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40

Parts 64 to 71

Revised as of July 1, 2010

Protection of Environment

Containing a codification of documents of general applicability and future effect

As of July 1, 2010

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.
July 1, 2010.

THIS TITLE

Title 40—PROTECTION OF ENVIRONMENT is composed of thirty-two volumes. The parts in these volumes are arranged in the following order: Parts 1–49, parts 50–51, part 52 (52.01–52.1018), part 52 (52.1019–end of part 52), parts 53–59, part 60 (60.1–end of part 60, sections), part 60 (Appendices), parts 61–62, part 63 (63.1–63.599), part 63 (63.600–63.1199), part 63 (63.1200–63.1439), part 63 (63.1440–63.6175), part 63 (63.6580–63.8830), part 63 (63.8980–end of part 63) parts 64–71, parts 72–80, parts 81–84, part 85–§ 86.599–99, part 86 (86.600–1–end of part 86), parts 87–99, parts 100–135, parts 136–149, parts 150–189, parts 190–259, parts 260–265, parts 266–299, parts 300–399, parts 400–424, parts 425–699, parts 700–789, parts 790–999, and part 1000 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 2010.

Chapter I—Environmental Protection Agency appears in all thirty-two volumes. Regulations issued by the Council on Environmental Quality, including an Index to Parts 1500 through 1508, appear in the volume containing part 1000 to end. The OMB control numbers for title 40 appear in § 9.1 of this chapter.

For this volume, Robert J. Sheehan, III was Chief Editor. The Code of Federal Regulations publication program is under the direction of Michael L. White, assisted by Ann Worley.

Title 40—Protection of Environment

(This book contains parts 64–71)

Part

CHAPTER I—Environmental Protection Agency (Continued) 64

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY (CONTINUED)

EDITORIAL NOTE: Nomenclature changes to chapter I appear at 65 FR 47324, 47325, Aug. 2, 2000; 66 FR 34375, 34376, June 28, 2001.

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SUBCHAPTER C—AIR PROGRAMS (CONTINUED)

PART 64—COMPLIANCE ASSURANCE MONITORING

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64.10 Savings provisions.

AUTHORITY: 42 U.S.C. 7414 and 7661–7661f.

SOURCE: 62 FR 54940, Oct. 22, 1997, unless otherwise noted.

§ 64.1 Definitions.

The following definitions apply to this part. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable provisions of the Act.

Act means the Clean Air Act, as amended by Pub.L. 101–549, 42 U.S.C. 7401, *et seq*.

Applicable requirement shall have the same meaning as provided under part 70 of this chapter.

Capture system means the equipment (including but not limited to hoods, ducts, fans, and booths) used to contain, capture and transport a pollutant to a control device.

Continuous compliance determination method means a method, specified by the applicable standard or an applicable permit condition, which:

(1) Is used to determine compliance with an emission limitation or standard on a continuous basis, consistent with the averaging period established for the emission limitation or standard; and

(2) Provides data either in units of the standard or correlated directly with the compliance limit.

Control device means equipment, other than inherent process equipment, that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere. The types of equipment that may commonly be used as control devices include, but are not limited to, fabric filters, mechanical collectors, electrostatic precipitators, inertial separators, afterburners, thermal or catalytic incinerators, adsorption devices (such as carbon beds), condensers, scrubbers (such as wet collection and gas absorption devices), selective catalytic or non-catalytic reduction systems, flue gas recirculation systems, spray dryers, spray towers, mist eliminators, acid plants, sulfur recovery plants, injection systems (such as water, steam, ammonia, sorbent or limestone injection), and combustion devices independent of the particular process being conducted at an emissions unit (e.g., the destruction of emissions achieved by venting process emission streams to flares, boilers or process heaters). For purposes of this part, a control device does not include passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics. If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular pollutant-specific emissions unit, then that definition shall be binding for purposes of this part.

Data means the results of any type of monitoring or method, including the results of instrumental or non-instrumental monitoring, emission calculations, manual sampling procedures, recordkeeping procedures, or any other form of information collection procedure used in connection with any type of monitoring or method.

Emission limitation or standard means any applicable requirement that constitutes an emission limitation, emission standard, standard of performance or means of emission limitation as defined under the Act. An emission limitation or standard may be expressed in terms of the pollutant, expressed either

as a specific quantity, rate or concentration of emissions (e.g., pounds of SO_2 per hour, pounds of SO_2 per million British thermal units of fuel input, kilograms of VOC per liter of applied coating solids, or parts per million by volume of SO_2) or as the relationship of uncontrolled to controlled emissions (e.g., percentage capture and destruction efficiency of VOC or percentage reduction of SO_2). An emission limitation or standard may also be expressed either as a work practice, process or control device parameter, or other form of specific design, equipment, operational, or operation and maintenance requirement. For purposes of this part, an emission limitation or standard shall not include general operation requirements that an owner or operator may be required to meet, such as requirements to obtain a permit, to operate and maintain sources in accordance with good air pollution control practices, to develop and maintain a malfunction abatement plan, to keep records, submit reports, or conduct monitoring.

Emissions unit shall have the same meaning as provided under part 70 of this chapter.

Exceedance shall mean a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring.

Excursion shall mean a departure from an indicator range established for monitoring under this part, consistent with any averaging period specified for averaging the results of the monitoring.

Inherent process equipment means equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that the owner or operator documents is installed and operated primarily for purposes other than compliance with air pollution regulations. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment. For the purposes of this part, inherent process equipment is not considered a control device.

Major source shall have the same meaning as provided under part 70 or 71 of this chapter.

Monitoring means any form of collecting data on a routine basis to determine or otherwise assess compliance with emission limitations or standards. Recordkeeping may be considered monitoring where such records are used to determine or assess compliance with an emission limitation or standard (such as records of raw material content and usage, or records documenting compliance with work practice requirements). The conduct of compliance method tests, such as the procedures in appendix A to part 60 of this chapter, on a routine periodic basis may be considered monitoring (or as a supplement to other monitoring), provided that requirements to conduct such tests on a one-time basis or at such times as a regulatory authority may require on a non-regular basis are not considered monitoring requirements for purposes of this paragraph. Monitoring may include one or more than one of the following data collection techniques, where appropriate for a particular circumstance:

(1) Continuous emission or opacity monitoring systems.

(2) Continuous process, capture system, control device or other relevant parameter monitoring systems or procedures, including a predictive emission monitoring system.

(3) Emission estimation and calculation procedures (e.g., mass balance or stoichiometric calculations).

(4) Maintenance and analysis of records of fuel or raw materials usage.

(5) Recording results of a program or protocol to conduct specific operation and maintenance procedures.

(6) Verification of emissions, process parameters, capture system parameters, or control device parameters using portable or in situ measurement devices.

(7) Visible emission observations.

(8) Any other form of measuring, recording, or verifying on a routine basis

emissions, process parameters, capture system parameters, control device parameters or other factors relevant to assessing compliance with emission limitations or standards.

Owner or operator means any person who owns, leases, operates, controls or supervises a stationary source subject to this part.

Part 70 or 71 permit shall have the same meaning as provided under part 70 or 71 of this chapter, provided that it shall also refer to a permit issued, renewed, amended, revised, or modified under any federal permit program promulgated under title V of the Act.

Part 70 or 71 permit application shall mean an application (including any supplement to a previously submitted application) that is submitted by the owner or operator in order to obtain a part 70 or 71 permit.

Permitting authority shall have the same meaning as provided under part 70 or 71 of this chapter.

Pollutant-specific emissions unit means an emissions unit considered separately with respect to each regulated air pollutant.

Potential to emit shall have the same meaning as provided under part 70 or 71 of this chapter, provided that it shall be applied with respect to an ''emissions unit'' as defined under this part in addition to a ''stationary source'' as provided under part 70 or 71 of this chapter.

Predictive emission monitoring system (PEMS) means a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

Regulated air pollutant shall have the same meaning as provided under part 70 or 71 of this chapter.

§64.2 Applicability.

(a) *General applicability*. Except for backup utility units that are exempt under paragraph (b)(2) of this section, the requirements of this part shall apply to a pollutant-specific emissions unit at a major source that is required to obtain a part 70 or 71 permit if the unit satisfies all of the following criteria:

(1) The unit is subject to an emission limitation or standard for the applicable regulated air pollutant (or a surrogate thereof), other than an emission limitation or standard that is exempt under paragraph (b)(1) of this section;

(2) The unit uses a control device to achieve compliance with any such emission limitation or standard; and

(3) The unit has potential pre-control device emissions of the applicable regulated air pollutant that are equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source. For purposes of this paragraph, ''potential pre-control device emissions'' shall have the same meaning as ''potential to emit,'' as defined in §64.1, except that emission reductions achieved by the applicable control device shall not be taken into account.

(b) *Exemptions*—(1) *Exempt emission limitations or standards*. The requirements of this part shall not apply to any of the following emission limitations or standards:

(i) Emission limitations or standards proposed by the Administrator after November 15, 1990 pursuant to section 111 or 112 of the Act.

(ii) Stratospheric ozone protection requirements under title VI of the Act.

(iii) Acid Rain Program requirements pursuant to sections 404, 405, 406, 407(a), 407(b), or 410 of the Act.

(iv) Emission limitations or standards or other applicable requirements that apply solely under an emissions trading program approved or promulgated by the Administrator under the Act that allows for trading emissions within a source or between sources.

(v) An emissions cap that meets the requirements specified in §70.4(b)(12) or §71.6(a)(13)(iii) of this chapter.

(vi) Emission limitations or standards for which a part 70 or 71 permit specifies a continuous compliance determination method, as defined in §64.1. The exemption provided in this paragraph (b)(1)(vi) shall not apply if the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device

(such as a surface coating line controlled by an incinerator for which continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test; in this example, this part would apply to the control device and capture system, but not to the remaining elements of the coating line, such as raw material usage).

(2) *Exemption for backup utility power emissions units.* The requirements of this part shall not apply to a utility unit, as defined in § 72.2 of this chapter, that is municipally-owned if the owner or operator provides documentation in a part 70 or 71 permit application that:

(i) The utility unit is exempt from all monitoring requirements in part 75 (including the appendices thereto) of this chapter;

(ii) The utility unit is operated for the sole purpose of providing electricity during periods of peak electrical demand or emergency situations and will be operated consistent with that purpose throughout the part 70 or 71 permit term. The owner or operator shall provide historical operating data and relevant contractual obligations to document that this criterion is satisfied; and

(iii) The actual emissions from the utility unit, based on the average annual emissions over the last three calendar years of operation (or such shorter time period that is available for units with fewer than three years of operation) are less than 50 percent of the amount in tons per year required for a source to be classified as a major source and are expected to remain so.

§ 64.3 Monitoring design criteria.

(a) *General criteria.* To provide a reasonable assurance of compliance with emission limitations or standards for the anticipated range of operations at a pollutant-specific emissions unit, monitoring under this part shall meet the following general criteria:

(1) The owner or operator shall design the monitoring to obtain data for one or more indicators of emission control performance for the control device, any associated capture system and, if necessary to satisfy paragraph (a)(2) of this section, processes at a pollutant-specific emissions unit. Indicators of performance may include, but are not limited to, direct or predicted emissions (including visible emissions or opacity), process and control device parameters that affect control device (and capture system) efficiency or emission rates, or recorded findings of inspection and maintenance activities conducted by the owner or operator.

(2) The owner or operator shall establish an appropriate range(s) or designated condition(s) for the selected indicator(s) such that operation within the ranges provides a reasonable assurance of ongoing compliance with emission limitations or standards for the anticipated range of operating conditions. Such range(s) or condition(s) shall reflect the proper operation and maintenance of the control device (and associated capture system), in accordance with applicable design properties, for minimizing emissions over the anticipated range of operating conditions at least to the level required to achieve compliance with the applicable requirements. The reasonable assurance of compliance will be assessed by maintaining performance within the indicator range(s) or designated condition(s). The ranges shall be established in accordance with the design and performance requirements in this section and documented in accordance with the requirements in § 64.4. If necessary to assure that the control device and associated capture system can satisfy this criterion, the owner or operator shall monitor appropriate process operational parameters (such as total throughput where necessary to stay within the rated capacity for a control device). In addition, unless specifically stated otherwise by an applicable requirement, the owner or operator shall monitor indicators to detect any bypass of the control device (or capture system) to the atmosphere, if such bypass can occur based on the design of the pollutant-specific emissions unit.

(3) The design of indicator ranges or designated conditions may be:

(i) Based on a single maximum or minimum value if appropriate (e.g., maintaining condenser temperatures a certain number of degrees below the condensation temperature of the applicable compound(s) being processed) or

at multiple levels that are relevant to distinctly different operating conditions (e.g., high versus low load levels).

(ii) Expressed as a function of process variables (e.g., an indicator range expressed as minimum to maximum pressure drop across a venturi throat in a particulate control scrubber).

(iii) Expressed as maintaining the applicable parameter in a particular operational status or designated condition (e.g., position of a damper controlling gas flow to the atmosphere through a by-pass duct).

(iv) Established as interdependent between more than one indicator.

(b) *Performance criteria.* The owner or operator shall design the monitoring to meet the following performance criteria:

(1) Specifications that provide for obtaining data that are representative of the emissions or parameters being monitored (such as detector location and installation specifications, if applicable).

(2) For new or modified monitoring equipment, verification procedures to confirm the operational status of the monitoring prior to the date by which the owner or operator must conduct monitoring under this part as specified in §64.7(a). The owner or operator shall consider the monitoring equipment manufacturer's requirements or recommendations for installation, calibration, and start-up operation.

(3) Quality assurance and control practices that are adequate to ensure the continuing validity of the data. The owner or operator shall consider manufacturer recommendations or requirements applicable to the monitoring in developing appropriate quality assurance and control practices.

(4) Specifications for the frequency of conducting the monitoring, the data collection procedures that will be used (e.g., computerized data acquisition and handling, alarm sensor, or manual log entries based on gauge readings), and, if applicable, the period over which discrete data points will be averaged for the purpose of determining whether an excursion or exceedance has occurred.

(i) At a minimum, the owner or operator shall design the period over which data are obtained and, if applicable, averaged consistent with the characteristics and typical variability of the pollutant-specific emissions unit (including the control device and associated capture system). Such intervals shall be commensurate with the time period over which a change in control device performance that would require actions by owner or operator to return operations within normal ranges or designated conditions is likely to be observed.

(ii) For all pollutant-specific emissions units with the potential to emit, calculated *including* the effect of control devices, the applicable regulated air pollutant in an amount equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source, for each parameter monitored, the owner or operator shall collect four or more data values equally spaced over each hour and average the values, as applicable, over the applicable averaging period as determined in accordance with paragraph (b)(4)(i) of this section. The permitting authority may approve a reduced data collection frequency, if appropriate, based on information presented by the owner or operator concerning the data collection mechanisms available for a particular parameter for the particular pollutant-specific emissions unit (e.g., integrated raw material or fuel analysis data, noninstrumental measurement of waste feed rate or visible emissions, use of a portable analyzer or an alarm sensor).

(iii) For other pollutant-specific emissions units, the frequency of data collection may be less than the frequency specified in paragraph (b)(4)(ii) of this section but the monitoring shall include some data collection at least once per 24-hour period (e.g., a daily inspection of a carbon adsorber operation in conjunction with a weekly or monthly check of emissions with a portable analyzer).

(c) *Evaluation factors.* In designing monitoring to meet the requirements in paragraphs (a) and (b) of this section, the owner or operator shall take into account site-specific factors including the applicability of existing monitoring equipment and procedures,

the ability of the monitoring to account for process and control device operational variability, the reliability and latitude built into the control technology, and the level of actual emissions relative to the compliance limitation.

(d) *Special criteria for the use of continuous emission, opacity or predictive monitoring systems.* (1) If a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS) or predictive emission monitoring system (PEMS) is required pursuant to other authority under the Act or state or local law, the owner or operator shall use such system to satisfy the requirements of this part.

(2) The use of a CEMS, COMS, or PEMS that satisfies any of the following monitoring requirements shall be deemed to satisfy the general design criteria in paragraphs (a) and (b) of this section, provided that a COMS may be subject to the criteria for establishing indicator ranges under paragraph (a) of this section:

(i) Section 51.214 and appendix P of part 51 of this chapter;

(ii) Section 60.13 and appendix B of part 60 of this chapter;

(iii) Section 63.8 and any applicable performance specifications required pursuant to the applicable subpart of part 63 of this chapter;

(iv) Part 75 of this chapter;

(v) Subpart H and appendix IX of part 266 of this chapter; or

(vi) If an applicable requirement does not otherwise require compliance with the requirements listed in the preceding paragraphs (d)(2)(i) through (v) of this section, comparable requirements and specifications established by the permitting authority.

(3) The owner or operator shall design the monitoring system subject to this paragraph (d) to:

(i) Allow for reporting of exceedances (or excursions if applicable to a COMS used to assure compliance with a particulate matter standard), consistent with any period for reporting of exceedances in an underlying requirement. If an underlying requirement does not contain a provision for establishing an averaging period for the reporting of exceedances or excursions, the criteria used to develop an averaging period in (b)(4) of this section shall apply; and

(ii) Provide an indicator range consistent with paragraph (a) of this section for a COMS used to assure compliance with a particulate matter standard. If an opacity standard applies to the pollutant-specific emissions unit, such limit may be used as the appropriate indicator range unless the opacity limit fails to meet the criteria in paragraph (a) of this section after considering the type of control device and other site-specific factors applicable to the pollutant-specific emissions unit.

§ 64.4 Submittal requirements.

(a) The owner or operator shall submit to the permitting authority monitoring that satisfies the design requirements in § 64.3. The submission shall include the following information:

(1) The indicators to be monitored to satisfy §§ 64.3(a)(1)–(2);

(2) The ranges or designated conditions for such indicators, or the process by which such indicator ranges or designated conditions shall be established;

(3) The performance criteria for the monitoring to satisfy § 64.3(b); and

(4) If applicable, the indicator ranges and performance criteria for a CEMS, COMS or PEMS pursuant to § 64.3(d).

(b) As part of the information submitted, the owner or operator shall submit a justification for the proposed elements of the monitoring. If the performance specifications proposed to satisfy § 64.3(b)(2) or (3) include differences from manufacturer recommendations, the owner or operator shall explain the reasons for the differences between the requirements proposed by the owner or operator and the manufacturer's recommendations or requirements. The owner or operator also shall submit any data supporting the justification, and may refer to generally available sources of information used to support the justification (such as generally available air pollution engineering manuals, or EPA or permitting authority publications on appropriate monitoring for various types of control devices or capture systems). To justify the appropriateness of the monitoring elements proposed, the owner

or operator may rely in part on existing applicable requirements that establish the monitoring for the applicable pollutant-specific emissions unit or a similar unit. If an owner or operator relies on presumptively acceptable monitoring, no further justification for the appropriateness of that monitoring should be necessary other than an explanation of the applicability of such monitoring to the unit in question, unless data or information is brought forward to rebut the assumption. Presumptively acceptable monitoring includes:

(1) Presumptively acceptable or required monitoring approaches, established by the permitting authority in a rule that constitutes part of the applicable implementation plan required pursuant to title I of the Act, that are designed to achieve compliance with this part for particular pollutant-specific emissions units;

(2) Continuous emission, opacity or predictive emission monitoring systems that satisfy applicable monitoring requirements and performance specifications as specified in §64.3(d);

(3) Excepted or alternative monitoring methods allowed or approved pursuant to part 75 of this chapter;

(4) Monitoring included for standards exempt from this part pursuant to §64.2(b)(1)(i) or (vi) to the extent such monitoring is applicable to the performance of the control device (and associated capture system) for the pollutant-specific emissions unit; and

(5) Presumptively acceptable monitoring identified in guidance by EPA. Such guidance will address the requirements under §§64.4(a), (b), and (c) to the extent practicable.

(c)(1) Except as provided in paragraph (d) of this section, the owner or operator shall submit control device (and process and capture system, if applicable) operating parameter data obtained during the conduct of the applicable compliance or performance test conducted under conditions specified by the applicable rule. If the applicable rule does not specify testing conditions or only partially specifies test conditions, the performance test generally shall be conducted under conditions representative of maximum emissions potential under anticipated operating conditions at the pollutant-specific emissions unit. Such data may be supplemented, if desired, by engineering assessments and manufacturer's recommendations to justify the indicator ranges (or, if applicable, the procedures for establishing such indicator ranges). Emission testing is not required to be conducted over the entire indicator range or range of potential emissions.

(2) The owner or operator must document that no changes to the pollutant-specific emissions unit, including the control device and capture system, have taken place that could result in a significant change in the control system performance or the selected ranges or designated conditions for the indicators to be monitored since the performance or compliance tests were conducted.

(d) If existing data from unit-specific compliance or performance testing specified in paragraph (c) of this section are not available, the owner or operator:

(1) Shall submit a test plan and schedule for obtaining such data in accordance with paragraph (e) of this section; or

(2) May submit indicator ranges (or procedures for establishing indicator ranges) that rely on engineering assessments and other data, provided that the owner or operator demonstrates that factors specific to the type of monitoring, control device, or pollutant-specific emissions unit make compliance or performance testing unnecessary to establish indicator ranges at levels that satisfy the criteria in §64.3(a).

(e) If the monitoring submitted by the owner or operator requires installation, testing, or other necessary activities prior to use of the monitoring for purposes of this part, the owner or operator shall include an implementation plan and schedule for installing, testing and performing any other appropriate activities prior to use of the monitoring. The implementation plan and schedule shall provide for use of the monitoring as expeditiously as practicable after approval of the monitoring in the part 70 or 71 permit pursuant to §64.6, but in no case shall the schedule for completing installation

and beginning operation of the monitoring exceed 180 days after approval of the permit.

(f) If a control device is common to more than one pollutant-specific emissions unit, the owner or operator may submit monitoring for the control device and identify the pollutant-specific emissions units affected and any process or associated capture device conditions that must be maintained or monitored in accordance with § 64.3(a) rather than submit separate monitoring for each pollutant-specific emissions unit.

(g) If a single pollutant-specific emissions unit is controlled by more than one control device similar in design and operation, the owner or operator may submit monitoring that applies to all the control devices and identify the control devices affected and any process or associated capture device conditions that must be maintained or monitored in accordance with § 64.3(a) rather than submit a separate description of monitoring for each control device.

§ 64.5 Deadlines for submittals.

(a) *Large pollutant-specific emissions units.* For all pollutant-specific emissions units with the potential to emit (taking into account control devices to the extent appropriate under the definition of this term in § 64.1) the applicable regulated air pollutant in an amount equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source, the owner or operator shall submit the information required under § 64.4 at the following times:

(1) On or after April 20, 1998, the owner or operator shall submit information as part of an application for an initial part 70 or 71 permit if, by that date, the application either:

(i) Has not been filed; or

(ii) Has not yet been determined to be complete by the permitting authority.

(2) On or after April 20, 1998, the owner or operator shall submit information as part of an application for a significant permit revision under part 70 or 71 of this chapter, but only with respect to those pollutant-specific emissions units for which the proposed permit revision is applicable.

(3) The owner or operator shall submit any information not submitted under the deadlines set forth in paragraphs (a)(1) and (2) of this section as part of the application for the renewal of a part 70 or 71 permit.

(b) *Other pollutant-specific emissions units.* For all other pollutant-specific emissions units subject to this part and not subject to § 64.5(a), the owner or operator shall submit the information required under § 64.4 as part of an application for a renewal of a part 70 or 71 permit.

(c) The effective date for the requirement to submit information under § 64.4 shall be as specified pursuant to paragraphs (a)–(b) of this section and a permit reopening to require the submittal of information under this section shall not be required pursuant to § 70.7(f)(1)(i) of this chapter, provided, however, that, if a part 70 or 71 permit is reopened for cause by EPA or the permitting authority pursuant to § 70.7(f)(1)(iii) or (iv), or § 71.7(f) or (g), the applicable agency may require the submittal of information under this section for those pollutant-specific emissions units that are subject to this part and that are affected by the permit reopening.

(d) Prior to approval of monitoring that satisfies this part, the owner or operator is subject to the requirements of § 70.6(a)(3)(i)(B).

§ 64.6 Approval of monitoring.

(a) Based on an application that includes the information submitted in accordance with § 64.5, the permitting authority shall act to approve the monitoring submitted by the owner or operator by confirming that the monitoring satisfies the requirements in § 64.3.

(b) In approving monitoring under this section, the permitting authority may condition the approval on the owner or operator collecting additional data on the indicators to be monitored for a pollutant-specific emissions unit, including required compliance or performance testing, to confirm the ability of the monitoring to provide data that are sufficient to satisfy the requirements of this part and to confirm the appropriateness of an indicator

range(s) or designated condition(s) proposed to satisfy §64.3(a)(2) and (3) and consistent with the schedule in §64.4(e).

(c) If the permitting authority approves the proposed monitoring, the permitting authority shall establish one or more permit terms or conditions that specify the required monitoring in accordance with §70.6(a)(3)(i) of this chapter. At a minimum, the permit shall specify:

(1) The approved monitoring approach that includes all of the following:

(i) The indicator(s) to be monitored (such as temperature, pressure drop, emissions, or similar parameter);

(ii) The means or device to be used to measure the indicator(s) (such as temperature measurement device, visual observation, or CEMS); and

(iii) The performance requirements established to satisfy §64.3(b) or (d), as applicable.

(2) The means by which the owner or operator will define an exceedance or excursion for purposes of responding to and reporting exceedances or excursions under §§64.7 and 64.8 of this part. The permit shall specify the level at which an excursion or exceedance will be deemed to occur, including the appropriate averaging period associated with such exceedance or excursion. For defining an excursion from an indicator range or designated condition, the permit may either include the specific value(s) or condition(s) at which an excursion shall occur, or the specific procedures that will be used to establish that value or condition. If the latter, the permit shall specify appropriate notice procedures for the owner or operator to notify the permitting authority upon any establishment or reestablishment of the value.

(3) The obligation to conduct the monitoring and fulfill the other obligations specified in §§64.7 through 64.9 of this part.

(4) If appropriate, a minimum data availability requirement for valid data collection for each averaging period, and, if appropriate, a minimum data availability requirement for the averaging periods in a reporting period.

(d) If the monitoring proposed by the owner or operator requires installation, testing or final verification of operational status, the part 70 or 71 permit shall include an enforceable schedule with appropriate milestones for completing such installation, testing, or final verification consistent with the requirements in §64.4(e).

(e) If the permitting authority disapproves the proposed monitoring, the following applies:

(1) The draft or final permit shall include, at a minimum, monitoring that satisfies the requirements of §70.6(a)(3)(i)(B);

(2) The permitting authority shall include in the draft or final permit a compliance schedule for the source owner to submit monitoring that satisfies §§64.3 and 64.4, but in no case shall the owner or operator submit revised monitoring more than 180 days from the date of issuance of the draft or final permit; and

(3) If the source owner or operator does not submit the monitoring in accordance with the compliance schedule as required in paragraph (e)(2) of this section or if the permitting authority disapproves the monitoring submitted, the source owner or operator shall be deemed not in compliance with part 64, unless the source owner or operator successfully challenges the disapproval.

§64.7 Operation of approved monitoring.

(a) *Commencement of operation.* The owner or operator shall conduct the monitoring required under this part upon issuance of a part 70 or 71 permit that includes such monitoring, or by such later date specified in the permit pursuant to §64.6(d).

(b) *Proper maintenance.* At all times, the owner or operator shall maintain the monitoring, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(c) *Continued operation.* Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the owner or operator shall conduct all monitoring in continuous operation (or shall collect data at all required intervals) at all times that

the pollutant-specific emissions unit is operating. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities shall not be used for purposes of this part, including data averages and calculations, or fulfilling a minimum data availability requirement, if applicable. The owner or operator shall use all the data collected during all other periods in assessing the operation of the control device and associated control system. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(d) *Response to excursions or exceedances.* (1) Upon detecting an excursion or exceedance, the owner or operator shall restore operation of the pollutant-specific emissions unit (including the control device and associated capture system) to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include minimizing the period of any startup, shutdown or malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of an excursion or exceedance (other than those caused by excused startup or shutdown conditions). Such actions may include initial inspection and evaluation, recording that operations returned to normal without operator action (such as through response by a computerized distribution control system), or any necessary follow-up actions to return operation to within the indicator range, designated condition, or below the applicable emission limitation or standard, as applicable.

(2) Determination of whether the owner or operator has used acceptable procedures in response to an excursion or exceedance will be based on information available, which may include but is not limited to, monitoring results, review of operation and maintenance procedures and records, and inspection of the control device, associated capture system, and the process.

(e) *Documentation of need for improved monitoring.* After approval of monitoring under this part, if the owner or operator identifies a failure to achieve compliance with an emission limitation or standard for which the approved monitoring did not provide an indication of an excursion or exceedance while providing valid data, or the results of compliance or performance testing document a need to modify the existing indicator ranges or designated conditions, the owner or operator shall promptly notify the permitting authority and, if necessary, submit a proposed modification to the part 70 or 71 permit to address the necessary monitoring changes. Such a modification may include, but is not limited to, reestablishing indicator ranges or designated conditions, modifying the frequency of conducting monitoring and collecting data, or the monitoring of additional parameters.

§ 64.8 Quality improvement plan (QIP) requirements.

(a) Based on the results of a determination made under § 64.7(d)(2), the Administrator or the permitting authority may require the owner or operator to develop and implement a QIP. Consistent with § 64.6(c)(3), the part 70 or 71 permit may specify an appropriate threshold, such as an accumulation of exceedances or excursions exceeding 5 percent duration of a pollutant-specific emissions unit's operating time for a reporting period, for requiring the implementation of a QIP. The threshold may be set at a higher or lower percent or may rely on other criteria for purposes of indicating whether a pollutant-specific emissions unit is being maintained and operated in a manner consistent with good air pollution control practices.

(b) Elements of a QIP:

(1) The owner or operator shall maintain a written QIP, if required, and have it available for inspection.

(2) The plan initially shall include procedures for evaluating the control performance problems and, based on the results of the evaluation procedures, the owner or operator shall modify the plan to include procedures for

conducting one or more of the following actions, as appropriate:

(i) Improved preventive maintenance practices.

(ii) Process operation changes.

(iii) Appropriate improvements to control methods.

(iv) Other steps appropriate to correct control performance.

(v) More frequent or improved monitoring (only in conjunction with one or more steps under paragraphs (b)(2)(i) through (iv) of this section).

(c) If a QIP is required, the owner or operator shall develop and implement a QIP as expeditiously as practicable and shall notify the permitting authority if the period for completing the improvements contained in the QIP exceeds 180 days from the date on which the need to implement the QIP was determined.

(d) Following implementation of a QIP, upon any subsequent determination pursuant to §64.7(d)(2) the Administrator or the permitting authority may require that an owner or operator make reasonable changes to the QIP if the QIP is found to have:

(1) Failed to address the cause of the control device performance problems; or

(2) Failed to provide adequate procedures for correcting control device performance problems as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions.

(e) Implementation of a QIP shall not excuse the owner or operator of a source from compliance with any existing emission limitation or standard, or any existing monitoring, testing, reporting or recordkeeping requirement that may apply under federal, state, or local law, or any other applicable requirements under the Act.

§64.9 Reporting and recordkeeping requirements.

(a) *General reporting requirements.* (1) On and after the date specified in §64.7(a) by which the owner or operator must use monitoring that meets the requirements of this part, the owner or operator shall submit monitoring reports to the permitting authority in accordance with §70.6(a)(3)(iii) of this chapter.

(2) A report for monitoring under this part shall include, at a minimum, the information required under §70.6(a)(3)(iii) of this chapter and the following information, as applicable:

(i) Summary information on the number, duration and cause (including unknown cause, if applicable) of excursions or exceedances, as applicable, and the corrective actions taken;

(ii) Summary information on the number, duration and cause (including unknown cause, if applicable) for monitor downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable); and

(iii) A description of the actions taken to implement a QIP during the reporting period as specified in §64.8. Upon completion of a QIP, the owner or operator shall include in the next summary report documentation that the implementation of the plan has been completed and reduced the likelihood of similar levels of excursions or exceedances occurring.

(b) *General recordkeeping requirements.* (1) The owner or operator shall comply with the recordkeeping requirements specified in §70.6(a)(3)(ii) of this chapter. The owner or operator shall maintain records of monitoring data, monitor performance data, corrective actions taken, any written quality improvement plan required pursuant to §64.8 and any activities undertaken to implement a quality improvement plan, and other supporting information required to be maintained under this part (such as data used to document the adequacy of monitoring, or records of monitoring maintenance or corrective actions).

(2) Instead of paper records, the owner or operator may maintain records on alternative media, such as microfilm, computer files, magnetic tape disks, or microfiche, provided that the use of such alternative media allows for expeditious inspection and review, and does not conflict with other applicable recordkeeping requirements.

§64.10 Savings provisions.

(a) Nothing in this part shall:

(1) Excuse the owner or operator of a source from compliance with any existing emission limitation or standard, or

any existing monitoring, testing, reporting or recordkeeping requirement that may apply under federal, state, or local law, or any other applicable requirements under the Act. The requirements of this part shall not be used to justify the approval of monitoring less stringent than the monitoring which is required under separate legal authority and are not intended to establish minimum requirements for the purpose of determining the monitoring to be imposed under separate authority under the Act, including monitoring in permits issued pursuant to title I of the Act. The purpose of this part is to require, as part of the issuance of a permit under title V of the Act, improved or new monitoring at those emissions units where monitoring requirements do not exist or are inadequate to meet the requirements of this part.

(2) Restrict or abrogate the authority of the Administrator or the permitting authority to impose additional or more stringent monitoring, recordkeeping, testing, or reporting requirements on any owner or operator of a source under any provision of the Act, including but not limited to sections 114(a)(1) and 504(b), or state law, as applicable.

(3) Restrict or abrogate the authority of the Administrator or permitting authority to take any enforcement action under the Act for any violation of an applicable requirement or of any person to take action under section 304 of the Act.

PART 65—CONSOLIDATED FEDERAL AIR RULE

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

SOURCE: 65 FR 78285, Dec. 14, 2000, unless otherwise noted.

Subpart A—General Provisions

§65.1 Applicability.

(a) The provisions of this subpart apply to owners or operators expressly referenced to this part from a subpart of 40 CFR part 60, 61, or 63 for which the owner or operator has chosen to comply with the provisions of this part as an alternative to the provisions in the referencing subpart as specified in paragraph (b) of this section.

(b) Owners or operators may choose to comply with this part for any regulated source subject to a referencing subpart.

