rely on a Projected Actual Emissions Test.**

9 Except as otherwise provided in Subsection (g)(3) of this Section, the
10 provisions of this Section shall apply with respect to any nonattainment pollutant
11 that is emitted from projects at existing emissions units located at a major stationary
12 source, other than a source with a PAL permit, when there is a reasonable possibility,
13 within the meaning of Subsection (g) of this Section, that a project that is not a part
14 of a major modification may result in a significant emissions increase of such
15 pollutant, and the owner or operator elects to use the method specified in paragraphs
16 (B)(1) through (B)(3) of the definition of Projected Actual Emissions to calculate
17 *Projected Actual Emissions* [40 CFR 51.165(a)(xxviii)(A)].

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

20 (1) a description of the project;

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

23 (3) a description of the applicability test used to determine that
24 the project is not a major modification for any regulated NSR pollutant,
25 including the baseline actual emissions, the *Projected Actual*
26 *Emissions*, the amount of emissions excluded under paragraph (B)(3)
27 of the definition of *Projected Actual Emissions* [40 CFR

1 51.165(a)(xxviii)(A)] and an explanation for why such amount was
2 excluded, and any netting calculations, if applicable.

3 (b) If the emissions unit is an existing emissions unit, before
4 beginning actual construction, the owner or operator shall provide a copy of
5 the information set out in Subsection (a) of this Section to the GEPA
6 Administrator. The owner or operator shall be subject to the requirements of
7 other GEPA rules and regulations and other applicable requirements.

8 (c) The owner or operator shall monitor the emissions of any
9 regulated NSR pollutant that could increase as a result of the project and that
10 are emitted by any emissions unit identified in Subsection (a)(2) of this
11 Section; and calculate and maintain a record of the annual emissions, in tons
12 per year (tpy), on a calendar year basis as long as the emission unit is in
13 operation and has not been decommissioned.

14 (d) If the emissions unit is an existing electric utility steam
15 generating unit, the owner or operator shall submit a report to the GEPA
16 Administrator within sixty (60) days after the end of each calendar year during
17 which records must be generated under Subsection (c) of this Section, setting
18 out the unit's annual emissions during the calendar year that preceded
19 submission of the report.

20 (e) If the emissions unit is an existing emissions unit other than an
21 electric utility steam generating unit, the owner or operator shall submit a
22 report to the GEPA Administrator if the annual emissions, in tpy, from the
23 project identified in Subsection (a)(2) of this Section exceed the baseline
24 actual emissions by a significant amount for that regulated NSR pollutant, and
25 if such emissions differ from the Projected Actual Emissions (prior to
26 exclusion of the amount of emissions specified under paragraph (B)(3) of the
27 definition of *Projected Actual Emissions* [40 CFR 51.165(a)(xxviii)(A)] as
28 documented and maintained pursuant to Subsection (a)(3) of this Section.

1 Such report shall be submitted to the GEPA Administrator within sixty (60)
2 days after the end of such year. The report shall contain the following:

3 (1) the name, address, and telephone number of the
4 major stationary source;

5 (2) the annual emissions, as calculated pursuant to
6 Subsection (c) of this Section; and

7 (3) any other information that the owner or operator
8 wishes to include in the report (e.g., an explanation as to why
9 the emissions differ from the preconstruction projection).

10 (f) The owner or operator of the source shall make the information
11 required to be documented and maintained pursuant to this Section available
12 for review upon a request for inspection by the GEPA Administrator pursuant
13 to the requirements contained in § 1207 of this Chapter.

14 (g) A “reasonable possibility” under this Section occurs when the
15 owner or operator calculates the project to result in either:

16 (1) a projected actual emissions increase of at least fifty
17 percent (50%) of the amount that is a “significant emissions
18 increase,” as defined in this rule (without reference to the amount
19 that is a significant net emissions increase), for the regulated
20 NSR pollutant; or

21 (2) a projected actual emissions increase that, added to
22 the amount of emissions excluded under paragraph (B)(3) of the
23 definition of *Projected Actual Emissions* [40 CFR
24 51.165(a)(xxviii)(A)] sums to at least fifty percent (50%) of the
25 amount that is a “significant emissions increase,” as defined in
26 this rule (without reference to the amount that is a significant net
27 emissions increase), for the regulated NSR pollutant.

