

COMPARISON OF LANGUAGE IN 19.903(B)–(C) AND 19.904(G) TO CORRESPONDING 40 CFR 52.21 LANGUAGE
FOR SUBJECT TO REGULATION AND REGULATED NSR POLLUTANT

Regulation 19 Language	CFR Language	Comments
<p>Reg. 19.903(C) <u>For the purpose of this chapter</u>, “subject to regulation” means, for any air pollutant, that the pollutant is subject to either a provision <u>of</u> the <u>federal</u> Clean Air Act, or a nationally applicable regulation codified by the Administrator <u>pursuant to 40 C.F.R., Chapter 1</u>, Subchapter C <u>and adopted herein</u>, that requires actual control of the quantity of emissions of that pollutant and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity.</p>	<p>49 CFR 52.21(b)(49) Subject to regulation means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of this chapter, that requires actual control of the quantity of emissions of that pollutant; and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:</p>	<p>No apparent substantive differences. The “except that” provisions under (b)(49) are found in 19.904(G).</p>
<p>Reg. 19.904(G) <u>(G) For the purpose of the regulation of GHGs, only the standards and requirements promulgated by EPA as of June 3, 2010, related to the permitting of GHG emissions shall apply to the requirements of 40 C.F.R. § 52.21, as of November 29, 2005, incorporated by reference at Reg.19.904(A). The following definitions and requirements shall also apply:</u></p> <p>(1) <u>“Greenhouse gases”</u> (GHGs) <u>means</u> the air pollutant defined as the aggregate</p>	<p>(i) Greenhouse gases (GHGs), the air pollutant defined in § 86.1818-12(a) of</p>	<p>Differences are primarily stylistic, internal references to provisions that correspond, or “as of” dates.</p> <p>Greenhouse gases are defined the same way in § 86.1818-12(a) as is stated below. This</p>

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<p>group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in <u>Reg. 19.904(G)(4) through Reg.19.904(G)(5)</u>, and shall not be subject to regulation if the stationary source:</p> <p>(a) Maintains its total source-wide emissions below the GHG <u>plantwide applicability limitations (hereinafter “PAL”)</u> level;</p> <p>(b) Meets the requirements in <u>40 § C.F.R. 52.21(aa)(1) through 40 C.F.R. § 52.21(aa)(15) as outlined in Reg. 19.904(A)(1); and</u></p> <p>(c) Complies with the PAL permit containing the GHG PAL.</p>	<p>this chapter as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs (b)(49)(iv) through (v) of this section and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements in paragraphs (aa)(1) through (15) of this section, and complies with the PAL permit containing the GHG PAL.</p>	<p>merely refers back to another provision where GHG is regulated.</p> <p>In Regulation No. 19, Reg. 19.904(G)(4) corresponds to the requirements of paragraph (b)(49)(iv) and (G)(5) corresponds to the requirements of paragraph (b)(49)(v) before it was withdrawn from the CFR. Reg. 19.904(G)(5) is currently stayed due to the rescission clause in Regulation No. 19, Chapter 1.</p>
<p>Reg 19.904(G)(2)</p> <p>(2) For purposes of <u>Reg. 19.904(G)(3) through Reg.19.904(G)(5)</u>:</p> <p>(a) The term <u>tons per year (tpy) “CO2 equivalent emissions”</u> (CO2e) shall represent an amount of GHGs emitted, and shall be computed as follows:</p> <p>(i) Multiplying the mass amount of emissions in tpy, for each of the six</p>	<p>(ii)-For purposes of paragraphs (b)(49)(iii) through (v) of this section, the term tpy CO2 equivalent emissions (CO2e) shall represent an amount of GHGs emitted, and shall be computed as follows:</p> <p>(a) Multiplying the mass amount of emissions (tpy), for each of the six</p>	<p>There is one substantive difference pertaining to biomass (see note below). The other differences are stylistic, internal references to provisions that correspond, or “as of” dates.</p>

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<p>greenhouse gases in the pollutant GHGs, by each gas's associated global warming potential published at Table A - 1 to Subpart A of <u>40 C.F.R.</u> Part 98 - Global Warming Potentials <u>(as of the effective date of the federal final rule published by EPA in the Federal Register on November 29, 2013 [78 FR 71948])</u>; and</p> <p>(ii) Sum the resultant values from <u>Reg. 19.904(G)(2)(a)</u> for each gas to compute a tpy CO2e.</p>	<p>greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of part 98 of this chapter— Global Warming Potentials.</p> <p>For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or micro organisms (including products, by products, residues and waste from agriculture, forestry and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non fossilized and biodegradable organic material).</p> <p>(b) Sum the resultant value from paragraph (b)(49)(ii)(a) of this section for each gas to compute a tpy CO2e.</p>	<p>Since the biomass deferral only applied to biomass CO2 emissions prior to July 21, 2014, there is no practical disadvantage to leaving out the deferral language. Additionally, the Deferral Rule was vacated by the courts and no additional final action has been taken.</p>