(c) Compliance with this part instead of the referencing subparts does not alter the applicability of the referencing subparts. This part applies to only the equipment, process vents, storage vessels, or transfer operations to which the referencing subparts apply. This part does not extend applicability to equipment, process vents, storage vessels, or transfer operations that are not regulated by the referencing subpart.

(d) The provisions of 40 CFR part 60, subpart A; 40 CFR part 61, subpart A; and 40 CFR part 63, subpart A, that are listed in table 1 of this subpart still apply to owners or operators of regulated sources expressly referenced to this part. The owner or operator shall comply with the provisions in table 1 of this subpart in the column corresponding to the referencing subpart. All provisions of 40 CFR part 60, subpart A; 40 CFR part 61, subpart A; and 40 CFR part 63, subpart A, not expressly referenced in table 1 of this subpart do not apply, and the provisions of this part apply instead, except that provisions which were required to be met prior to implementation of this part 65 still apply.

(e) The provisions of the referencing subparts that are listed in table 2 of this subpart still apply to owners or operators of regulated sources expressly referenced to this part. The owner or operator shall comply with the provisions in table 2 of this subpart in the row corresponding to the referencing subpart. All provisions of the referencing subparts not expressly referenced in table 2 to this subpart do not apply and the provisions of this part apply instead, except that provisions which were required to be met prior to implementation of this part 65 still apply.

(f) *Implementation date.* Owners or operators who choose to comply with this part shall comply by the dates specified in paragraph (f)(1) of this section, as applicable, and shall meet the requirement in paragraph (f)(2) of this section.

(1) Owners or operators shall implement this part as specified in an implementation schedule or at initial startup. The implementation date shall be established by mutual agreement with the Administrator or delegated authority. The implementation schedule shall be included in the source's title V permit. For non-title V sources, the implementation schedule shall be proposed by the source in the Initial Notification for Part 65 Applicability as specified in § 65.5(c).

(2) There shall be no gaps in compliance between compliance with the referencing subpart and compliance with this part.

(g) *Transitioning out of this part.* Owners or operators who decide to no longer comply with this part and to comply with the provisions in the referencing subpart instead shall comply with the following, as applicable:

(1) This transition shall be carried out on a date established in a title V permit or if the source is not a title V source, by a date established by agreement with the Administrator or delegated authority. The transition date shall be proposed in a title V permit amendment, or for non-title V sources, in a periodic report or separate notice.

(2) There shall be no gaps in compliance between compliance with this part and compliance with the referencing subpart provisions.

(h) *Overlap with other subparts of this part.* When provisions of another subpart of this part conflict with the provisions of this subpart, the provisions of the other subpart shall apply.

(i) *Equipment assignment procedures.* If specific items of equipment (pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, surge control vessels, and bottoms receivers) that are part of a process unit complying with this part are managed by different administrative organizations (for example, different companies, affiliates, departments, divisions, etc.), those items of equipment may be aggregated with any process unit within the plant site.

§ 65.2 Definitions.

All terms used in this part shall have the meaning given them in the Act and in this section. If a term is defined both in this section and in other parts that reference the use of this part, the term shall have the meaning given in this section for purposes of this part. If a term is not defined in the Act or in this section, the term shall have the meaning given in the referencing subpart for purposes of this part. The terms follow:

Act means the Clean Air Act (42 U.S.C. 7401 *et seq.*).

Administrator means the Administrator of the United States Environmental Protection Agency (EPA) or his or her authorized representative (for

example, a State that has been delegated the authority to implement the provisions of this part).

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

Automated continuous parameter monitoring system means a continuous parameter monitoring system that automatically both records the measured data and calculates hourly averages.

Automated monitoring and recording system means any means of measuring values of monitored parameters and creating a hard copy or computer record of the measured values that does not require manual reading of monitoring instruments and manual transcription of data values. Automated monitoring and recording systems include, but are not limited to, computerized systems, strip charts, and circular charts.

Batch process means a process in which the equipment is fed intermittently or discontinuously. Processing then occurs in this equipment after which the equipment is generally emptied. Examples of industries that use batch processes include pharmaceutical production and pesticide production.

Batch product-process equipment train means the collection of equipment (for example, connectors, reactors, valves, pumps) configured to produce a specific product or intermediate by a batch process.

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator or a process heater. Boiler also means any industrial furnace as defined in 40 CFR 260.10.

Bottoms receiver means a tank that collects distillation bottoms before the stream is sent for storage or for further downstream processing.

By compound means by individual stream components, not carbon equivalents.

Car-seal means a seal that is placed on a device that is used to change the position of a valve (for example, from opened to closed) in such a way that the position of the valve cannot be changed without breaking the seal.

Closed vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device. A closed vent system does not include the vapor collection system that is part of any tank truck or railcar or the loading arm or hose that is used for vapor return. For transfer racks, the closed vent system begins at, and includes, the first block valve on the downstream side of the loading arm or hose used to convey displaced vapors.

Closed vent system shutdown means a work practice or operational procedure that stops production from a process unit or part of a process unit during which it is technically feasible to clear process material from a closed vent system or part of a closed vent system consistent with safety constraints and during which repairs can be effected. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a closed vent system shutdown. An unscheduled work practice or operational procedure that would stop production from a process unit or part of a process unit for a shorter period of time than would be required to clear the closed vent system or part of the closed vent system of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled closed vent system shutdown, is not a closed vent system shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not closed vent system shutdowns.

Closed-loop system means an enclosed system that returns process fluid to a process.

Closed-purge system means a system or combination of systems and portable containers to capture purged liquids. Containers must be covered or closed when not being filled or emptied.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or

boiler, used for the combustion of organic emissions.

Compliance date means the date by which a regulated source is required to be in compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established by the Administrator (or a State with an approved permit program) pursuant to the Act.

Connector means flanged, screwed, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this regulation. For the purpose of reporting and recordkeeping, connector means joined fittings that are not inaccessible, ceramic, or ceramic-lined (for example, porcelain, glass, or glass-lined) as described in § 65.108(e)(2).

Continuous parameter monitoring system or *CPMS* means the total equipment that may be required to meet the data acquisition and availability requirements of this part used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

Continuous record means documentation, either in hard copy or computer-readable form, of data values measured at least once every 15 minutes and recorded at the frequency specified in § 65.161(a).

Continuous seal means a seal that is designed to form a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the floating roof. A continuous seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

Control device means any combustion device, recovery device, or any combination of these devices used to comply with this part. Such equipment or devices include, but are not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For process vents (as defined in this section), recovery devices are not considered control devices except for the recovery devices specified in § 65.63(a)(2)(ii). A fuel gas system is not a control device. For a steam stripper, a primary condenser is not considered a control device.

Control system means the combination of the closed vent system and the control devices used to collect and control vapors or gases from a regulated source.

Day means a calendar day.

Distance piece means an open or enclosed casing through which the piston rod travels, separating the compressor cylinder from the crankcase.

Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

Ductwork means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

Emission point means an individual process vent, storage vessel, transfer rack, wastewater stream, or equipment leak.

Empty or emptying means the removal of the stored liquid from a storage vessel. Storage vessels where stored liquid is left on the walls, as bottom clingage, or in pools due to bottom irregularities are considered empty. Lowering of the stored liquid level, so that the floating roof is resting on its legs, as necessitated by normal vessel operation (for example, when changing stored material or when transferring material out of the vessel for shipment) is not considered emptying.

Equipment means each of the following that is subject to control under the referencing subpart: pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system; and any control devices or systems used to comply with subpart F of this part.

Equivalent method means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Administrator's satisfaction to have a consistent and quantitatively known relationship to the reference method under specified conditions.

External floating roof or *EFR* means a pontoon-type (noncontact) or double-

deck-type (contact) roof that is designed to rest on the stored liquid surface in a storage vessel with no fixed roof.

Failure, EFR (referred to as EFR failure) is defined as any time the external floating roof's primary seal has holes, tears, or other openings in the shoe, seal fabric, or seal envelope; or the secondary seal has holes, tears, or other openings in the seal or the seal fabric; or the gaskets no longer close off the stored liquid surface from the atmosphere; or a slotted membrane has more than 10 percent open area.

Failure, internal floating roof type A (referred to as IFR type A failure) means any time, as determined during visual inspection through roof hatches, in which the internal floating roof is not resting on the surface of the stored liquid inside the storage vessel and is not resting on the leg supports; or there is stored liquid on the floating roof; or there are holes, tears, or other openings in the seal or seal fabric; or there are visible gaps between the seal and the wall of the storage vessel.

Failure, internal floating roof type B (referred to as IFR type B failure) means any time, as determined during internal inspections, the internal floating roof's primary seal has holes, tears, or other openings in the seal or the seal fabric; or the secondary seal (if one has been installed) has holes, tears, or other openings in the seal or the seal fabric; or the gaskets no longer close off the stored liquid surface from the atmosphere; or a slotted membrane has more than 10 percent open area.

Fill or *filling* means the introduction of liquids into a storage vessel, but not necessarily to complete capacity.

First attempt at repair, for the purposes of subparts F and G of this part, means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere, followed by monitoring as specified in §§65.104(b) and 65.143(c), as appropriate, to verify whether the leak is repaired, unless the owner or operator determines by other means that the leak is not repaired.

Fixed roof means a roof that is mounted (for example, permanently affixed) on a storage vessel in a stationary manner and that does not move with fluctuations in stored liquid level.

Flame zone means the portion of the combustion chamber in a boiler or process heater occupied by the flame envelope.

Floating roof means a roof consisting of an external floating roof or an internal floating roof that is designed to rest upon and is supported by the stored liquid and is equipped with a continuous seal.

Flow indicator means a device that indicates whether gas flow is present in a line, or whether the valve position would allow gas flow to be present in a line.

Force majeure means, for purposes of §65.157, an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and flow and pressure control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices or in-process combustion equipment, such as furnaces and gas turbines, either singly or in combination.

Group 1 process vent means a process vent for which the flow rate is greater than or equal to 0.011 standard cubic meter per minute (0.39 cubic feet per minute); the total concentration is greater than or equal to the appropriate value in table 1 of subpart D of this part, and the total resource effectiveness index value, calculated according to §65.64(h) is less than or equal to 1.0.

Group 2A process vent means a process vent that is not Group 1 or Group 2B

for which monitoring and recordkeeping are required to demonstrate a total resource effectiveness index value greater than 1.0.

Group 2B process vent means a process vent that is not Group 1 or Group 2A for which monitoring and recordkeeping are not required to demonstrate a total resource effectiveness index value greater than 4.0, or which is exempt from control requirements due to the vent stream's flow rate, regulated material concentration, or total resource effectiveness index value.

Halogenated vent stream or *halogenated stream* means, for purposes of this part, a vent stream determined to be halogenated by the procedures specified in § 65.85(c) for transfer racks and in § 65.64(g) for process vents, as applicable.

Halogens and hydrogen halides means hydrogen chloride (HCl), chlorine (Cl_2), hydrogen bromide (HBr), bromine (Br_2), and hydrogen fluoride (HF).

Hard-piping means pipe or tubing that is manufactured and installed using good engineering judgment and standards, such as ASME B31.3, Process Piping (available from the American Society of Mechanical Engineers, PO Box 2900, Fairfield, NJ 07007–2900).

High-throughput transfer racks means those transfer racks that transfer greater than or equal to a total of 11.8 million liters per year (3.12 million gallons per year) of liquid containing regulated material.

In food/medical service means that a piece of equipment in regulated material service contacts a process stream used to manufacture a Food and Drug Administration-regulated product where leakage of a barrier fluid into the process stream would cause any of the following:

(1) A dilution of product quality so that the product would not meet written specifications;

(2) An exothermic reaction that is a safety hazard;

(3) The intended reaction to be slowed down or stopped; or

(4) An undesired side reaction to occur.

In gas/vapor service means that a piece of equipment in regulated material service contains a gas or vapor when in operation.

In heavy liquid service means that a piece of equipment in regulated material service is not in gas/vapor service or in light liquid service.

In light liquid service means that a piece of equipment in regulated material service contains a liquid that meets the following conditions:

(1) The vapor pressure of one or more of the organic compounds is greater than 0.3 kilopascals at 20 °C (0.04 pounds per square inch at 68 °F);

(2) The total concentration of the pure organic compound constituents having a vapor pressure greater than 0.3 kilopascals at 20 °C (0.04 pounds per square inch at 68 °F) is equal to or greater than 20 percent by weight of the total process stream; and

(3) The fluid is a liquid at operating conditions. (Note: Vapor pressures may be determined by standard reference texts or American Society for Testing and Materials (ASTM) D–2879, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.)

In liquid service means that a piece of equipment in regulated material service is not in gas/vapor service.

In regulated material service means, for the purposes of the equipment leak provisions of subpart F of this part, equipment which meets the definition of ''in volatile organic compound service,'' ''in volatile hazardous air pollutant service,'' ''in benzene service,'' ''in vinyl chloride service,'' or ''in organic hazardous air pollutant service'' as defined in the referencing subpart.

In vacuum service means that equipment is operating at an internal pressure that is at least 5 kilopascals (0.7 pounds per square inch) below ambient pressure.

In-situ sampling systems means nonextractive samplers or in-line samplers.

Incinerator means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section present is not physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery

section is a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas. This energy recovery section limitation does not apply to an energy recovery section used solely to preheat the incoming vent stream or combustion air.

Initial startup means, for new or reconstructed sources, the first time the source begins production. For additions or changes not defined as a new source by an applicable referencing subpart, initial startup means the first time additional or changed equipment is put into operation. Initial startup does not include operation solely for testing equipment. Initial startup does not include subsequent startup (as defined in this section) of process units following malfunctions or process unit shutdowns. Except for equipment leaks, initial startup also does not include subsequent startups (as defined in this section) of process units following changes in product for flexible operation units or following recharging of equipment in batch operation.

Instrumentation system means a group of equipment components used to condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (for example, composition, pressure, flow). Valves and connectors are the predominant type of equipment used in instrumentation systems; however, other types of equipment may also be included in these systems. Only valves nominally 0.5 inches and smaller in diameter and connectors nominally 0.75 inches and smaller in diameter are considered instrumentation systems for the purposes of subpart F of this part.

Intermediate change to monitoring means a modification to federally required monitoring involving ''proven technology'' (generally accepted by the scientific community as equivalent or better) that is applied on a site-specific basis and that may have the potential to decrease the stringency of the associated emission limitation or standard. Though site-specific, an intermediate change may set a national precedent for a source category and may ultimately result in a revision to the federally required monitoring. Examples of intermediate changes to monitoring include, but are not limited to:

(1) Use of a continuous monitoring system (CEMS) in lieu of a parameter monitoring approach;

(2) Decreased frequency for non-continuous parameter monitoring or physical inspections;

(3) Changes to quality control requirements for parameter monitoring; and

(4) Use of an electronic data reduction system in lieu of manual data reduction.

Intermediate change to test method means a within-method modification to a federally enforceable test method involving ''proven technology'' (generally accepted by the scientific community as equivalent or better) that is applied on a site-specific basis and that may have the potential to decrease the stringency of the associated emission limitation or standard. Though site-specific, an intermediate change may set a national precedent for a source category and may ultimately result in a revision to the federally enforceable test method. In order to be approved, an intermediate change must be validated according to EPA Method 301 (40 CFR part 63, appendix A) to demonstrate that it provides equal or improved accuracy or precision. Examples of intermediate changes to a test method include, but are not limited to:

(1) Modifications to a test method's sampling procedure including substitution of sampling equipment that has been demonstrated for a particular sample matrix; and use of a different impinger absorbing solution;

(2) Changes in sample recovery procedures and analytical techniques, such as changes to sample holding times and use of a different analytical finish with proven capability for the analyte of interest; and

(3) ''Combining'' a federally required method with another proven method for application to processes emitting multiple pollutants.

Internal floating roof or *IFR* means a pontoon-type (noncontact) or double-deck-type (contact) roof that is designed to rest or float on the stored liquid surface inside a storage vessel that has a fixed roof.

Liquid-mounted seal means a foam-or liquid-filled continuous seal mounted in contact with the stored liquid.

Liquids dripping means any visible leakage from a seal including dripping, spraying, misting, clouding, and ice formation. Indications of liquids dripping include puddling or new stains that are indicative of an existing evaporated drip.

Loading cycle means the time period from the beginning of filling a tank truck or railcar until flow to the control device ceases as determined by the flow indicator.

Low-throughput transfer racks means those transfer racks that transfer less than a total of 11.8 million liters per year (3.12 million gallons per year) of liquid containing regulated material.

Major change to monitoring means a modification to federally required monitoring that uses ''unproven technology or procedures'' (not generally accepted by the scientific community) or is an entirely new method (sometimes necessary when the required monitoring is unsuitable). A major change to monitoring may be site-specific or may apply to one or more source categories and will almost always set a national precedent. Examples of major changes to monitoring include, but are not limited to:

(1) Use of a new monitoring approach developed to apply to a control technology not contemplated in the applicable regulation in this part;

(2) Use of a predictive emission monitoring system (PEMS) in place of a required continuous emission monitoring system (CEMS);

(3) Use of alternative calibration procedures that do not involve calibration gases or test cells;

(4) Use of an analytical technology that differs from that specified by a performance specification;

(5) Decreased monitoring frequency for a continuous emission monitoring system, continuous opacity monitoring system, predictive emission monitoring system, or continuous parameter monitoring system;

(6) Decreased monitoring frequency for a leak detection and repair program; and

(7) Use of alternative averaging times for reporting purposes.

Major change to test method means a modification to a federally enforceable test method that uses ''unproven technology or procedures'' (not generally accepted by the scientific community) or is an entirely new method (sometimes necessary when the required test method is unsuitable). A major change to a test method may be site-specific or may apply to one or more source categories and will almost always set a national precedent. In order to be approved, a major change must be validated according to EPA Method 301 (40 CFR part 63, appendix A). Examples of major changes to a test method include, but are not limited to:

(1) Use of an unproven analytical finish;

(2) Use of a method developed to fill a test method gap;

(3) Use of a new test method developed to apply to a control technology not contemplated in the applicable regulation in this part; and

(4) Combining two or more sampling/analytical methods (at least one unproven) into one for application to processes emitting multiple pollutants.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not malfunctions. Malfunctions that do not affect a regulated source or compliance with this part are not malfunctions for purposes of this part.

Metallic shoe seal or *mechanical shoe seal* means metal sheets that are held vertically against the wall of the storage vessel by springs, weighted levers, or other mechanisms and connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

Minor change to monitoring means:

(1) A modification to federally required monitoring that:

(i) Does not decrease the stringency of the compliance and enforcement measures of the relevant standard;

(ii) Has no national significance (e.g., does not affect implementation of the applicable regulation in this part for other affected sources, does not set a national precedent, and individually does not result in a revision to the monitoring requirements); and

(iii) Is site-specific, made to reflect or accommodate the operational characteristics, physical constraints, or safety concerns of an affected source.

(2) Examples of minor changes to monitoring include, but are not limited to:

(i) Modifications to a sampling procedure, such as use of an improved sample conditioning system to reduce maintenance requirements;

(ii) Increased monitoring frequency; and

(iii) Modification of the environmental shelter to moderate temperature fluctuation and thus protect the analytical instrumentation.

Minor change to test method means:

(1) A modification to a federally enforceable test method that:

(i) Does not decrease the stringency of the emission limitation or standard;

(ii) Has no national significance (e.g., does not affect implementation of the applicable regulation in this part for other affected sources, does not set a national precedent, and individually does not result in a revision to the test method); and

(iii) Is site-specific, made to reflect or accommodate the operational characteristics, physical constraints, or safety concerns of an affected source.

(2) Examples of minor changes to a test method include, but are not limited to:

(i) Field adjustments in a test method's sampling procedure, such as a modified sampling traverse or location to avoid interference from an obstruction in the stack, increasing the sampling time or volume, use of additional impingers for a high moisture situation, accepting particulate emission results for a test run that was conducted with a lower than specified temperature, substitution of a material in the sampling train that has been demonstrated to be more inert for the sample matrix; and

(ii) Changes in recovery and analytical techniques such as a change in quality control/quality assurance requirements needed to adjust for analysis of a certain sample matrix.

Nonautomated monitoring and recording system means manual reading of values measured by monitoring instruments and manual transcription of those values to create a record. Nonautomated systems do not include strip charts nor circular charts.

Nonrepairable means that it is technically infeasible to repair a piece of equipment from which a leak has been detected without a process unit shutdown.

One-hour period means the 60-minute period commencing on the hour.

Onsite or *on-site* means, with respect to records required to be maintained by this part, that the records are stored at a location within a plant site that encompasses the regulated source. Onsite includes, but is not limited to, storage at the regulated source to which the records pertain, or storage in central files elsewhere at the plant site.

Open-ended valve or line means any valve except relief valves having one side of the valve seat in contact with process fluid and one side open to the atmosphere, either directly or through open piping.

Organic monitoring device means a device used to indicate the concentration level of organic compounds based on a detection principle such as infrared, photo ionization, or thermal conductivity.

Owner or operator means any person who owns, leases, operates, controls, or supervises a regulated source or a stationary source of which a regulated source is a part.

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

Performance test means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive

Federal operating permit system established pursuant to title V of the Act and regulations codified in part 71 of this chapter.

Permitting authority means one of the following:

(1) 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 part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661) and part 71 of this chapter.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Polymerizing monomer means, for the purposes of this part, a compound which may form polymer buildup in pump mechanical seals resulting in rapid mechanical seal failure.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the relief device. This release can be one release or a series of releases over a short time period.

Pressure relief device or valve means a device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not pressure relief devices.

Primary fuel means the fuel that provides the principal heat input to the device. To be considered primary, the fuel must be able to sustain operation without the addition of other fuels.

Process heater means an enclosed combustion device that transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water. A process heater may, as a secondary function, heat water in unfired heat recovery sections.

Process unit means the equipment specified in the definitions of process unit or chemical manufacturing process unit in the applicable referencing subpart. If the referencing subpart does not define process unit, then, for the purposes of this part, process unit means the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended product.

Process unit shutdown means a work practice or operational procedure that stops production from a process unit or part of a process unit during which it is technically feasible to clear process material from a process unit or part of a process unit consistent with safety constraints and during which repairs can be effected. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a process unit shutdown. An unscheduled work practice or operational procedure that would stop production from a process unit or part of a process unit for a shorter period of time than would be required to clear the process unit or part of the process unit of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled process unit shutdown is not a process unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not process unit shutdowns.

Process vent means a process vent or vent stream as they are defined in the referencing subpart.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (*i.e.,* net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Equipment capable of and used for the purpose of recovering chemicals, but not normally for use, reuse or sale, are not recovery devices but are control devices. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices

such as decanters, strippers, or thin-film evaporation units.

Reference method means any method of sampling and analyzing for an air pollutant as specified in an applicable subpart, the appendices to 40 CFR part 60 or 63, or in appendix B of 40 CFR part 61.

Referencing subpart means 40 CFR part 60, subparts Ka, Kb, VV, DDD, III, NNN, and RRR; 40 CFR part 61, subparts V, Y, and BB; and 40 CFR part 63, subparts G and H.

Regulated material means, for the purposes of this part, the material regulated by the specific referencing subpart, including volatile organic liquids (VOL), volatile organic compounds (VOC), organic hazardous air pollutants (HAP's), benzene, vinyl chloride, or other chemicals or groups of chemicals.

Regulated source means, for the purposes of this part, the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to this part, or 40 CFR part 60, 61, or 63.

Relief device or valve means a device or valve used only to release an unplanned, nonroutine discharge. A relief device or valve discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage.

Repaired means, for the purposes of subparts F and G of this part, that equipment meets the following conditions:

(1) Is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable section of this part; and

(2) Unless otherwise specified in applicable provisions of this part, is monitored as specified in §§65.104(b) and 65.143(c) to verify that emissions from the equipment are below the applicable leak definition.

Routed to a process or route to a process means the emissions are conveyed to any enclosed portion of a process unit where the emissions are predominantly recycled and/or consumed in the same manner as a material that fulfills the same function in the process and/or transformed by chemical reaction into materials that are not regulated materials and/or incorporated into a product; and/or recovered.

Run means one of a series of emission or other measurements needed to determine emissions for a representative operating period or cycle as specified in this part. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

Sampling connection system means an assembly of equipment within a process unit used during periods of representative operation to take samples of the process fluid. Equipment used to take nonroutine grab samples is not considered a sampling connection system.

Secondary fuel means a fuel fired through a burner other than the primary fuel burner that provides supplementary heat in addition to the heat provided by the primary fuel.

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Set pressure means, for the purposes of subparts F and G of this part, the pressure at which a properly operating pressure relief device begins to open to relieve atypical process system operating pressure.

Shutdown means the cessation of operation of a regulated source (for example, chemical manufacturing process unit or a reactor, air oxidation reactor, distillation unit) and equipment required or used to comply with this part, or the emptying and degassing of a storage vessel. Shutdown is defined here for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair. Shutdown does not include the routine rinsing or washing of equipment in batch operation between batches.

Simultaneous loading means, for a shared control device, loading of regulated materials from more than one transfer arm at the same time so that the beginning and ending times of loading cycles coincide or overlap and there is no interruption in vapor flow to the shared control device.

Single-seal system means, for the purposes of subpart C of this part, a floating roof having one continuous seal. This seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal.

Specific gravity monitoring device means a unit of equipment used to monitor specific gravity and having a minimum accuracy of ±0.02 specific gravity units.

Startup means the setting into operation of a regulated source (for example, chemical manufacturing process unit or a reactor, air oxidation reactor, distillation unit, a storage vessel after emptying and degassing) and/or equipment required or used to comply with this part. Startup includes initial startup, operation solely for testing equipment, the recharging of equipment in batch operation, and transitional conditions due to changes in product for flexible operation units.

State means all non-Federal authorities, including local agencies, interstate associations, and statewide programs, that have delegated authority to implement the provisions of this part; the referencing subparts; and/or the permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Steam jet ejector means a steam nozzle that discharges a high-velocity jet across a suction chamber that is connected to the equipment to be evacuated.

Stuffing box pressure means the fluid (liquid or gas) pressure inside the casing or housing of a piece of equipment, on the process side of the inboard seal.

Surge control vessel means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a process unit (as defined in the specific subpart that references this part) when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

Temperature monitoring device means a unit of equipment used to monitor temperature and having a minimum accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±1.2 degrees Celsius (°C), whichever is greater.

Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established under 40 CFR part 70 or 71 to implement title V of the Act (42 U.S.C. 7661).

Total organic compounds or *TOC* means those compounds measured according to the procedures specified in §§ 65.64(c) and 65.158(b)(3)(ii)(A), as applicable. Those compounds that the Administrator has determined do not contribute appreciably to the formation of ozone and that are specifically excluded from the definition of volatile organic compound at 40 CFR 51.100(s), as amended, are to be excluded for the purposes of measuring the hourly emission rate as required in § 65.64(f) for process vents subject to subpart III, NNN, or RRR of part 60 of this chapter.

Total resource effectiveness index value or *TRE index value* means a calculated value used to determine whether control is required for a process vent. It is based on process vent flow rate, emission rate of regulated material, net heating value, and corrosion properties (halogenated compound content), as quantified by the equations given under § 65.64(h).

Vapor balancing system means a piping system that is designed to collect regulated material vapors displaced from tank trucks or railcars during loading and to route the collected regulated material vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected by a common header; or to compress and route to a process or a fuel gas system the collected regulated material vapors.

Vapor-mounted seal means a continuous seal that is mounted so that there is a vapor space between the stored liquid and the bottom of the seal.

Visible emission means the observation of an emission of opacity or optical density above the threshold of vision.

[65 FR 78285, Dec. 14, 2000, as amended at 71 FR 20471, Apr. 20, 2006; 72 FR 48942, Aug. 27, 2007]

§65.3 Compliance with standards and operation and maintenance requirements.

(a) *Requirements.* (1) Except as provided in paragraph (a)(2) of this section, the emission standards and established parameter ranges of this part shall apply at all times except during periods of startup, shutdown (as defined in §65.2), malfunction, or nonoperation of the regulated source (or specific portion thereof) resulting in cessation of the emissions to which this part applies. However, if a startup, shutdown, malfunction, or period of nonoperation of one portion of a regulated source does not affect the ability of a particular emission point to comply with the specific provisions to which it is subject, then that emission point shall still be required to comply with the applicable provisions of this part during the startup, shutdown, malfunction, or period of nonoperation. For example, if there is an over pressure in the reactor area, a storage vessel in a chemical manufacturing process unit would still be required to be controlled in accordance with subpart C of this part. Similarly, the degassing of a storage vessel would not affect the ability of a process vent to meet the requirements of subpart D or G of this part.

(2) Sections 65.106 through 65.118 shall apply at all times except during periods of startup or shutdown (as defined in §65.2), malfunction, process unit shutdown (as defined in §65.2), or nonoperation of the regulated source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which subpart F of this part applies.

(3) During startups, shutdowns, and malfunctions when the emission standards of this part do not apply pursuant to paragraphs (a)(1) and (2) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize emissions in excess of those that would have occurred if there were no startup, shutdown, or malfunction and the owner or operator complied with the relevant provisions of this part. The measures to be taken may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the regulated source. Backup control devices are not required but may be used if available. This paragraph (a)(3) does not apply to Group 2A or Group 2B process vents.

(4) Malfunctions shall be corrected as soon as practical after their occurrence. This paragraph (a)(4) does not apply to Group 2A or Group 2B process vents.

(5) Operation and maintenance requirements established pursuant to section 112 of the Act are enforceable independent of emissions limitations or other requirements in relevant standards.

(b) *Compliance determination procedures*—(1) *Parameter monitoring: Compliance with operating conditions.* The parameter monitoring data for emission points that are required to perform continuous monitoring shall be used to determine compliance with the required operating conditions for the monitored control devices or recovery devices. For each excursion, except for excused excursions and as provided for in paragraph (b)(2) of this section, the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating conditions. Excused excursions are provided for in §65.156(d)(2).

(2) *Parameter monitoring: Excursions.* If the conditions of paragraph (b)(2)(i) or (ii) of this section are met, an excursion is not a violation and, in cases where continuous monitoring is required, the excursion does not count toward the number of excused excursions. Nothing in this paragraph (b)(2) shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this part.

(i) During periods of startup, shutdown, or malfunction (and the source is operated during such periods in accordance with §65.3(a)(3)), a monitoring parameter is outside its established range or monitoring data cannot be collected; or

(ii) During periods of nonoperation of the regulated source or portion thereof (resulting in cessation of the emissions to which the monitoring applies).

(3) *Operation and maintenance procedures*. Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan, if applicable, required in § 65.6(a), as applicable), review of operation and maintenance records, inspection of the regulated source, and alternatives approved as specified in § 65.7.

(4) *Emissions standards*. Paragraphs (b)(4)(i) and (ii) of this section shall govern the use of data, tests, and requirements to determine compliance with emissions standards. Paragraphs (b)(4)(i) and (ii) do not apply to Group 2A or Group 2B process vents. Compliance with design, equipment, work practice, and operational standards, including those for equipment leaks, shall be determined according to paragraph (b)(5) of this section.

(i) *Performance test*. The Administrator will determine compliance with emission standards of this part based on the results of performance tests conducted according to the procedures specified in subpart G of this part, unless otherwise specified in a subpart of this part.

(ii) *Operation and maintenance requirements*. The Administrator will determine compliance with emission standards of this part by evaluation of an owner or operator's conformance with operation and maintenance requirements, including the evaluation of monitoring data, as specified in subparts of this part.

(5) *Design, equipment, work practice, or operational standards*. Paragraphs (b)(5)(i) and (ii) do not apply to Group 2A or Group 2B process vents.

(i) *Records and inspection*. The Administrator will determine compliance with design, equipment, work practice, or operational standards by review of records, inspection of the regulated source, and other procedures specified in this part.

(ii) *Operation and maintenance*. The Administrator will determine compliance with design, equipment, work practice, or operational standards by evaluation of an owner or operator's conformance with operation and maintenance requirements as specified in paragraph (a) of this section, in other subparts of this part, and in applicable provisions of § 65.6(b).

(c) *Finding of compliance*. The Administrator will make a finding concerning a regulated source's compliance with an emission standard, design standard, work practice, operational standard or operating and maintenance requirement as specified in paragraphs (a) and (b) of this section upon obtaining all the compliance information required by the relevant standard (including the written reports of performance test results, monitoring results, and other information, if applicable) and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used. Standards in this part and methods of determining compliance are given in metric units followed by the equivalents in English units. The Administrator will make findings of compliance with the standards of this part using metric units.

(d) *Compliance times*. All terms that define a period of time for completion of required tasks (for example, weekly, monthly, quarterly, annually) unless specified otherwise in the section or paragraph that imposes the requirement refer to the standard calendar periods.

(1) Notwithstanding time periods specified for completion of required tasks, time periods may be changed by mutual agreement between the owner or operator and the Administrator as specified in § 65.5(h)(3) (for example, a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period applies until it is changed. A new request is not necessary for each recurring period.

(2) When the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in the following paragraphs, as appropriate:

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period provided the task is conducted at a reasonable interval after completion of the task during the previous period.

[65 FR 78285, Dec. 14, 2000, as amended at 71 FR 20471, Apr. 20, 2006]

§65.4 Recordkeeping.

(a) *Maintaining notifications, records, and reports.* Except as provided in paragraph (b) of this section, the owner or operator of each regulated source subject to this part shall keep copies of notifications, reports, and records required by this part for the length of time specified in the following, as applicable:

(1) If an owner or operator is required to obtain or operate a regulated source under a title V permit, then all applicable notifications, reports, and records for that regulated source shall be maintained for at least 5 years, except for the records required in §65.47(b) for storage vessel capacity, §65.104(e)(2) for valve and connector monitoring, and §65.163(d)(1) for closed vent system design specifications.

(2) If an owner or operator is not required to obtain or operate a regulated source under a title V permit, then all notifications, reports, and records for that regulated source required by this part shall be maintained for at least 2 years, except for the records required in §65.47(b) for storage vessel capacity, §65.104(e)(2) for valve and connector monitoring, and §65.163(d)(1) for closed vent system design specifications.

(b) *Copies of reports.* If an owner or operator submits reports to the applicable EPA Regional Office, the owner or operator is not required to maintain copies of those reports. If the EPA Regional Office has waived the requirement of §65.5(g)(1) for submittal of copies of reports, the owner or operator is not required to maintain copies of the waived reports. Paragraph (b) of this section applies only to reports and not the underlying records which must be maintained as specified throughout this part.