1 (3) For a project in which a reasonable possibility
2 occurs only within the meaning of Subsection (g)(2), and not also
3 within the meaning of Subsection (g)(1), the provisions of
4 Subsections (b) through (e) of this Section do not apply to the
5 project.

6 **§ 1800.6. Secondary Emissions.**

7 Secondary emissions shall not be considered in determining whether a
8 stationary source would qualify as a major stationary source. If a stationary source
9 is subject to this rule on the basis of direct emissions from the stationary source, the
10 requirements of §1804 must also be met for secondary emissions.

11 **§ 1800.7. Stationary Sources.**

12 For purposes of this rule, the term stationary source does not refer to the source
13 of emissions resulting directly from an internal combustion engine for transportation
14 purposes or from a nonroad engine or nonroad vehicle as defined in §216 of the
15 Clean Air Act.

16 **§ 1800.8. Environmental Protection Agency Determination.**

17 Notwithstanding any other requirements of this rule governing the issuance of
18 a nonattainment major NSR permit, the GEPA Administrator shall not issue a
19 nonattainment major NSR permit to a new major stationary source or major
20 modification subject to the requirements of this rule if the federal Environmental
21 Protection Agency has determined that the SIP is not being adequately implemented
22 for the nonattainment area in which the proposed source is to be constructed or
23 modified in accordance with the requirements of Title I, Part D of the Clean Air Act.

24 **§ 1801. Definitions.**

25 For the purposes of this rule, the definitions provided in Subsections (a), (b),
26 and (c) of this Section apply to the terms used in this rule. In the event of any
27 discrepancy between the definitions specified in Subsections (a), (b), and (c) of this
28 Section, the definition in the Subsections that is listed first shall control.

1 (a) The definitions contained in 40 CFR 51.165(a)(1) shall apply,
2 and are hereby incorporated by reference, with the exception of the definitions
3 of “Building, structure, facility, or installation” and of “Reviewing authority”,
4 which has the meaning specified in Subsection (b) of this Section.

5 (b) The following definitions shall also apply:

6 (1) Building, structure, facility, or installation means all of the
7 pollutant-emitting activities which belong to the same industrial
8 grouping, are located on one or more contiguous or adjacent properties,
9 and are under the control of the same person (or persons under common
10 control) except the activities of any vessel, unless the vessel is ported
11 for electrical generation for on-shore use or consumption. Pollutant
12 emitting activities shall be considered as part of the same industrial
13 grouping if they belong to the same *Major Group* (*i.e.*, which have the
14 same two-digit code) as described in the *Standard Industrial*
15 *Classification Manual, 1972*, as amended by the 1977 Supplement (U.S.
16 Government Printing Office stock numbers 4101-0065 and 003-005-
17 00176-0, respectively).

18 (2) “Clean Air Act (CAA)” means the federal Clean Air Act,
19 42 U.S.C. 7401 et seq., as amended.

20 (3) “Complete” means, in reference to an application, which
21 contains all of the information necessary for processing.

22 (4) “Emission reduction” means reductions of actual
23 emissions from emissions units.

24 (5) “GEPA” means the Guam Environmental Protection
25 Agency.

26 (6) “GEPA Administrator” means the Administrator of the
27 Guam Environmental Protection Agency or such Administrator's
28 designee.

1 (7) “Internal emission reductions” means emission reductions
2 which have occurred or will occur at the same major stationary source
3 where the proposed emissions increase will occur.

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

7 (9) “Nonattainment pollutant” means any regulated NSR
8 pollutant for which Guam, or a portion of Guam, has been designated
9 as nonattainment, as codified in 40 CFR 81.353, as well as any
10 precursor of such regulated NSR pollutant specified in 40 CFR
11 51.165(a)(1)(xxxvii)(C).

12 (10) “Permanent” means an emission reduction which is
13 federally enforceable for the life of a corresponding increase in
14 emissions.

15 (11) “Reviewing authority” means the GEPA Administrator.

16 (12) “Shutdown” means the cessation of operation of any air
17 pollution control equipment or process equipment for any purpose.

18 (13) “Startup” means the setting into operation of any air
19 pollution control equipment or process equipment for any purpose
20 except routine phasing in of process equipment.

21 (14) “State Implementation Plan (SIP)” means the State
22 Implementation Plan approved or promulgated for Guam under §110
23 or 172 of the Clean Air Act.

