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40 CFR Ch. I (7–1–10 Edition)

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 Marianas Islands. Where such meaning is clear from the context, "State" shall have its conventional meaning. For purposes of the acid rain program, the term "State" shall be limited to authorities within the 48 contiguous States and the District of Columbia as provided in section 402(14) of the Act.

Stationary source means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act.

[61 FR 34228, July 1, 1996, as amended at 64 FR 8262, Feb. 19, 1999; 69 FR 31505, June 2, 2004; 72 FR 24078, May 1, 2007; 74 FR 51439, Oct. 6, 2009]

EFFECTIVE DATE NOTE: At 75 FR 31608, June 3, 2010, § 71.2 was amended by revising the introductory text of paragraph (2) of the definition for "major source." and adding a definition for "Subject to regulation", effective August 2, 2010. For the convenience of the user, the added and revised text is set forth as follows:

§ 71.2 Definitions.

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Major source * * *

(2) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

* * * * *

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 quan-

tity 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:

(1) Greenhouse gases (GHGs), the air pollutant defined in § 86.1818–12(a) of 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 unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO₂ equivalent emissions.

(2) The term tpy CO₂ equivalent emissions (CO₂e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six 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, and summing the resultant value for each to compute a tpy CO₂e.

§ 71.3 Sources subject to permitting requirements.

(a) Part 71 sources. The following sources are subject to the permitting requirements under this part:

- (1) Any major source;
- (2) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Act;
- (3) Any source, including an area source, subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Act;
- (4) Any affected source; and
- (5) Any source in a source category designated by the Administrator pursuant to this section.

(b) Source category exemptions. (1) All sources listed in paragraph (a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act are exempted from the obligation to obtain a part 71 permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any

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permanent exemptions in addition to those provided for in paragraph (b)(4) of this section.

(2) In the case of nonmajor sources subject to a standard or other requirement under either section 111 or 112 of the Act after July 21, 1992 publication, the Administrator will determine whether to exempt any or all such applicable sources from the requirement to obtain a part 70 or part 71 permit at the time that the new standard is promulgated.

(3) [Reserved]

(4) The following source categories are exempted from the obligation to obtain a part 71 permit:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, subpart AAA—Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 61, subpart M—National Emission Standard for Hazardous Air Pollutants for Asbestos, § 61.145, Standard for Demolition and Renovation.

(c) *Emissions units and part 71 sources.*

(1) For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(2) For any nonmajor source subject to the part 71 program under paragraphs (a) or (b) of this section, the permitting authority shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the part 71 program.

(d) *Fugitive emissions.* Fugitive emissions from a part 71 source shall be included in the permit application and the part 71 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(e) An owner or operator of a source may submit to the Administrator a written request for a determination of applicability under this section.

(1) *Request content.* The request shall be in writing and include identification

of the source and relevant and appropriate facts about the source. The request shall meet the requirements of § 71.5(d).

(2) *Timing.* The request shall be submitted to the Administrator prior to the issuance (including renewal) of a permit under this part as a final agency action.

(3) *Submission.* All submittals under this section shall be made by the responsible official to the Regional Administrator for the Region in which the source is located.

(4) *Response.* The Administrator will issue a written response based upon the factual submittal meeting the requirements of paragraph (e)(1) of this section.

[61 FR 34228, July 1, 1996, as amended at 64 FR 8262, Feb. 19, 1999; 70 FR 75346, Dec. 19, 2005]

§ 71.4 Program implementation.

(a) *Part 71 programs for States.* The Administrator will administer and enforce a full or partial operating permits program for a State (excluding Indian country) in the following situations:

(1) A program for a State meeting the requirements of part 70 of this chapter has not been granted full approval under § 70.4 of this chapter by the Administrator by July 31, 1996, and the State's part 70 program has not been granted interim approval under § 70.4(d) of this chapter for a period extending beyond July 31, 1996. The effective date of such a part 71 program is July 31, 1996.

(2) An operating permits program for a State which was granted interim approval under § 70.4(d) of this chapter has not been granted full approval by the Administrator by the expiration of the interim approval period or July 31, 1996, whichever is later. Such a part 71 program shall be effective upon expiration of the interim approval or July 31, 1996 whichever is later.

(3) Any partial part 71 program will be effective only in those portions of a State that are not covered by a partial part 70 program that has been granted full or interim approval by the Administrator pursuant to § 70.4(c) of this chapter.