(c) *Availability of records.* All applicable records shall be maintained in such a manner that they can be readily accessed and are suitable for inspection as specified in the following:

(1) Except as specified in paragraph (c)(2) of this section, records of the most recent 2 years shall be retained onsite or shall be accessible to an inspector while onsite. The records of the remaining 3 years, where required, may be retained offsite.

(2) For sources referenced to this part from 40 CFR part 63, subpart G or H, the most recent 6 months of records shall be retained on site or shall be accessible to an inspector while onsite from a central location by computer or other means that provides access within 2 hours after a request. The remaining 4 and one-half years of records, where required, may be retained offsite.

(3) Records specified in paragraph (c)(1) or (2) of this section may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, computer disk, magnetic tape, or microfiche.

§65.5 Reporting requirements.

(a) *Required reports.* Each owner or operator of a regulated source subject to this subpart shall submit the following reports, as applicable:

(1) A Notification of Initial Startup described in paragraph (b) of this section.

(2) An Initial Notification for Part 65 Applicability described in paragraph (c) of this section.

(3) An Initial Compliance Status Report described in paragraph (d) of this section.

(4) Periodic reports described in paragraph (e) of this section.

(5) Other reports shall be submitted as specified elsewhere in this part.

(6) Startup, Shutdown, and Malfunction Reports described in § 65.6(c).

(b) *Notification of Initial Startup*—(1) *Contents.* Any owner or operator of a regulated source which elects to comply with this part at initial startup shall send the Administrator written notification of the actual date of initial startup of a regulated source.

(2) *Due date.* The notification of the actual date of initial startup shall be postmarked within 15 days after such date.

(c) *Initial Notification for Part 65 Applicability.* Owners or operators of regulated sources that have been subject to a 40 CFR part 60, 61, or 63 standard, and who wish to comply with this part, and who are not operating the regulated source under an approved title V permit shall notify the Administrator of their intent. The notice shall include the information specified in paragraphs (c)(1) through (7) of this section, as applicable, and may accompany the application for a construction permit for the regulated source. This notification may be waived by the Administrator.

(1) Identification of the storage vessels subject to subpart C of this part.

(2) Identification of the process vents subject to subpart D of this part, including process vent group status as specified in § 65.62(a).

(3) Identification of the process vents subject to 40 CFR part 60, subpart DDD, complying with requirements of subpart G of this part.

(4) Identification of the transfer racks subject to subpart E of this part.

(5) For equipment leaks, identification of the process units subject to subpart F of this part.

(6) The proposed implementation schedule specified in § 65.1(f)(1) for sources identified in paragraphs (c)(1) through (5) of this section.

(7) *Process unit identification.* As an alternative to requirements specified in paragraphs (c)(1) through (4) of this section, the process units can be identified instead of the individual pieces of equipment. For this alternative, the kind of emission point in the process unit that will comply must also be identified.

(d) *Initial Compliance Status Report*—(1) *Contents.* The owner or operator shall submit an Initial Compliance Status Report for each regulated source subject to this part containing the information specified in the subparts of this part. Unless the required information has already been submitted under requirements of the applicable referencing subpart, this information can be submitted as part of a title V permit application or amendment.

(2) *Due date.* The owner or operator shall submit the Initial Compliance Status Report for each regulated source within 240 days after the applicable compliance date specified in the referencing subparts, or within 60 days after the completion of the initial performance test or initial compliance determination, whichever is earlier. Initial compliance Status Reports may be combined for multiple regulated sources as long as the due date requirements for all sources covered in the combined report are met.

(e) *Periodic reports.* The owner or operator of a source subject to monitoring requirements of this part or to other requirements of this part where periodic reporting is specified, shall submit a periodic report.

(1) *Contents.* Periodic reports shall include all information specified in subparts of this part.

(2) *Due date.* The periodic report shall be submitted semiannually no later than 60 calendar days after the end of each 6-month period. The first report shall be submitted as specified in the following, as applicable:

(i) The first report shall be submitted no later than the last day of the month that includes the date 8 months after the date the source became subject to this part or since the last part 60, 61, or 63 periodic report was submitted for the applicable requirement, whichever is earlier.

(ii) For sources electing to comply with the CAR at initial startup, the first report shall cover the 6 months after the Initial Compliance Status Report is due. The first report shall be

submitted no later than the last day of the month that includes the date 8 months after the Initial Compliance Status Report is due.

(3) *Overlap with title V reports.* Information required by this part, which is submitted with a title V periodic report, need not also be included in a subsequent periodic report required by this part. The title V report shall be referenced in the periodic report required by this part.

(f) *General report content.* All reports and notifications submitted pursuant to this part, including reports that combine information from this part and a referencing subpart, shall include the following information:

(1) The name, address, and telephone number (fax number may also be provided) of the owner or operator.

(2) The name, address and telephone number of the person to whom inquiries should be addressed, if different than the owner/operator.

(3) The address (physical location) of the reporting facility.

(4) Identification of each regulated source covered in the submission and identification of which subparts (referencing subparts and this part 65) options from this part are applicable to that regulated source. Summaries and groupings of this information are permitted.

(g) *Report and notification submission*—(1) *Submission.* All reports and notifications required under this part shall be sent to the Administrator at the appropriate EPA Regional Office and to the delegated State authority, except that requests for permission to use an alternative means of emission limitation as provided for in §65.8(a) shall be submitted to the Director of the EPA Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, MD–10, Research Triangle Park, North Carolina, 27711. The EPA Regional Office may waive the requirement to receive a copy of any reports or notifications at its discretion.

(2) *Submission of copies.* If any State requires a notice that contains all the information required in a report or notification listed in this part, an owner or operator may send the appropriate EPA Regional Office a copy of the report or notification sent to the State to satisfy the requirements of this part for that report or notification.

(3) *Method of submission.* Wherever this subpart specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (for example, by fax or courier). Submittals shall be sent on or before the specified date.

(4) *Submission by electronic media.* If acceptable to both the Administrator and the owner or operator of a source, reports may be submitted on electronic media.

(h) *Adjustment to timing of submittals and review of required communications*—(1) *Alignment with title V submission.* An owner or operator may submit periodic reports required by this part on the same schedule as the title V periodic report for the facility. The owner or operator using this option need not obtain prior approval, but must assure no reporting gaps from the last periodic report for the relevant standards. The owner or operator shall clearly identify the change in reporting schedule in the first report filed under paragraph (h) of this section. The requirements of paragraph (e) of this section are not waived when implementing this change.

(2) *Request for adjustment.* An owner or operator may arrange by mutual agreement (which may be a standing agreement) with the Administrator a common schedule on which periodic reports required by this part shall be submitted throughout the year as long as the reporting period is not extended. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practical before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted. A request for a change to the periodic reporting schedule need only be made once for every schedule change and not once for every semiannual report submitted.

(3) *Approval of request for adjustment.* If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the

Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) *Notification of delay*. If the Administrator is unable to meet a specified deadline, the owner or operator will be notified of any significant delay and informed of the amended schedule.

(i) Unless already submitted in a previous report, an owner or operator shall report in a title V permit application or as otherwise specified by the permitting authority, the information listed in paragraphs (i)(1) through (5) of this section. This information shall be submitted to the Administrator if the regulated source is not a title V source.

(1) A list designating each emission point complying with subparts C through G of this part and whether each process vent is Group 1, Group 2A, or Group 2B.

(2) The control technology or method of compliance that will be applied to each emission point.

(3) A statement that the compliance demonstration, monitoring, inspection, recordkeeping, and reporting provisions in subparts C through G of this part that are applicable to each emission point will be implemented beginning on the date of compliance as specified in the referencing subpart.

(4) The monitoring information in § 65.162(e) if, for any emission point, the owner or operator of a source seeks to comply through use of a control technique other than those for which monitoring parameters are specified in §§ 65.148 through 65.154.

(5) Any requests for alternatives to the continuous operating parameter monitoring and recordkeeping provisions, as specified in § 65.162(d).

§ 65.6 Startup, shutdown, and malfunction plan and procedures.

(a) Paragraphs (b) and (c) of this section do not apply to Group 2A or Group 2B process vents.

(b) *Startup, shutdown, and malfunction plan*—(1) *Description and purpose of plan*. The owner or operator of a regulated source shall develop a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the regulated source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the relevant standard. The plan shall also address routine or otherwise predictable CPMS malfunctions. This plan shall be developed by the owner or operator by the regulated source's implementation date as specified in § 65.1(f), or for sources referenced from 40 CFR part 63, subpart F, by the compliance date specified in that subpart. The requirement to develop this plan shall be incorporated into the source's title V permit. This requirement is optional for equipment that must comply with subpart F of this part. It is not optional for equipment equipped with a closed vent system and control device subject to subpart G of this part. The purposes of the startup, shutdown, and malfunction plan are described in the following:

(i) To ensure that owners or operators are prepared to correct malfunctions as soon as practical after their occurrence in order to minimize excess emissions of regulated material (excess emissions are defined in § 65.3(a)(4)); and

(ii) To reduce the reporting burden associated with periods of startup, shutdown, and malfunction (including corrective action taken to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation).

(2) *Operation of source*. During periods of startup, shutdown, and malfunction, the owner or operator of a regulated source shall operate and maintain such source (including associated air pollution control equipment and CPMS) in accordance with § 65.3(a). The general duty to minimize emissions during a period of startup, shutdown, or malfunction does not require the owner or operator to achieve emission levels that would be required by the applicable standard at other times if this is not consistent with safety and good air pollution control practices, nor does it require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable

standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan required in paragraph (b)(1) of this section), review of operation and maintenance records, and inspection of the source.

(3) *Use of additional procedures.* To satisfy the requirements of this section to develop a startup, shutdown, and malfunction plan, the owner or operator may use the regulated source's standard operating procedures (SOP) manual, or an Occupational Safety and Health Administration (OSHA) or other plan, provided the alternative plans meet all the requirements of this section and are made available for inspection when requested by the Administrator.

(4) *Revisions to the plan.* Based on the results of a determination made under §65.3(b)(3), the Administrator may require that an owner or operator of a regulated source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator may require reasonable revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan is inadequate as specified in the following:

(i) Does not address a startup, shutdown, and malfunction event of the CPMS, the air pollution control equipment, or the regulated source that has occurred; or

(ii) Fails to provide for the operation of the regulated source (including associated air pollution control equipment and CPMS) during a startup, shutdown, and malfunction event in a manner consistent with good air pollution control practices for minimizing emissions to the extent practical; or

(iii) Does not provide adequate procedures for correcting malfunctioning process and/or air pollution control equipment as quickly as practicable; or

(iv) Does not provide adequate measures to prevent or minimize excess emissions to the extent practical as specified and defined in §65.3(a)(4).

(5) *Additional malfunction plan requirements.* If the startup, shutdown, and malfunction plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the startup, shutdown, and malfunction plan at the time the owner or operator developed the plan, the owner or operator shall revise the startup, shutdown, and malfunction plan within 45 days after the event to include detailed procedures for operating and maintaining the regulated source during similar malfunction events, and a program of corrective action for similar malfunctions of process or air pollution control equipment or CPMS.

(6) *Retain plan on site.* The current plan must be kept on site at all times.

(c) *Periodic startup, shutdown, and malfunction reports.* During the reporting period, reports shall only be required for startup, shutdown, and malfunction during which excess emissions as defined in §65.3(a)(4) occur. A startup, shutdown, and malfunction report can be submitted as part of a periodic report required under §65.5(e), or on a more frequent basis if specified otherwise in a relevant standard or as established otherwise by the permitting authority in the source's title V permit. The startup, shutdown, and malfunction report shall be delivered or postmarked by the 30th day following the end of each calendar half (or other calendar reporting period, as appropriate), unless the information is submitted with the periodic report. The report shall include the following information, as appropriate:

(1) The name, title, and signature of the owner or operator or other responsible official certifying its accuracy.

(2) The number of startup, shutdown, malfunction events and the total duration of all periods of startup, shutdown, and malfunction for the reporting period.

(3) If actions taken by an owner or operator during a startup, shutdown, and malfunction of a regulated source, or of a control device or monitoring system required for compliance (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan,

then the owner or operator shall state such information in a startup, shutdown, and malfunction report, and describe the actions taken. Such description can take the form of a checklist; only one checklist is necessary if actions taken are the same for multiple events during the reporting period.

(4) If at any time an action taken by an owner or operator, during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) during which excess emissions occur, as defined in § 65.3(a)(4), is not consistent with the procedures specified in the regulated source's startup, shutdown, and malfunction plan, the owner or operator shall report the actions taken for that event as part of the periodic report. The report shall explain the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and whether any excess emissions and/or parameter monitoring exceedances are believed to have occurred.

[65 FR 78285, Dec. 14, 2000, as amended at 71 FR 20471, Apr. 20, 2006]

§ 65.7 Monitoring, recordkeeping, and reporting waivers and alternatives, and alternative work practice for equipment leaks.

(a) *Waiver of recordkeeping or reporting requirements*—(1) *Waiver application*. The owner or operator may apply for a waiver from recordkeeping or reporting requirements if the regulated source is achieving the relevant standard(s), or the source is operating under an extension of compliance under 40 CFR 63.6(i), or a waiver of compliance under 40 CFR 61.10(b), or the owner or operator has requested an extension or waiver of compliance and the Administrator is still considering that request. The waiver application shall be submitted in writing to the Administrator.

(2) *Extension of compliance request*. If an application for a waiver of recordkeeping or reporting is made, the application shall accompany the request for an extension of compliance under 40 CFR 63.6(i) or the request for a waiver of compliance under 40 CFR 61.10(b), any required compliance progress report or compliance status report required in the source's title V permit application or a permit modification application, or a periodic report required under this part, whichever is applicable. The application shall include whatever information the owner or operator considers useful to convince the Administrator that a waiver of recordkeeping or reporting is warranted.

(3) *Approval or denial of waiver*. The Administrator will approve or deny a request for a waiver of recordkeeping or reporting requirements when performing one of the following actions:

(i) Approves or denies an extension of compliance under 40 CFR 63.6(i) or a waiver of compliance under 40 CFR 61.10(b); or

(ii) Makes a determination of compliance following the submission of a required compliance status report or periodic report; or

(iii) Makes a determination of suitable progress toward compliance following the submission of a compliance progress report, whichever is applicable.

(4) *Waiver conditions*. A waiver of any recordkeeping or reporting requirement granted under this paragraph (a) may be conditioned on other recordkeeping or reporting requirements deemed necessary by the Administrator.

(5) *Waiver cancellation*. Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the regulated source.

(b) *Requests for approval of alternative monitoring or recordkeeping*. An owner or operator may submit a written request for approval to use alternatives to the monitoring or recordkeeping provisions of this part. For process vents and transfer racks, except low-throughput transfer racks, the provisions in paragraph (c) of this section shall govern the review and approval of requests. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring or recordkeeping method, such as the technical or economic infeasibility, or the impracticality, of the regulated source using the required method. For storage

vessels and low throughput transfer racks, owners and operators shall comply with the requirements of §65.145(b) for preparing and submitting a design evaluation. For equipment leaks, owners and operators shall comply with the recordkeeping requirements of §65.163(d). Owners and operators are also provided the option of complying with an alternative work practice for monitoring leaking equipment in §65.7 (e), (f), and (g) rather than monitoring equipment with a 40 CFR part 60, appendix A–7, Method 21 monitor.

(c) *Approval or denial of request to use alternative monitoring or recordkeeping.* The Administrator will notify the owner or operator of approval or intention to deny approval of the request to use an alternative monitoring or recordkeeping method within 90 calendar days after receipt of the original request and within 30 calendar days after receipt of any supplementary information that is submitted. Before disapproving any request to use an alternative method, the Administrator will notify the applicant of the Administrator's intention to disapprove the request together with the following:

(1) Notice of the information and findings on which the intended disapproval is based; and

(2) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request. At the time the Administrator notifies the applicant of the intention to disapprove the request, the Administrator will specify how much time the owner or operator will have after being notified of the intended disapproval to submit the additional information.

(d) *Use of an alternative monitoring or recordkeeping method.* (1) The owner or operator of a regulated source is subject to the monitoring and recordkeeping requirements of the relevant standard unless permission to use an alternative monitoring or recordkeeping method requested under paragraph (b) of this section or §65.162(d) has been granted by the Administrator. Once an alternative is approved, the owner or operator shall use the alternative for the emission points or regulated sources cited in the approval and shall meet the monitoring and recordkeeping requirements of the relevant standard for all other emission points or regulated sources.

(2) If the Administrator approves the use of an alternative monitoring or recordkeeping method for a regulated source under paragraph (c) of this section, the owner or operator of such source shall continue to use the alternative monitoring or recordkeeping method unless he or she receives approval from the Administrator to use another method.

(3) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring or recordkeeping method, requirement, or procedure, the Administrator may require the use of a method, requirement, or procedure specified in the relevant standard. If the results of the specified and alternative methods, requirements, or procedures do not agree, the results obtained by the specified method, requirement, or procedure shall prevail.

(e) *Alternative work practice for monitoring equipment for leaks.* This section contains requirements for an alternative work practice used to identify leaking equipment. This alternative work practice is placed here for administrative convenience and is available to all subparts in 40 CFR parts 60, 61, 63, and 65 that require monitoring of equipment with a 40 CFR part 60, appendix A–7, Method 21 monitor. Paragraphs (e), (f), and (g) of this section apply to all equipment for which the applicable subpart requires monitoring with a 40 CFR part 60, appendix A–7, Method 21 monitor, except for closed vent systems, equipment designated as leakless, and equipment identified in the applicable subpart as having no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background. An owner or operator may use an optical gas imaging instrument instead of a 40 CFR part 60, appendix A–7, Method 21 monitor. Requirements in the existing subparts that are specific to the Method 21 instrument do not apply under this section. All other requirements in the applicable subpart that are not addressed in paragraphs (e), (f), and (g) of this section continue to apply. For example, equipment specification requirements, and non-Method 21 instrument

recordkeeping and reporting requirements in the applicable subpart continue to apply. The terms defined in paragraphs (e)(1) through (5) of this section have meanings that are specific to the alternative work practice standard in paragraphs (e), (f), and (g) of this section.

(1) *Applicable subpart* means the subpart in 40 CFR parts 60, 61, 63, and 65 that requires monitoring of each piece of equipment with a 40 CFR part 60, appendix A–7, Method 21 monitor.

(2) *Equipment* means pumps, valves, pressure relief valves, compressors, open-ended lines, flanges, connectors, and other equipment covered by the applicable subpart that require monitoring with a 40 CFR part 60, appendix A–7, Method 21 monitor.

(3) *Imaging* means making visible emissions that may otherwise be invisible to the naked eye.

(4) *Optical gas imaging instrument* means an instrument that makes visible emissions that may otherwise be invisible to the naked eye.

(5) *Repair* means that equipment is adjusted, or otherwise altered, in order to eliminate a leak.

(6) *Leak* means:

(i) Any emissions imaged by the optical gas instrument;

(ii) Indications of liquids dripping;

(iii) Indications by a sensor that a seal or barrier fluid system has failed; or

(iv) Screening results using a 40 CFR part 60, appendix A–7, Method 21 monitor that exceed the leak definition in the applicable subpart to which the equipment is subject.

(f) The alternative work practice standard for monitoring equipment for leaks is available to all subparts in 40 CFR parts 60, 61, 63, and 65 that require monitoring of equipment with a 40 CFR part 60, appendix A–7, Method 21 monitor.

(1) An owner or operator of an affected source subject to 40 CFR parts 60, 61, 63, or 65 can choose to comply with the alternative work practice requirements in paragraph (g) of this section instead of using the 40 CFR part 60, appendix A–7, Method 21 monitor to identify leaking equipment. The owner or operator must document the equipment, process units, and facilities for which the alternative work practice will be used to identify leaks.

(2) Any leak detected when following the leak survey procedure in paragraph (g)(3) of this section must be identified for repair as required in the applicable subpart.

(3) If the alternative work practice is used to identify leaks, re-screening after an attempted repair of leaking equipment must be conducted using either the alternative work practice or the 40 CFR part 60, appendix A–7, Method 21 monitor at the leak definition required in the applicable subparts to which the equipment is subject.

(4) The schedule for repair is as required in the applicable subpart.

(5) When this alternative work practice is used for detecting leaking equipment, choose one of the monitoring frequencies listed in Table 3 to subpart A of this part, in lieu of the monitoring frequency specified for regulated equipment in the applicable subpart. Reduced monitoring frequencies for good performance are not applicable when using the alternative work practice.

(6) When this alternative work practice is used for detecting leaking equipment, the following are not applicable for the equipment being monitored:

(i) Skip period leak detection and repair;

(ii) Quality improvement plans; or

(iii) Complying with standards for allowable percentage of valves and pumps to leak.

(7) When the alternative work practice is used to detect leaking equipment, the regulated equipment in paragraph (f)(1)(i) of this section must also be monitored annually using a 40 CFR part 60, appendix A–7, Method 21 monitor at the leak definition required in the applicable subpart. The owner or operator may choose the specific monitoring period (for example, first quarter) to conduct the annual monitoring. Subsequent monitoring must be conducted every 12 months from the initial period. Owners or operators must keep records of the annual Method 21 screening results, as specified in paragraph (i)(4)(vii) of this section.

(g) An owner or operator of an affected source who chooses to use the alternative work practice must comply

with the requirements of paragraphs (g)(1) through (g)(5) of this section.

(1) *Instrument specifications*. The optical gas imaging instrument must comply with the requirements specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this section.

(i) Provide the operator with an image of the potential leak points for each piece of equipment at both the detection sensitivity level and within the distance used in the daily instrument check described in paragraph (g)(2) of this section. The detection sensitivity level depends upon the frequency at which leak monitoring is to be performed.

(ii) Provide a date and time stamp for video records of every monitoring event.

(2) *Daily instrument check*. On a daily basis, and prior to beginning any leak monitoring work, test the optical gas imaging instrument at the mass flow rate determined in paragraph (g)(2)(i) of this section in accordance with the procedure specified in paragraphs (g)(2)(ii) through (g)(2)(iv) of this section for each camera configuration used during monitoring (for example, different lenses used), unless an alternative method to demonstrate daily instrument checks has been approved in accordance with paragraph (g)(2)(v) of this section.

(i) Calculate the mass flow rate to be used in the daily instrument check by following the procedures in paragraphs (g)(2)(i)(A) and (g)(2)(i)(B) of this section.

(A) For a specified population of equipment to be imaged by the instrument, determine the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable, within the distance to be used in paragraph (g)(2)(iv)(B) of this section, at or below the standard detection sensitivity level.

(B) Multiply the standard detection sensitivity level, corresponding to the selected monitoring frequency in Table 3 of subpart A of this part, by the mass fraction of detectable chemicals from the stream identified in paragraph (g)(2)(i)(A) of this section to determine the mass flow rate to be used in the daily instrument check, using the following equation.

$$E_{dic} = \left(E_{sds}\right)\sum_{i=1}^{k} x_i$$

Where:

E_{dic} = Mass flow rate for the daily instrument check, grams per hour

x_i= Mass fraction of detectable chemical(s) i seen by the optical gas imaging instrument, within the distance to be used in paragraph (g)(2)(iv)(B) of this section, at or below the standard detection sensitivity level, E_{sds}.

E_{sds} = Standard detection sensitivity level from Table 3 to subpart A, grams per hour

k = Total number of detectable chemicals emitted from the leaking equipment and seen by the optical gas imaging instrument.

(ii) Start the optical gas imaging instrument according to the manufacturer's instructions, ensuring that all appropriate settings conform to the manufacturer's instructions.

(iii) Use any gas chosen by the user that can be viewed by the optical gas imaging instrument and that has a purity of no less than 98 percent.

(iv) Establish a mass flow rate by using the following procedures:

(A) Provide a source of gas where it will be in the field of view of the optical gas imaging instrument.

(B) Set up the optical gas imaging instrument at a recorded distance from the outlet or leak orifice of the flow meter that will not be exceeded in the actual performance of the leak survey. Do not exceed the operating parameters of the flow meter.

(C) Open the valve on the flow meter to set a flow rate that will create a mass emission rate equal to the mass rate calculated in paragraph (g)(2)(i) of this section while observing the gas flow through the optical gas imaging instrument viewfinder. When an image of the gas emission is seen through the viewfinder at the required emission rate, make a record of the reading on the flow meter.

(v) Repeat the procedures specified in paragraphs (g)(2)(ii) through (g)(2)(iv) of this section for each configuration of the optical gas imaging instrument used during the leak survey.

(vi) To use an alternative method to demonstrate daily instrument checks, apply to the Administrator for approval of the alternative under §65.7(b).

(3) *Leak survey procedure*. Operate the optical gas imaging instrument to image every regulated piece of equipment selected for this work practice in accordance with the instrument manufacturer's operating parameters. All emissions imaged by the optical gas imaging instrument are considered to be leaks and are subject to repair. All emissions visible to the naked eye are also considered to be leaks and are subject to repair.

(4) *Recordkeeping*. Keep the records described in paragraphs (g)(4)(i) through (g)(4)(vii) of this section:

(i) The equipment, processes, and facilities for which the owner or operator chooses to use the alternative work practice.

(ii) The detection sensitivity level selected from Table 3 to subpart A of this part for the optical gas imaging instrument.

(iii) The analysis to determine the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable, as specified in paragraph (g)(2)(i)(A) of this section.

(iv) The technical basis for the mass fraction of detectable chemicals used in the equation in paragraph (g)(2)(i)(B) of this section.

(v) *The daily instrument check*. Record the distance, per paragraph (g)(2)(iv)(B) of this section, and the flow meter reading, per paragraph (g)(2)(iv)(C) of this section, at which the leak was imaged. Keep a video record of the daily instrument check for each configuration of the optical gas imaging instrument used during the leak survey (for example, the daily instrument check must be conducted for each lens used). The video record must include a time and date stamp for each daily instrument check. The video record must be kept for 5 years.

(vi) *Recordkeeping requirements in the applicable subpart*. A video record must be used to document the leak survey results. The video record must include a time and date stamp for each monitoring event. A video record can be used to meet the recordkeeping requirements of the applicable subparts if each piece of regulated equipment selected for this work practice can be identified in the video record. The video record must be kept for 5 years.

(vii) *The results of the annual Method 21 screening required in paragraph (f)(7) of this section*. Records must be kept for all regulated equipment specified in paragraph (f)(1) of this section. Records must identify the equipment screened, the screening value measured by Method 21, the time and date of the screening, and calibration information required in the existing applicable subparts.

(5) *Reporting*. Submit the reports required in the applicable subpart. Submit the records of the annual Method 21 screening required in paragraph (f)(7) of this section to the Administrator via e-mail to *CCG-AWP@EPA.GOV*.

[65 FR 78285, Dec. 14, 2000, as amended at 73 FR 78217, Dec. 22, 2008]

§ 65.8 Procedures for approval of alternative means of emission limitation.

(a) *Alternative means of emission limitation*. An owner or operator may request a determination of equivalence for an alternative means of emission limitation to the requirements of design, equipment, work practice, or operational standards of this part. If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in regulated material emissions at least equivalent to the reduction in emissions from that source achieved under any design, equipment, work practice, or operational standards (but not performance standards) in this part, the Administrator will publish in the FEDERAL REGISTER a notice permitting the use of the alternative means for purposes of compliance with that requirement.

(1) The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(2) Any such notice shall be published only after public notice and an opportunity for a hearing.

(b) *Content of submittal*. (1) In order to obtain approval, any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information showing that the alternative means achieves equivalent emission reductions. An owner or operator seeking permission to use an alternative means of compliance who

has not previously performed testing shall also submit a proposed test plan. If the owner or operator seeks permission to use an alternative means of compliance based on previously performed testing, they shall submit the results of that testing, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring.

(2) The owner or operator who requests an alternative means of emission limitation shall submit a description of the proposed testing, monitoring, recordkeeping, and reporting that will be used and the proposed basis for demonstrating compliance.

(3) For storage vessels, the owner or operator shall include the results of actual emissions tests using full-size or scale-model storage vessels that accurately collect and measure all regulated material emissions using a given control technique, and that accurately simulate wind and account for other emission variables such as temperature and barometric pressure, or an engineering analysis that the Administrator determines is an accurate method of determining equivalence.

(4) For proposed alternatives to equipment leak requirements, the owner or operator shall also submit the information and meet the requirements for alternative means of emission limitation specified in §65.102(b) (alternative means of emission limitation).

(c) Manufacturers of equipment used to control equipment leaks of a regulated material may request a determination of equivalence for an alternative means of emission limitation for equipment leaks, as specified in §65.102(c).

(d) *Compliance.* If the Administrator makes a determination that a means of emission limitation is a permissible alternative to the requirements of design, equipment, work practice, or operational standards of this part, the owner or operator shall either comply with the alternative or comply with the requirements of this part.

§65.9 Availability of information and confidentiality.

(a) *Availability of information.* The availability to the public of information provided to, or otherwise obtained by, the Administrator under this part shall be governed by part 2 of this chapter. With the exception of information protected under part 2 of this chapter, all reports, records, and other information collected by the Administrator under this part are available to the public. In addition, a copy of each permit application, compliance plan (including the schedule of compliance), initial compliance status report, periodic report, and title V permit is available to the public, consistent with protections recognized in section 503(e) of the Act.

(b) *Confidentiality.* (1) If an owner or operator is required to submit information entitled to protection from disclosure under section 114(c) of the Act, the owner or operator may submit such information separately. The requirements of section 114(c) shall apply to such information.

(2) The contents of a title V permit shall not be entitled to protection under section 114(c) of the Act; however, information submitted as part of an application for a title V permit may be entitled to protection from disclosure.

§65.10 State authority.

(a) The provisions of this part shall not be construed in any manner to preclude any State or political subdivision thereof from adopting and enforcing any emission standard or limitation applicable to a regulated source, provided that such standard, limitation, prohibition, or other regulation is not less stringent than the standard applicable to such a regulated source.

(b) The provisions of this part shall not be construed in any manner to preclude any State or political subdivision thereof from requiring the owner or operator of a regulated source to obtain permits, licenses, or approvals prior to initiating construction, modification, or operation of such a regulated source.

§65.11 Circumvention and prohibited activities.

(a) *Circumvention.* (1) No owner or operator subject to the provisions of this part shall build, erect, install, or use any article, machine, equipment, or process to conceal an emission that

would otherwise constitute noncompliance with a relevant standard. Such concealment includes, but is not limited to, the following:

(1) The use of diluents to achieve compliance with a relevant standard based on the concentration of a pollutant in the effluent discharged to the atmosphere; and

(2) The fragmentation of an operation for the purpose of avoiding regulation by a relevant standard.

(b) *Prohibited activities.* (1) No owner or operator subject to the provisions of this part shall operate any regulated source in violation of the requirements of this part except under the following provisions:

(i) An extension or waiver of compliance granted by the Administrator under an applicable part; or

(ii) An extension of compliance granted under an applicable part by a State with an approved permit program; or

(iii) An exemption from compliance granted by the President under section 112(i)(4) of the Act.

(2) After the effective date of an approved permit program in a State, no owner or operator of a regulated source in that State who is required under an applicable part to obtain a title V permit shall operate such source except in compliance with the provisions of this part and the applicable requirements of the permit program in that State.

(3) An owner or operator of a regulated source who is subject to an emission standard promulgated under this part or a referencing part shall comply with the requirements of that standard by the date(s) established in the applicable subpart(s) (including this subpart) regardless of whether the following criteria are met:

(i) A title V permit has been issued to that source; or

(ii) If a title V permit has been issued to that source, whether such permit has been revised or modified to incorporate the emission standard.

(c) *Severability.* Notwithstanding any requirement incorporated into a title V permit obtained by an owner or operator subject to the provisions of this part, the provisions of this part are federally enforceable.

§ 65.12 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under sections 111(c) and 112(l) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States: §§ 65.8, 65.46, 65.102, 65.156(b)(l)(ii), and 65.158(a)(2)(ii).

§ 65.13 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the FEDERAL REGISTER. The materials are available for purchase at the corresponding addresses noted in paragraph (b) of this section, and all are available for inspection or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*; at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, SW., Washington, DC; and at the EPA Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina.

(b) The materials listed in this paragraph (b) are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM D1946–77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved December 14, 2000 for §§ 65.64(e)(2) and 65.147(a)(4)(i) and (b)(3)(ii).

(2) ASTM D2382–76, Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method). IBR approved

December 14, 2000 for §§ 65.64(e)(1) and 65.147(b)(3)(ii).

[65 FR 78285, Dec. 14, 2000, as amended at 69 FR 18803, Apr. 9, 2004]

§ 65.14 Addresses.

(a) All requests, reports, applications, notifications, and other communications submitted pursuant to this part, except as specified under § 65.5(g)(1), shall be sent to the Administrator at the appropriate EPA Regional Office indicated in the following list:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Director, Air Management Division, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203.

Region II (New Jersey, New York, Puerto Rico, Virgin Islands), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10007.

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Director, Air Management Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas); Director; Compliance Assurance and Enforcement Division; U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

Region VII (Iowa, Kansas, Missouri, Nebraska), Director, Air and Toxics Division, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80295.

Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105.

Region X (Alaska, Oregon, Idaho, Washington), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

(b) All information required to be submitted to the Administrator under this part shall also be submitted to the appropriate State agency of any State to which authority has been delegated under section 112(l) of the Act. The mailing addresses for State agencies are listed as follows:

(1) *Alabama*. Air Pollution Control Division, Air Pollution Control Commission, 645 S. McDonough Street, Montgomery, Alabama 36104.

(2) *Alaska*. Department of Environmental Conservation, 3220 Hospital Drive, Juneau, Alaska 99811.

(3) *Arizona*. Arizona Department of Health Services, 1740 West Adams Street, Phoenix, Arizona 85007.

(4) *Arkansas*. Chief, Division of Air Pollution Control, Arkansas Department of Pollution Control and Ecology, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72209.

(5) *California*. (i) Amador County Air Pollution Control District, P.O. Box 430, 810 Court Street, Jackson, California 95642.

(ii) Bay Area Air Pollution Control District, 939 Ellis Street, San Francisco, California 94109.

(iii) Butte County Air Pollution Control District, P.O. Box 1229, 316 Nelson Avenue, Oroville, California 95965.

(iv) Calaveras County Air Pollution Control District, Government Center, El Dorado Road, San Andreas, California 95249.

(v) Camino del Rimedio, Santa Barbara, California 93110.

(vi) Colusa County Air Pollution Control District, 751 Fremont Street, Colusa, California 95952.