24 (15) “Surplus” means the amount of emission reductions that
25 are, at the time of use of an emission reduction, not otherwise required
26 by federal or Guam law, not required by any legal settlement or consent
27 decree, and not relied upon to meet any requirement related to the Guam
28 State Implementation Plan (SIP). Examples of federal and Guam laws,

1 and SIP-related requirements, include, but are not limited to, the
2 following:

3 (A) the federally-approved Guam SIP;

4 (B) other adopted Guam air quality laws and regulations
5 not in the SIP, including, but not limited to, any requirement,
6 regulation, or measure that: (1) Guam has included on a legally
7 required and publicly available list of measures that are
8 scheduled for adoption by Guam in the future; or (2) is the
9 subject of a public notice distributed by Guam regarding an intent
10 to adopt such revision;

11 (C) any other source or source-category specific
12 regulatory or permitting requirement, including, but not limited
13 to, Reasonable Available Control Technology (RACT), New
14 Source Performance Standards (NSPS), National Emission
15 Standards for Hazardous Air Pollutants (NESHAP), Best
16 Available Control Measures (BACM), Best Available Control
17 Technology (BACT), and Lowest Achievable Emission Rate
18 (LAER); and

19 (D) any regulation or supporting documentation that is
20 required by the Federal Clean Air Act, but is not contained or
21 referenced in 40 CFR Part 52, including, but not limited to:
22 assumptions used in attainment and maintenance demonstrations
23 (including Reasonable Further Progress demonstrations and
24 milestone demonstrations), including any proposed control
25 measure identified as potentially contributing to an enforceable
26 near-term emission reduction commitment; assumptions used in
27 conformity demonstrations; and assumptions used in emissions
28 inventories.

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

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

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

8 **§ 1802. Application Requirements.**

9 **§ 1802.1. Application Submittal.**

10 The owner or operator of any proposed new major stationary source or major
11 modification required to obtain a nonattainment major NSR permit pursuant to this
12 rule shall submit a complete, true, and correct application to obtain a nonattainment
13 major NSR permit to the GEPA Administrator, and include in the application
14 submittal the information listed in § 1803.2, as well as the demonstrations listed in
15 §§1803.3-1803.5. Designating an application complete for purposes of permit
16 processing does not preclude the GEPA Administrator from requesting or accepting
17 any additional information.

18 **§ 1802.2. Application Content.**

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

22 (a) Identification of the applicant, including contact information.

23 (b) Identification of address and location of the new or modified
24 source.

25 (c) An identification and description of all emission points,
26 including information regarding all regulated NSR pollutants emitted by all
27 emissions units included in the new source or modification.

1 (d) A process description of all activities, including design capacity,
2 which may generate emissions of regulated NSR pollutants in sufficient detail
3 to establish the basis for the applicability of standards and fees.

4 (e) A projected schedule for commencing construction and
5 operation for all emissions units included in the new source or modification.

6 (f) A projected operating schedule for each emissions unit included
7 in the new source or modification.

8 (g) A determination as to whether the new source or modification
9 will result in any secondary emissions.

10 (h) The emission rates of all regulated NSR pollutants, including
11 fugitive and secondary emission rates, if applicable. The emission rates must
12 be described in tpy and for such shorter term rates as are necessary to establish
13 compliance using the applicable standard reference test method or other
14 methodology specified (i.e., grams/liter, ppmv or ppmw, lbs/MMBtu).

15 (i) The calculations on which the emission rate information is based,
16 including fuel specifications, if applicable, and any other assumptions used in
17 determining the emission rates (e.g., HHV, sulfur content of natural gas).

18 (j) The calculations, pursuant to §1800.3, used to determine
19 applicability of this rule, including the emission calculations (increases or
20 decreases) for each project that occurred during the contemporaneous period.

21 (k) The calculations, pursuant to §1804.3 (offset), used to determine
22 the quantity of offsets required for the new source or modification.

23 (l) Identification of existing emission reduction credits or
24 identification of internal emission reductions, including related emission
25 calculations and proposed permit modifications required to ensure emission
26 reductions meet the offset integrity criteria of being real, surplus, quantifiable,
27 permanent and federally enforceable or enforceable as a practical matter.

1 (m) If applicable, a description of how performance testing will be
2 conducted, including test methods and a general description of testing
3 protocols.

