

EFFECTIVE DATE NOTE: At 75 FR 31608, June 3, 2010, § 71.13 was added, effective August 2, 2010.

### Subpart B—Permits for Early Reductions Sources

#### § 71.21 Program overview.

(a) The regulations in this subpart provide for a limited, Federal, title V, permit program to establish alternative emission limitations for early reductions sources that have demonstrated qualifying reductions of hazardous air pollutants under section 112(i)(5) of the Act. A permit issued under this subpart which establishes such an enforceable alternative emission limitation shall grant all emissions units in the early reductions source a six-year extension from otherwise applicable dates of compliance for standards promulgated under section 112(d) of the Act.

(b) After approval of a State's comprehensive permit program pursuant to title V of the Act, the Administrator may continue to issue specialty permits under this subpart only under the following circumstances:

(1) The early reductions source filed a permit application under this subpart before the State obtained approval of a comprehensive title V permit program but the permit had not been finally issued at the time of State program approval; or

(2) The early reductions source will be required to file an early reductions permit application under § 71.24(b) before a comprehensive permit application is required by the State under the approved program.

(c) When a circumstance described in paragraph (b)(1) or (b)(2) of this section occurs, the primary consideration in the Administrator's decision to issue a specialty permit is the degree of delay anticipated by deferring to the State for permit issuance.

(d) A Permit issued to an early reductions source under this subpart shall have a term not to exceed five years. Such a specialty permit shall be incorporated into a comprehensive title V permit subsequently issued to the facility containing the early reductions source, without reopening or revision

of the specialty permit except as provided in § 71.26(e).

(e) Issuance of a specialty permit under this subpart does not relieve a source from an obligation to file a timely and complete comprehensive permit application as required under an approved comprehensive title V permit program.

(f) *Delegation to other permitting authorities.* (1) The Administrator may delegate to another permitting authority the responsibility to implement this permit program. Under such a delegation, the Administrator reserves the right to issue a final permit to early reductions sources that filed permit applications with the Administrator prior to the permitting authority obtaining delegation.

(2) Under any delegation, the Administrator will require that the permitting authority have enforcement authority substantially equivalent to that specified in § 70.11 of this chapter.

(3) Upon any delegation, administrative appeals of permit decisions issuing pursuant to the delegated program shall continue to be subject to the requirements of § 71.27(1).

#### § 71.22 Definitions.

All terms used in this subpart not defined in this section are given the same meaning as in the Act or in subpart D of part 63 of this chapter.

*Act* means the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

*Actual emissions* means the actual rate of emissions of a pollutant, but does not include excess emissions from a malfunction, or startups and shutdowns associated with a malfunction. Actual emissions shall be calculated using the early reductions source's actual operating rates, and types of materials processed, stored, or combusted during the selected time period.

*Affected States* are all States:

(1) Whose air quality may be affected and that are contiguous to the State in which a permit, permit modification or permit renewal is being proposed; or

(2) That are within 50 miles of the permitted source.

*Comprehensive title V permit program* means a program approved by the Administrator under part 70 of this chapter or a program promulgated for EPA

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permit issuance under title V that encompasses all applicable requirements of the Clean Air Act.

*Draft permit* means the version of a permit for which the Administrator offers public participation under § 71.27.

*Early reductions source* means a source of hazardous air pollutants as defined pursuant to § 63.73 of this chapter.

*Emissions unit* means any part or activity of a stationary source that emits or has the potential to emit any hazardous air pollutant.

*Enforceable commitment* means a document drafted pursuant to section 112(i)(5)(B) of the Act and signed by a responsible company official which commits a company to achieving before January 1, 1994 sufficient reductions in hazardous air pollutants from a designated early reductions source to qualify such source for a compliance extension under section 112(i)(5)(A) of the Act.

*EPA or Administrator* means the Administrator of the EPA or his or her designee.

*Final permit* means the version of a permit issued by the Administrator under this subpart that has completed all review procedures required by § 71.27.