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<p>Reg 19.904(G)(3) (3) The term “emissions increase” as used in <u>Reg. 19.904(G)(4) through Reg. 19.904(G)(5)</u> shall mean that both a significant emissions increase (as calculated using the procedures in <u>40 C.F.R. § 52.21(a)(2)(iv), as of November 29, 2005</u>), and a significant net emissions increase (as defined in <u>40 C.F.R. § 52.21(b)(3), as of November 29, 2005</u>, and <u>40 C.F.R. § 52.21(b)(23), as of November 29, 2005</u>), occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_{2e}, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and “significant” is defined as 75,000 tpy CO_{2e} instead of applying the value in <u>40 C.F.R. § 52.21(b)(23)(ii), as of November 29, 2005</u>.</p>	<p>(iii) The term emissions increase as used in paragraphs (b)(49)(iv) through (v) of this section shall mean that both a significant emissions increase (as calculated using the procedures in paragraph (a)(2)(iv) of this section) and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_{2e}, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and “significant” is defined as 75,000 tpy CO_{2e} instead of applying the value in paragraph (b)(23)(ii) of this section.</p>	<p>No apparent substantive differences. Differences are primarily stylistic, internal references to provisions that correspond, or “as of” dates.</p>
<p>Reg 19.904(G)(4) (4) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:</p> <p>(a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit <u>GHGs at</u> 75,000 tpy CO_{2e} or more; or</p>	<p>(iv) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:</p> <p>(a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_{2e} or more; or</p>	<p>No substantive differences between 19.904(G)(4) and (b)(49)(iv)</p>

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<p>(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase <u>of GHGs</u> of 75,000 tpy CO2e or more.</p> <p>Reg 19.904(G)(5) <u>(5) Beginning July 1, 2011, in addition to the provisions in Reg.19.904(G)(4) of this section, the pollutant GHGs shall also be subject to regulation:</u> <u>(a) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO2e or more; or</u> <u>(b) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO2e or more, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO2e or more.</u></p>	<p>(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO2e or more; and,</p> <p>(v) Reserved</p>	<p>In Regulation No. 19, Reg. 19.904 (G)(5) corresponds to the requirements of paragraph (b)(49)(v) before it was withdrawn from the CFR. Reg. 19.904(G)(5) is currently stayed due to the rescission clause in Regulation No. 19, Chapter 1 and should be removed from the regulation.</p>
<p>Reg 19.903 Definitions (B) “Regulated NSR Pollutant,” for purposes of this <u>chapter</u>, means the following: (1) Any pollutant for which a national ambient air quality standard has been <u>adopted under Chapter 2 of this</u></p>	<p>40 CFR 52.21(b)(50) Regulated NSR pollutant, for purposes of this section, means the following: (i) Any pollutant for which a national ambient air quality standard has been promulgated. This includes, but is not</p>	<p>This could be a substantive difference under</p>

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<p><u>Regulation and any pollutant identified under this paragraph (B)(1) as a constituent or precursor for such pollutant. Precursors identified by the Department for purposes of NSR are the following:</u></p>	<p>limited to, the following:</p>	<p>certain circumstances. The Commission must adopt a new NAAQS before it becomes effective in Regulation No. 9, Chapter 19. Between the time that EPA promulgates a new NAAQS and the Commission adopts that NAAQS, “regulated NSR pollutant” has a different meaning in Regulation No. 19, Chapter 9 than in the corresponding CFR provisions.</p> <p>The list of what is included in (b)(50)(i) corresponds to the lists under 19.903(B)(1) and (B)(6). The last sentence in 19.903(B)(1) corresponds to (b)(50)(i)(b).</p>
<p>Reg 19.903 (B)(6) PM2.5 emissions and PM10 emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter at ambient temperatures. <u>As of the effective date of the federal final rule published by EPA in the Federal Register on Thursday, October 25, 2012 (77 FR 65107),</u> such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM2.5, and PM10 in PSD permits. Compliance with emissions limitations for PM2.5, and PM10 issued prior to this date shall not be based on condensable particulate matter unless required by the terms and</p>	<p>40 CFR 52.21(b)(50)(i)(a) PM2.5 emissions and PM10 emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM2.5 and PM10 in PSD permits. Compliance with emissions limitations for PM2.5 and PM10 issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date</p>	<p>The dates here differ. Ours is later than EPA’s date. Nevertheless, both dates have elapsed so there would be no difference going forward regarding applicability determinations.</p>

