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**Title 40 —Protection of Environment**  
**Chapter I —Environmental Protection Agency**  
**Subchapter C —Air Programs**  
**Part 52 —Approval and Promulgation of Implementation Plans**  
**Subpart A —General Provisions**

**Source:** 37 FR 10846, May 31, 1972, unless otherwise noted.

**Authority:** 42 U.S.C. 7401 *et seq.*

**Editorial Note:** Nomenclature changes to part 52 appear at 81 FR 74586, Oct. 26, 2016.

**§ 52.24 Statutory restriction on new sources.**

- (a) Any area designated nonattainment pursuant to section 107(d) of the Act to which, immediately prior to the enactment of the Amendments to the Act of 1990 (November 15, 1990), a prohibition of construction or modification of major stationary sources was applied, shall retain that prohibition if such prohibition was applied by virtue of a finding of the Administrator that the State containing such an area:
  - (1) Failed to submit an implementation plan meeting the requirements of an approvable new source review permitting program; or
  - (2) Failed to submit an implementation plan that provided for timely attainment of the national ambient air quality standard for sulfur dioxide by December 31, 1982. This prohibition shall apply until the Administrator approves a plan for such area as meeting the applicable requirements of part D of title I of the Act as amended (NSR permitting requirements) or subpart 5 of part D of title I of the Act as amended (relating to attainment of the national ambient air quality standards for sulfur dioxide), as applicable.
- (b) Permits to construct and operate as required by permit programs under section 172(c)(5) of the Act may not be issued for new or modified major stationary sources proposing to locate in nonattainment areas or areas in a transport region where the Administrator has determined that the applicable implementation plan is not being adequately implemented for the nonattainment area or transport region in which the proposed source is to be constructed or modified in accordance with the requirements of part D of title I of the Act.
- (c) Whenever, on the basis of any information, the Administrator finds that a State is not in compliance with any requirement or prohibition of the Act relating to the construction of new sources or the modification of existing sources, the Administrator may issue an order under section 113(a)(5) of the Act prohibiting the construction or modification of any major stationary source in any area to which such requirement applies.
- (d) The restrictions in paragraphs (a) and (b) of this section apply only to major stationary sources of emissions that cause or contribute to concentrations of the pollutant (or precursors, as applicable) for which the transport region or nonattainment area was designated such, and for which the applicable implementation plan is not being carried out in accordance with, or does not meet, the requirements of part D of title I of the Act.

- (e) For any transport region or any area designated as nonattainment for any national ambient air quality standard, the restrictions in paragraphs (a) and (b) of this section shall apply to any major stationary source or major modification that would be major for the pollutant (or precursors, where applicable) for which the area is designated nonattainment or a transport region, if the stationary source or major modification would be constructed anywhere in the designated nonattainment area or transport region.
- (f) The provisions in § 51.165 of this chapter shall apply in interpreting the terms under this section.
- (g) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then:
  - (1) If the construction moratorium imposed pursuant to this section is still in effect for the nonattainment area or transport region in which the source or modification is located, then the permit may not be so revised; or
  - (2) If the construction moratorium is no longer in effect in that area, then the requirements of § 51.165 of this chapter shall apply to the source or modification as though construction had not yet commenced on the source or modification.
- (h) This section does not apply to major stationary sources or major modifications locating in a clearly defined part of a nonattainment area or transport region (such as a political subdivision of a State), where EPA finds that a plan which meets the requirements of part D of title I of the Act is in effect and is being implemented in that part.
- (i)-(j) [Reserved]
- (k) For an area designated as nonattainment after July 1, 1979, the Emission Offset Interpretative Ruling, 40 CFR part 51, appendix S shall govern permits to construct and operate applied for during the period between the date of designation as nonattainment and the date the NSR permit program meeting the requirements of part D is approved. The Emission Offset Interpretative Ruling, 40 CFR part 51, appendix S, shall also govern permits to construct and operate applied for in any area designated under section 107(d) of the CAA as attainment or unclassifiable for ozone that is located in an ozone transport region prior to the date the NSR permitting program meeting the requirements of part D is approved.

[70 FR 71704, Nov. 29, 2005]

**Editorial Note:** For FEDERAL REGISTER citations affecting § 52.24, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).