4 **§ 1802.3. Lowest Achievable Emission Rate (LAER).**

5 The applicant shall submit an analysis demonstrating that LAER has been
6 proposed for each emissions unit included in the new major stationary source or
7 major modification that emits a nonattainment pollutant for which the new stationary
8 source or modification is classified as major.

9 **§ 1802.4. Certification of Compliance.**

10 The applicant shall submit a certification that each existing major stationary
11 source owned or operated by the applicant (or any entity controlling, controlled by,
12 or under common control with the applicant) in Guam is in compliance with all
13 applicable emission limitations and standards under the CAA or is in compliance
14 with an expeditious compliance schedule which is federally enforceable.

15 **§ 1802.5. Analysis of Alternatives.**

16 The applicant shall submit an analysis of alternative sites, sizes, production
17 processes, and environmental control techniques for the proposed source that
18 demonstrates the benefits of the proposed source significantly outweigh the
19 environmental and social costs imposed as a result of its location, construction, or
20 modification.

21 **§ 1802.6. Application Fees.**

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

24 **§ 1803. Emissions Offsets.**

25 **§ 1803.1. Offset Requirements.**

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

1 (b) Emission reductions from one or more sources may be used, alone or
2 in combination with internal emission reductions, in order to satisfy offset
3 requirements.

4 (c) Emissions reductions achieved by shutting down an existing emissions
5 unit or curtailing production or operating hours may only be credited for offsets if
6 such reductions are surplus, permanent, quantifiable, and federally enforceable; and

7 (d) The shutdown or curtailment occurred after the last day of the base year
8 for the attainment plan for the specific pollutant; or

9 (e) The projected emissions inventory used to develop the attainment plan
10 explicitly includes the emissions from such previously shutdown or curtailed
11 emissions units. However, in no event may credit be given for shutdowns that
12 occurred before August 7, 1977.

13 **§ 1803.2. Timing.**

14 (a) Internal emission reductions used to satisfy an offset requirement must
15 be federally enforceable prior to the issuance of the nonattainment major NSR
16 permit, which relies on the emission reductions.

17 (b) Except as provided by Subsection (c) of this Section, the decrease in
18 actual emissions used to generate emission reductions or internal emission
19 reductions must occur no later than the commencement of operation of the new or
20 modified major stationary source.

21 (c) Where the new emissions unit is a replacement for an emissions unit
22 that is being shut down in order to provide the necessary offsets, the GEPA
23 Administrator may allow up to one hundred eighty (180) calendar days for
24 shakedown or commissioning of the new emissions unit before the existing
25 emissions unit is required to cease operation.

26 **§ 1803.3. Quantity.**

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

1 (a) The unit of measure for offsets, emission reductions, and internal
2 emission reductions shall be tpy. All calculations and transactions shall use
3 emission rate values rounded to the nearest one one-hundredth (0.01) tpy.

4 (b) The quantity of emission reductions or internal emission
5 reductions required shall be calculated as the product of the amount of
6 increased emissions, as determined in accordance with Subsection (c) of this
7 Section, and the offset ratio, as determined in accordance with Subsection (d)
8 of this Section.

9 (c) The amount of increased emissions shall be determined as
10 follows:

11 (1) When the offset requirement is triggered by the
12 construction of a new major stationary source, the amount of increased
13 emissions shall be the sum of the potential to emit of all emissions units.

14 (2) When the offset requirement is triggered by a major
15 modification of an existing major stationary source, the amount of
16 increased emissions shall be the sum of the differences between the
17 allowable emissions after the modification and the actual emissions
18 before the modification for each emissions unit.

19 (3) The amount of increased emissions includes fugitive
20 emissions.

21 (d) An offset ratio of 1:1 shall be used for each pound of SO₂
22 permitted to be emitted.

23 **§ 1803.4. Emission Reduction Requirements.**

24 (a) Internal emission reductions or emission reductions used to satisfy an
25 offset requirement shall be:

26 (1) real, surplus, permanent, quantifiable, and federally enforceable;
27 and

1 (2) surplus at the time of issuance of the nonattainment major NSR
2 permit containing the offset requirements.

3 (b) Permitted sources whose emission reductions are used to satisfy offset
4 requirements must appropriately amend or cancel their nonattainment major NSR
5 permit or other air pollution control permit, where applicable, to reflect their newly
6 reduced potential to emit, including practicably enforceable conditions to limit their
7 potential to emit.

