modifications which involve a ''major'' increase in actual emissions, but no increase in potential to emit. To correct this deficiency, calculations in the District rule must be based on increases in actual emissions (and for sources which have not begun normal operations, actual emissions shall equal the potential to emit). Because the district has correctly defined ''potential to emit'' and ''actual emissions,'' this change can be made by incorporating the federal definition of ''net emissions increase'' into the District rule definition of ''modification.''

Regulated Air Pollutant: The definition of ''regulated air pollutant'' in the submitted rule contains a list of emissions which are ''regulated by sections containing Emission limits and by Section 12.'' The list of ''Chemical Substances Requiring BACT and Public Notification'' in Section 12.2.7, however, contains substances which are not included in the definition of ''regulated air pollutant.'' This oversight should be corrected for rule consistency.

Volatile Organic Compound: The definition of ''volatile organic compound'' in the submitted rule contains a list of substances exempt from regulation as VOCs which is inconsistent with the exemption list in 40 CFR 51.100(s). This discrepancy should be corrected to avoid granting VOC emission reduction credits, as well as requiring VOC offsets, for exempt compounds. The definition in the CFR should be adopted verbatim into this section.

Rule 12

Public Notice: The submitted rule does not specify that public comments regarding an air quality permit application will be considered, except in the event of a public hearing. A thirty-day public comment period should be required for each permit application, as specified by 40 CFR 51.166(q). All public comment, oral and written, received within the specified time, should be considered in making the final decision on the approvability of the permit application.

Variance to Rule Requirements: The submitted rule outlines the procedure by which the Board of Health may grant a variance to subsection 12.2.10.6 (which requires impact analysis for NO_x sources of 100 tpy or greater). The District has explained that this variance is intended to refer to the lowered major source applicability threshold of 50 tpy for NO_x sources in the Las Vegas Valley. If so, this must be clarified in the rule, so that no variance may be granted to a source required by federal standards to undergo new source review.

Fugitive Emissions: The submitted rule contains a definition of potential to emit which includes fugitive emissions only for sources of PM–10 in the nonattainment area. Fugitives must also be included in the major source applicability determination, defined by a source's potential to emit, for all other regulated pollutants, if the source belongs to one of the source categories listed in 40 CFR 51.165(a)(1)(iv)(C).

Additional Impact Analysis for Attainment Pollutants: In many cases, the submitted rule correctly requires major sources to perform an additional impact analysis, as required in 40 CFR 51.166(i) and 51.166(o). However, the rule fails to require the analysis for VOC, lead and CO in sections 12.2.5, 12.2.8, and 12.2.13, respectively. In addition, the rule fails to require the analysis for major modifications. The rule must be amended to require the additional impact analysis for pollutant subject to regulation under the Act which will be emitted by the new source or modifications.

Alternative Siting Analysis: The submitted rule lacks a requirement that an alternative siting analysis be performed by all permit applicants for sources located within a nonattainment area. This analysis, required by CAA 173(a)(5), would demonstrate that the benefits of a proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Class I Area Visibility Protection: The submitted rule lacks the visibility protection requirements of section 169A of the CAA and described in 40 CFR 51.307. These provisions require review of major sources and modifications that may have an impact on visibility in any mandatory Class I Federal Area. This may have been overlooked, because there are currently no Class I areas in Clark County. Nonetheless, this requirement should be included in the event that such an area be designated in the future, or that a source may impact a Class I area outside of Clark County.

PSD Ambient Air Increments: The submitted rule lacks provisions which set the maximum allowable increases in PM–10, SO_2, and NO_2 to those increments listed in 40 CFR 51.166(c), for designated attainment or unclassifiable areas. The increments must be listed in the rule.

Offsets: The submitted rule states that, when required, offsets must be obtained by a source either prior to, or within thirty days of, the issuance of the Operating Permit, depending on the pollutant. Section 173 of the CAA, however, requires that offsets be federally enforceable prior to the issuance of an Authority to Construct Permit, and in effect by the time operation commences. This requirement must be changed in order to make the rule approvable.

Additional Requirements: The submitted rule contains no provisions which require new source review for a source or modification which becomes major due to a relaxation in a federally-enforceable limit. As described in 40 CFR 51.165(a)(5)(ii), such sources and modifications are subject to major new source review ''as though construction had not yet commenced.'' The submitted rule must add this requirement.

Hazardous Air Pollutants: The list of hazardous air pollutants in the submitted rule must be expanded to include those pollutants listed in 40 CFR 51.166(b)(23)(i), which are not also regulated by Section 112(b)(1) of the Act. These pollutants and their significance levels must be listed.

Rule 58

RACT Adjustment: The submitted rule lacks provisions requiring that existing and future emission reduction credits (ERCs) are surplus to Reasonably Available Control Technology (RACT) requirements at time of use. EPA interprets section 172(c)(1) of the Act to require a RACT level of reductions on ERCs as well as on all applicable sources. This ensures that all ERCs will be surplus at their time of use, since any banked credits that predate a RACT requirement will not be able to be counted as a credit toward meeting that requirement.

Prior Shutdowns: The submitted rule does not disallow ''prior shutdown'' credits as required in 40 CFR 51.165(a)(1)(xxv). As defined by this CFR section, prior shutdown credits are generated by facilities which apply for credit after the facility has already ceased to operate. The provision limiting shutdown credits applies either when the District attainment plan has been disapproved, or when this plan is not yet due, but a due date during the creation of this plan is missed. In this case, sources which seek ERCs due to a shutdown must do so at the time operation of the source ceases.

Property Rights: The submitted rule refers to procedures which allow banking of ERCs ''in a legally protected manner.'' This language suggests that banked ERCs could be protected under property rights laws, or that their adjustment or rescission could be legally contested by the owner of the ERCs. EPA cannot approve such language, and encourages the District to