(vii) El Dorado Air Pollution Control District, 330 Fair Lane, Placerville, California 95667.

(viii) Fresno County Air Pollution Control District, 1221 Fulton Mall, Fresno, California 93721.

(ix) Glenn County Air Pollution Control District, P.O. Box 351, 720 North Colusa Street, Willows, California 95988.

(x) Great Basin Unified Air Pollution Control District, 157 Short Street, suite 6, Bishop, California 93514.

(xi) Imperial County Air Pollution Control District, County Services Building, 939 West Main Street, El Centro, California 92243.

(xii) Kern County Air Pollution Control District, 1601 H Street, suite 250, Bakersfield, California 93301.

(xiii) Kings County Air Pollution Control District, 330 Campus Drive, Hanford, California 93230.

(xiv) Lake County Air Pollution Control District, 255 North Forbes Street, Lakeport, California 95453.

(xv) Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, California 96130.

(xvi) Madera County Air Pollution Control District, 135 West Yosemite Avenue, Madera, California 93637.

(xvii) Mariposa County Air Pollution Control District, Box 5, Mariposa, California 95338.

(xviii) Mendocino County Air Pollution Control District, County Courthouse, Ukiah, California 94582.

(xix) Merced County Air Pollution Control District, P.O. Box 471, 240 East 15th Street, Merced, California 95340.

(xx) Modoc County Air Pollution Control District, 202 West 4th Street, Alturas, California 96101.

(xxi) Monterey Bay Unified Air Pollution Control, 1164 Monroe Street, Suite 10, Salinas, California 93906.

(xxii) Nevada County Air Pollution Control District, H.E.W. Complex, Nevada City, California 95959.

(xxiii) North Coast Unified Air Quality Management District, 5630 South Broadway, Eureka California 95501.

(xxiv) Northern Sonoma County Air Pollution Control District, 134 ''A'' Avenue, Auburn, California 95448.

(xxv) Placer County Air Pollution Control District, 11491 ''B'' Avenue, Auburn, California 95603.

(xxvi) Shasta County Air Pollution Control District, 2650 Hospital Lane, Redding, California 96001.

(xxvii) Sierra County Air Pollution Control District, P.O. Box 286, Downieville, California 95936.

(xxviii) Siskiyou County Air Pollution Control District, 525 South Foothill Drive, Yreka, California 96097.

(xxix) South Coast Air Quality Management District, 9150 Flair Drive, El Monte, California 91731.

(xxx) Stanislaus County Air Pollution Control District, 1030 Scenic Drive, Modesto, California 95350.

(xxxi) Sutter County Air Pollution Control District, Sutter County Office Building, 142 Garden Highway, Yuba City, California 95991.

(xxxii) Tehama County Air Pollution Control District, P.O. Box 38, 1760 Walnut Street, Red Bluff, California 96080.

(xxxiii) Tulare County Air Pollution Control District, County Civic Center, Visalia, California 93277.

(xxxiv) Tuolumne County Air Pollution Control District, 9 North Washington Street, Sonora, California 95370.

(xxxv) Ventura County Air Pollution Control District, 800 South Victoria Avenue, Ventura, California 93009.

(xxxvi) Yolo-Solano Air Pollution Control District, P.O. Box 1006, 323 First Street, i5, Woodland, California 95695.

(6) *Colorado*. Department of Health, Air Pollution Control Division, 4210 East 11th Avenue, Denver, Colorado 80220.

(7) *Connecticut*. Bureau of Air Management, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, Connecticut 06106.

(8) *Delaware*. Delaware Department of Natural Resources and Environmental Control, Tatnall Building, P.O. Box 1401, Dover, Delaware 19901.

(9) *Florida*. Florida Bureau of Air Quality Management, Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301.

(10) *Georgia*. Environmental Protection Division, Department of Natural Resources, 270 Washington Street, SW., Atlanta, Georgia 30334.

(11) *Hawaii*. (i) Hawaii Department of Health, 1250 Punchbowl Street, Honolulu, Hawaii 96813.

(ii) Hawaii Department of Health (mailing address), Post Office Box 3378, Honolulu, Hawaii 96801.

(12) *Idaho*. Idaho Division of Environmental Quality 601 Pole Line Rd. Ste. # 2 Twin Falls, Idaho 83301.

(13) *Illinois*. Illinois Environmental Protection Agency—Bureau of Air 1340

North Ninth St., Springfield Illinois 62702 1021 North Grand Avenue East (mailing address) P.O. Box 19276 62794–9276.

(14) *Indiana*. Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206.

(15) *Iowa*. Iowa Department of Natural Resources, Environmental Protection Division, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319.

(16) *Kansas*. Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620.

(17) *Kentucky*. Kentucky Division of Air Pollution Control, Department for Natural Resources and Environmental Protection, U.S. 127, Frankfort, Kentucky 40601.

(18) *Louisiana*. Program Administrator, Air Quality Division, Louisiana Department of Environmental Quality, P.O. Box 44096, Baton Rouge, Louisiana 70804.

(19) *Maine*. Bureau of Air Quality Control, Department of Environmental Protection, State House, Station No. 17, Augusta, Maine 04333.

(20) *Maryland*. Bureau of Air Quality and Noise Control, Maryland State Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, Maryland 21201.

(21) *Massachusetts*. Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th floor, Boston, Massachusetts 02108.

(22) *Michigan*. Air Pollution Control Division, Michigan Department of Natural Resources, Stevens T. Mason Building, 8th Floor, Lansing, Michigan 48926.

(23) *Minnesota*. Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

(24) *Mississippi*. Bureau of Pollution Control, Department of Natural Resources, P.O. Box 10385, Jackson, Mississippi 39209.

(25) *Missouri*. Missouri Department of Natural Resources, Division of Environmental Quality, P.O. Box 176, Jefferson City, Missouri 65102.

(26) *Montana*. Department of Health and Environmental Services, Air Quality Bureau, Cogswell Building, Helena, Montana 59601.

(27) *Nebraska*. Nebraska Department of Environmental Control, P.O. Box 94877, State House Station, Lincoln, Nebraska 68509.

(28) *Nevada*. Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 201 South Fall Street, Carson City, Nevada 89710.

(29) *New Hampshire*. Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, New Hampshire 03302–2033.

(30) *New Jersey*. New Jersey Department of Environmental Protection, John Fitch Plaza, P.O. Box 2807, Trenton, New Jersey 08625.

(31) *New Mexico*. Director, New Mexico Environmental Improvement Division, Health and Environment Department, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

(32) *New York*. New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, Attention: Division of Air Resources.

(33) *North Carolina*. North Carolina Environmental Management Commission, Department of Environment and Natural Resources, Division of Air Quality, P.O. Box 29580, Raleigh, North Carolina 27626–0580.

(34) *North Dakota*. State Department of Health and Consolidated Laboratories, Division of Environmental Engineering, State Capitol, Bismarck, North Dakota 58505.

(35) *Ohio*. Ohio Environmental Protection Agency, Central District Office, Air Pollution Unit, P.O. Box 1049, Columbus, Ohio 43266–0149.

(36) *Oklahoma*. Oklahoma State Department of Health, Air Quality Service, P.O. Box 53551, Oklahoma City, Oklahoma 73152.

(37) *Oregon*. Department of Environmental Quality, Yeon Building, 522 SW. Fifth, Portland, Oregon 97204.

(38) *Pennsylvania*. Department of Environmental Resources, Post Office Box 2063, Harrisburg, Pennsylvania 17120.

(39) *Rhode Island*. Division of Air and Hazardous Materials, Department of

Environmental Management, 291 Promenade Street, Providence, Rhode Island 02908.

(40) *South Carolina*. Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

(41) *South Dakota*. Department of Water and Natural Resources, Office of Air Quality and Solid Waste, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501–3181.

(42) *Tennessee*. Division of Air Pollution Control, Tennessee Department of Public Health, 256 Capitol Hill Building, Nashville, Tennessee 37219.

(43) *Texas*. Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711–3087.

(44) *Utah*. Department of Health, Bureau of Air Quality, 288 North 1460 West, P.O. Box 16690, Salt Lake City, Utah 84116–0690.

(45) *Vermont*. Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, Vermont 05676.

(46) *Virginia*. Virginia State Air Pollution Control Board, Room 1106, Ninth Street Office Building, Richmond, Virginia 23219.

(47) *Washington*. Department of Ecology, Olympia, Washington 98504.

(48) *West Virginia*. Air Pollution Control Commission, 1558 Washington Street, East, Charleston, West Virginia 25311.

(49) *Wisconsin*. Wisconsin Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707.

(50) *Wyoming*. Wyoming Department of Environmental Quality Air Division, 122 West 25th St.—4th Floor, Cheyenne, Wyoming 82002.

§§ 65.15–65.19 [Reserved]

TABLE 1 TO SUBPART A OF PART 65—APPLICABLE 40 CFR PARTS 60, 61, AND 63 GENERAL PROVISIONS

A. 40 CFR part 60, subpart A provisions for referencing subparts Ka, Kb, VV, DDD, III, NNN, and RRR
§ 60.1, § 60.2, § 60.5, § 60.6, § 60.7(a)(1), and (a)(4), § 60.14, § 60.15, § 60.16
B. 40 CFR part 61, subpart A provisions for referencing subparts Y, V, and BB
§ 61.01, § 61.02, § 61.05, § 61.06, § 61.07, § 61.08, § 61.10(b), and (c), § 61.11, § 61.15
C. 40 CFR part 63, subpart A provisions for referencing subparts G and H
§ 63.1(a)(1), (a)(2), (a)(3), (a)(13), (a)(14), (b)(2) and (c)(4) § 63.2 § 63.5 (a)(1), (a)(2), (b), (d)(1)(ii), (d)(3)(i),[a] (d)(3)(iii),[a] (d)(3)(iv),[a] (d)(3)(v),[a] (d)(3)(vi),[a] (d)(4), (e), (f)(1), and (f)(2) § 63.6 (a), (b)(3), (c)(5), (i)(1), (i)(2), (i)(4)(i)(A), (i)(5) through (i)(14), (i)(16) and (j) § 63.9(a)(2), (b)(4)(i),[b] (b)(4)(ii), (b)(4)(iii), (b)(5),[b] (c) and (d) § 63.10(d)(4) § 63.12(b)

[a] These provisions do not apply to equipment leaks.
[b] The notifications specified in 40 CFR 63.9(b)(4)(i) and 63.9(b)(5) shall be submitted at the times specified in this part 65.

TABLE 2 TO SUBPART A OF PART 65—APPLICABLE REFERENCING SUBPART PROVISIONS

If you have been referenced from * * *	You must comply with * * *
40 CFR part 60, subpart Ka	60.110a, 60.111a, and 60.115a
40 CFR part 60, subpart Kb	60.110b, 60.111b, 60.116b(c), (e), (f)(1), and (g)
40 CFR part 60, subpart VV	60.480, 60.481, 60.482–1(a), 60.485(d), (e), and (f), and 60.486(i) and (j), 60.488, and 60.489
40 CFR part 60, subpart DDD	60.560(a), (b) and (d) through (j), 60.561, 60.562–1, 60.562–2, and 60.565(g)(1)
40 CFR part 60, subpart III	60.610(a), (b) and (d), 60.611, 60.616, 60.617
40 CFR part 60, subpart NNN	60.660(a), (b), (c)(1) through (c)(3), (c)(5), (d), 60.661, 60.666, and 60.667
40 CFR part 60, subpart RRR	60.700(a), (b), (c)(1), (c)(3), (c)(5), (c)(6), (c)(7), (d), 60.701, 60.706, 60.707
40 CFR part 61, subpart V	61.240, 61.241, 61.245(d), 61.246(i) and (j), and 61.247(a) and (f)
40 CFR part 61, subpart Y	61.270, 61.271(d)(2), and 61.274(a)
40 CFR part 61, subpart BB	61.300 and 61.301
40 CFR part 63, subpart G For process vents, group 1 storage vessels, and group 1 transfer racks.	63.100, 63.101, 63.104 and 63.105 of subpart F and 63.110 and 63.111 of subpart G
40 CFR part 63, subpart H	63.100, 63.101, 63.104 and 63.105 of subpart F, and 63.160, 63.161, 63.180(d) of subpart H

TABLE 3 TO SUBPART A OF PART 65—DETECTION SENSITIVITY LEVELS (GRAMS PER HOUR)

Monitoring Frequency per Subpart [a]	Detection Sensitivity Level
Bi-Monthly	60
Semi-Quarterly	85
Monthly	100

[a] When this alternative work practice is used to identify leaking equipment, the owner or operator must choose one of the monitoring frequencies listed in this table, in lieu of the monitoring frequency specified in the applicable subpart. Bi-monthly means every other month. Semi-quarterly means twice per quarter. Monthly means once per month.

[73 FR 78219, Dec. 22, 2008]

Subpart B [Reserved]

Subpart C—Storage Vessels

§ 65.40 Applicability.

(a) The provisions of this subpart and of subpart A of this part apply to control of regulated material emissions from surge control vessels, bottoms receivers, and other storage vessels where a referencing subpart references the use of this subpart for such emissions control.

(b) If a physical or process change is made that causes a storage vessel to fall outside the criteria in the referencing subpart that required the storage vessel to control emissions of regulated material, the owner or operator may elect to no longer comply with the provisions of this subpart. Instead, the owner or operator shall comply with any applicable provisions of the referencing subpart.

§ 65.41 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

§ 65.42 Control requirements.

(a) For each storage vessel to which this subpart applies, the owner or operator shall comply with the requirements of paragraph (b) or (c) of this section.

(b) For each storage vessel storing a liquid for which the maximum true vapor pressure of the total regulated material in the liquid is less than 76.6 kilopascals (10.9 pounds per square inch), the owner or operator shall reduce regulated material emissions to the atmosphere as provided in any one of the paragraphs (b)(1) through (7) of this section.

(1) *Internal floating roof (IFR).* Operate and maintain a fixed roof and internal floating roof meeting the requirements of § 65.43.

(2) *External floating roof (EFR).* Operate and maintain an external floating roof meeting the requirements of § 65.44.

(3) *EFR converted to IFR.* Operate and maintain an external floating roof converted to an internal floating roof meeting the requirements of § 65.45.

(4) *Closed vent system and flare.* Operate and maintain a closed vent system and flare as specified in § 65.142(a)(1). Periods of planned routine maintenance of the flare during which the flare does not meet the specifications of § 65.147 shall not exceed 240 hours per year. The specifications and requirements in § 65.147 for flares do not apply during periods of planned routine maintenance or during a control system malfunction. The owner or operator shall report the periods of planned routine maintenance as specified in § 65.166(d).

(5) *Closed vent system and control device.* Operate and maintain a closed vent system and control device as specified in the following and § 65.142(a)(2):

(i) Except as provided in paragraph (b)(5)(ii) of this section, the control device shall be designed and operated to reduce inlet emissions of regulated material by 95 percent or greater.

(ii) For owners or operators referenced to this part from 40 CFR part 63, subpart G, and if the owner or operator of a storage vessel can demonstrate that a control device installed on the storage vessel on or before December 31, 1992 is designed to reduce inlet emissions of total organic HAP by greater than or equal to 90 percent but less than 95 percent, then the control device is required to be operated to reduce inlet emissions of total organic HAP by 90 percent or greater.

(iii) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraph (b)(5)(i) or (ii) of this section, shall not exceed 240 hours per year. The owner or operator shall report the periods of planned routine maintenance as specified in § 65.166(d).

(iv) The requirements in paragraph (b)(5)(i) of this section for control devices do not apply during periods of planned routine maintenance or during a control system malfunction.

(6) *Route to process or fuel gas system.* Route the emissions to a process or a fuel gas system as specified in § 65.142(a)(3). Whenever the owner or operator bypasses the fuel gas system or process, the owner or operator shall comply with the recordkeeping requirement in § 65.163(b)(3). Bypassing is permitted if the owner or operator complies with one or more of the following conditions:

(i) The liquid level in the storage vessel is not increased;

(ii) The emissions are routed through a closed vent system to a control device complying with paragraph (b)(4) or (5) of this section; or

(iii) The total aggregate amount of time during which the emissions bypass the fuel gas system or process during the calendar year without being routed to a control device, for all reasons (except startups/shutdowns/malfunctions or product changeovers of flexible operation units and periods when the storage vessel has been emptied and degassed), does not exceed 240 hours.

(7) *Equivalent requirements.* Comply with an equivalent to the requirements in any one of the paragraphs (b)(1) through (6) of this section, as provided in § 65.46.

(c) For each storage vessel storing a liquid for which the maximum true vapor pressure of the total regulated material in the liquid is greater than or equal to 76.6 kilopascals (10.9 pounds per square inch), the owner or operator shall meet the requirements in paragraph (b)(4), (5), or (6) of this section, or equivalent as provided in § 65.46.

§ 65.43 Fixed roof with an internal floating roof (IFR).

(a) *IFR design requirements.* The owner or operator who elects to control storage vessel regulated material emissions by using a fixed roof and an internal floating roof shall comply with the design requirements in paragraphs (a)(1) through (4) of this section.

(1) The internal floating roof shall be designed to float on the stored liquid surface except when the floating roof must be supported by the leg supports.

(2) Except as provided in paragraph (a)(3) of this section, the internal floating roof shall be equipped with a closure device between the wall of the storage vessel and the floating roof edge and shall consist of one of the following devices:

(i) A liquid-mounted seal.

(ii) A metallic shoe seal.

(iii) Two continuous seals mounted one above the other. The lower seal may be vapor-mounted.

(3) If the internal floating roof is equipped with a vapor-mounted seal as of December 31, 1992, paragraph (a)(2) of this section does not apply until the next time the storage vessel is emptied and degassed, or by April 22, 2004, whichever occurs first.

(4) Except as provided in paragraph (a)(4)(viii) of this section, each internal floating roof shall meet the following specifications:

(i) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents is to provide a projection below the stored liquid surface.

(ii) Except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains, each opening shall be equipped with a gasketed cover or gasketed lid.

(iii) Each penetration of the internal floating roof shall be a sample well. Each sample well shall have a slit fabric cover that covers at least 90 percent of the opening.

(iv) Each automatic bleeder vent and rim space vent shall be gasketed.

(v) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(vi) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(vii) Covers on each access hatch and each gauge float well shall be designed to be bolted or fastened when they are closed.

(viii) If the internal floating roof does not meet any one of the specifications listed in paragraphs (a)(4)(i) through (vii) of this section as of December 31, 1992, the requirement for meeting those specifications does not apply until the next time the storage vessel is emptied and degassed, or by April 22, 2004, whichever occurs first.

(b) *IFR operational requirements.* The owner or operator using a fixed roof and an internal floating roof shall comply with the following operational requirements:

(1) The internal floating roof shall float on the stored liquid surface at all times except when the floating roof must be supported by the leg supports.

(2) When the floating roof is resting on the leg supports, the process of filling or refilling shall be continuous and shall be accomplished as soon as practical and the owner or operator shall maintain the record specified in §65.47(e).

(3) Automatic bleeder vents are to be set to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.

(4) Each cover, access hatch, gauge float well, or lid on any opening in the internal floating roof shall be maintained in a closed position at all times (*i.e.*, no visible gaps) except when the device is in actual use. Prior to filling the storage vessel, rim space vents are to be set to open only when the internal floating roof is not floating, or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(c) *IFR inspection requirements.* To demonstrate compliance, the owner or operator shall visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service) according to paragraphs (c)(1) through (4) of this section and maintain records of the IFR inspection results as specified in §65.47(c)(1).

(1) *Single seal.* For vessels equipped with a single-seal system, the owner or operator shall perform the following inspections:

(i) Visually inspect for IFR type A failures, the internal floating roof, and the seal through manholes and roof hatches on the fixed roof no less frequently than once every 12 months.

(ii) Visually inspect for IFR type B failures, the internal floating roof, the seal, gaskets, slotted membranes, and sleeve seals (if any) each time the storage vessel is emptied, but no less frequently than once every 10 years.

(2) *Double seal.* For vessels equipped with two continuous seals mounted one above the other, the owner or operator

shall perform either the inspection required in paragraph (c)(2)(i) of this section or the inspections required in paragraph (c)(2)(ii) of this section:

(i) Visually inspect for IFR type B failures, the internal floating roof, the primary seal, the secondary seal, gaskets, slotted membranes, and sleeve seals (if any) each time the storage vessel is emptied, but no less frequently than once every 5 years; or

(ii) Visually inspect the internal floating roof and the other components as specified in the following:

(A) For IFR type A failures, inspect the secondary seal through manholes and roof hatches on the fixed roof no less frequently than once every 12 months; and

(B) For IFR type B failures, inspect the primary seal, the secondary seal, gaskets, slotted membranes, and sleeve seals (if any) each time the vessel is emptied, but no less frequently than once every 10 years.

(3) For inspections to determine if any IFR type B failures are present as required by paragraphs (c)(1)(ii), (c)(2)(i), and (c)(2)(ii)(B) of this section, the owner or operator shall comply with the refilling notification requirements specified in § 65.48(c)(1).

(4) After installing the control equipment required to comply with § 65.42(b)(1) or (3), visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service) prior to filling the storage vessel with regulated material. If there are holes, tears, or other openings in the primary seal, the secondary seal, or the seal fabric, or defects in the internal floating roof, the owner or operator shall repair the items before filling the storage vessel.

(d) *IFR repair requirements*. The owner or operator shall repair any observed or determined failures according to paragraphs (d)(1) and (2) of this section:

(1) If an IFR type A failure is observed, the owner or operator shall repair the items or empty and remove the storage vessel from service within 45 calendar days. If the failure cannot be repaired within 45 calendar days or if the vessel cannot be emptied within 45 calendar days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each and keep the records specified in § 65.47(d).

(2) If an IFR type B failure is determined, the owner or operator shall repair the items and comply with the refilling notification requirements of § 65.48(c)(1) before refilling the storage vessel with regulated material.

§ 65.44 External floating roof (EFR).

(a) *EFR design requirements*. The owner or operator who elects to control storage vessel regulated material emissions by using an external floating roof shall comply with the design requirements listed in paragraphs (a)(1) through (3) of this section.

(1) The external floating roof shall be designed to float on the stored liquid surface except when the floating roof must be supported by the leg supports.

(2) The external floating roof shall be equipped with a closure device between the wall of the storage vessel and the roof edge.

(i) Except as provided in paragraph (a)(2)(iii) of this section, the closure device is to consist of two continuous seals, one above the other. The lower seal is referred to as the primary seal and the upper seal is referred to as the secondary seal.

(ii) Except as provided in paragraph (a)(2)(iv) of this section, the primary seal shall be either a metallic shoe seal or a liquid-mounted seal.

(iii) If the external floating roof is equipped with a liquid-mounted or metallic shoe primary seal as of December 31, 1992, the requirement for a secondary seal in paragraph (a)(2)(i) of this section does not apply until the next time the storage vessel is emptied and degassed, or by April 22, 2004, whichever occurs first.

(iv) If the external floating roof is equipped with a vapor-mounted primary seal and a secondary seal as of December 31, 1992, the requirement for a liquid-mounted or metallic shoe primary seal in paragraph (a)(2)(ii) of this section does not apply until the next time the storage vessel is emptied and degassed, or by April 22, 2004, whichever occurs first.

(3) The external floating roof shall meet the following specifications:

(i) Except for automatic bleeder vents (vacuum breaker vents) and rim

space vents, each opening in the noncontact external floating roof shall provide a projection below the stored liquid surface except as provided in paragraph (a)(3)(xiii) of this section.

(ii) Covers on each access hatch and each gauge float well shall be designed to be bolted or fastened when they are closed.

(iii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening shall be equipped with a gasketed cover, seal, or lid.

(iv) Automatic bleeder vents and rim space vents shall be equipped with a gasket.

(v) Each roof drain that empties into the stored liquid shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(vi) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(vii) Except for antirotational devices equipped with a welded cap, each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(viii) Each slotted guide pole shall be equipped with a gasketed float or other device that closes off the stored liquid surface from the atmosphere.

(ix) Each gauge hatch/sample well shall be equipped with a gasketed cover.

(x) Where a metallic shoe seal is in use as the primary seal, one end of the metallic shoe shall be designed to extend into the stored liquid and the other end shall extend a minimum vertical distance of 61 centimeters (24 inches) above the stored liquid surface.

(xi) The secondary seal shall be designed to be installed above the primary seal so that it completely covers the space between the roof edge and the vessel wall.

(xii) For the primary and secondary seals, there shall be no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.

(xiii) If each opening in a noncontact external floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents does not provide a projection below the liquid surface as of December 31, 1992, the requirement for providing these projections below the liquid surface does not apply until the next time the storage vessel is emptied and degassed, or by April 22, 2004, whichever occurs first.

(b) *EFR operational requirements.* The owner or operator using an external floating roof shall comply with the following operational requirements:

(1) The external floating roof shall float on the stored liquid surface at all times except when the floating roof must be supported by the leg supports.

(2) When the floating roof is resting on the leg supports, the process of filling or refilling shall be continuous and shall be accomplished as soon as practical, and the owner or operator shall maintain the record specified in §65.47(e).

(3) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening shall be maintained in a closed position (*i.e.*, no visible gap) at all times except when the device is in actual use.

(4) Covers on each access hatch and each gauge float well shall be bolted or fastened when they are closed.

(5) Automatic bleeder vents are to be set to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.

(6) Rim space vents are to be set to open only when the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(7) The cap on the end of each unslotted guide pole shall be closed at all times except when gauging the stored liquid level or taking samples of the stored liquid.

(8) The cover on each gauge hatch/sample well shall be closed at all times except when the hatch or well must be open for access.

(9) Except during the inspections required by paragraph (c) of this section, both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the storage vessel in a continuous fashion.

(c) *EFR inspection requirements.* To demonstrate compliance for an external floating roof vessel, the owner or operator shall use the procedures in paragraphs (c)(4) through (9) of this section for seal gaps according to the frequency specified in paragraphs (c)(1) through (3) of this section and meet the requirements of paragraph (c)(10) of this section.

(1) Measurements of gaps between the vessel wall and the primary seal shall be performed no less frequently than once every 5 years and at the times specified in paragraphs (c)(1)(i) and (ii) of this section. The owner or operator shall maintain records of the EFR seal gap measurements as specified in § 65.47(c)(2).

(i) During the hydrostatic testing of the vessel, by initial startup, or within 90 days of the initial fill with regulated material.

(ii) For an external floating roof vessel equipped with a liquid-mounted or metallic shoe primary seal and without a secondary seal as provided for in paragraph (a)(2)(iii) of this section, measurements of gaps between the vessel wall and the primary seal shall be performed at least once per year until a secondary seal is installed. When a secondary seal is installed above the primary seal, measurements of gaps between the vessel wall and both the primary and secondary seals shall be performed within 90 calendar days of installation of the secondary seal and according to the frequency specified in paragraphs (c)(1) through (3) of this section thereafter.

(2) Measurements of gaps between the vessel wall and the secondary seal shall be performed no less frequently than once per year and within 90 days of the initial fill with regulated material, within 90 days of installation of the secondary seal, or by initial startup. The owner or operator shall maintain records of the EFR seal gap measurements as specified in § 65.47(c)(2).

(3) If any storage vessel ceases to store regulated material for a period of 1 year or more, measurements of gaps between the vessel wall and the primary seal, and gaps between the vessel wall and the secondary seal shall be performed within 90 days of the vessel being refilled with regulated material. The owner or operator shall maintain records of the EFR seal gap measurements as specified in § 65.47(c)(2).

(4) If the tank contains regulated material, all primary seal inspections or gap measurements that require the removal or dislodging of the secondary seal shall be accomplished as soon as possible, and the secondary seal shall be replaced as soon as possible.

(5) The owner or operator shall notify the Administrator 30 days before any EFR seal gap measurement as specified in § 65.48(c)(2).

(6) Except as provided in paragraph (d) of this section, the owner or operator shall determine gap widths and gap areas in the primary and secondary seals (seal gaps) individually by the following procedures:

(i) Seal gaps, if any, shall be measured at one or more floating roof levels when the roof is not resting on the roof leg supports.

(ii) Seal gaps, if any, shall be measured around the entire circumference of the vessel in each place where a 0.32 centimeter (⅛ inch) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the storage vessel. The circumferential distance of each such location shall also be measured.

(iii) The total surface area of each gap described in paragraph (c)(6)(ii) of this section shall be determined by using probes of various widths to measure accurately the actual distance from the vessel wall to the seal and multiplying each such width by its respective circumferential distance.

(7) The owner or operator shall add the gap surface area of each gap location for the primary seal and divide the sum by the nominal diameter of the vessel. The owner or operator shall include the calculations in the record of the seal gap measurement as specified in § 65.47(c)(2). For metallic shoe primary seals or liquid-mounted primary seals, the accumulated area of gaps between the vessel wall and the primary seal shall not exceed 212 square centimeters per meter of vessel diameter (10.0 square inches per foot of vessel diameter) and the width of any portion of any gap shall not exceed 3.81 centimeters (1.50 inches).

(8) The owner or operator shall add the gap surface area of each gap location for the secondary seal and divide the sum by the nominal diameter of the vessel. The owner or operator shall include the calculations in the record of the seal gap measurement as specified in §65.47(c)(2). The accumulated area of gaps between the vessel wall and the secondary seal used in combination with a metallic shoe seal or liquid-mounted primary seal shall not exceed 21.2 square centimeters per meter of vessel diameter (1.00 square inch per foot of vessel diameter) and the width of any portion of any gap shall not exceed 1.27 centimeters (0.50 inch). The secondary seal gap requirements may be exceeded during the measurement of primary seal gaps as required by paragraph (c)(1) of this section.

(9) If the owner or operator determines that it is unsafe to perform the seal gap measurements or to inspect the vessel to determine compliance because the floating roof appears to be structurally unsound and poses an imminent or potential danger to inspecting personnel, the owner or operator shall comply with one of the following requirements:

(i) The owner or operator shall measure the seal gaps or inspect the storage vessel no later than 30 calendar days after the determination that the roof is unsafe; or

(ii) The owner or operator shall empty and remove the storage vessel from service no later than 45 calendar days after determining that the roof is unsafe. If the vessel cannot be emptied within 45 calendar days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each and comply with the recordkeeping requirements in §65.47(d).

(10) The owner or operator shall visually inspect for EFR failures, the external floating roof, the primary seal, secondary seal, and fittings prior to initial filling and each time the vessel is emptied (including initially before the vessel is filled with regulated material), shall maintain records of the EFR inspection results as specified in §65.47(c)(1), and shall comply with the refilling notification requirements specified in §65.48(c)(1).

(d) *EFR repair requirements.* (1) The owner or operator shall repair conditions that do not meet seal gap specifications listed in paragraphs (c)(7) and (8) of this section or any EFR failure observed by the inspection required by paragraph (c)(10) of this section no later than 45 calendar days after identification, or shall empty and remove the storage vessel from service no later than 45 calendar days after identification. If the vessel cannot be repaired or emptied within 45 calendar days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each and comply with the recordkeeping requirements in §65.47(d).

(2) If an EFR failure is observed by the inspection required by paragraph (c)(10) of this section, the owner or operator shall repair the items as necessary so that none of the conditions specified in paragraph (c)(10) of this section exist before filling or refilling the storage vessel with regulated material.

§65.45 External floating roof converted into an internal floating roof.

The owner or operator who elects to control storage vessel regulated material emissions by using an external floating roof converted into an internal floating roof shall comply with the internal floating roof requirements of §65.43 except §65.43(a)(3), (b)(2), and (b)(3) and the external floating roof deck fitting requirements of §65.44 except §65.44(a)(1), (a)(2), (b)(1), (b)(8), (b)(9), (c), and (d), including the recordkeeping and reporting provisions referenced therein.

§65.46 Alternative means of emission limitation.

Any person seeking permission to use an alternative means of compliance under this section shall use the procedures of §65.8.

§65.47 Recordkeeping provisions.

(a) *Retention time.* Each owner or operator of a storage vessel subject to this subpart shall meet the requirements of §65.4, except the record specified in paragraph (b) of this section

shall be kept as long as the storage vessel is in operation.

(b) *Vessel dimensions and capacity.* Each owner or operator of a storage vessel subject to this subpart shall keep readily accessible records showing the dimensions of the storage vessel and an analysis of the capacity of the storage vessel.

(c) *Inspection results.* The owner or operator shall keep the records specified in paragraphs (c)(1) and (2) of this section.

(1) For each IFR or EFR inspection required by § 65.43(c)(1) and (2), or § 65.44(c)(10), respectively, a record containing the following information, as appropriate:

(i) In the event that no IFR type A failure, IFR type B failure, or EFR failure is observed, a record showing that the inspection was performed. The record shall identify the storage vessel on which the inspection was performed, the date the storage vessel was inspected, and references indicating which items were inspected.

(ii) In the event that an IFR type A failure, IFR type B failure, or EFR failure is observed, a record that identifies the storage vessel on which the inspection was performed, the date the storage vessel was inspected, a description of the failure and of the repair made, the date the vessel was emptied (if applicable), and the date that the repair was made. As specified in § 65.48(b)(1), the owner or operator shall include this record in the periodic report.

(2) For each EFR seal gap measurement required by § 65.44(c)(1), (2), or (3), a record describing the results of the measurement. The record shall identify the vessel on which the measurement was performed, shall include the date of the measurement, the raw data obtained in the measurement, and the calculations described in § 65.44(c)(7) and (8), and shall meet the following two additional requirements, as appropriate:

(i) In the event that the seal gap measurements do conform to the specifications in § 65.44(c)(7) and (8), the owner or operator shall submit the information specified in § 65.48(b)(2)(i) in the periodic report.

(ii) In the event that the seal gap measurements do not conform to the specifications in § 65.44(c)(7) and (8), the owner or operator shall also keep a description of the repairs that were made, the date the repairs were made, and the date the storage vessel was emptied and shall include a report of the seal gap measurement results in the periodic report as specified in § 65.48(b)(2)(ii).

(d) *Emptying and repairing extension.* The owner or operator who elects to utilize an extension in emptying a storage vessel for purposes of repair shall prepare by the initiation of the extension the following documentation, as appropriate, of the decision to utilize an extension:

(1) For an extension pursuant to § 65.43(d)(1) or § 65.44(d)(1), a description of the failure, documentation that alternative storage capacity is unavailable, and a schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as practical. As specified in § 65.48(b)(1)(i), the owner or operator shall include this information in the periodic report.

(2) For an extension pursuant to § 65.44(c)(9), an explanation of why it was unsafe to perform the inspection or seal gap measurement, documentation that alternate storage capacity is unavailable, and a schedule of actions that will ensure that the vessel will be emptied as soon as practical. As specified in § 65.48(b)(3), the owner or operator shall include this information in the periodic report.