8 (c) Emission reductions must be obtained from the same nonattainment
9 area.

10 (d) The use of emission reductions shall not provide:

11 (1) authority for, or the recognition of, any pre-existing vested right
12 to emit any regulated NSR pollutant;

13 (2) authority for, or the recognition of, any rights that would be
14 contrary to applicable law; or

15 (3) an exemption to a stationary source from any emission
16 limitations established in accordance with federal or Guam laws, rules, and
17 regulations.

18 **§ 1803.5. Restrictions on Trading Pollutants.**

19 The emission offsets obtained shall be for the same regulated NSR pollutant.

20 **§ 1804. Administrative Requirements.**

21 **§ 1804.1. Ambient Air Quality Standards.**

22 The GEPA Administrator may require the use of an air quality model to
23 estimate the effects of a new or modified stationary source. The analysis shall
24 estimate the effects of the new or modified stationary source, and verify that the new
25 or modified stationary source will not prevent or interfere with the attainment or
26 maintenance of any ambient air quality standard. In making this determination, the
27 GEPA Administrator shall take into account the mitigation of emissions through
28 offsets pursuant to this rule, and the impacts of transported pollutants on downwind

1 pollutant concentrations. The GEPA Administrator may impose, based on an air
2 quality analysis, offset ratios greater than the requirements of Subsection (d) of §
3 1803.3.

4 **§ 1804.2. Air Quality Models.**

5 (a) All required estimates of ambient concentrations, pursuant to this rule,
6 shall be based on the applicable air quality models, databases, and other
7 requirements specified in 40 CFR Part 51, Appendix W (“Guideline on Air Quality
8 Models”).

9 (b) Where an air quality model specified in 40 CFR Part 51, Appendix W,
10 is inappropriate, the model may be modified or another model substituted on written
11 request to the Administrator. Methods such as those outlined in the "Workbook for
12 the Comparison of Air Quality Models" (U.S. Environmental Protection Agency,
13 Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711,
14 May 1978) may be used to determine the comparability of air quality models.
15 Written approval from the USEPA and GEPA must be obtained for any modification
16 or substitution. In addition, use of a modified or substituted model must be subject
17 to public notification and the opportunity for public comment pursuant to §1419 of
18 this Chapter.

19 **§ 1804.3. Stack Height Procedures.**

20 The degree of emission limitation required of any source for control of any air
21 pollutant must not be affected by so much of any source's stack height that exceeds
22 good engineering practice (GEP) or by any other dispersion technique, except as
23 provided in 40 CFR 51.118(b). For the purposes of this Section, the definitions in 40
24 CFR 51.100 shall apply.

25 (a) Before the GEPA Administrator issues a nonattainment major
26 NSR permit under this rule to a source with a stack height that exceeds GEP
27 stack height, the Control Officer shall notify the public of the availability of
28 the demonstration study and provide opportunity for a public hearing.

1 (b) Any field study or fluid model used to demonstrate GEP stack
2 height and any determination concerning excessive concentration must be
3 approved by the EPA and the GEPA Administrator prior to any emission limit
4 being established.

5 (c) The provisions of §1805.3 do not restrict, in any manner, the
6 actual stack height of any stationary source or facility.

7 **§ 1805. Nonattainment Major NSR Permit – Decision.**

8 **§ 1805.1. Preliminary Decision.**

9 Following acceptance of an application as complete, the GEPA Administrator
10 shall perform the evaluations required to determine if the proposed new major
11 stationary source or major modification will comply with all applicable GEPA,
12 Guam, and federal rules, regulations, or statutes, including, but not limited to, the
13 requirements under §1803 of this rule, and shall make a preliminary written decision
14 as to whether a nonattainment major NSR permit should be approved, conditionally
15 approved, or denied. The decision shall be supported by a succinct written analysis.
16 The decision shall be based on the requirements in force on the date the application
17 is deemed complete, except when a new federal requirement, not yet incorporated
18 into this rule, applies to the new or modified source.