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<p>conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this <u>chapter</u>.</p> <p>Reg 19.903 (B)(1) (1) <u>Any pollutant for which a national ambient air quality standard has been adopted under Chapter 2 of this Regulation and</u> any pollutant identified under this paragraph <u>(B)(1)</u> as a constituent or precursor for <u>such</u> pollutant. Precursors identified by the <u>Department</u> for purposes of NSR are the following:</p> <p>(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.</p> <p>(b) Sulfur dioxide is a precursor to PM2.5 in all attainment and unclassifiable areas.</p> <p>(c) Nitrogen oxides are presumed to be precursors to PM2.5 in all attainment and unclassifiable areas, unless <u>Arkansas</u> demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources</p>	<p>without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.</p> <p>40 CFR 52.21(b)(50)(i)(b) (b) Any pollutant identified under this paragraph (b)(50)(i)(b) as a constituent or precursor for a pollutant for which a national ambient air quality standard has been promulgated. Precursors identified by the <u>Administrator</u> for purposes of NSR are the following:</p> <p>(1) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.</p> <p>(2) Sulfur dioxide is a precursor to PM2.5 in all attainment and unclassifiable areas.</p> <p>(3) Nitrogen oxides are presumed to be precursors to PM2.5 in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources</p>	<p>We do not have an applicable implementation plan that otherwise requires condensable particulate matter to be included; therefore, the CFR language here would not provide for a substantive difference.</p> <p>The first part of 19.903(B)(1) corresponds to 52.21(b)(50)(i).</p> <p>The word “Administrator” has been replaced with “Department” in Reg. 19.903(B)(1). The term “the State” in (b)(50)(i)(b) has been replaced with “Arkansas” in 19.903(B)(1).</p> <p>No apparent differences in substantive requirements. It may be that if we are listing the precursors in the Regulation that the term “Commission” should be used in place of “Department,” because this provision does not grant the Department authority to identify others that are not codified in Regulation No. 19.</p>

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<p>in a specific area are not a significant contributor to that area’s ambient PM2.5 concentrations.</p> <p>(d) Volatile organic compounds are presumed not to be precursors to PM2.5 in any attainment or unclassifiable area, unless <u>Arkansas</u> demonstrates to the Administrator’s satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area’s ambient PM2.5 concentrations.</p>	<p>in a specific area are not a significant contributor to that area's ambient PM2.5 concentrations.</p> <p>(4) Volatile organic compounds are presumed not to be precursors to PM2.5 in any attainment or unclassifiable area, unless the—State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM2.5 concentrations.</p>	
<p>Reg 19.903 (B)(2)-(5)</p> <p>(2) Any pollutant that is subject to any standard promulgated under Section 111 of the Act <u>as of July 27, 2012</u>;</p> <p>(3) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;</p> <p>(4) Any pollutant that otherwise is subject to regulation under the Act;</p> <p>(5) Notwithstanding paragraphs <u>(B)(1) through (4)</u> of this section, the term <i>regulated NSR pollutant</i> shall not include</p>	<p>(ii) Any pollutant that is subject to any standard promulgated under section 111 of the Act;</p> <p>(iii) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or</p> <p>(iv) Any pollutant that otherwise is subject to regulation under the Act as defined in paragraph (b)(49) of this section.; except that</p> <p>(v) Notwithstanding paragraphs (b)(50)(i) through (iv) of this section, the term <i>regulated NSR pollutant</i> shall not include</p>	<p>We have an “as of” date for (B)(2), but not B(3) or (4).</p> <p>Given that (B)(4) has no date, it would pull in anything regulated under Section 111 after the 2012 date.</p> <p>(b)(49) refers back to the term “subject to regulation.” See noted differences earlier in the table. This could presumably be more narrow than what is in 19.903(B)(4).</p> <p>We have an “as of” date for pollutants listed under 108.</p>

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<p>any or all hazardous air pollutants either listed in Section 112 of the Act, or added to the list pursuant to Section 112(b)(2) of the Act, and which have not been delisted pursuant to Section 112(b)(3) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act <u>as of July 27, 2012; and</u></p>	<p>any or all hazardous air pollutants either listed in section 112 of the Act or added to the list pursuant to section 112(b)(2) of the Act, and which have not been delisted pursuant to section 112(b)(3) of the Act, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act.</p>	

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