(e) *Floating roof set on its legs.* The owner or operator shall maintain a record for each storage vessel subject to § 65.43(b)(2) and § 65.44(b)(2) identifying the date when the floating roof was set on its legs and the date when the roof was refloated. The record shall also indicate whether this was a continuous operation.

§ 65.48 Reporting provisions.

(a) *Notification of initial startup.* If § 65.5(b) requires that a notification of initial startup be filed, then the content of the notification of initial startup shall at least include the information specified in § 65.5(b) and the identification of each storage vessel, its capacity, and the types of regulated material stored in the storage vessel.

(b) *Periodic reports.* Report the information specified in paragraphs (b)(1) through (3) of this section, as applicable, in the periodic report specified in §65.5(e).

(1) *Inspection results.* Report the following information for each inspection conducted in accordance with §65.43(c) and §65.44(c) in which an IFR or EFR failure is detected in the control equipment:

(i) If an IFR type A failure or an EFR failure is observed for vessels for which inspections are required under §65.43(c)(1)(i), §65.43(c)(2)(ii)(A), or §65.44(c)(10), each report shall include the inspection results record listed in §65.47(c)(1)(ii). If an extension is utilized in accordance with §65.43(d)(1) or §65.44(d)(1), the report shall include the records listed in §65.47(c)(1)(ii) plus the documentation specified in §65.47(d)(1).

(ii) If an IFR type B failure is observed for vessels for which inspections are required under §65.43(c)(1)(ii), (c)(2)(i), or (c)(2)(ii)(B), each report shall include a copy of the records listed in §65.47(c)(1)(ii).

(2) *Seal gap measurement results.* (i) For each vessel whose seal gaps are measured during the reporting period, identify each seal gap measurement made in accordance with §65.44(c) in which the requirements of §65.44(c)(7) or (8) are met.

(ii) For each seal gap measurement made in accordance with §65.44(c) in which the requirements of §65.44(c)(7) or (8) are not met, from the records kept pursuant to §65.47(c)(2), report the date of the measurements, results of the calculations, and note which seal gap measurements did not conform to the specifications in §65.44(c)(7) and (8).

(3) *Extension documentation.* If an extension is utilized in accordance with §65.44(c)(9), the owner or operator shall include the documentation specified in §65.47(d)(2) in the next report required by §65.5(e).

(c) *Special notifications.* An owner or operator who elects to comply with §65.43, §65.44, or §65.45 shall submit, as applicable, the reports specified in paragraphs (c)(1) and (2) of this section except as specified in paragraph (c)(3) of this section. Each written notification or report shall also include the information specified in §65.5(f).

(1) *Refilling notification.* In order to afford the Administrator the opportunity to have an observer present, notify the Administrator prior to refilling of a storage vessel that has been emptied. If the storage vessel is equipped with an internal floating roof as specified in §65.43, an external floating roof as specified in §65.44, or an external floating roof converted to an internal floating roof as specified in §65.45, the notification shall meet either of the following requirements, as applicable.

(i) Notify the Administrator in writing at least 30 calendar days prior to the refilling of each storage vessel; or

(ii) If the inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days in advance of refilling the vessel, the owner or operator shall notify the Administrator as soon as practical, but no later than 7 calendar days prior to the refilling of the storage vessel. Notification may be made by telephone and immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, the notification including the written documentation may be made in writing and sent so that it is received by the Administrator at least 7 calendar days prior to refilling.

(2) *Seal gap measurement notification.* In order to afford the Administrator the opportunity to have an observer present during seal gap measurements, the owner or operator of a storage vessel equipped with an external floating roof as specified in §65.44 shall meet either of the following notification requirements, as applicable:

(i) Notify the Administrator in writing at least 30 calendar days in advance of any seal gap measurements; or

(ii) If the seal gap measurements are not planned and the owner or operator could not have known about the seal gap measurements 30 calendar days in advance, the owner or operator shall notify the Administrator as soon as practical, but no later than 7 calendar days prior to the seal gap measurements. Notification may be made by telephone and immediately followed by written documentation demonstrating why the seal gap measurements were

unplanned. Alternatively, the notification including the written documentation may be made in writing and sent so that it is received by the Administrator at least 7 calendar days prior to refilling.

(3) *Notification waiver*. Where a notification required by paragraphs (c)(1) or (2) of this section is sent to a delegated State or local agency, a copy of the notification to the Administrator is not required. A delegated State or local agency may waive the requirements for these notifications.

(d) *Compliance certification*. For sources subject to the compliance certification provisions of title V, a recertification of continuous compliance with §§ 65.43(b)(1) and 65.44(b)(1) shall be based on the annual inspections required by § 65.43(c)(1)(i) and (c)(2)(ii)(A) and any observations made at other times when the roof is viewed.

§§ 65.49–65.59 [Reserved]

Subpart D—Process Vents

§ 65.60 Applicability.

The provisions of this subpart and of subpart A of this part apply to regulated material emissions from process vents where a referencing subpart references the use of this subpart.

§ 65.61 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

§ 65.62 Process vent group determination.

(a) *Group status*. The owner or operator of a process vent shall determine the group status (i.e., Group 1, Group 2A, or Group 2B) for each process vent. Group 1 process vents require control, and Group 2A and 2B process vents do not. Group 2A process vents require parameter monitoring, and Group 2B process vents do not. The owner or operator shall report the group status of each process vent as specified in § 65.5(c)(2).

(b) *Group 1*. A process vent is considered Group 1 if it meets at least one of the following specifications:

(1) The owner or operator designates the process vent as Group 1.

(2) At representative operating conditions expected to yield the lowest TRE index value for the process vent, the TRE index value is less than or equal to 1.0, the flow rate is greater than or equal to 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute), and the concentration is greater than or equal to the applicable criterion in table 1 of this subpart. Procedures for determining the TRE index value, flow rate, and concentration are specified in § 65.64.

(c) *Group 2A*. A process vent is considered Group 2A if, at representative operating conditions expected to yield the lowest TRE index value, it has a TRE index value of greater than 1.0 and less than or equal to 4.0, a flow rate of greater than or equal to 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute), and a concentration greater than or equal to the applicable table 1 criterion. Procedures for determining the TRE index value, flow rate, and concentration are specified in § 65.64.

(d) *Group 2B*. A process vent is considered Group 2B if, at representative operating conditions expected to yield the lowest TRE index value, it has a TRE index value of greater than 4.0; or a flow rate of less than 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute); or a concentration less than the applicable criterion in table 1 of this subpart. Procedures for determining the TRE index value, flow rate, and concentration are specified in § 65.64.

§ 65.63 Performance and group status change requirements.

(a) *Group 1 performance requirements*. Except for the additional requirement for halogenated vent streams as provided in paragraph (b) of this section, the owner or operator of a Group 1 process vent shall comply with the requirements of either paragraph (a)(1), (2), or (3) of this section.

(1) *Flare.* Reduce emissions of regulated material using a flare meeting the applicable requirements of §65.142(b).

(2) *98 percent or 20 parts per million standard.* Reduce emissions of regulated material or TOC by at least 98 weight-percent or to a concentration of less than 20 parts per million by volume, whichever is less stringent. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, and corrected to 3 percent oxygen. The owner or operator shall meet the requirements in §65.142(b) and paragraphs (a)(2)(i) and/or (a)(2)(ii) of this section.

(i) Compliance with paragraph (a)(2) of this section may be achieved by using any combination of recovery and/or control device to meet the 20 parts per million by volume concentration standard; or by using any combination of recovery and/or control device to meet the 98 weight percent reduction standard, if the recovery device meets the conditions of paragraph (a)(2)(ii) of this section.

(ii) An owner or operator may use a recovery device alone or in combination with one or more control devices to reduce emissions of total regulated material by 98 weight-percent if all of the following conditions are met:

(A) For process vents referenced to this part by 40 CFR part 63, subpart G, the recovery device (and any control device that operates in combination with the recovery device to reduce emissions of total regulated material by 98 weight-percent) was installed before December 31, 1992.

(B) The recovery device that will be used to reduce emissions of total regulated material by 98 weight-percent is the last recovery device before emission to the atmosphere.

(C) The recovery device alone or in combination with one or more control devices is capable of reducing emissions of total regulated material by 98 weight-percent but is not capable of reliably reducing emissions of total regulated material to a concentration of 20 parts per million by volume.

(D) If the owner or operator disposed of the recovered material, the recovery device would be considered a control device and comply with the requirements of this subpart and §65.142(b) for control devices.

(3) *TRE index value.* Achieve and maintain a TRE index value greater than 1.0 at the outlet of the final recovery device, or prior to release from the process vent to the atmosphere if no recovery device is present. If the TRE index value is greater than 1.0, the process vent shall meet the provisions for a Group 2A or 2B process vent specified in either paragraph (c), (d), (e), or (f) of this section, whichever is applicable.

(b) *Halogenated Group 1 performance requirement.* Halogenated Group 1 process vents that are combusted shall be controlled according to paragraph (b)(1) or (2) of this section. The owner or operator shall either designate the Group 1 process vent as a halogenated Group 1 process vent or shall determine whether the process vent is halogenated using the procedures specified in §65.64(g). If determined, the halogen concentration in the vent stream shall be recorded and reported in the Initial Compliance Status Report as specified in §65.160(d). If the owner or operator designates the process vent as a halogenated Group 1 process vent, then this shall also be recorded and reported in the Initial Compliance Status Report.

(1) *Halogen reduction device following combustion.* If a combustion device is used to comply with paragraph (a)(2) of this section for a halogenated process vent, then the process vent exiting the combustion device shall be ducted to a halogen reduction device including, but not limited to, a scrubber before it is discharged to the atmosphere, and the halogen reduction device shall meet the requirements of paragraph (b)(1)(i) or (ii) of this section, as applicable. The halogenated process vent shall not be combusted using a flare.

(i) Except as provided in paragraph (b)(1)(ii) of this section, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens by 99 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilogram per hour (0.99 pound per hour), whichever is less stringent. The owner or operator shall meet the requirements in §65.142(b).

(ii) If a scrubber or other halogen reduction device was installed prior to December 31, 1992, the device shall reduce overall emissions of hydrogen halides and halogens by 95 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilogram per hour (0.99 pound per hour), whichever is less stringent. The owner or operator shall meet the requirements in § 65.142(b).

(2) *Halogen reduction device prior to combustion.* A halogen reduction device, such as a scrubber, or other technique may be used to reduce the process vent halogen atom mass emission rate to less than 0.45 kilogram per hour (0.99 pound per hour) prior to any combustion control device and thus make the process vent nonhalogenated; the process vent must comply with the requirements of paragraph (a)(1) or (2) of this section. The mass emission rate of halogen atoms contained in organic compounds prior to the combustor shall be determined according to the procedures in § 65.64(g). The owner or operator shall maintain the record specified in § 65.160(d) and submit the report specified in § 65.165(d).

(c) *Performance requirements for Group 2A process vents with recovery devices.* For Group 2A process vents, where the owner or operator is using a recovery device to maintain a TRE index value greater than 1.0, the owner or operator shall maintain a TRE index value greater than 1.0 and comply with the requirements for recovery devices in § 65.142(b).

(d) *Performance requirements for Group 2A process vents without recovery devices.* For Group 2A process vents where the owner or operator is not using a recovery device to maintain a TRE index value greater than 1.0, determine the appropriate parameters to be monitored and submit the information as specified in paragraphs (d)(1), (2), and (3) of this section. Such information shall be submitted for approval to the Administrator as part of a title V permit application or by separate notice. The owner or operator shall monitor as specified in § 65.65(a), maintain the record specified in § 65.66(e), and submit reports as specified in § 65.67(c).

(1) *Parameter monitoring.* A description of the parameter(s) to be monitored to ensure the owner or operator of a process vent achieves and maintains the TRE above 1.0. and an explanation of the criteria used to select the parameter(s).

(2) *Demonstration methods and procedures.* A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the process, the schedule for this demonstration, and a statement that the owner or operator will establish a range for the monitored parameter as part of the Initial Compliance Status Report required in § 65.5(d), unless this information has already been included in the operating permit application.

(3) *Monitoring, recordkeeping, and reporting frequency.* The frequency and content of monitoring, recording, and reporting if monitoring and recordkeeping are not continuous, or if reports of daily average values when the monitored parameter value is outside the range established in the operating permit or Initial Compliance Status Report will not be included in periodic reports required under § 65.5(e). The rationale for the proposed monitoring, recording, and reporting system shall be included.

(e) *Group 2B performance requirements.* For Group 2B process vents, the owner or operator shall maintain a TRE index greater than 4.0, a flow rate less than 0.011 scmm, or a concentration less than the applicable criteria in table 1 to this subpart.

(f) *Group 2A or 2B process change requirements.* Whenever process changes are made that could reasonably be expected to change a Group 2A or 2B process vent to a Group 1 vent, the owner or operator shall recalculate the TRE index value, flow, or TOC or organic hazardous air pollutant (HAP) concentration according to paragraph (f)(1), (2), or (3) of this section as specified for each process vent as necessary to determine whether the process vent is Group 1, Group 2A, or Group 2B and shall maintain the applicable records specified in § 65.66(d) and submit the applicable reports specified in § 65.67(b). The owner or operator shall perform the group status determination as soon as practical after the process change and within 180 days after the process

change. Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of paragraph (f) of this section, process changes do not include process upsets; unintentional, temporary process changes; and changes that are within the range on which the original TRE index value calculation was based.

(1) *Flow rate.* The flow rate shall be determined as specified in the sampling site and flow rate determination procedures in §65.64(b) and (d) or by using best engineering assessment of the effects of the change. Engineering assessments shall meet the specifications in §65.64(i).

(2) *Concentration.* The TOC or organic HAP concentration shall be determined as specified in §65.64(b) and (c) or by using best engineering assessment of the effects of the change. Engineering assessments shall meet the specifications in §65.64(i).

(3) *TRE index value.* The TRE index value shall be recalculated based on measurements of process vent flow rate, TOC, and/or organic HAP concentrations, and heating values as specified in §65.64(b), (c), (d), (e), (f), (g), and (h) as applicable, or based on best engineering assessment of the effects of the change. Engineering assessments shall meet the specifications in §65.64(i).

(4) *Group status change to Group 1.* Where the process change causes the group status to change to Group 1, the owner or operator shall comply with the Group 1 process vent provisions in paragraph (a) of this section and, if they apply, the halogenated Group 1 process vent provisions in paragraph (b) of this section upon initial startup after the change and thereafter unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making the process change. If this demonstration is made to the Administrator's satisfaction, the owner or operator shall comply as expeditiously as practical, but in no event later than 3 years after the emission point becomes Group 1, and shall comply with the following procedures to establish a compliance date:

(i) The owner or operator shall submit to the Administrator for approval a compliance schedule, along with a justification for the schedule.

(ii) The compliance schedule shall be submitted with the operating permit application or amendment or by other appropriate means.

(iii) The Administrator shall approve the compliance schedule or request changes within 120 calendar days of receipt of the compliance schedule and justification.

(5) *Group status change to Group 2A.* Whenever a process change causes the process vent group status to change to Group 2A, the owner or operator shall comply with the provisions of paragraph (c) or (d) of this section upon completion of the group status determination of the process vent.

(6) *Group status change to Group 2B.* Whenever a process change causes the process vent group status to change to Group 2B, the owner or operator shall comply with the provisions of paragraph (e) of this section as soon as practical after the process change.

§65.64 Group determination procedures.

(a) *General.* The provisions of this section provide calculation and measurement methods for parameters that are used to determine group status.

(b)(1) *Sampling site.* For purposes of determining TOC or HAP concentration, process vent volumetric flow rate, heating value, or TRE index value as specified under paragraph (c), (d), (e), (f), or (h) of this section, the sampling site shall be located after the last recovery device (if any recovery devices are present) but prior to the inlet of any control device that is present, and prior to release to the atmosphere.

(2) *Sampling site when a halogen reduction device is used prior to a combustion device.* An owner or operator using a scrubber or other halogen reduction device to reduce the process vent halogen atom mass emission rate to less than 0.45 kilogram per hour (0.99 pound per hour) prior to a combustion control device in compliance with §65.63(b)(2) shall determine the halogen atom mass emission rate prior to the combustor

and after the scrubber or other halogen reduction device according to the procedures in paragraph (g) of this section.

(3) *Sampling site selection method.* Method 1 or 1A of appendix A of 40 CFR part 60, as appropriate, shall be used for selection of the sampling site. No traverse site selection method is needed for process vents smaller than 0.10 meter (4 inches) in nominal inside diameter.

(c) *TOC or HAP concentration.* The TOC or HAP concentrations used for TRE index value calculations in paragraph (h) of this section shall be determined based on paragraph (c)(1) or (i) of this section, or any other method or data that have been validated according to the protocol in Method 301 of appendix A of 40 CFR part 63. For concentrations needed for comparison with the appropriate concentration in table 1 of this subpart, TOC or HAP concentration shall be determined based on paragraph (c)(1), (c)(2), or (i) of this section or any other method or data that have been validated according to the protocol in Method 301 of appendix A of 40 CFR part 63. The owner or operator shall record the TOC or HAP concentration as specified in § 65.66(c).

(1) *Method 18.* The procedures specified in paragraph (c)(1)(i) and (ii) of this section shall be used to calculate parts per million by volume concentration using Method 18 of appendix A of 40 CFR part 60.

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(ii) The concentration of either TOC (minus methane and ethane) or organic HAP emissions shall be calculated using the following two procedures, as applicable.

(A) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using Equation 64–1 of this section:

$$C_{TOC} = \frac{\sum_{i=1}^{x}\left(\sum_{j=1}^{n} C_{ji}\right)}{x} \qquad \text{(Eq. 64-1)}$$

Where:

C_{TOC} = Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

x = Number of samples in the sample run.

n = Number of components in the sample.

C_{ji} = Concentration of sample component j of the sample i, dry basis, parts per million by volume.

(B) The total organic HAP concentration (C_{HAP}) shall be computed according to the equation in paragraph (c)(1)(ii)(A) of this section except that only the organic HAP species shall be summed.

(2) *Method 25A.* The following procedures shall be used to calculate parts per million by volume concentration using Method 25A of appendix A of 40 CFR part 60:

(i) Method 25A of appendix A of 40 CFR part 60 shall be used only if a single organic compound of regulated material is greater than 50 percent of total organic HAP or TOC, by volume, in the process vent.

(ii) The process vent composition may be determined by either process knowledge, test data collected using an appropriate EPA method, or a method or data validated according to the protocol in Method 301 of appendix A of 40 CFR part 63. Examples of information that could constitute process knowledge include calculations based on material balances, process stoichiometry, or previous test results provided the results are still relevant to the current process vent conditions.

(iii) The organic compound used as the calibration gas for Method 25A of appendix A of 40 CFR part 60 shall be the single organic compound of regulated material present at greater than 50 percent of the total organic HAP or TOC by volume.

(iv) The span value for Method 25A of appendix A of 40 CFR part 60 shall be equal to the appropriate concentration value in table 1 to this subpart.

(v) Use of Method 25A of appendix A of 40 CFR part 60 is acceptable if the

response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(vi) The owner or operator shall demonstrate that the concentration of TOC including methane and ethane measured by Method 25A of appendix A of 40 CFR part 60 is below one-half the appropriate value in table 1 to this subpart to be considered a Group 2B vent with an organic HAP or TOC concentration below the appropriate value in table 1 to this subpart.

(d) *Volumetric flow rate.* The process vent volumetric flow rate (Q_S) in standard cubic meters per minute at 20 °C (68 °F) shall be determined as specified in paragraphs (d)(1) and (2) of this section and shall be recorded as specified in §65.66(b):

(1) Use Method 2, 2A, 2C, or 2D of appendix A of 40 CFR part 60, as appropriate. If the process vent tested passes through a final steam jet ejector and is not condensed, the stream volumetric flow shall be corrected to 2.3 percent moisture; or

(2) The engineering assessment procedures in paragraph (i) of this section can be used for determining volumetric flow rates.

(e) *Heating value.* The net heating value shall be determined as specified in paragraphs (e)(1) and (2) of this section or by using the engineering assessment procedures in paragraph (i) of this section.

(1) The net heating value of the process vent shall be calculated using Equation 64–2 of this section:

$$H_T = K_1\left(\sum_{j=1}^{n} D_j H_j\right) \qquad \text{(Eq. 64-2)}$$

Where:

H_T = Net heating value of the sample, megajoule per standard cubic meter, where the net enthalpy per mole of process vent is based on combustion at 25 °C and 760 millimeters of mercury, but the standard temperature for determining the volume corresponding to 1 mole is 20 °C as in the definition of Q_S (process vent volumetric flow rate).

K_1 = Constant, 1.740×10^{-7} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (megajoule per kilocalorie), where standard temperature for (gram-mole per standard cubic meter) is 20 °C.

n = Number of components in the sample.

D_j = Concentration on a wet basis of compound j in parts per million as measured by procedures indicated in paragraph (e)(2) of this section. For process vents that pass through a final steam jet and are not condensed, the moisture is assumed to be 2.3 percent by volume.

H_j = Net heat of combustion of compound j, kilocalorie per gram-mole, based on combustion at 25 °C and 760 millimeters of mercury. The heat of combustion of process vent components shall be determined using American Society for Testing and Materials (ASTM) D2382–76 (incorporated by reference as specified in §65.13) if published values are not available or cannot be calculated.

(2) The molar composition of the process vent (D_j) shall be determined using the following methods:

(i) Method 18 of appendix A of 40 CFR part 60 to measure the concentration of each organic compound.

(ii) American Society for Testing and Materials (ASTM) D1946–77 (incorporated by reference as specified in §65.13) to measure the concentration of carbon monoxide and hydrogen.

(iii) Method 4 of appendix A of 40 CFR part 60 to measure the moisture content of the stack gas.

(f) *TOC or HAP emission rate.* The emission rate of TOC (minus methane and ethane) (E_{TOC}) and/or the emission rate of total organic HAP (E_{HAP}) in the process vent as required by the TRE index value equation specified in paragraph (h) of this section, shall be calculated using Equation 64.3 of this section:

$$E = K_2\left(\sum_{j=1}^{n} C_j M_j\right) Q_s \qquad \text{(Eq. 64-3)}$$

Where:

E = Emission rate of TOC (minus methane and ethane) (E_{TOC}) or emission rate of total organic HAP (E_{HAP}) in the sample, kilograms per hour.

K_2 = Constant, 2.494×10^{-6} (parts per million) (gram-mole per standard cubic meter) (kilogram per gram) (minutes per hour), where standard temperature for (gram-mole per standard cubic meter) is 20 °C.

n = Number of components in the sample.

C_j = Concentration on a dry basis of organic compound j in parts per million as measured by Method 18 of appendix A of 40 CFR part 60 as indicated in paragraph (c) of this

section. If the TOC emission rate is being calculated, C_j includes all organic compounds measured minus methane and ethane; if the total organic HAP emission rate is being calculated, only organic HAP compounds are included.

M_j = Molecular weight of organic compound j, gram/gram-mole.

Q_s = Process vent flow rate, dry standard cubic meter per minute, at a temperature of 20 °C.

(g) *Halogenated vent determination.* In order to determine whether a process vent is halogenated, the mass emission rate of halogen atoms contained in organic compounds shall be calculated according to the procedures specified in paragraphs (g)(1) and (2) of this section. A process vent is considered halogenated if the mass emission rate of halogen atoms contained in the organic compounds is equal to or greater than 0.45 kilogram per hour (0.99 pound per hour).

(1) The process vent concentration of each organic compound containing halogen atoms (parts per million by volume, by compound) shall be determined based on one of the following procedures:

(i) Process knowledge that no halogen or hydrogen halides are present in the process vent; or

(ii) Applicable engineering assessment as discussed in paragraph (i)(3) of this section; or

(iii) Concentration of organic compounds containing halogens measured by Method 18 of appendix A of 40 CFR part 60; or

(iv) Any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63.

(2) Equation 64–4 of this section shall be used to calculate the mass emission rate of halogen atoms:

$$E = K_2 Q \left(\sum_{j=1}^{n} \sum_{i=1}^{m} C_j * L_{j,i} * M_{j,i} \right) \qquad \text{(Eq. 64-4)}$$

Where:

E = Mass of halogen atoms, dry basis, kilogram per hour.

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (kilogram-mole per standard cubic meter) (minute per hour), where standard temperature is 20 °C.

Q = Flow rate of gas stream, dry standard cubic meters per minute, determined according to paragraph (d) or (i) of this section.

n = Number of halogenated compounds j in the gas stream.

j = Halogenated compound j in the gas stream.

m = Number of different halogens i in each compound j of the gas stream.

i = Halogen atom i in compound j of the gas stream.

C_j = Concentration of halogenated compound j in the gas stream, dry basis, parts per million by volume.

L_{ji} = Number of atoms of halogen i in compound j of the gas stream.

M_{ji} = Molecular weight of halogen atom i in compound j of the gas stream, kilogram per kilogram-mole.

(h) *TRE index value.* The owner or operator shall calculate the TRE index value of the process vent using the equations and procedures specified in paragraphs (h)(1) through (3) of this section, as applicable, and shall maintain the records specified in § 65.66(a) or § 65.66(d)(4), as applicable.

(1) *TRE index value equation.* Equation 64–5 of this section shall be used to calculate the TRE index:

$$TRE = A * [B + C + D + E + F] \qquad \text{(Eq. 64-5)}$$

Where:

TRE = TRE index value.

A, B, C, D, E, and F = Parameters presented in tables 2 and 3 of this subpart that include the following variables:

Q = Process vent flow rate, standard cubic meters per minute, at a standard temperature of 20 °C, as calculated according to paragraph (d) or (i) of this section.

H = Process vent net heating value, megajoules per standard cubic meter, as calculated according to paragraph (e) or (i) of this section.

E_{TOC} = Emission rate of TOC (minus methane and ethane), kilograms per hour, as calculated according to paragraph (f) or (i) of this section.

E_{HAP} = Emission rate of total organic HAP, kilograms per hour, as calculated according to paragraph (f) or (i) of this section.

(2) *Nonhalogenated process vents.* The owner or operator of a nonhalogenated process vent shall calculate the TRE index value using either one of the following procedures, as applicable:

(i) *TRE calculations: Part 60 regulated sources.* Use the parameters in table 2 to this subpart and calculate the TRE index value twice, once using the appropriate equation (depending on the heating value and flow rate of the process vent) in equations 15 through 30 and once using the appropriate equation (depending on the heating value of the process vent) in equations 31 and 32. Select the lowest TRE index value.

(ii) *TRE calculations: Part 63 regulated sources.* Use the equation and parameters in table 3 to this subpart and calculate the TRE index value using equations 34, 35, and 36 for process vents at existing sources; or equations 38, 39, and 40 for process vents at new sources. Select the lowest TRE index value.

(3) *Halogenated process vents.* The owner or operator of a halogenated process vent stream as determined according to procedures specified in paragraph (g) of this section shall calculate the TRE index value using either one of the following procedures, as applicable:

(i) *TRE Calculations: Part 60 regulated sources.* Use the parameters in table 2 to this subpart and calculate the TRE index value using the appropriate equation chosen from equations 1 through 14 depending on the heating value and flow rate of the process vent.

(ii) *TRE calculations: Part 63 regulated sources.* Use the appropriate parameters in table 3 to this subpart and calculate the TRE index value using equation 33 or 37 depending on whether the process vent is at a new or existing source.

(i) *Engineering assessment.* For purposes of TRE index value determination, engineering assessment may be used to determine process vent flow rate, net heating value, TOC emission rate, and total organic HAP emission rate for the representative operating condition expected to yield the lowest TRE index value. Engineering assessments shall meet the requirements of paragraphs (i)(1) through (4) of this section. If process vent flow rate or process vent organic HAP or TOC concentration is being determined for comparison with the 0.011 scmm (0.40 standard cubic foot) flow rate or the applicable concentration value in table 1 to this subpart, engineering assessment may be used to determine the flow rate or concentration for the representative operating condition expected to yield the highest flow rate or concentration.

(1) If the TRE index value calculated using such engineering assessment and the TRE index value equation in paragraph (h) of this section is greater than 4.0, then the owner or operator is not required to perform the measurements specified in paragraphs (c) through (g) of this section.

(2) If the TRE index value calculated using such engineering assessment and the TRE index value equation in paragraph (h) of this section is less than or equal to 4.0, then the owner or operator is required either to perform the measurements specified in paragraphs (c) through (g) of this section for group determination or to consider the process vent a Group 1 process vent and comply with the requirement (or standard) specified in §65.63(a) and, if applicable, §65.63(b).

(3) Engineering assessment includes, but is not limited to, the examples specified in paragraphs (i)(3)(i) through (iv) of this section.

(i) Previous test results provided the tests are representative of current operating practices at the process unit.

(ii) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(iii) Maximum flow rate, TOC emission rate, organic HAP emission rate, organic HAP or TOC concentration, or net heating value limit specified or implied within a permit limit applicable to the process vent.

(iv) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to, the following examples:

(A) Use of material balances based on process stoichiometry to estimate maximum TOC or organic HAP concentrations;

(B) Estimation of maximum flow rate based on physical equipment design such as pump or blower capacities;

(C) Estimation of TOC or organic HAP concentrations based on saturation conditions; and

(D) Estimation of maximum expected net heating value based on the stream concentration of each organic compound or, alternatively, as if all TOC in the stream were the compound with the highest heating value.

(4) All data, assumptions, and procedures used in the engineering assessment shall be documented. The owner or operator shall maintain the records specified in § 65.66(a), (b), (c), or (d), as applicable.

§ 65.65 Monitoring.

(a) An owner or operator of a Group 2A process vent maintaining a TRE index value greater than 1.0 without a recovery device shall monitor based on the approved plan as specified in § 65.63(d).

(b) As required in § 65.63(a) and (c), an owner or operator of a Group 2A process vent maintaining a TRE index value greater than 1.0 with a recovery device or a Group 1 process vent shall comply with § 65.142(b).

§ 65.66 Recordkeeping provisions.

(a) *TRE index value records.* The owner or operator shall maintain records of measurements, engineering assessments, and calculations performed to determine the TRE index value of the process vent according to the procedures of § 65.64(h), including those records associated with halogen vent stream determination. Documentation of engineering assessments shall include all data, assumptions, and procedures used for the engineering assessments, as specified in § 65.64(i). As specified in § 65.67(a), the owner or operator shall include this information in the Initial Compliance Status Report.

(b) *Flow rate records.* Each owner or operator who elects to demonstrate that a process vent is Group 2B based on a flow rate less than 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute) shall record the flow rate as measured using the sampling site and flow rate determination procedures specified in § 65.64(b) and (d) or determined through engineering assessment as specified in § 65.64(i). As specified in § 65.67(a), the owner or operator shall include this information in the Initial Compliance Status Report.

(c) *Concentration records.* Each owner or operator who elects to demonstrate that a process vent is Group 2B based on a concentration less than the applicable criteria in table 1 to this subpart shall record the organic HAP or TOC concentration as measurement using the sampling site and HAP or TOC concentration determination procedures specified in § 65.64(b) and (c) or determined through engineering assessment as specified in § 65.64(i). As specified in § 65.67(a), the owner or operator shall include this information in the Initial Compliance Status Report.

(d) *Process change records.* The owner or operator shall keep up-to-date, readily accessible records as specified in the following and shall report this information as specified in § 65.67(b):

(1) If the process vent is Group 2B on the basis of flow rate being less than 0.011 scmm (0.40 standard cubic foot), then the owner or operator shall keep records of any process changes as defined in § 65.63(f) that increase the process vent flow rate and any recalculation or measurement of the flow rate pursuant to § 65.63(f).

(2) If the process vent is Group 2B on the basis of organic HAP or TOC concentration being less than the applicable value in table 1 to this subpart, then the owner or operator shall keep records of any process changes as defined in § 65.63(f) that increase the organic HAP or TOC concentration of the process vent and any recalculation or measurement of the concentration pursuant to § 65.63(f).

(3) If the process vent is Group 2A or Group 2B on the basis of the TRE index value being greater than 1.0, then the owner or operator shall keep records of any process changes as defined in § 65.63(f) and any recalculation of the TRE index value pursuant to § 65.63(f).

(4) As a result of a process change, if a process vent that was Group 2B on any basis becomes a Group 2B process vent only on the basis of having a TRE greater than 4.0, then the owner or operator shall keep records of the TRE index value determination performed

according to the sample site and TRE index value determination procedures of §65.64(b)(1) and (h) or determined through engineering assessment as specified in §65.64(i).

(e) *Other Group 2A records.* An owner or operator of a Group 2A process vent maintaining a TRE index value greater than 1.0 without a recovery device shall record the parameters monitored based on the approved plan as specified in §65.63(d).

§65.67 Reporting provisions.

(a) *Initial compliance status report.* The owner or operator shall submit as part of the Initial Compliance Status Report specified in §65.5(d) the information recorded in §65.66(a), (b), and (c), as applicable.

(b) *Process change.* (1) Whenever a process change, as described in §65.63(f), is made that causes a Group 2A or 2B process vent to become a Group 1 process vent or a Group 2B process vent to become a Group 2A process vent, the owner or operator shall either submit a report within 60 days after the performance test or group determination or submit a report included as part of the next periodic report. The report shall include the following information:

(i) A description of the process change;

(ii) The results of the recalculation of the flow rate, organic HAP or TOC concentration, and/or TRE index value required under §65.63(f) and recorded under §65.66(d); and

(iii) A statement that the owner or operator will comply with the provisions of §65.63 by the schedules specified in §65.63(f)(4) through (6).

(2) For process vents that become Group 1 process vents after a process change requiring a performance test to be conducted for the control device being used as specified in subpart G of this part, the owner or operator shall specify that the performance test has become necessary due to a process change. This specification shall be made in the notification to the Administrator of the intent to conduct a performance test as provided in §65.164(b)(1).

(3) Whenever a process change as described in §65.63(f) is made that changes the group status of a process vent from Group 1 to Group 2A, or from Group 1 to Group 2B, or from Group 2A to Group 2B, the owner or operator shall include a statement in the next periodic report after the process change that a process change has been made and the new group status of the process vents.