19 **§ 1805.2. Nonattainment Major NSR Permit – Preliminary Decision**
20 **Requirements.**

21 (a) Prior to issuance of a preliminary written decision to issue a
22 nonattainment major NSR permit for a new major stationary source or major
23 modification, the GEPA Administrator shall determine:

24 (1) that each emissions unit(s) that constitutes the new source or
25 modification will not violate any applicable requirement of the Guam SIP;
26 and

1 (2) that the emissions from the new or modified stationary source
2 will not interfere with the attainment or maintenance of any applicable
3 national ambient air quality standard; and

4 (3) that the emission limitation for each emissions unit that
5 constitutes the new source or modification specifies LAER for such units. If
6 the GEPA Administrator determines that technological or economic
7 limitations on the application of measurement methodology to a particular
8 class of sources would make the imposition of an enforceable numerical
9 emission standard infeasible, the GEPA Administrator may instead prescribe
10 a design, operational, or equipment standard. In such cases, the GEPA
11 Administrator shall make his/her best estimate as to the emission rate that will
12 be achieved and must specify that rate in the application review documents.
13 Any nonattainment major NSR permit issued without an enforceable
14 numerical emission standard must contain enforceable conditions which
15 ensure that the design characteristics or equipment will be properly
16 maintained or that the operational conditions will be properly performed to
17 continuously achieve the assumed degree of control. Such conditions shall be
18 enforceable as emission limitations by private parties under §304 of the CAA.
19 The term “emission limitation” shall also include such design, operational, or
20 equipment standards; and

21 (4) the quantity of emission reductions or internal emission
22 reductions required to offset the new source or modification, pursuant to
23 §1804.3; and

24 (5) that all emission reductions or internal emission reductions
25 required for the new source or modification have been identified and have
26 been made federally enforceable or legally and practicably enforceable; and

1 (6) that the quantity of emission reductions or internal emission
2 reductions determined under Subsection (b) of §1804.3 will be surrendered
3 prior to commencing operation.

4 (b) Temporary sources and emissions resulting from the construction phase
5 of a new source are exempt from Subsections (a)(4), (a)(5) and (a)(6) of this Section.

6 **§ 1805.3. Nonattainment Major NSR Permit Contents.**

7 (a) A nonattainment major NSR permit for a new major stationary source
8 or major modification shall contain terms and conditions:

9 (1) which ensure compliance with all applicable requirements and
10 which are enforceable as a legal and practical matter; and

11 (2) sufficient to ensure that the major stationary source or major
12 modification will achieve LAER in accordance with Subsections (b) and (c)
13 of this Section.

14 (b) A new major stationary source shall achieve LAER for each
15 nonattainment pollutant for which the source is classified as major.

16 (c) A major modification shall achieve LAER for each nonattainment
17 pollutant for which the modification would result in a significant net emissions
18 increase. This requirement applies to each proposed emissions unit at which a net
19 emissions increase in the nonattainment pollutant would occur as a result of a
20 physical change, or change in the method of operation of the emissions unit.

21 **§ 1805.4. Nonattainment Major NSR Permit – Final Decision.**

22 (a) Prior to making a final decision to issue a nonattainment major
23 NSR permit for a new major stationary source or major modification, the
24 GEPA Administrator shall consider all written comments that are submitted
25 within thirty (30) days of public notification and all comments received at any
26 public hearing(s) in making a final determination on the approvability of the
27 application and the appropriate nonattainment major NSR permit conditions.
28 The GEPA Administrator shall make all comments available, including the

1 GEPA Administrator’s response to the comments, for public inspection in the
2 same locations where the GEPA Administrator made preconstruction
3 information relating to the proposed source or modification available as per
4 the requirements of §1808.

5 (b) The GEPA Administrator shall deny any application for a
6 nonattainment major NSR permit if the GEPA Administrator finds the new
7 source or modification would not comply with the standards and requirements
8 set forth in GEPA or federal rules or regulations.

9 (c) The GEPA Administrator shall make a final decision whether to
10 issue or deny the nonattainment major NSR permit after determining that the
11 nonattainment major NSR permit will or will not ensure compliance with all
12 applicable emission standards and requirements.

13 (d) The GEPA Administrator shall notify the applicant in writing of
14 the final decision and make such notification available for public inspection
15 at the same location where the GEPA Administrator made preconstruction
16 information and public comments relating to the source available.

17 **§ 1805.5. Ongoing Permit Requirements.**

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

23 **§ 1805.6. Technology Clearinghouse.**

24 Within thirty (30) days of the issuance of any permit under this rule, the GEPA
25 Administrator shall submit control technology information from the permit to the
26 USEPA Administrator for the purposes listed in § 173(d) of the CAA.