*Hazardous air pollutant* means any air pollutant listed pursuant to section 112(b) of the Act.

*Permit* means any permit covering an existing early reductions source that is issued, amended, or revised pursuant to this subpart.

*Permit revision* means any permit modification or administrative permit amendment.

*Permitting authority* means either of the following:

(1) The Administrator, in the case of EPA-implemented programs; or

(2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under this subpart.

*Post-reduction year* means the one year period beginning with the date early reductions have to be achieved to qualify for a compliance extension under subpart D of part 63 of this chapter, unless a source has established with the Administrator an earlier one

year period as the post-reduction year. For most sources, the post-reduction year would begin with the date of proposal of the first section 112(d) standard applicable to the early reductions source; however, for sources that have made enforceable commitments, it would be the year from January 1, 1994 through December 31, 1994.

*Responsible official* means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA).

*Section 112(d) standard* means an emission standard issued by the Administrator under section 112(d) of the Clean Air Act, as amended.

*State* means any non-Federal permitting authority, including any local agency, interstate association, or statewide program. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Where such meaning is clear from the context,

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“State” shall have its conventional meaning.

### § 71.23 Applicability.

(a) *Sources covered.* The provisions of this subpart apply to an owner or operator of an existing source who is seeking a compliance extension under section 112(i)(5) of the Act and who, pursuant to part 63, subpart D, of this chapter, is required to file a permit application for the extension prior to the date a comprehensive title V permit program is approved for the State in which the existing source is located.

(b) *Covered emissions.* All hazardous air pollutant emissions from the early reductions source shall be included in permit applications and part 71 permits issued under this subpart.

### § 71.24 Permit applications.

(a) *Where to file.* To apply for a compliance extension and an alternative emission limitation under this subpart, the owner or operator of an early reductions source shall file a complete permit application with the appropriate EPA Regional Office. The owner or operator shall also send a copy of the application to the appropriate State agency; to the EPA Emission Standards Division, Mail Drop 13, Research Triangle Park, North Carolina, 27711 (attention: Early Reductions Officer); and to the EPA Office of Enforcement, EN-341W, 1200 Pennsylvania Ave., NW., Washington, DC 20460 (attention: Early Reductions Officer).

(b) *Deadlines.* (1) Permit applications under this subpart for early reductions sources not subject to enforceable commitments shall be submitted by the later of the following dates:

(i) 120 days after proposal of an otherwise applicable standard issued under section 112(d) of the Act; or

(ii) March 21, 1995.

(2) Permit applications for early reductions sources subject to enforceable commitments established pursuant to § 63.75 of this chapter shall be filed no later than April 30, 1994.

(3) If the post-reduction year does not end at least one month before the permit application deadline under paragraphs (b)(1) or (b)(2) of this section, the source may file the post-reduction emissions information required under

paragraph (e)(2) of this section later as a supplement to the original permit application. In such cases, this supplemental information shall be submitted to the Administrator no later than one month after the end of the post-reduction year.

(4) If a source test will be the supporting basis for establishing post-reduction emissions for one or more emissions units in the early reductions source, the test results shall be submitted by the deadline for submittal of a permit application under this section.

(c) *Complete application.* To be found complete, an application must provide all information required pursuant to paragraph (e) of this section, except for the information on post-reduction emissions required under paragraph (e)(2) of this section. Applications for permit revision need supply the information required under paragraph (e) of this section only if it is related to the proposed change. Information submitted under paragraph (e) of this section must be sufficient to allow the Administrator to determine if the early reductions source meets the applicable requirements of subpart D of part 63 of this chapter. Unless the Administrator determines that an application is not complete within 45 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in § 71.26(a)(3). If, while processing an application that has been determined or deemed to be complete, the Administrator determines that additional information is necessary to evaluate or take final action on that application, the Administrator may request such information in writing and set a reasonable deadline for a response.

(d) *Duty to supplement or correct application.* Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional or revised information as necessary to address any requirements of subpart D of part 63 of this chapter (Compliance Extensions