(4) The owner or operator is not required to submit a report of a process change if one of the following conditions is met:

(i) The change does not meet the definition of a process change in §65.63(f); or

(ii) For a Group 2B process vent, the vent stream flow rate is recalculated according to §65.63(f) and the recalculated value is less than 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute); or

(iii) For a Group 2B process vent, the organic HAP or TOC concentration of the vent stream is recalculated according to §65.63(f), and the recalculated value is less than the applicable value in table 1 to this subpart; or

(iv) For a Group 2B process vent, the TRE index value is recalculated according to §65.63(f) and the recalculated value is greater than 4.0.

(c) *Parameters for Group 2A without a recovery device.* An owner or operator of a Group 2A process vent maintaining a TRE index value greater than 1.0 without using a recovery device shall report the information specified in the approved plan under §65.63(d).

§§65.68–65.79 [Reserved]

TABLE 1 TO SUBPART D OF PART 65—CONCENTRATION FOR GROUP DETERMINATION

Referencing subpart	Concentration [1]
Subpart III of Part 60	NA.
Subpart NNN of Part 60	300 ppmv of TOC.
Subpart RRR of Part 60	300 ppmv of TOC.
Subpart G of Part 63	50 ppmv of HAP [2].

[1] The 50 ppm HAP concentration cutoff only applies to 40 CFR part 63, subpart G sources. Process vents subject to only 40 CFR part 60, subparts RRR or NNN are eligible for the 300 ppm TOC cutoff. There is no concentration cutoff for subpart III sources. The process vent provisions of subpart DDD are not consolidated under this subpart.

[2] For process vents subject to subpart G of 40 CFR part 63, the owner or operator may measure HAP or TOC concentration with regard to the low concentration exemption provisions of this part.

TABLE 2 TO SUBPART D OF PART 65—TRE PARAMETERS FOR NSPS REFERENCING SUBPARTS[A]

Halo-genated vent stream?	Net heating value (MJ/scm)[b]	Vent stream flow rate (scm/min)[c]	Values of terms for TRE equation: TRE=A * [B + C + D + E + F]						Equation number
			A	B	C	D	E	F	
Yes	0≤ H ≤3.5	Q <14.2	$1/E_{TOC}$	30.96334	0	0	−0.13064QH	0	1
		14.2≤ Q ≤18.8	$1/E_{TOC}$	19.18370	0.27580Q	$0.757620Q^{0.88}$	−0.13064QH	$0.01025Q^{0.5}$	2
		18.8< Q ≤699	$1/E_{TOC}$	20.00563	0.27580Q	$0.303870Q^{0.88}$	−0.13064QH	$0.01025Q^{0.5}$	3
		699< Q ≤1400	$1/E_{TOC}$	39.87022	0.29973Q	$0.303870Q^{0.88}$	−0.13064QH	$0.01449Q^{0.5}$	4
		1400< Q ≤2100	$1/E_{TOC}$	59.73481	0.31467Q	$0.303870Q^{0.88}$	−0.13064QH	$0.01775Q^{0.5}$	5
		2100< Q ≤2800	$1/E_{TOC}$	79.59941	0.32572Q	$0.303870Q^{0.88}$	−0.13064QH	$0.02049Q^{0.5}$	6
		2800< Q ≤3500	$1/E_{TOC}$	99.46400	0.33456Q	$0.303870Q^{0.88}$	−0.13064QH	$0.02291Q^{0.5}$	7
	H >3.5	Q <14.2	$1/E_{TOC}$	20.61052	0	0	0	0	8
		14.2≤ Q ≤18.8	$1/E_{TOC}$	18.84466	0.26742Q	$-0.200440Q^{0.88}$	0	$0.01025Q^{0.5}$	9
		18.8< Q ≤699	$1/E_{TOC}$	19.66658	0.26742Q	$-0.253320Q^{0.88}$	0	$0.01025Q^{0.5}$	10
		699< Q ≤1400	$1/E_{TOC}$	39.19213	0.29062Q	$-0.253320Q^{0.88}$	0	$0.01449Q^{0.5}$	11
		1400< Q ≤2100	$1/E_{TOC}$	58.71768	0.30511Q	$-0.253320Q^{0.88}$	0	$0.01775Q^{0.5}$	12
		2100< Q ≤2800	$1/E_{TOC}$	78.24323	0.31582Q	$-0.253320Q^{0.88}$	0	$0.02049Q^{0.5}$	13
		2800< Q ≤3500	$1/E_{TOC}$	97.76879	0.32439Q	$-0.253320Q^{0.88}$	0	$0.02291Q^{0.5}$	14
No	0≤ H ≤0.48	Q <14.2	$1/E_{TOC}$	11.01250	0	0	−0.17109QH	0	15
		14.2≤ Q ≤1340	$1/E_{TOC}$	8.54245	0.10555Q	$0.090300Q^{0.88}$	−0.17109QH	$0.01025Q^{0.5}$	16
		1340< Q ≤2690	$1/E_{TOC}$	16.94386	0.11470Q	$0.090300Q^{0.88}$	−0.17109QH	$0.01449Q^{0.5}$	17
		2690< Q ≤4040	$1/E_{TOC}$	25.34528	0.12042Q	$0.090300Q^{0.88}$	−0.17109QH	$0.01775Q^{0.5}$	18
	0.48< H ≤1.9	Q <14.2	$1/E_{TOC}$	13.45630	0	0	−0.16181QH	0	19
		14.2≤ Q ≤1340	$1/E_{TOC}$	9.25233	0.06105Q	$0.319370Q^{0.88}$	−0.16181QH1	$0.01025Q^{0.5}$	20
		1340< Q ≤2690	$1/E_{TOC}$	18.36363	0.06635Q	$0.319370Q^{0.88}$	−0.16181QH	$0.01449Q^{0.5}$	21
		2690< Q ≤4040	$1/E_{TOC}$	27.47492	0.06965Q	$0.319370Q^{0.88}$	−0.16181QH	$0.01775Q^{0.5}$	22
	1.9< H ≤3.6	Q <14.2	$1/E_{TOC}$	7.96988	0	0	0	0	23
		14.2≤ Q ≤1180	$1/E_{TOC}$	6.67868	0.06943Q	$0.025820Q^{0.88}$	0	$0.01025Q^{0.5}$	24
		1180< Q ≤2370	$1/E_{TOC}$	13.21633	0.07546Q	$0.025820Q^{0.88}$	0	$0.01449Q^{0.5}$	25
		2370< Q ≤3550	$1/E_{TOC}$	19.75398	0.07922Q	$0.025820Q^{0.88}$	0	$0.01775Q^{0.5}$	26
	H >3.6	Q <14.2	$1/E_{TOC}$	6.67868	0	$0.02220Q^{0.88}H^{0.88}$	−0.00707QH	$0.02036H^{0.5}$	27
		Q ≥14.2 and 14.2≤ Q*(H/3.6) ≤1180	$1/E_{TOC}$	6.67868	0	$0.02220Q^{0.88}H^{0.88}$	−0.00707QH	$0.00540Q^{0.5}H^{0.5}$	28
		Q ≥14.2 and 1180< Q*(H/3.6) ≤2370	$1/E_{TOC}$	13.21633	0	$0.02412Q^{0.88}H^{0.88}$	−0.00707QH	$0.00764Q^{0.5}H^{0.5}$	29

		Q ≥14.2 and 2370< Q*(H/3.6) ≤3550	$1/E_{TOC}$	19.75398	0	$0.02533Q^{0.88}H^{0.88}$	−0.00707QH	$0.00936Q^{0.5}H^{0.5}$	30
No	0≤ H <11.2	All	$1/E_{TOC}$	2.08	2.25Q	$0.288Q^{0.8}$	−0.193QH	$-0.0051E_{TOC}$	31
	H ≥11.2	All	$1/E_{TOC}$	2.08	0.309Q	$0.0619Q^{0.8}$	−0.0043QH	$-0.0043E_{TOC}$	32

[a] Use according to procedures outlined in § 65.64(h).
[b] MJ/scm = mega Joules per standard cubic meter.
[c] scm/min = standard cubic meters per minute.

TABLE 3 TO SUBPART D OF PART 65—TRE PARAMETERS FOR HON REFERENCING SUBPARTS [A]

Existing or new?	Halogenated vent stream?	Values of terms for TRE equation: TRE = A * [B + C + D + E + F]						
		A	B	C	D	E	F	Equation number
Existing	Yes	$1/E_{HAP}$	3.995	0.05200Q	0	−0.001769H	$0.0009700E_{TOC}$	33
	No	$1/E_{HAP}$	1.935	0.3660Q	0	−0.007687H	$-0.000733E_{TOC}$	34
		$1/E_{HAP}$	1.492	0.06267Q	0	0.03177H	$-0.001159E_{TOC}$	35
		$1/E_{HAP}$	2.519	0.01183Q	0	0.01300H	$0.04790E_{TOC}$	36
New	Yes	$1/E_{HAP}$	1.0895	0.01417Q	0	−0.000482H	$0.0002645E_{TOC}$	37
	No	$1/E_{HAP}$	0.5276	0.0998Q	0	−0.002096H	$-0.0002000E_{TOC}$	38
		$1/E_{HAP}$	0.4068	0.0171Q	0	0.008664H	$-0.000316E_{TOC}$	39
		$1/E_{HAP}$	0.6868	0.00321Q	0	0.003546H	$0.01306E_{TOC}$	40

[a] Use according to procedures outlined in § 65.64(h).

Subpart E—Transfer Racks

§ 65.80 Applicability.

(a) The provisions of this subpart and of subpart A of this part apply to control of regulated material emissions from transfer racks where a referencing subpart references the use of this subpart for such emissions control.

(b) If a physical or process change is made that causes a transfer rack to fall outside the criteria in the referencing subpart that required the transfer rack to control emission of regulated material, the owner or operator may elect to comply with the provisions for transfer racks not subject to control contained in the referencing subpart instead of the provisions of this subpart.

§ 65.81 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

§ 65.82 Design requirements.

(a) The owner or operator shall equip each transfer rack with either one of the following equipment:

(1) A closed vent system which routes the regulated material vapors to a control device as provided in § 65.83(a)(1) and (2).

(2) Process piping which routes the regulated material vapors to a process or a fuel gas system as provided in § 65.83(a)(4), or to a vapor balance system as provided in § 65.83(a)(3).

(b) Each closed vent system shall be designed to collect the regulated material displaced from tank trucks or railcars during loading and to route the collected regulated material to a control device as provided in § 65.83(a)(1) and (2).

(c) Process piping shall be designed to collect the regulated material displaced from tank trucks or railcars during loading and to route the collected regulated material vapors to a process or a fuel gas system as provided in § 65.83(a)(4), or to a vapor balance system as provided in § 65.83(a)(3).

(d) Each closed vent system shall meet the applicable requirements of § 65.143.

(e) If the collected regulated material vapors are routed to a process or a fuel gas system as provided in § 65.83(a)(4), then each owner or operator shall meet the applicable requirements of § 65.142(c).

§ 65.83 Performance requirements.

(a) The owner or operator of the transfer rack shall comply with paragraph (a)(1), (2), (3), or (4) of this section.

(1) *98 Percent or 20 parts per million by volume standard.* Use a control device to reduce emissions of regulated material by 98 weight-percent or to an exit concentration of 20 parts per million by volume, whichever is less stringent. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, corrected to 3 percent oxygen. The owner or operator shall meet the applicable requirements of § 65.142(c). Compliance may be achieved by using any combination of control devices.

(2) *Flare.* Reduce emissions of regulated material using a flare meeting the applicable requirements of § 65.142(c).

(3) *Vapor balancing.* Reduce emissions of regulated material using a vapor balancing system designed and operated to collect regulated material vapors displaced from tank trucks or railcars during loading; and to route the collected regulated material vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected to a common header, or to compress and route collected regulated material vapors to a process. Transfer racks for which the owner or operator is using a vapor balancing system are exempt from the closed vent system design requirements of § 65.82(b) and (d), the halogenated vent stream control requirements of paragraph (b) of this section, the control device operation requirements of § 65.84(b), the monitoring requirements of § 65.86, and the requirements of subpart G of this part.

(4) *Route to a process or fuel gas system.* Route emissions of regulated material to a process or fuel gas system. The owner or operator shall meet the applicable requirements of §65.142(c) and is exempt from the closed vent system design requirements of paragraphs §65.82(b) and (d), the halogenated vent stream control requirements of paragraph (b) of this section, the control device operation requirements of §65.84(b), and the monitoring requirements of §65.86. If the emissions are routed to a process, the regulated material in the emissions shall predominantly meet one of, or a combination of, the ends specified in the following:

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not regulated materials;

(iii) Incorporated into a product; and/or

(iv) Recovered.

(b) *Additional control requirements for halogenated vent streams.* Halogenated vent streams from transfer racks that are combusted shall be controlled according to paragraph (b)(1) or (2) of this section. The owner or operator shall either designate the transfer rack vent stream as a halogenated vent stream or shall determine whether the vent stream is halogenated using the procedures specified in §65.85(c). If determined, the halogen concentration in the vent stream shall be recorded and reported in the Initial Compliance Status Report as specified in §65.160(d). If the owner or operator designates the vent stream as a halogenated vent stream, then this shall also be recorded and reported in the Initial Compliance Status Report.

(1) *Halogen reduction device following combustion.* If a combustion device is used to comply with paragraph (a)(1) of this section for a halogenated vent stream, then the vent stream exiting the combustion device shall be ducted to a halogen reduction device including, but not limited to, a scrubber before it is discharged to the atmosphere, and the halogen reduction device shall meet the requirements of paragraph (b)(1)(i) or (ii) of this section, as applicable. The halogenated vent stream shall not be combusted using a flare.

(i) Except as provided in paragraph (b)(1)(ii) of this section, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens by 99 percent or shall reduce the outlet mass emission rate of total hydrogen halides and halogens to 0.45 kilogram per hour (0.99 pound per hour) or less, whichever is less stringent. The owner or operator shall meet the applicable requirements of §65.142(c).

(ii) If a scrubber or other halogen reduction device was installed prior to December 31, 1992, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens by 95 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilogram per hour (0.99 pound per hour), whichever is less stringent. The owner or operator shall meet the applicable requirements of §65.142(c).

(2) *Halogen reduction device prior to combustion.* A halogen reduction device, such as a scrubber, or other technique may be used to make the vent stream nonhalogenated by reducing the vent stream halogen atom mass emission rate to less than 0.45 kilogram per hour (0.99 pound per hour) prior to any combustion control device used to comply with the requirements of paragraph (a)(1) or (2) of this section. The mass emission rate of halogen atoms contained in organic compounds prior to the combustor shall be determined according to the procedures in §65.85(c). The owner or operator shall maintain the record specified in §65.160(d) and submit the report specified in §65.165(d).

§65.84 Operating requirements.

(a) *Closed vent systems or process piping.* An owner or operator of a transfer rack shall operate it in such a manner that emissions are routed through the equipment specified in either paragraph (a)(1) or (2) of this section.

(1) A closed vent system which routes the regulated material vapors to a control device as provided in §65.83(a)(1) and (2).

(2) Process piping which routes the regulated material vapors to a process or a fuel gas system as provided in

§ 65.83(a)(4) or to a vapor balance system as provided in § 65.83(a)(3).

(b) *Control device operation.* Whenever regulated material emissions are vented to a control device used to comply with the provisions of this subpart, such control device shall be operating.

(c) *Tank trucks and railcars.* The owner or operator shall load regulated material only into tank trucks and railcars that meet one of the following two requirements and shall maintain the records specified in § 65.87:

(1) Have a current certification in accordance with the U.S. Department of Transportation (DOT) pressure test requirements of 49 CFR part 180 for tank trucks and 49 CFR 173.31 for railcars; or

(2) Have been demonstrated to be vapor-tight within the preceding 12 months as determined by the procedures in § 65.85(a). Vapor-tight means that the pressure in a truck or railcar tank will not drop more than 750 pascals (0.11 pound per square inch) within 5 minutes after it is pressurized to a minimum of 4,500 pascals (0.65 pound per square inch).

(d) *Pressure relief device.* The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the loading equipment of each tank truck or railcar shall begin to open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to paragraph (d) of this section.

(e) *Compatible system.* The owner or operator of a transfer rack subject to the provisions of this subpart shall load regulated material only to tank trucks or railcars equipped with a vapor collection system that is compatible with the transfer rack's closed vent system or process piping.

(f) *Loading while systems connected.* The owner or operator of a transfer rack subject to this subpart shall load regulated material only to tank trucks or railcars whose collection systems are connected to the transfer rack's closed vent systems or process piping.

§ 65.85 Procedures.

(a) *Vapor tightness.* For the purposes of demonstrating vapor tightness to determine compliance with § 65.84(c)(2), the following procedures and equipment shall be used:

(1) The pressure test procedures specified in Method 27 of appendix A of 40 CFR part 60; and

(2) A pressure measurement device that has a precision of ±2.5 millimeters of mercury (0.10 inch) or better and that is capable of measuring above the pressure at which the tank truck or railcar is to be tested for vapor tightness.

(b) *Engineering assessment.* Engineering assessment to determine if a vent stream is halogenated or flow rate of a gas stream includes, but is not limited to, the following examples:

(1) Previous test results, provided the tests are representative of current operating practices at the process unit.

(2) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(3) Maximum flow rate or halogen emission rate specified or implied within a permit limit applicable to the process vent.

(4) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties.

(5) All data, assumptions, and procedures used in the engineering assessment shall be documented.

(c) *Halogenated vent stream determination.* In order to determine whether a vent stream is halogenated, the mass emission rate of halogen atoms contained in organic compounds shall be calculated as specified in paragraphs (c)(1) and (2) of this section.

(1) The vent stream concentration of each organic compound containing halogen atoms (parts per million by volume by compound) shall be determined based on any of the following procedures:

(i) Process knowledge that no halogen or hydrogen halides are present in the vent stream; or

(ii) Applicable engineering assessment as specified in paragraph (b) of this section; or

(iii) Concentration of organic compounds containing halogens measured by Method 18 of appendix A of 40 CFR part 60; or

(iv) Any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63.

(2) Equation 85–1 of this section shall be used to calculate the mass emission rate of halogen atoms:

$$E = K_2 V_s \left(\sum_{j=1}^{n} \sum_{i=1}^{m} C_j * L_{ji} * M_{ji} \right) \qquad \text{(Eq. 85-1)}$$

Where:

E = Mass of halogen atoms, dry basis, kilograms per hour.

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (kilogram-mole per standard cubic meter) (minute/hour), where standard temperature is 20 °C.

V_s = Flow rate of gas stream, dry standard cubic meters per minute, determined according to Method 2, 2A, 2C, or 2D of appendix A of 40 CFR part 60, as appropriate, or determined using engineering assessment as specified in paragraph (b) of this section.

n = Number of halogenated compounds j in the gas stream.

j = Halogenated compound j in the gas stream.

m = Number of different halogens i in each compound j of the gas stream.

i = Halogen atom i in compound j of the gas stream.

C_j = Concentration of halogenated compound j in the gas stream, dry basis, parts per million by volume.

L_{ji} = Number of atoms of halogen i in compound j of the gas stream.

M_{ji} = Molecular weight of halogen atom i in compound j of the gas stream, kilogram per kilogram-mole.

§ 65.86 Monitoring.

The owner or operator of a transfer rack equipped with a closed vent system and control device pursuant to § 65.83(a)(1) or (2) shall monitor the closed vent system and control device as required under the applicable paragraphs specified in § 65.142(c).

§ 65.87 Recordkeeping provisions.

The owner or operator of a transfer rack shall record that either the verification of U.S. Department of Transportation (DOT) tank certification or Method 27 of appendix A of 40 CFR part 60 testing required in § 65.84(c) has been performed. Various methods for the record of verification can be used, such as a check off on a log sheet, a list of DOT serial numbers or Method 27 data, or a position description for gate security showing that the security guard will not allow any trucks on-site that do not have the appropriate documentation.

§§ 65.88–65.99 [Reserved]

Subpart F—Equipment Leaks

§ 65.100 Applicability.

(a) *Equipment subject to this subpart.* The provisions of this subpart and subpart A of this part apply to equipment that contains or contacts regulated material. Compliance with this subpart instead of the referencing subpart does not alter the applicability of the referencing subpart. This subpart applies only to the equipment to which the referencing subpart applies. This part does not extend applicability to equipment that is not regulated by the referencing subpart.

(b) *Equipment in vacuum service.* Equipment in vacuum service is excluded from the requirements of this subpart.

(c) *Equipment in service less than 300 hours per calendar year.* Equipment intended to be in regulated material service less than 300 hours per calendar year is excluded from the requirements of §§ 65.106 through 65.115 and § 65.117 if it is identified as required in § 65.103(b)(6).

(d) *Lines and equipment not containing process fluids.* Lines and equipment not containing process fluids are not subject to the provisions of this subpart. Utilities and other nonprocess lines, such as heating and cooling systems that do not combine their materials with those in the processes they serve, are not considered to be part of a process unit.

§ 65.101 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

§ 65.102 Alternative means of emission limitation.

(a) *Performance standard exemption.* The provisions of paragraph (b) of this section do not apply to the performance standards of § 65.111(b) for pressure relief devices or § 65.112(f) for compressors operating under the alternative compressor standard.

(b) *Requests by owners or operators.* An owner or operator may request a determination of alternative means of emission limitation to the requirements of §§ 65.106 through 65.115 as provided in paragraph (d) of this section. If the Administrator makes a determination that a means of emission limitation is a permissible alternative, the owner or operator shall either comply with the alternative or comply with the requirements of §§ 65.106 through 65.115.

(c) *Requests by manufacturers of equipment.* (1) Manufacturers of equipment used to control equipment leaks of a regulated material may apply to the Administrator for approval of an alternative means of emission limitation that achieves a reduction in emissions of the regulated material equivalent to the reduction achieved by the equipment, design, and operational requirements of this subpart.

(2) The Administrator will grant permission according to the provisions of paragraph (d) of this section.

(d) *Permission to use an alternative means of emission limitation.* Permission to use an alternative means of emission limitation shall be governed by the procedures in paragraph (d)(1) through (4) of this section.

(1) Where the standard is an equipment, design, or operational requirement, the following requirements apply:

(i) Each owner or operator applying for permission to use an alternative means of emission limitation shall be responsible for collecting and verifying emission performance test data for an alternative means of emission limitation.

(ii) The Administrator will compare test data for the means of emission limitation to test data for the equipment, design, and operational requirements.

(iii) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve at least the same emission reduction as the equipment, design, and operational requirements of this subpart.

(2) Where the standard is a work practice, the following requirements apply:

(i) Each owner or operator applying for permission to use an alternative means of emission limitation shall be responsible for collecting and verifying test data for the alternative.

(ii) The owner or operator shall demonstrate the emission reduction achieved by the required work practice and the proposed alternative means of emission limitation.

(iii) The Administrator will compare the demonstrated emission reduction for the alternative means of emission limitation to the demonstrated emission reduction for the required work practices and will consider the commitment in paragraph (d)(2)(iv) of this section.

(iv) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve the same or greater emission reduction as the required work practices of this subpart.

(3) An owner or operator may offer a unique approach to demonstrate the alternative means of emission limitation.

(4) If in the judgment of the Administrator an alternative means of emission limitation will be approved, the Administrator will publish a notice of the determination in the FEDERAL REGISTER using the procedures pursuant to § 65.8(a).

§ 65.103 Equipment identification.

(a) *General equipment identification.* Equipment subject to this subpart

shall be identified. Identification of the equipment does not require physical tagging of the equipment. For example, the equipment may be identified on a plant site plan, in log entries, by designation of process unit boundaries, by some form of weatherproof identification, or by other appropriate methods.

(b) *Additional equipment identification.* In addition to the general identification required by paragraph (a) of this section, equipment subject to any of the provisions in §§ 65.106 through 65.115 shall be specifically identified as required in paragraphs (b)(1) through (6) of this section, as applicable. Paragraph (b) of this section does not apply to an owner or operator of a batch product-process who elects to pressure test the batch product-process equipment train pursuant to § 65.117.

(1) *Connectors.* Except for inaccessible, ceramic, or ceramic-lined connectors meeting the provisions of § 65.108(e)(2), and instrumentation systems identified pursuant to paragraph (b)(5) of this section, identify the connectors subject to the requirements of this subpart. Connectors subject to § 65.108(e)(3) shall be distinguished from other connectors. Connectors need not be individually identified if all connectors in a designated area or length of pipe subject to the provisions of this subpart are identified as a group, and the number of connectors subject is indicated. With respect to connectors, the identification shall be complete no later than the completion of the initial survey required by § 65.108(a).

(2) [Reserved]

(3) *Routed to a process or fuel gas system or equipped with a closed vent system and control device.* Identify the equipment that the owner or operator elects to route to a process or fuel gas system or equip with a closed vent system and control device under the provisions of § 65.107(e)(3) (pumps in light liquid service), § 65.109(e)(3) (agitators), § 65.111(d) (pressure relief devices in gas/vapor service), § 65.112(e) (compressors), or § 65.118 (alternative means of emission limitation for enclosed-vented process units).

(4) *Pressure relief devices.* Identify the pressure relief devices equipped with rupture disks under the provisions of § 65.111(e).

(5) *Instrumentation systems.* Identify instrumentation systems subject to the provisions of this subpart. Individual components in an instrumentation system need not be identified.

(6) *Equipment in service less than 300 hours per calendar year.* Identify either by list, location (area or group), or other method, equipment in regulated material service less than 300 hours per calendar year within a process unit subject to the provisions of this subpart.

(c) *Special equipment designations: Equipment that is unsafe or difficult-to-monitor*—(1) *Designation and criteria for unsafe-to-monitor.* Valves meeting the provisions of § 65.106(e)(1), pumps meeting the provisions of § 65.107(e)(6), connectors meeting the provisions of § 65.108(e)(1), and agitators meeting the provisions of § 65.109(e)(7) may be designated unsafe-to-monitor if the owner or operator determines that monitoring personnel would be exposed to an immediate danger as a consequence of complying with the monitoring requirements of this subpart.

(2) *Designation and criteria for difficult-to-monitor.* Valves meeting the provisions of § 65.106(e)(2) may be designated difficult-to-monitor if the provisions of paragraph (c)(2)(i) of this section apply. Agitators meeting the provisions of § 65.109(e)(5) may be designated difficult-to-monitor if the provisions of paragraph (c)(2)(ii) of this section apply.

(i) *Valves.* The owner or operator of the valve:

(A) Determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters (7 feet) above a support surface, or it is not accessible in a safe manner when it is in regulated material service, and the process unit within which the valve is located is a regulated source for which the owner or operator commenced construction, reconstruction, or modification prior to the compliance date of the referencing subpart; or

(B) Designates less than 3 percent of the total number of valves within the process unit as difficult-to-monitor.

(ii) *Agitators.* The owner or operator determines that the agitator cannot be

monitored without elevating the monitoring personnel more than 2 meters (7 feet) above a support surface, or it is not accessible in a safe manner when it is in regulated material service.

(3) *Identification of unsafe or difficult-to-monitor equipment.* The owner or operator shall record the identity of equipment designated as unsafe-to-monitor according to the provisions of paragraph (c)(1) of this section and the planned schedule for monitoring this equipment. The owner or operator shall record the identity of equipment designated as difficult-to-monitor according to the provisions of paragraph (c)(2) of this section, the planned schedule for monitoring this equipment, and an explanation why the equipment is difficult-to-monitor.

(4) *Written plan requirements.* (i) The owner or operator of equipment designated as unsafe-to-monitor according to the provisions of paragraph (c)(1) of this section shall have a written plan that requires monitoring of the equipment as frequently as practical during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable, and repair of the equipment according to the procedures in § 65.105 if a leak is detected.

(ii) The owner or operator of equipment designated as difficult-to-monitor according to the provisions of paragraph (c)(2) of this section shall have a written plan that requires monitoring of the equipment at least once per calendar year and repair of the equipment according to the procedures in § 65.105 if a leak is detected.

(d) *Special equipment designations: Equipment that is unsafe to repair*—(1) *Designation and criteria.* Connectors subject to the provisions of § 65.105(e) may be designated unsafe to repair if the owner or operator determines that repair personnel would be exposed to an immediate danger as a consequence of complying with the repair requirements of this subpart, and if the connector will be repaired before the end of the next process unit shutdown as specified in § 63.105(e).

(2) *Identification of equipment.* The identity of connectors designated as unsafe to repair and an explanation why the connector is unsafe to repair shall be recorded.

(e) *Special equipment designations: Compressors operating with an instrument reading of less than 500 parts per million.* Identify the compressors that the owner or operator elects to designate as operating with an instrument reading of less than 500 parts per million under the provisions of § 65.112(f).

(f) *Special equipment designations: Equipment in heavy liquid service.* The owner or operator of equipment in heavy liquid service shall comply with the requirements of either paragraph (f)(1) or (2) of this section as provided in paragraph (f)(3) of this section.

(1) Retain information, data, and analyses used to determine that a piece of equipment is in heavy liquid service.

(2) When requested by the Administrator, demonstrate that the piece of equipment or process is in heavy liquid service.

(3) A determination or demonstration that a piece of equipment or process is in heavy liquid service shall include an analysis or demonstration that the process fluids do not meet the definition of ''in light liquid service.'' Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

§ 65.104 Instrument and sensory monitoring for leaks.

(a) *Monitoring for leaks.* The owner or operator of a regulated source subject to this subpart shall monitor regulated equipment as specified in paragraph (a)(1) of this section for instrument monitoring and paragraph (a)(2) of this section for sensory monitoring.

(1) *Instrument monitoring for leaks.* (i) Valves in gas/vapor service and in light liquid service shall be monitored pursuant to § 65.106(b).

(ii) Pumps in light liquid service shall be monitored pursuant to § 65.107(b).

(iii) Connectors in gas/vapor service and in light liquid service shall be monitored pursuant to § 65.108(b).

(iv) Agitators in gas/vapor service and in light liquid service shall be monitored pursuant to § 65.109(b).

(v) Pressure relief devices in gas/vapor service shall be monitored pursuant to § 65.111(b) and (c).

(vi) Compressors designated to operate with an instrument reading less than 500 parts per million as described in § 65.103(e) shall be monitored pursuant to § 65.112(f).

(2) *Sensory monitoring for leaks.* (i) Pumps in light liquid service shall be observed pursuant to § 65.107(b)(4) and (e)(1)(v).

(ii) Agitators in gas/vapor service and in light liquid service shall be observed pursuant to § 65.109(b)(3) or (e)(1)(v).

(b) *Instrument monitoring methods.* Instrument monitoring as required under this subpart shall comply with the requirements specified in paragraphs (b)(1) through (6) of this section.

(1) *Monitoring method.* Monitoring shall comply with Method 21 of appendix A of 40 CFR part 60, except as otherwise provided in this section.

(2) *Detection instrument performance criteria.* (i) Except as provided for in paragraph (b)(2)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21 of appendix A of 40 CFR part 60, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the representative composition of the process fluid not each individual organic compound in the stream. For process streams that contain nitrogen, air, water, or other inerts that are not organic hazardous air pollutants or volatile organic compounds, the response factor shall be determined on an inert-free basis. The response factor may be determined at any concentration for which monitoring for leaks will be conducted. Maintain the record specified by § 65.119(b)(8).

(ii) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (b)(2)(i) of this section, the instrument readings may be adjusted by multiplying by the representative response factor of the process fluid calculated on an inert-free basis as described in paragraph (b)(2)(i) of this section.

(3) *Detection instrument calibration procedure.* The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of appendix A of 40 CFR part 60.

(4) *Detection instrument calibration gas.* Calibration gases shall be zero air (less than 10 parts per million of hydrocarbon in air) and the gases specified in paragraph (b)(4)(i) of this section except as provided in paragraph (b)(4)(ii) of this section.

(i) Mixtures of methane in air at a concentration no more than 2,000 parts per million greater than the leak definition concentration of the equipment monitored. If the monitoring instrument's design allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,000 parts per million above the concentration specified as a leak, and the highest scale shall be calibrated with a calibration gas that is approximately equal to 10,000 parts per million. If only one scale on an instrument will be used during monitoring, the owner or operator need not calibrate the scales that will not be used during that day's monitoring.

(ii) A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (b)(2)(i) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(5) *Monitoring performance.* Monitoring shall be performed when the equipment is in regulated material service or is in use with any other detectable material.

(6) *Monitoring data.* Monitoring data obtained prior to the regulated source becoming subject to the referencing subpart that do not meet the criteria specified in paragraphs (b)(1) through (5) of this section may still be used to qualify initially for less frequent monitoring under the provisions in § 65.106(a)(2), (b)(3), or (b)(4) for valves or § 65.108(b)(3) for connectors, provided the departures from the criteria or from the specified monitoring frequency of § 65.106(b)(3) or (4) are minor and do not significantly affect the quality of the data. Examples of minor departures are monitoring at a slightly different frequency (such as every 6

weeks instead of monthly or quarterly), following the performance criteria of section 3.1.2(a) of Method 21 of appendix A of 40 CFR part 60 instead of paragraph (b)(2) of this section, or monitoring using a different leak definition if the data would indicate the presence or absence of a leak at the concentration specified in this subpart. Failure to use a calibrated instrument is not considered a minor departure.

(c) *Instrument monitoring readings and background adjustments.* The owner or operator may elect to adjust or not to adjust the instrument readings for background. If an owner or operator elects not to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (b)(1) through (5) of this section. In such cases, all instrument readings shall be compared directly to the applicable leak definition for the monitored equipment to determine whether there is a leak or to determine compliance with § 65.111(b) (pressure relief devices) or § 65.112(f) (alternative compressor standard). If an owner or operator elects to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the following procedures:

(1) The requirements of paragraphs (b)(1) through (5) of this section shall apply.

(2) The background level shall be determined using the procedures in Method 21 of appendix A of 40 CFR part 60.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Method 21 of appendix A of 40 CFR part 60.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared to the applicable leak definition for the monitored equipment to determine whether there is a leak or to determine compliance with § 65.111(b) (pressure relief devices) or § 65.112(f) (alternative compressor standard).

(d) *Sensory monitoring methods.* Sensory monitoring consists of visual, audible, olfactory, or any other detection method used to determine a potential leak to the atmosphere.

(e) *Leaking equipment identification and records.* (1) When each leak is detected, a weatherproof and readily visible identification shall be attached to the leaking equipment.

(2) When each leak is detected, the information specified in paragraphs (e)(2)(i) and (ii) of this section shall be recorded and kept pursuant to § 65.4(a), except the information for valves complying with the 2-year monitoring period allowed under § 65.106(b)(3)(v), and connectors complying with the 8-year monitoring period allowed under § 65.108(b)(3)(iii) shall be kept 5 years beyond the date of the last use of the information to set a monitoring period.