27 **§ 1806. Source Obligations.**

28 **§ 1806.1. Enforcement.**

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

6 **§ 1806.2. Termination.**

7 Approval to construct shall terminate if construction is not commenced within
8 eighteen (18) months after receipt of such approval, if construction is discontinued
9 for a period of eighteen (18) months or more, or if construction is not completed
10 within a reasonable time. The GEPA Administrator may extend the eighteen (18)-
11 month period upon a satisfactory showing of good cause why an extension is
12 justified. This provision does not apply to the time period between construction of
13 the approved phases of a phased construction project; each phase must commence
14 construction within eighteen (18) months of the projected and approved
15 commencement date.

16 **§ 1806.3. Compliance.**

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

20 **§ 1806.4. Relaxation in Enforceable Limitations.**

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

27 **§ 1807. Public Participation.**

1 After the GEPA Administrator has made a preliminary written decision to
2 issue a nonattainment major NSR permit for a new major stationary source or major
3 modification, as specified in §§1806.1 and 1806.2, the GEPA Administrator shall:

4 (a) Publish, in at least one newspaper of general circulation in Guam,
5 a notice stating the preliminary decision of the GEPA Administrator, noting
6 how pertinent information can be obtained, including how the public can
7 access the information specified in §1808(b), and inviting written public
8 comment for a thirty (30)-day period following the date of publication. The
9 notice shall include the time and place of any hearing that may be held,
10 including a statement of procedure to request a hearing (unless a hearing has
11 already been scheduled).

12 (b) No later than the date the notice of the preliminary written
13 determination is published, make available in at least one location, a copy of
14 all materials the applicant submitted, a copy of the preliminary decision, a
15 copy of the proposed nonattainment major NSR permit and a copy or
16 summary of other materials, if any, considered in making the preliminary
17 written decision.

18 (c) Send a copy of the notice of public comment to the applicant,
19 EPA Region 9, any persons requesting such notice, and any other interested
20 parties such as: the Mayor of the village where the source would be located;
21 the Guam Land Use Commission, and any federal land manager whose lands
22 may be affected by emissions from the source or modification.

23 (d) Provide opportunity for a public hearing for persons to appear
24 and submit written or oral comments on the air quality impact of the source,
25 alternatives to it, the control technology required, and other appropriate
26 considerations, if in the GEPA Administrator's judgment such a hearing is
27 warranted. The GEPA Administrator shall give notice of any public hearing
28 at least thirty (30) days in advance of the hearing.

1 **§ 1808. Plant-Wide Applicability Limits (PAL).**

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

6 **§ 1809. Sulfur Oxides from Fuel Combustion.**

7 (a) Notwithstanding any other provision of law, rule, or administrative
8 policy or waiver, effective July 31, 2022, no person shall burn fossil fuel containing
9 in excess of 15 parts per million (ppm) or 0.0015% percent sulfur by weight except
10 for fuel used in ocean-going vessels and the Cabras Power Plants 1 and 2. Ocean-
11 going vessels that supply electrical power for onshore use or consumption shall not
12 burn fossil fuel for electrical generation containing in excess of 15 ppm or 0.0015%.

13 (b) Effective December 31, 2022, the Cabras Power Plants 1 and 2 shall
14 not burn any fossil fuel containing an excess of 2000 ppm or .2% of sulfur by weight.
15 After the closure and decommissioning of the Cabras Power Plants 1 and 2, no
16 person shall burn fossil fuel containing in excess of 15 part per million (ppm) or
17 0.0015% percent sulfur by weight except for fuel used in ocean-going vessels.

18 **§ 1810. Invalidation.**

19 If any provision of this rule or the application of such provision to any person
20 or circumstance is held invalid, the remainder of this rule or the application of such
21 provision to persons or circumstances other than those as to which it is held invalid,
22 shall not be affected thereby.

23 **§ 1811. Effective Date for Referenced Federal Regulations.**

24 All references and citations in this rule to Title 40 of the Code of Federal
25 Regulations (CFR) refer to the referenced federal regulation as in effect on October
26 17, 2022.”

27 **Section 3. Effective Date.** This Act shall be effective upon enactment.

1 **Section 4. Severability.** If any provision of this Act or its application to any
2 person or circumstance is found to be invalid or contrary to law, such invalidity shall
3 not affect other provisions or applications of this Act which can be given effect
4 without the invalid provisions or application, and to this end the provisions of this
5 Act are severable.