(i) The instrument, the equipment identification, and the instrument operator's name, initials, or identification number if a leak is detected or confirmed by instrument monitoring.

(ii) The date the leak was detected.

§ 65.105 Leak repair.

(a) *Leak repair schedule.* The owner or operator shall repair each leak detected as soon as practical but not later than 15 calendar days after it is detected except as provided in paragraph (d) or (e) of this section. A first attempt at repair as defined in subpart A of this part shall be made no later than 5 calendar days after the leak is detected. First attempt at repair for pumps includes, but is not limited to, tightening the packing gland nuts and/or ensuring that the seal flush is operating at design pressure and temperature. First attempt at repair for valves includes, but is not limited to, tightening the bonnet bolts, and/or replacing the bonnet bolts, and/or tightening the packing gland nuts, and/or injecting lubricant into the lubricated packing.

(b) [Reserved]

(c) *Leak identification removal*—(1) *Valves and connectors.* The leak identification on a valve in gas/vapor or light liquid service may be removed after it has been monitored as specified in § 65.106(d)(2) and no leak has been detected during that monitoring. The leak identification on a connector in gas/vapor or light liquid service may be removed after it has been monitored as specified in § 65.108(b)(3)(iv) and no leak

has been detected during that monitoring.

(2) *Other equipment*. The identification that has been placed pursuant to § 65.104(e)(1) on equipment determined to have a leak, except for a valve or for a connector that is subject to the provisions of § 65.108(b)(3)(iv), may be removed after it is repaired.

(d) *Delay of repair*. Delay of repair is allowed for any of the conditions specified in paragraphs (d)(1) through (5) of this section. The owner or operator shall maintain a record of the facts that explain any delay of repairs and, where appropriate, why repair within 15 days was technically infeasible without a process unit shutdown.

(1) Delay of repair of equipment for which leaks have been detected is allowed if repair within 15 days after a leak is detected is technically infeasible without a process unit shutdown. Repair of this equipment shall occur as soon as practical, but no later than the end of the next process unit shutdown, except as provided in paragraph (d)(5) of this section.

(2) Delay of repair of equipment for which leaks have been detected is allowed for equipment that is isolated from the process and that does not remain in regulated material service.

(3) Delay of repair for valves, connectors, and agitators is also allowed if the following provisions are met:

(i) The owner or operator determines that emissions of purged material resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair; and

(ii) When repair procedures are effected, the purged material is collected and routed to a process or fuel gas system or is collected and destroyed or recovered in a control device complying with § 65.115.

(4) Delay of repair for pumps is also allowed if the provisions of paragraphs (d)(4)(i) and (ii) of this section are met.

(i) Repair requires replacing the existing seal design with a new system that the owner or operator has determined under the provisions of § 65.116(d) will provide better performance or one of the following specifications are met:

(A) A dual mechanical seal system that meets the requirements of § 65.107(e)(1) will be installed;

(B) A pump that meets the requirements of § 65.107(e)(2) will be installed; or

(C) A system that routes emissions to a process or a fuel gas system or a closed vent system and control device that meets the requirements of § 65.107(e)(3) will be installed.

(ii) Repair is completed as soon as practical but not later than 6 months after the leak was detected.

(5) Delay of repair beyond a process unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the process unit shutdown, and valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the second process unit shutdown will not be allowed unless the third process unit shutdown occurs sooner than 6 months after the first process unit shutdown.

(e) *Unsafe-to-repair: Connectors*. Any connector that is designated as described in § 65.103(d) as an unsafe-to-repair connector is exempt from the requirements of § 65.108(d) and paragraph (a) of this section if the provisions of § 65.103(d) are met.

(f) *Leak repair records*. For each leak detected, the information specified in paragraphs (f)(1) through (5) of this section shall be recorded and kept pursuant to § 65.4(a).

(1) The date of first attempt to repair the leak.

(2) The date of successful repair of the leak.

(3) Maximum instrument reading measured by Method 21 of appendix A of 40 CFR part 60 at the time the leak is successfully repaired or determined to be nonrepairable.

(4) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak as specified in the paragraphs (f)(4)(i) and (ii) of this section.

(i) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures may be included as part of the startup/shutdown/malfunction plan required by

§ 65.6 for the source or may be part of a separate document that is maintained at the plant site. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(ii) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked onsite before depletion and the reason for depletion.

(5) Dates of process unit shutdowns that occur while the equipment is unrepaired.

§ 65.106 Standards: Valves in gas/vapor service and in light liquid service.

(a) *Compliance schedule.* (1) The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(2) The use of monitoring data generated before the regulated source became subject to the referencing subpart to qualify initially for less frequent monitoring is governed by the provisions of § 65.104(b)(6).

(b) *Leak detection.* Unless otherwise specified in § 65.102(b) or paragraph (e) of this section, the owner or operator shall monitor all valves at the intervals specified in paragraphs (b)(3) and/or (b)(4) of this section and shall comply with all other provisions of this section.

(1) *Monitoring method.* The valves shall be monitored to detect leaks by the method specified in § 65.104(b) and (c).

(2) *Instrument reading that defines a leak.* The instrument reading that defines a leak is 500 parts per million or greater.

(3) *Monitoring frequency.* The owner or operator shall monitor valves for leaks at the intervals specified in paragraphs (b)(3)(i) through (v) of this section and shall keep the record specified in paragraph (b)(3)(vi) of this section.

(i) If at least the greater of two valves or 2 percent of the valves in a process unit leak, as calculated according to paragraph (c) of this section, the owner or operator shall monitor each valve once per month.

(ii) At process units with less than the greater of two leaking valves or 2 percent leaking valves, the owner or operator shall monitor each valve once each quarter except as provided in paragraphs (b)(3)(iii) through (v) of this section. Monitoring data generated before the regulated source became subject to the referencing subpart and meeting the criteria of either § 65.104(b)(1) through (5) or § 65.104(b)(6) may be used to qualify initially for less frequent monitoring under paragraphs (b)(3)(iii) through (v) of this section.

(iii) At process units with less than 1 percent leaking valves, the owner or operator may elect to monitor each valve once every 2 quarters.

(iv) At process units with less than 0.5 percent leaking valves, the owner or operator may elect to monitor each valve once every 4 quarters.

(v) At process units with less than 0.25 percent leaking valves, the owner or operator may elect to monitor each valve once every 2 years.

(vi) The owner or operator shall keep a record of the monitoring schedule for each process unit.

(4) *Valve subgrouping.* For a process unit or a group of process units to which this subpart applies, an owner or operator may choose to subdivide the valves in the applicable process unit or group of process units and apply the provisions of paragraph (b)(3) of this section to each subgroup. If the owner or operator elects to subdivide the valves in the applicable process unit or group of process units, then the provisions of paragraphs (b)(4)(i) through (viii) of this section apply.

(i) The overall performance of total valves in the applicable process unit or group of process units to be subdivided shall be less than 2 percent leaking valves, as detected according to paragraphs (b)(1) and (2) of this section and as calculated according to paragraphs (c)(1)(ii) and (c)(2) of this section.

(ii) The initial assignment or subsequent reassignment of valves to subgroups shall be governed by the following provisions:

(A) The owner or operator shall determine which valves are assigned to each subgroup. Valves with less than 1 year of monitoring data or valves not monitored within the last 12 months must be placed initially into the most frequently monitored subgroup until at least 1 year of monitoring data have been obtained.

(B) Any valve or group of valves can be reassigned from a less frequently monitored subgroup to a more frequently monitored subgroup provided that the valves to be reassigned were monitored during the most recent monitoring period for the less frequently monitored subgroup. The monitoring results must be included with that less frequently monitored subgroup's associated percent leaking valves calculation for that monitoring event.

(C) Any valve or group of valves can be reassigned from a more frequently monitored subgroup to a less frequently monitored subgroup provided that the valves to be reassigned have not leaked for the period of the less frequently monitored subgroup (for example, for the last 12 months, if the valve or group of valves is to be reassigned to a subgroup being monitored annually). Nonrepairable valves may not be reassigned to a less frequently monitored subgroup.

(iii) The owner or operator shall determine every 6 months if the overall performance of total valves in the applicable process unit or group of process units is less than 2 percent leaking valves and so indicate the performance in the next periodic report. If the overall performance of total valves in the applicable process unit or group of process units is 2 percent leaking valves or greater, the owner or operator shall no longer subgroup and shall revert to the program required in paragraphs (b)(1) through (3) of this section for that applicable process unit or group of process units. An owner or operator can again elect to comply with the valve subgrouping procedures of paragraph (b)(4) of this section if future overall performance of total valves in the process unit or group of process units is again less than 2 percent. The overall performance of total valves in the applicable process unit or group of process units shall be calculated as a weighted average of the percent leaking valves of each subgroup according to Equation 106–1 of this section:

$$\%V_{LO} = \frac{\sum_{i=1}^{n}\left(\%V_{Li} \times V_i\right)}{\sum_{i=1}^{n} V_i} \qquad \text{(Eq. 106-1)}$$

Where:

$\%V_{LO}$ = Overall performance of total valves in the applicable process unit or group of process units.

$\%V_{Li}$ = Percent leaking valves in subgroup i, most recent value calculated according to the procedures in paragraphs (c)(1)(ii) and (c)(2) of this section.

V_i = Number of valves in subgroup i.

n = Number of subgroups.

(iv) The owner or operator shall maintain the following records:

(A) Which valves are assigned to each subgroup;

(B) Monitoring results and calculations made for each subgroup for each monitoring period;

(C) Which valves are reassigned, the last monitoring result prior to reassignment, and when they were reassigned; and

(D) The results of the semiannual overall performance calculation required in paragraph (b)(4)(iii) of this section.

(v) The owner or operator shall notify the Administrator no later than 30 days prior to the beginning of the next monitoring period of the decision to begin or end subgrouping valves. The notification shall identify the participating process units and the number of valves assigned to each subgroup, if applicable. The notification may be included in a periodic report if the periodic report is submitted no later than 30 days prior to the beginning of the next monitoring period.

(vi) The owner or operator shall submit in the periodic reports the following information:

(A) Total number of valves in each subgroup; and

(B) Results of the semiannual overall performance calculation required by paragraph (b)(4)(iii) of this section.

(vii) To determine the monitoring frequency for each subgroup, the calculation procedures of paragraph (c)(2) of this section shall be used.

(viii) Except for the overall performance calculations required by paragraphs (b)(4)(i) and (iii) of this section, each subgroup shall be treated as if it were a separate process unit for the purposes of applying the provisions of this section.

(c) *Percent leaking valves calculation*—(1) *Calculation basis and procedures.* (i) The owner or operator shall decide no later than the implementation date of this part or upon revision of an operating permit whether to calculate percent leaking valves on a process unit or group of process units basis. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis, and this shall be the basis used for comparison with the subgrouping criteria specified in paragraph (b)(4)(i) of this section.

(ii) The percent leaking valves for each monitoring period for each process unit or valve subgroup, as provided in paragraph (b)(4) of this section, shall be calculated using Equation 106–2 of this section:

$$\%V_L = (V_L / V_T) \times 100 \qquad \text{(Eq. 106-2)}$$

Where:

$\%V_L$ = Percent leaking valves.

V_L = Number of valves found leaking, including those valves found leaking pursuant to paragraphs (d)(2)(iii)(A) and (d)(2)(iii)(B) of this section and excluding nonrepairable valves as provided in paragraph (c)(3) of this section.

V_T = The sum of the total number of valves monitored.

(2) *Calculation for monitoring frequency.* When determining monitoring frequency for each process unit or valve subgroup subject to monthly, quarterly, or semiannual monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last two monitoring periods. When determining monitoring frequency for each process unit or valve subgroup subject to annual or biennial (once every 2 years) monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last three monitoring periods.

(3) *Nonrepairable valves.* (i) Nonrepairable valves shall be included in the calculation of percent leaking valves the first time the valve is identified as leaking and nonrepairable and as required to comply with paragraph (c)(3)(ii) of this section. Otherwise, a number of nonrepairable valves (identified and included in the percent leaking valves calculation in a previous period) up to a maximum of 1 percent of the total number of valves in regulated material service at a process unit may be excluded from calculation of percent leaking valves for subsequent monitoring periods.

(ii) If the number of nonrepairable valves exceeds 1 percent of the total number of valves in regulated material service at a process unit, the number of nonrepairable valves exceeding 1 percent of the total number of valves in regulated material service shall be included in the calculation of percent leaking valves.

(d) *Leak repair.* (1) If a leak is determined pursuant to paragraph (b), (e)(1), or (e)(2) of this section, then the leak shall be repaired using the procedures in § 65.105, as applicable.

(2) After a leak determined under paragraph (b) or (e)(2) of this section has been repaired, the valve shall be monitored at least once within the first 3 months after its repair. The monitoring required by paragraph (d) of this section is in addition to the monitoring required to satisfy the definition of repair.

(i) The monitoring shall be conducted as specified in § 65.104(b) and (c), as appropriate, to determine whether the valve has resumed leaking.

(ii) Periodic monitoring required by paragraph (b) of this section may be used to satisfy the requirements of paragraph (d) of this section if the timing of the monitoring period coincides with the time specified in paragraph (d) of this section. Alternatively, other monitoring may be performed to satisfy the requirements of paragraph (d) of this section regardless of whether the timing of the monitoring period for periodic monitoring coincides with the time specified in paragraph (d) of this section.

(iii) If a leak is detected by monitoring that is conducted under paragraph (d)(2) of this section, the owner

or operator shall comply with the following provisions to determine whether that valve must be counted as a leaking valve for purposes of paragraph (c)(1)(ii) of this section:

(A) If the owner or operator elected to use periodic monitoring required by paragraph (b) of this section to satisfy the requirements of paragraph (d)(2) of this section, then the valve shall be counted as a leaking valve.

(B) If the owner or operator elected to use other monitoring, prior to the periodic monitoring required by paragraph (b) of this section, to satisfy the requirements of paragraph (d)(2) of this section, then the valve shall be counted as a leaking valve unless it is repaired and shown by periodic monitoring not to be leaking.

(e) *Special provisions for valves*—(1) *Unsafe-to-monitor valves*. Any valve that is designated as described in § 65.103(c)(1) as an unsafe-to-monitor valve is exempt from the requirements of paragraph (b) and (d)(2) of this section, and the owner or operator shall monitor the valve according to the written plan specified in § 65.103(c)(4).

(2) *Difficult-to-monitor valves*. Any valve that is designated as described in § 65.103(c)(2) as a difficult-to-monitor valve is exempt from the requirements of paragraph (b) of this section, and the owner or operator shall monitor the valve according to the written plan specified in § 65.103(c)(4).

(3) *Less than 250 valves*. Any equipment located at a plant site with fewer than 250 valves in regulated material service is exempt from the requirements for monthly monitoring specified in paragraph (b)(3)(i) of this section. Instead, the owner or operator shall monitor each valve in regulated material service for leaks once each quarter or comply with paragraph (b)(3)(iii), (iv), or (v) of this section except as provided in paragraphs (e)(1) and (2) of this section.

§ 65.107 Standards: Pumps in light liquid service.

(a) *Compliance schedule*. The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Leak detection*. Unless otherwise specified in § 65.102(b) or paragraph (e) of this section, the owner or operator shall monitor each pump to detect leaks and shall comply with all other provisions of this section.

(1) *Monitoring method*. The pumps shall be monitored monthly to detect leaks by the method specified in § 65.104(b) and (c).

(2) *Instrument reading that defines a leak*. The following leak definitions determined through instrument readings apply:

(i) 5,000 parts per million or greater for pumps handling polymerizing monomers;

(ii) 2,000 parts per million or greater for pumps in food/medical service; and

(iii) 1,000 parts per million or greater for all other pumps.

(3) *Leak repair exception*. For pumps to which a 1,000 parts per million leak definition applies, repair is not required unless an instrument reading of 2,000 parts per million or greater is detected.

(4) *Visual inspection*. Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the owner or operator shall comply with either of the following procedures:

(i) The owner or operator shall monitor the pump as specified in § 65.104(b) and (c) unless the pump has already been monitored since the last routine monthly monitoring required by paragraph (b)(1) of this section. If monitoring is performed and the instrument reading indicates a leak as specified in paragraph (b)(2) of this section, a leak is detected and the leak shall be repaired using the procedures in § 65.105, except as specified in paragraph (b)(3) of this section; or

(ii) The owner or operator shall eliminate the visual indications of liquids dripping.

(c) *Percent leaking pumps calculation*. (1) The owner or operator shall decide no later than the implementation date of this part or upon revision of an operating permit whether to calculate percent leaking pumps on a process unit

basis or group of process units basis. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis.

(2) If, when calculated on a 6-month rolling average, at least the greater of either 10 percent of the pumps in a process unit or three pumps in a process unit leak, the owner or operator shall implement a quality improvement program for pumps that complies with the requirements of § 65.116.

(3) The number of pumps at a process unit shall be the sum of all the pumps in regulated material service, except that pumps found leaking in a continuous process unit within 1 month after startup of the pump shall not count in the percent leaking pumps calculation for that one monitoring period only.

(4) Percent leaking pumps shall be determined by Equation 107–1 of this section:

$$\%P_L = \left(\left(P_L - P_S\right)/\left(P_T - P_S\right)\right) * 100 \qquad \text{(Eq. 107-1)}$$

Where:

$\%P_L$ = Percent leaking pumps.

P_L = Number of pumps found leaking as determined through monthly monitoring as required in paragraph (b)(1) of this section.

P_S = Number of pumps leaking within 1 month of startup during the current monitoring period.

P_T = Total pumps in regulated material service, including those meeting the criteria in paragraphs (e)(1), (e)(2), (e)(3), and (e)(6) of this section.

(d) *Leak repair*. If a leak is detected pursuant to paragraph (b) of this section, then the leak shall be repaired using the procedures in § 65.105, as applicable.

(e) *Special provisions for pumps*—(1) *Dual mechanical seal pumps*. Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section, provided the requirements specified in paragraphs (e)(1)(i) through (viii) of this section are met.

(i) The owner or operator determines, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both. The owner or operator shall keep records of the design criteria and an explanation of the design criteria, and any changes to these criteria and the reasons for the changes.

(ii) Each dual mechanical seal system shall meet the following three requirements:

(A) Operated with the barrier fluid at a pressure that is at all times (except periods of start-up, shutdown, or malfunction) greater than the pump stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed vent system to a control device that complies with the requirements of § 65.115; or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(iii) The barrier fluid is not in light liquid service.

(iv) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(v) Each pump is checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the owner or operator shall follow either one of the following procedures prior to the next required inspection:

(A) The owner or operator shall monitor the pump as specified in § 65.104(b) and (c) to determine if there is a leak of regulated material in the barrier fluid. If an instrument reading of 1,000 parts per million or greater is measured, a leak is detected and it shall be

repaired using the procedures in § 65.105; or

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(vi) If indications of liquids dripping from the pump seal exceed the criteria established in paragraph (e)(1)(i) of this section, or if based on the criteria established in paragraph (e)(1)(i) of this section the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(vii) Each sensor as described in paragraph (e)(1)(iv) of this section is observed daily or is equipped with an alarm unless the pump is located within the boundary of an unmanned plant site.

(viii) When a leak is detected pursuant to paragraph (e)(1)(vi) of this section, it shall be repaired as specified in § 65.105.

(2) *No external shaft.* Any pump that is designed with no externally actuated shaft penetrating the pump housing is exempt from the requirements of paragraph (b) of this section.

(3) *Routed to a process or fuel gas system or equipped with a closed vent system.* Any pump that is routed to a process or fuel gas system or equipped with a closed vent system that captures and transports leakage from the pump to a control device meeting the requirements of § 65.115 is exempt from the requirements of paragraph (b) of this section.

(4) *Unmanned plant site.* Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(4) and (e)(1)(v) of this section and the daily requirements of paragraph (e)(1)(vii) of this section provided that each pump is visually inspected as often as practical and at least monthly.

(5) *Ninety percent exemption.* If more than 90 percent of the pumps at a process unit meet the criteria in either paragraph (e)(1) or (2) of this section, the process unit is exempt from the percent leaking calculation in paragraph (c) of this section.

(6) *Unsafe-to-monitor pumps.* Any pump that is designated as described in § 65.103(c)(1) as an unsafe-to-monitor pump is exempt from the requirements of paragraph (b) of this section, the monitoring and inspection requirements of paragraphs (e)(1)(v) through (viii) of this section, and the owner or operator shall monitor and repair the pump according to the written plan specified in § 65.103(c)(4).

§ 65.108 Standards: Connectors in gas/vapor service and in light liquid service.

(a) *Compliance schedule.* Except as allowed in § 65.102(b) or as specified in paragraph (e) of this section, the owner or operator shall monitor all connectors in each process unit initially for leaks by either 12 months after the implementation date as specified in § 65.1(f) or 12 months after initial startup, whichever is later. If all connectors in each process unit have been monitored for leaks prior to the implementation date specified in § 65.1(f), no initial monitoring is required provided either no process changes have been made since the monitoring or the owner or operator can determine that the results of the monitoring, with or without adjustments, reliably demonstrate compliance despite process changes. If required to monitor because of a process change, the owner or operator is required to monitor only those connectors involved in the process change.

(b) *Leak detection.* Except as allowed in § 65.102(b) or as specified in paragraph (e) of this section, the owner or operator shall monitor all connectors in gas/vapor and light liquid service as specified in paragraphs (a) and (b)(3) of this section.

(1) *Monitoring method.* The connectors shall be monitored to detect leaks by the method specified in § 65.104(b) and (c).

(2) *Instrument reading that defines a leak.* If an instrument reading greater than or equal to 500 parts per million is measured, a leak is detected.

(3) *Monitoring periods.* The owner or operator shall perform monitoring, subsequent to the initial monitoring required in paragraph (a) of this section, as specified in paragraphs (b)(3)(i) through (iii) of this section, and shall comply with the requirements of paragraphs (b)(3)(iv) and (v) of this section.

The required period in which monitoring must be conducted shall be determined from paragraphs (b)(3)(i) through (iii) of this section using the monitoring results from the preceding monitoring period. The percent leaking connectors shall be calculated as specified in paragraph (c) of this subpart.

(i) If the percent leaking connectors in the process unit was greater than or equal to 0.5 percent, then monitor within 12 months (1 year).

(ii) If the percent leaking connectors in the process unit was greater than or equal to 0.25 percent but less than 0.5 percent, then monitor within 4 years. An owner or operator may comply with the requirements of paragraph (b)(3)(ii) of this section by monitoring at least 40 percent of the connectors within 2 years of the start of the monitoring period, provided all connectors have been monitored by the end of the 4-year monitoring period.

(iii) If the percent leaking connectors in the process unit was less than 0.25 percent, then monitor as provided in paragraph (b)(3)(iii)(A) of this section and either paragraph (b)(3)(iii)(B) or (C) of this section, as appropriate.

(A) An owner or operator shall monitor at least 50 percent of the connectors within 4 years of the start of the monitoring period.

(B) If the percent leaking connectors calculated from the monitoring results in paragraph (b)(3)(iii)(A) of this section is greater than or equal to 0.35 percent of the monitored connectors, the owner or operator shall monitor as soon as practical, but within the next 6 months, all connectors that have not yet been monitored during the monitoring period. At the conclusion of monitoring, a new monitoring period shall be started pursuant to paragraph (b)(3) of this section, based on the percent leaking connectors of the total monitored connectors.

(C) If the percent leaking connectors calculated from the monitoring results in paragraph (b)(3)(iii)(A) of this section is less than 0.35 percent of the monitored connectors, the owner or operator shall monitor all connectors that have not yet been monitored within 8 years of the start of the monitoring period.

(iv) If, during the monitoring conducted pursuant to paragraphs (b)(3)(i) through (iii) of this section, a connector is found to be leaking, it shall be re-monitored once within 90 days after repair to confirm that it is not leaking.

(v) The owner or operator shall keep a record of the start date and end date of each monitoring period under this section for each process unit.

(c) *Percent leaking connectors calculation.* For use in determining the monitoring frequency as specified in paragraphs (a) and (b)(3) of this section, the percent leaking connectors as used in paragraphs (a) and (b)(3) of this section shall be calculated by using Equation 108–1 of this section:

$$\%C_L = C_L / C_t * 100 \qquad \text{(Eq. 108-1)}$$

Where:

$\%C_L$ = Percent leaking connectors as determined through periodic monitoring required in paragraphs (a) and (b)(3)(i) through (b)(3)(iii) of this section.

C_L = Number of connectors measured at 500 parts per million or greater by the method specified in § 65.104(b).

C_t = Total number of monitored connectors in the process unit.

(d) *Leak repair.* If a leak is detected pursuant to paragraphs (a) and (b) of this section, then the leak shall be repaired using the procedures in § 65.105, as applicable.

(e) *Special provisions for connectors*—(1) *Unsafe-to-monitor connectors.* Any connector that is designated, as described in § 65.103(c)(1), as an unsafe-to-monitor connector is exempt from the requirements of paragraphs (a) and (b) of this section and the owner or operator shall monitor according to the written plan specified in § 65.103(c)(4).

(2) *Inaccessible, ceramic, or ceramic-lined connectors.* (i) Any connector that is inaccessible or that is ceramic or ceramic-lined (for example, porcelain, glass, or glass-lined), is exempt from the monitoring requirements of paragraphs (a) and (b) of this section and from the recordkeeping and reporting requirements of §§ 65.119 and 65.120. An inaccessible connector is one that meets any of the following provisions, as applicable:

(A) Buried;

(B) Insulated in a manner that prevents access to the connector by a monitor probe;

(C) Obstructed by equipment or piping that prevents access to the connector by a monitor probe;

(D) Unable to be reached from a wheeled scissor-lift or hydraulic-type scaffold that would allow access to connectors up to 7.6 meters (25 feet) above the ground;

(E) Inaccessible because it would require elevating the monitoring personnel more than 2 meters (7 feet) above a permanent support surface or would require the erection of scaffold;

(F) Not able to be accessed at any time in a safe manner to perform monitoring. Unsafe access includes, but is not limited to, the use of a wheeled scissor-lift on unstable or uneven terrain, the use of a motorized man-lift basket in areas where an ignition potential exists, or access would require near proximity to hazards such as electrical lines or would risk damage to equipment.

(ii) If any inaccessible, ceramic, or ceramic-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the visual, audible, olfactory, or other indications of a leak to the atmosphere shall be eliminated as soon as practical.

(3) *Connectors referenced from 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V.* For sources referenced to this part from 40 CFR part 61, subpart VV, or from 40 CFR part 61, subpart V, connectors are exempt from the requirements of paragraphs (a) through (d) of this section and the owner or operator shall comply with the following paragraphs:

(i) Connectors shall be monitored within 5 days by the method specified in § 65.104(b) and (c) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(ii) If an instrument reading of 500 parts per million or greater is measured, a leak is detected.

(iii) When a leak is detected, it shall be repaired using the procedures in § 65.105, as applicable.

§ 65.109 Standards: Agitators in gas/vapor service and in light liquid service.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Leak detection*—(1) *Monitoring method.* Each agitator seal shall be monitored monthly to detect leaks by the methods specified in § 65.104(b) and (c), except as provided in § 65.102(b) or paragraph (e) of this section.

(2) *Instrument reading that defines a leak.* If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected.

(3) *Visual inspection.* Each agitator seal shall be checked by visual inspection each calendar week for indications of liquids dripping from the agitator seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the agitator seal, the owner or operator shall comply with either of the following procedures prior to the next required inspection:

(i) The owner or operator shall monitor the agitator seal as specified in § 65.104(b) and (c) to determine if there is a leak of regulated material. If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected, and it shall be repaired according to paragraph (d) of this section.

(ii) The owner or operator shall eliminate the indications of liquids dripping from the agitator seal.

(c) [Reserved]

(d) *Leak repair.* If a leak is detected, then the leak shall be repaired using the procedures in § 65.105(a).

(e) *Special provisions for agitators*—(1) *Dual mechanical seal.* Each agitator equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section provided the requirements specified in paragraphs (e)(1)(i) through (vi) of this section are met.

(i) Each dual mechanical seal system shall meet any one of the following requirements:

(A) Operated with the barrier fluid at a pressure that is at all times (except

during periods of startup, shutdown, or malfunction) greater than the agitator stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system, or connected by a closed vent system to a control device that meets the requirements of § 65.115; or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(ii) The barrier fluid is not in light liquid service.

(iii) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(iv) Each agitator seal is checked by visual inspection each calendar week for indications of liquids dripping from the agitator seal. If there are indications of liquids dripping from the agitator seal at the time of the weekly inspection, the owner or operator shall follow either of the following procedures prior to the next required inspection:

(A) The owner or operator shall monitor the agitator seal as specified in § 65.104(b) and (c) to determine the presence of regulated material in the barrier fluid. If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected and it shall be repaired using the procedures in § 65.105; or

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(v) Each sensor as described in paragraph (e)(1)(iii) of this section is observed daily or is equipped with an alarm unless the agitator seal is located within the boundary of an unmanned plant site.

(vi) The owner or operator of each dual mechanical seal system shall meet the following requirements:

(A) The owner or operator shall determine based on design considerations and operating experience criteria that indicates failure of the seal system, the barrier fluid system, or both and that are applicable to the presence and frequency of drips. If indications of liquids dripping from the agitator seal exceed the criteria, or if based on the criteria the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected and shall be repaired pursuant to § 65.105, as applicable.

(B) The owner or operator shall keep records of the design criteria and an explanation of the design criteria, and any changes to these criteria and the reasons for the changes.

(2) *No external shaft.* Any agitator that is designed with no externally actuated shaft penetrating the agitator housing is exempt from paragraph (b) of this section.

(3) *Routed to a process or fuel gas system or equipped with a closed vent system.* Any agitator that is routed to a process or fuel gas system or equipped with a closed vent system that captures and transports leakage from the agitator to a control device meeting the requirements of § 65.115 is exempt from the requirements of paragraph (b) of this section.

(4) *Unmanned plant site.* Any agitator that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(3) and (e)(1)(iv) of this section, and the daily requirements of paragraph (e)(1)(v) of this section provided that each agitator is visually inspected as often as practical and at least monthly.

(5) *Difficult-to-monitor agitator seals.* Any agitator seal that is designated as described in § 65.103(c)(2) as a difficult-to-monitor agitator seal is exempt from the requirements of paragraph (b) of this section and the owner or operator shall monitor the agitator seal according to the written plan specified in § 65.103(c)(4).

(6) *Equipment obstructions.* Any agitator seal that is obstructed by equipment or piping that prevents access to the agitator by a monitor probe is exempt from the monitoring requirements of paragraph (b) of this section.

(7) *Unsafe-to-monitor agitator seals.* Any agitator seal that is designated as described in § 65.103(c)(1) as an unsafe-to-monitor agitator seal is exempt from the requirements of paragraph (b) of this section and the owner or operator of the agitator seal monitors the agitator seal according to the written plan specified in § 65.103(c)(4).

§ 65.110 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in liquid service; and instrumentation systems.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Leak detection.* Unless otherwise specified in § 65.102(b), the owner or operator shall comply with the following:

(1) *Monitoring method.* Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems shall be monitored within 5 calendar days by the method specified in § 65.104(b) and (c) if evidence of a potential leak to the atmosphere is found by visual, audible, olfactory, or any other detection method, unless the potential leak is repaired as required in paragraph (c) of this section.

(2) *Instrument reading that defines a leak.* If an instrument reading of 10,000 parts per million or greater for agitators, 5,000 parts per million or greater for pumps handling polymerizing monomers, 2,000 parts per million or greater for all other pumps (including pumps in food/medical service), or 500 parts per million or greater for valves, connectors, instrumentation systems, and pressure relief devices is measured pursuant to paragraph (b)(1) of this section, a leak is detected and it shall be repaired pursuant to § 65.105, as applicable.

(c) *Leak repair.* For equipment identified in paragraph (b) of this section that is not monitored by the method specified in § 65.104(b), repaired shall mean that the visual, audible, olfactory, or other indications of a leak to the atmosphere have been eliminated; that no bubbles are observed at potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

§ 65.111 Standards: Pressure relief devices in gas/vapor service.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Compliance standard.* Except during pressure releases as provided for in paragraph (c) of this section, each pressure relief device in gas/vapor service shall be operated with an instrument reading of less than 500 parts per million as measured by the method specified in § 65.104(b) and (c).

(c) *Pressure relief requirements.* (1) After each pressure release, the pressure relief device shall be returned to a condition indicated by an instrument reading of less than 500 parts per million, as soon as practical, but no later than 5 calendar days after each pressure release except as provided in § 65.105(d).

(2) The pressure relief device shall be monitored no later than 5 calendar days after the pressure release and being returned to regulated material service to confirm the condition indicated by an instrument reading of less than 500 parts per million as measured by the method specified in § 65.104(b) and (c).

(3) The owner or operator shall record the dates and results of the monitoring required by paragraph (c)(2) of this section following a pressure release including maximum instrument reading measured during the monitoring and the background level measured if the instrument reading is adjusted for background.

(d) *Pressure relief devices routed to a process or fuel gas system or equipped with a closed vent system and control device.* Any pressure relief device that is routed to a process or fuel gas system or equipped with a closed vent system capable of capturing and transporting leakage from the pressure relief device to a control device meeting the requirements of § 65.115 is exempt from the requirements of paragraphs (b) and (c) of this section.

(e) *Rupture disk exemption.* Any pressure relief device that is equipped with a rupture disk upstream of the pressure relief device is exempt from the requirements of paragraphs (b) and (c) of this section provided the owner or operator installs a new rupture disk upstream of the pressure relief device as soon as practical after each pressure release, but no later than 5 calendar days after each pressure release except as provided in § 65.105(d).

§ 65.112 Standards: Compressors.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Seal system standard.* Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of process fluid to the atmosphere except as provided in § 65.102(b) and paragraphs (e) and (f) of this section. Each compressor seal system shall meet any one of the following requirements:

(1) Operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure at all times (except during periods of start-up, shutdown, or malfunction); or

(2) Equipped with a barrier fluid system degassing reservoir that is routed to a process or fuel gas system, or connected by a closed vent system to a control device that meets the requirements of § 65.115; or

(3) Equipped with a closed-loop system that purges the barrier fluid directly into a process stream.

(c) *Barrier fluid system.* The barrier fluid shall not be in light liquid service. Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both. Each sensor shall be observed daily or shall be equipped with an alarm unless the compressor is located within the boundary of an unmanned plant site.

(d) *Failure criterion and leak detection.* (1) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both. If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion, a leak is detected and shall be repaired pursuant to § 65.105, as applicable.

(2) The owner or operator shall keep records of the design criteria and an explanation of the design criteria, and any changes to these criteria and the reasons for the changes.

(e) *Routed to a process or fuel gas system or equipped with a closed vent system.* A compressor is exempt from the requirements of paragraphs (b) through (d) of this section if it is equipped with a system to capture and transport leakage from the compressor drive shaft seal to a process or a fuel gas system or to a closed vent system that captures and transports leakage from the compressor to a control device meeting the requirements of § 65.115.

(f) *Alternative compressor standard.* (1) Any compressor that is designated as described in § 65.103(e) shall operate at all times with an instrument reading of less than 500 parts per million. A compressor so designated is exempt from the requirements of paragraphs (b) through (d) of this section if the compressor is demonstrated initially upon designation, annually, and at other times requested by the Administrator to be operating with an instrument reading of less than 500 parts per million as measured by the method specified in § 65.104(b) and (c).

(2) The owner or operator shall record the dates and results of each compliance test including the background level measured and the maximum instrument reading measured during each compliance test.

§ 65.113 Standards: Sampling connection systems.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Equipment requirement.* Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed vent system except as provided in paragraph (d) of this section or § 65.102(b). Gases displaced during filling of the sample container are not required to be collected or captured.

(c) *Equipment design and operation.* Each closed-purge, closed-loop, or closed vent system as required in paragraph (b) of this section shall meet the following applicable requirements:

(1) The system shall return the purged process fluid directly to a process line or to a fuel gas system; or

(2) Collect and recycle the purged process fluid to a process; or

(3) Be designed and operated to capture and transport all the purged process fluid to a control device that meets the requirements of § 65.115; or

(4) Collect, store, and transport the purged process fluid to any of the following systems or facilities:

(i) A waste management unit as defined in 40 CFR 63.111, if the waste management unit is complying with the provisions of 40 CFR part 63, subpart G, applicable to Group 1 wastewater streams. For sources referenced to this part from 40 CFR part 63, subpart H, and if the purged process fluid does not contain any organic HAP listed in table 9 of 40 CFR part 63, subpart G, the waste management unit need not be subject to and operated in compliance with the requirements of 40 CFR part 63, subpart G, applicable to Group 1 wastewater steams provided the facility has a National Pollution Discharge Elimination System (NPDES) permit or sends the wastewater to an NPDES-permitted facility; or

(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR part 262, 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261; and

(5) Containers that are part of a closed-purge system must be covered or closed when not being filled or emptied.

(d) *In-situ sampling systems*. In-situ sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (b) and (c) of this section.

§ 65.114 Standards: Open-ended valves or lines.

(a) *Compliance schedule*. The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Equipment and operational requirements*. (1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve except as provided in § 65.102(b) and paragraphs (c) and (d) of this section. The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line, or during maintenance. The operational provisions of paragraphs (b)(2) and (3) of this section also apply.

(2) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(3) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (b)(1) of this section at all other times.

(c) *Emergency shutdown exemption*. Open-ended valves or lines in an emergency shutdown system that are designed to open automatically in the event of a process upset are exempt from the requirements of paragraph (b) of this section.

(d) *Polymerizing materials exemption*. Open-ended valves or lines containing materials that would autocatalytically polymerize or would present an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraph (b) of this section are exempt from the requirements of paragraph (b) of this section.

§ 65.115 Standards: Closed vent systems and control devices; or emissions routed to a fuel gas system or process.

(a) *Compliance schedule*. The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Compliance standard*. (1) Owners or operators of closed vent systems and nonflare control devices used to comply with provisions of this subpart shall design and operate the closed vent systems and nonflare control devices to reduce emissions of regulated material with an efficiency of 95 percent or greater, or to reduce emissions of regulated material to a concentration of 20 parts per million by volume or, for an enclosed combustion device, to provide a minimum residence time of 0.50 second at a minimum of 760 °C (1400 °F). Owners and operators of closed vent systems and nonflare control devices used to comply with this part shall comply with the provisions of § 65.142(d), except as provided in

§ 65.102(b). Note that this includes the startup, shutdown, and malfunction provisions of § 65.6.

(2) Owners or operators of closed vent systems and flares used to comply with the provisions of this subpart shall design and operate the flare as specified in § 65.142(d), except as provided in § 65.102(b). Note that this includes the startup, shutdown, and malfunction provisions of § 65.6.

(3) Owners or operators routing emissions from equipment leaks to a fuel gas system or process shall comply with the provisions of § 65.142(d), except as provided in § 65.102(b).

[65 FR 78285, Dec. 14, 2000, as amended at 71 FR 20472, Apr. 20, 2006]

§ 65.116 Quality improvement program for pumps.

(a) *Criteria*. If, on a 6-month rolling average, at least the greater of either 10 percent of the pumps in a process unit (or plant site) or three pumps in a process unit (or plant site) leak, the owner or operator shall comply with the following requirements:

(1) Pumps that are in food/medical service or in polymerizing monomer service shall comply with all requirements except for those specified in paragraph (d)(8) of this section.

(2) Pumps that are not in food/medical or polymerizing monomer service shall comply with all requirements of this section.

(b) *Exiting the QIP*. The owner or operator shall comply with the requirements of this section until the number of leaking pumps is less than the greater of either 10 percent of the pumps or three pumps calculated as a 6-month rolling average in the process unit (or plant site). Once the performance level is achieved, the owner or operator shall comply with the requirements in § 65.107.

(c) *Resumption of QIP*. If in a subsequent monitoring period, the process unit (or plant site) has the greater of either 10 percent of the pumps leaking or three pumps leaking (calculated as a 6-month rolling average), the owner or operator shall resume the quality improvement program starting at performance trials.

(d) *QIP requirements*. The quality improvement program shall meet the requirements specified in paragraphs (d)(1) through (8) of this section.

(1) The owner or operator shall comply with the requirements in § 65.107.

(2) *Data collection*. The owner or operator shall collect the data specified in paragraphs (d)(2)(i) through (v) of this section and maintain records for each pump in each process unit (or plant site) subject to the quality improvement program. The data may be collected and the records may be maintained on a process unit or plant site basis.

(i) Pump type (for example, piston, horizontal or vertical centrifugal, gear, bellows); pump manufacturer; seal type and manufacturer; pump design (for example, external shaft, flanged body); materials of construction; if applicable, barrier fluid or packing material; and year installed.

(ii) Service characteristics of the stream such as discharge pressure, temperature, flow rate, corrosivity, and annual operating hours.

(iii) The maximum instrument readings observed in each monitoring observation before repair, response factor for the stream if appropriate, instrument model number, and date of the observation.

(iv) If a leak is detected, the repair methods used and the instrument readings after repair.

(v) If the data will be analyzed as part of a larger analysis program involving data from other plants or other types of process units, a description of any maintenance or quality assurance programs used in the process unit that are intended to improve emission performance.

(3) The owner or operator shall continue to collect data on the pumps as long as the process unit (or plant site) remains in the quality improvement program.

(4) *Pump or pump seal inspection*. The owner or operator shall inspect all pumps or pump seals that exhibited frequent seal failures and were removed from the process unit due to leaks. The inspection shall determine the probable cause of the pump seal failure or of the pump leak and shall include recommendations, as appropriate, for design changes or changes in specifications to reduce leak potential.

(5) *Data analysis.* (i) The owner or operator shall analyze the data collected to comply with the requirements of paragraph (d)(2) of this section to determine the services, operating or maintenance practices, and pump or pump seal designs or technologies that have poorer than average emission performance and those that have better than average emission performance. The analysis shall determine if specific trouble areas can be identified on the basis of service, operating conditions or maintenance practices, equipment design, or other process-specific factors.

(ii) The analysis shall also be used to determine if there are superior performing pump or pump seal technologies that are applicable to the service(s), operating conditions, or pump or pump seal designs associated with poorer than average emission performance. A superior performing pump or pump seal technology is one with a leak frequency of less than 10 percent for specific applications in the process unit or plant site. A candidate superior performing pump or pump seal technology is one demonstrated or reported in the available literature or through a group study as having low emission performance and as being capable of achieving less than 10 percent leaking pumps in the process unit (or plant site).

(iii) The analysis shall include consideration of the following information:

(A) The data obtained from the inspections of pumps and pump seals removed from the process unit due to leaks;

(B) Information from the available literature and from the experience of other plant sites that will identify pump designs or technologies and operating conditions associated with low emission performance for specific services; and

(C) Information on limitations on the service conditions for the pump seal technology operating conditions as well as information on maintenance procedures to ensure continued low emission performance.

(iv) The data analysis may be conducted through an inter- or intracompany program (or through some combination of the two approaches) and may be for a single process unit, a plant site, a company, or a group of process units.

(v) The first analysis of the data shall be completed no later than 18 months after the start of the quality improvement program. The first analysis shall be performed using data collected for a minimum of 6 months. An analysis of the data shall be done each year the process unit is in the quality improvement program.

(6) *Trial evaluation program.* A trial evaluation program shall be conducted at each plant site for which the data analysis does not identify use of superior performing pump seal technology or pumps that can be applied to the areas identified as having poorer than average performance except as provided in paragraph (d)(6)(v) of this section. The trial program shall be used to evaluate the feasibility of using in the process unit (or plant site) the pump designs or seal technologies, and operating and maintenance practices that have been identified by others as having low emission performance.

(i) The trial evaluation program shall include on-line trials of pump seal technologies or pump designs and operating and maintenance practices that have been identified in the available literature or in analysis by others as having the ability to perform with leak rates below 10 percent in similar services, as having low probability of failure, or as having no external actuating mechanism in contact with the process fluid. If any of the candidate superior performing pump seal technologies or pumps is not included in the performance trials, the reasons for rejecting specific technologies from consideration shall be documented as required in paragraph (e)(3)(ii) of this section.

(ii) The number of pump seal technologies or pumps in the trial evaluation program shall be the lesser of 1 percent or two pumps for programs involving single process units, and the lesser of 1 percent or five pumps for programs involving a plant site or groups of process units. The minimum number of pumps or pump seal technologies in a trial program shall be one.

(iii) The trial evaluation program shall specify and include documentation of the following information:

(A) The candidate superior performing pump seal designs or technologies to be evaluated, the stages for evaluating the identified candidate pump designs or pump seal technologies, including the time period necessary to test the applicability;

(B) The frequency of monitoring or inspection of the equipment;

(C) The range of operating conditions over which the component will be evaluated; and

(D) Conclusions regarding the emission performance and the appropriate operating conditions and services for the trial pump seal technologies or pumps.

(iv) The performance trials shall initially be conducted at least for a 6-month period beginning not later than 18 months after the start of the quality improvement program. No later than 24 months after the start of the quality improvement program, the owner or operator shall have identified pump seal technologies or pump designs that, combined with appropriate process, operating, and maintenance practices, operate with low emission performance for specific applications in the process unit. The owner or operator shall continue to conduct performance trials as long as no superior performing design or technology has been identified, except as provided in paragraph (d)(6)(vi) of this section. The initial list of superior emission performance pump designs or pump seal technologies shall be amended in the future, as appropriate, as additional information and experience are obtained.

(v) Any plant site with fewer than 400 valves and owned by a corporation with fewer than 100 employees shall be exempt from trial evaluations of pump seals or pump designs. Plant sites exempt from the trial evaluations of pumps shall begin the pump seal or pump replacement program at the start of the fourth year of the quality improvement program.

(vi) An owner or operator who has conducted performance trials on all alternative superior emission performance technologies suitable for the required applications in the process unit may stop conducting performance trials provided that a superior performing design or technology has been demonstrated, or there are no technically feasible alternative superior technologies remaining. The owner or operator shall prepare an engineering evaluation documenting the physical, chemical, or engineering basis for the judgment that the superior emission performance technology is technically infeasible or demonstrating that it would not reduce emissions.

(7) *Quality assurance program.* Each owner or operator shall prepare and implement a pump quality assurance program that details purchasing specifications and maintenance procedures for all pumps and pump seals in the process unit. The quality assurance program may establish any number of categories, or classes, of pumps as needed to distinguish among operating conditions and services associated with poorer than average emission performance, as well as those associated with better than average emission performance. The quality assurance program shall be developed considering the findings of the data analysis required under paragraph (d)(5) of this section, if applicable; the findings of the trial evaluation required in paragraph (d)(6) of this section; and the operating conditions in the process unit. The quality assurance program shall be updated each year as long as the process unit has the greater of either 10 percent or more leaking pumps or has three leaking pumps.

(i) The quality assurance program shall meet the following requirements:

(A) Establish minimum design standards for each category of pumps or pump seal technology. The design standards shall specify known critical parameters such as tolerance, manufacturer, materials of construction, previous usage, or other applicable identified critical parameters;

(B) Require that all equipment orders specify the design standard (or minimum tolerances) for the pump or the pump seal;

(C) Provide for an audit procedure for quality control of purchased equipment to ensure conformance with purchase specifications. The audit program may be conducted by the owner or operator

of the plant site or process unit or by a designated representative; and

(D) Detail off-line pump maintenance and repair procedures. These procedures shall include provisions to ensure that rebuilt or refurbished pumps and pump seals will meet the design specifications for the pump category and will operate so that emissions are minimized.

(ii) The quality assurance program shall be established no later than the start of the third year of the quality improvement program for plant sites with 400 or more valves or 100 or more employees, and no later than the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees.

(8) *Pump or pump seal replacement.* Beginning at the start of the third year of the quality improvement program for plant sites with 400 or more valves or 100 or more employees and at the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees, the owner or operator shall replace as described in paragraphs (d)(8)(i) and (ii) of this section the pumps or pump seals that are not superior emission performance technology with pumps or pump seals that have been identified as superior emission performance technology and that comply with the quality assurance standards for the pump category. Superior emission performance technology is that category or design of pumps or pump seals with emission performance that, when combined with appropriate process, operating, and maintenance practices, will result in less than 10 percent leaking pumps for specific applications in the process unit or plant site. Superior emission performance technology includes material or design changes to the existing pump, pump seal, seal support system, installation of multiple mechanical seals or equivalent, or pump replacement.

(i) Pumps or pump seals shall be replaced at the rate of 20 percent per year based on the total number of pumps in light liquid service. The calculated value shall be rounded to the nearest nonzero integer value. The minimum number of pumps or pump seals shall be one. Pump replacement shall continue until all pumps subject to the requirements of §65.107 are pumps determined to be superior performance technology.

(ii) The owner or operator may delay replacement of pump seals or pumps with superior technology until the next planned process unit shutdown provided the number of pump seals and pumps replaced is equivalent to the 20 percent or greater annual replacement rate.

(iii) The pumps shall be maintained as specified in the quality assurance program.

(e) *QIP recordkeeping.* In addition to the records required by paragraph (d)(2) of this section, the owner or operator shall maintain records for the period of the quality improvement program for the process unit as specified in paragraphs (e)(1) through (6) of this section.

(1) When using a pump quality improvement program as specified in this section, record the following information:

(i) The rolling average percent leaking pumps.

(ii) Documentation of all inspections conducted under the requirements of paragraph (d)(4) of this section and any recommendations for design or specification changes to reduce leak frequency.

(iii) The beginning and ending dates while meeting the requirements of paragraph (d) of this section.

(2) If a leak is not repaired within 15 calendar days after discovery of the leak, the reason for the delay and the expected date of successful repair.

(3) Records of all analyses required in paragraph (d) of this section. The records will include the following information:

(i) A list identifying areas associated with poorer than average performance and the associated service characteristics of the stream, the operating conditions, and the maintenance practices.

(ii) The reasons for rejecting specific candidate superior emission performing pump technology from performance trials.

(iii) The list of candidate superior emission performing valve or pump technologies and documentation of the

performance trial program items required under paragraph (d)(6)(iii) of this section.

(iv) The beginning date and duration of performance trials of each candidate superior emission performing technology.

(4) All records documenting the quality assurance program for pumps as specified in paragraph (d)(7) of this section, including records indicating that all pumps replaced or modified during the period of the quality improvement program are in compliance with the quality assurance.

(5) Records documenting compliance with the 20 percent or greater annual replacement rate for pumps as specified in paragraph (d)(8) of this section.

(6) Information and data to show the corporation has fewer than 100 employees, including employees providing professional and technical contracted services.

§ 65.117 Alternative means of emission limitation: Batch processes.

(a) *General requirement.* As an alternative to complying with the requirements of §§ 65.106 through 65.114 and § 65.116, an owner or operator of a batch process that operates in regulated material service during the calendar year may comply with one of the standards specified in paragraphs (b) and (c) of this section, or the owner or operator may petition for approval of an alternative standard under the provisions of § 65.102(b). The alternative standards of this section provide the options of pressure testing or monitoring the equipment for leaks. The owner or operator may switch among the alternatives provided the change is documented as specified in paragraph (b)(7) of this section.

(b) *Pressure testing of the batch equipment.* The following requirements shall be met if an owner or operator elects to use pressure testing of batch product-process equipment to demonstrate compliance with this subpart:

(1) *Reconfiguration.* Each time equipment is reconfigured for production of a different product or intermediate, the batch product-process equipment train shall be pressure-tested for leaks before regulated material is first fed to the equipment and the equipment is placed in regulated material service.

(i) When the batch product-process equipment train is reconfigured to produce a different product, pressure testing is required only for the new or disturbed equipment.

(ii) Each batch product-process that operates in regulated material service during a calendar year shall be pressure-tested at least once during that calendar year.

(iii) Pressure testing is not required for routine seal breaks, such as changing hoses or filters, that are not part of the reconfiguration to produce a different product or intermediate.

(2) *Testing procedures.* The batch product-process equipment shall be tested either using the procedures specified in paragraph (b)(5) of this section for pressure vacuum loss or with a liquid using the procedures specified in paragraph (b)(6) of this section.

(3) *Leak detection.* (i) For pressure or vacuum tests using a gas, a leak is detected if the rate of change in pressure is greater than 6.9 kilopascals (1 pound per square inch gauge) in 1 hour or if there is visible, audible, or olfactory evidence of fluid loss.

(ii) For pressure tests using a liquid, a leak is detected if there are indications of liquids dripping or if there is other evidence of fluid loss.

(4) *Leak repair.* (i) If a leak is detected, it shall be repaired and the batch product-process equipment shall be retested before startup of the process.

(ii) If a batch product-process fails the retest (the second of two consecutive pressure tests), it shall be repaired as soon as practical but not later than 30 calendar days after the second pressure test, except as specified in paragraph (e) of this section.

(5) *Gas pressure test procedure for pressure or vacuum loss.* The following procedures shall be used to pressure test batch product-process equipment for pressure or vacuum loss to demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section:

(i) The batch product-process equipment train shall be pressurized with a gas to a pressure less than the set pressure of any safety relief devices or

valves or to a pressure slightly above the operating pressure of the equipment, or alternatively the equipment shall be placed under a vacuum.

(ii) Once the test pressure is obtained, the gas source or vacuum source shall be shut off.

(iii) The test shall continue for not less than 15 minutes unless it can be determined in a shorter period of time that the allowable rate of pressure drop or of pressure rise was exceeded. The pressure in the batch product-process equipment shall be measured after the gas or vacuum source is shut off and at the end of the test period. The rate of change in pressure in the batch product-process equipment shall be calculated using Equation 117–1 of this section:

$$\Delta(P/t) = \left(\left|P_f - P_i\right|\right) / \left(t_f - t_i\right) \qquad \text{(Eq. 117-1)}$$

Where:

$\Delta(P/t)$ = Change in pressure, pounds per square inch gauge/hr.

P_f = Final pressure, pounds per square inch gauge.

P_i = Initial pressure, pounds per square inch gauge.

$t_f - t_i$ = Elapsed time, hours.

(iv) The pressure shall be measured using a pressure measurement device (gauge, manometer, or equivalent) that has a precision of ±2.5 millimeters mercury (0.10 inch of mercury) in the range of test pressure and is capable of measuring pressures up to the relief set pressure of the pressure relief device. If such a pressure measurement device is not reasonably available, the owner or operator shall use a pressure measurement device with a precision of at least ±10 percent of the test pressure of the equipment and shall extend the duration of the test for the time necessary to detect a pressure loss or rise that equals a rate of 1 pound per square inch gauge per hour (7 kilopascals per hour).

(v) An alternative procedure may be used for leak testing the equipment if the owner or operator demonstrates the alternative procedure is capable of detecting a pressure loss or rise.

(6) *Pressure test procedure using test liquid*. The following procedures shall be used to pressure test batch product-process equipment using a liquid to demonstrate compliance with the requirements of paragraph (b)(3)(ii) of this section:

(i) The batch product-process equipment train or section of the equipment train shall be filled with the test liquid (for example, water, alcohol) until normal operating pressure is obtained. Once the equipment is filled, the liquid source shall be shut off.

(ii) The test shall be conducted for a period of at least 60 minutes unless it can be determined in a shorter period of time that the test is a failure.

(iii) Each seal in the equipment being tested shall be inspected for indications of liquid dripping or other indications of fluid loss. If there are any indications of liquids dripping or of fluid loss, a leak is detected.

(iv) An alternative procedure may be used for leak testing the equipment if the owner or operator demonstrates the alternative procedure is capable of detecting losses of fluid.

(7) *Pressure testing recordkeeping*. The owner or operator of a batch product-process who elects to pressure test the batch product-process equipment train to demonstrate compliance with this subpart shall maintain records of the information specified in paragraphs (b)(7)(i) through (v) of this section.

(i) The identification of each product or product code produced during the calendar year. It is not necessary to identify individual items of equipment in a batch product-process equipment train.

(ii) Physical tagging of the equipment to identify that it is in regulated material service and subject to the provisions of this subpart is not required. Equipment in a batch product-process subject to the provisions of this subpart may be identified on a plant site plan, in log entries, or by other appropriate methods.

(iii) The dates of each pressure test required in paragraph (b) of this section, the test pressure, and the pressure drop observed during the test.

(iv) Records of any visible, audible, or olfactory evidence of fluid loss.

(v) When a batch product-process equipment train does not pass two consecutive pressure tests, as specified in paragraph (b)(4)(ii) of this section, the following information shall be recorded in a log and kept for 2 years:

(A) The date of each pressure test and the date of each leak repair attempt;

(B) Repair methods applied in each attempt to repair the leak;

(C) The reason for the delay of repair;

(D) The expected date for delivery of the replacement equipment and the actual date of delivery of the replacement equipment; and

(E) The date of successful repair.

(c) *Equipment monitoring.* The following requirements shall be met if an owner or operator elects to monitor the equipment in a batch process to detect leaks by the method specified in § 65.104(b) and (c) to demonstrate compliance with this subpart:

(1) The owner or operator shall comply with the requirements of §§ 65.106 through 65.116 as modified by paragraphs (c)(2) through (4) of this section.

(2) The equipment shall be monitored for leaks by the method specified in § 65.104(b) and (c) when the equipment is in regulated material service or is in use with any other detectable material.

(3) The equipment shall be monitored for leaks as specified in the following:

(i) Each time the equipment is reconfigured for the production of a new product, the reconfigured equipment shall be monitored for leaks within 30 days of startup of the process. This initial monitoring of reconfigured equipment shall not be included in determining percent leaking equipment in the process unit.

(ii) Connectors shall be monitored in accordance with the requirements in § 65.108.

(iii) Equipment other than connectors shall be monitored at the frequencies specified in table 1 to this subpart. The operating time shall be determined as the proportion of the year the batch product-process that is subject to the provisions of this subpart is operating.

(iv) The monitoring frequencies specified in paragraph (c)(3)(iii) of this section are not requirements for monitoring at specific intervals and can be adjusted to accommodate process operations. An owner or operator may monitor anytime during the specified monitoring period (for example, month, quarter, year), provided the monitoring is conducted at a reasonable interval after completion of the last monitoring campaign. For example, if the equipment is not operating during the scheduled monitoring period, the monitoring can be done during the next period when the process is operating.

(4) If a leak is detected, it shall be repaired as soon as practical but not later than 15 calendar days after it is detected except as provided in paragraph (e) of this section.

(d) *Added equipment recordkeeping.* (1) For batch product-process units that the owner or operator elects to monitor as provided under paragraph (c) of this section, the owner or operator shall prepare a list of equipment added to batch product-process units since the last monitoring period required in paragraphs (c)(3)(ii) and (iii) of this section.

(2) Maintain records demonstrating the proportion of the time during the calendar year the equipment is in use in a batch process that is subject to the provisions of this subpart. Examples of suitable documentation are records of time in use for individual pieces of equipment or average time in use for the process unit. These records are not required if the owner or operator does not adjust monitoring frequency by the time in use, as provided in paragraph (c)(3)(iii) of this section.

(3) Record and keep pursuant to § 65.4 the date and results of the monitoring required in paragraph (c)(3)(i) of this section for equipment added to a batch product-process unit since the last monitoring period required in paragraphs (c)(3)(ii) and (iii) of this section. If no leaking equipment is found during this monitoring, the owner or operator shall record that the inspection was performed. Records of the actual monitoring results are not required.

(e) *Delay of repair*. Delay of repair of equipment for which leaks have been detected is allowed if the replacement equipment is not available provided the following conditions are met:

(1) Equipment supplies have been depleted and supplies had been sufficiently stocked before the supplies were depleted.

(2) The repair is made no later than 10 calendar days after delivery of the replacement equipment.

(f) *Periodic report contents*. For owners or operators electing to meet the requirements of paragraph (b) of this section, the following periodic report to be filed pursuant to § 65.120(b) shall include the following information for each process unit:

(1) Batch product-process equipment train identification;

(2) The number of pressure tests conducted;

(3) The number of pressure tests where the equipment train failed the pressure test; and

(4) The facts that explain any delay of repairs.

§ 65.118 Alternative means of emission limitation: Enclosed-vented process units.

(a) *Use of closed vent system and control device*. Process units that are enclosed in such a manner that all emissions from equipment leaks are routed to a process or fuel gas system or collected and vented through a closed vent system to a control device meeting the requirements of § 65.115 are exempt from the requirements of §§ 65.106 through 65.114 and § 65.116. The enclosure shall be maintained under a negative pressure at all times while the process unit is in operation to ensure that all emissions are routed to a control device.

(b) *Recordkeeping*. Owners and operators choosing to comply with the requirements of this section shall maintain the following records:

(1) Identification of the process unit(s) and the regulated materials they handle.

(2) A schematic of the process unit, enclosure, and closed vent system.

(3) A description of the system used to create a negative pressure in the enclosure to ensure that all emissions are routed to the control device.

§ 65.119 Recordkeeping provisions.

(a) *Recordkeeping system*. An owner or operator of more than one regulated source subject to the provisions of this subpart may comply with the recordkeeping requirements for these regulated sources in one recordkeeping system. The recordkeeping system shall identify each record by regulated source and the type of program being implemented (for example, quarterly monitoring, quality improvement) for each type of equipment. The records required by this subpart are summarized in paragraphs (b) and (c) of this section.

(b) *General equipment leak records*. (1) As specified in § 65.103(a) through (c), the owner or operator shall keep general and specific equipment identification if the equipment is not physically tagged and the owner or operator is electing to identify the equipment subject to subpart F of this part through written documentation such as a log or other designation.

(2) The owner or operator shall keep a written plan as specified in § 65.103(c)(4) for any equipment that is designated as unsafe- or difficult-to-monitor.

(3) The owner or operator shall maintain a record of the identity and an explanation as specified in § 65.103(d)(2) for any equipment that is designated as unsafe to repair.

(4) As specified in § 65.103(e), the owner or operator shall maintain a record of the identity of compressors operating with an instrument reading of less than 500 parts per million.

(5) The owner or operator shall keep records associated with the determination that equipment is in heavy liquid service as specified in § 65.103(f).

(6) The owner or operator shall keep records for leaking equipment as specified in § 65.104(e)(2).

(7) The owner or operator shall keep records for leak repair as specified in § 65.105(f) and records for delay of repair as specified in § 65.105(d).

(8) For instrument response factor criteria determinations performed pursuant to § 65.104(b)(2)(i), the owner or operator shall maintain a record of an

engineering assessment that identifies the representative composition of the process fluid. The assessment shall be based on knowledge of the compounds present in the process, similarity of response factors for the materials present, the range of compositions encountered during monitoring, or other information available to the owner or operator.

(9) The owner or operator shall keep records of the detection limit calibration as specified in § 65.104(b)(3).

(c) *Specific equipment leak records.* (1) For valves, the owner or operator shall maintain the following records:

(i) The monitoring schedule for each process unit as specified in § 65.106(b)(3)(v).

(ii) The valve subgrouping records specified in § 65.106(b)(4)(iv), if applicable.

(2) For pumps, the owner or operator shall maintain the following records:

(i) Documentation of pump visual inspections as specified in § 65.107(b)(4).

(ii) Documentation of dual mechanical seal pump visual inspections as specified in § 65.107(e)(1)(v).

(iii) For the criteria as to the presence and frequency of drips for dual mechanical seal pumps, records of the design criteria and explanations and any changes and the reason for the changes, as specified in § 65.107(e)(1)(i).

(3) For connectors, the owner or operator shall maintain the records specified in § 65.108(b)(3)(v) which identify a monitoring schedule for each process unit.

(4) For agitators, the owner or operator shall maintain the following records:

(i) Documentation of agitator seal visual inspections as specified in § 65.109(b)(3).

(ii) For agitators equipped with a dual mechanical seal system that includes barrier fluid system, the owner or operator shall keep records as specified in § 65.109(e)(1)(vi)(B).

(iii) Documentation of the dual mechanical seal agitator seal visual inspections as specified in § 65.109(e)(1)(iv).

(5) For pressure relief devices in gas/vapor or light liquid service, the owner or operator shall keep records of the dates and results of monitoring following a pressure release, as specified in § 65.111(c)(3), or the date the rupture disk is replaced as specified in § 65.111(e).

(6) For compressors, the owner or operator shall maintain the following records:

(i) For criteria as to failure of the seal system and/or the barrier fluid system, record the design criteria and explanations and any changes and the reason for the changes, as specified in § 65.112(d)(2).

(ii) For compressors operating under the alternative compressor standard, record the dates and results of each compliance test as specified in § 65.112(f)(2).

(7) For a pump QIP program, the owner or operator shall maintain the following records:

(i) Individual pump records as specified in § 65.116(d)(2).

(ii) Trial evaluation program documentation as specified in § 65.116(d)(6)(iii).

(iii) Engineering evaluation documenting the basis for judgement that superior emission performance technology is not applicable as specified in § 65.116(d)(6)(vi).

(iv) Quality assurance program documentation as specified in § 65.116(d)(7).

(v) QIP records as specified in § 65.116(e).

(8) For process units complying with the batch process unit alternative, the owner or operator shall maintain the following records:

(i) Pressure test records as specified in § 65.117(b)(7).

(ii) Records for equipment added to the process unit as specified in § 65.117(d).

(9) For process units complying with the enclosed-vented process unit alternative, the owner or operator shall maintain the records for enclosed-vented process units as specified in § 65.118(b).

§ 65.120 Reporting provisions.

(a) *Initial Compliance Status Report.* Unless the information specified in paragraphs (a)(1) through (3) of this section has previously been submitted under the referencing subpart, each

owner or operator shall submit an Initial Compliance Status Report according to the procedures in § 65.5(d). The notification shall include the information listed in paragraphs (a)(1) through (3) of this section, as applicable.

(1) The notification shall provide the following information for each process unit subject to the requirements of this subpart:

(i) Process unit identification;

(ii) Number of each equipment type (for example, valves, pumps) excluding equipment in vacuum service; and

(iii) Method of compliance with the standard (for example, ''monthly leak detection and repair'' or ''equipped with dual mechanical seals'').

(2) The notification shall provide the following information for each process unit subject to the requirements of § 65.117(b):

(i) Batch products or product codes subject to the provisions of this subpart; and

(ii) Planned schedule for pressure testing when equipment is configured for production of products subject to the provisions of this subpart.

(3) The notification shall provide the following information for each process unit subject to the requirements in § 65.118:

(i) Process unit identification;

(ii) A description of the system used to create a negative pressure in the enclosure, and the control device used to comply with the requirements of subpart G of this part.

(b) *Periodic reports.* The owner or operator shall report the information specified in paragraphs (b)(1) through (9) of this section, as applicable, in the periodic report specified in § 65.5(e).

(1) For the equipment specified in paragraphs (b)(1)(i) through (v) of this section, report in a summary format by equipment type the number of components for which leaks were detected, and for valves, pumps, and connectors show the percent leakers and the total number of components monitored. Also include the number of leaking components that were not repaired as required by § 65.105(a), and for valves identify the number of components that are determined by § 65.106(c)(3) to be nonrepairable.

(i) Valves in gas/vapor service and in light liquid service pursuant to § 65.106(b) and (c).

(ii) Pumps in light liquid service pursuant to § 65.107(b) and (c).

(iii) Connectors in gas/vapor service and in light liquid service pursuant to § 65.108(b) and (c).

(iv) Agitators in gas/vapor service and in light liquid service pursuant to § 65.109(b).

(v) Compressors pursuant to § 65.112(d).

(2) Where any delay of repair is utilized pursuant to § 65.105(d), report that delay of repair has occurred and report the number of instances of delay of repair.

(3) If applicable, report the valve subgrouping information specified in § 65.106(b)(4)(iv).

(4) For pressure relief devices in gas/vapor service pursuant to § 65.111(b) and for compressors pursuant to § 65.112(f) that are to be operated at a leak detection instrument reading of less than 500 parts per million, report the results of all monitoring to show compliance conducted within the semiannual reporting period.

(5) Report, if applicable, the initiation of a monthly monitoring program for valves pursuant to § 65.106(b)(3)(i).

(6) Report, if applicable, the initiation of a quality improvement program for pumps pursuant to § 65.116.

(7) [Reserved]

(8) Where the alternative means of emissions limitation for batch processes is utilized, report the information listed in § 65.117(f).

(9) Report the information listed in paragraph (a) of this section for the Initial Compliance Status Report for process units with later compliance dates. Report any revisions to items reported in an earlier Initial Compliance Status Report if the method of compliance has changed since the last report.

§§ 65.121–65.139 [Reserved]

TABLE 1 TO SUBPART F OF PART 65—BATCH PROCESSES MONITORING FREQUENCY FOR EQUIPMENT OTHER THAN CONNECTORS

Operating time (percent of year)	Equivalent continuous process monitoring frequency time in use		
	Monthly	Quarterly	Semiannually
0 to <25	Quarterly	Annually	Annually.
25 to <50	Quarterly	Semiannually	Annually.
50 to <75	Bimonthly	Three times	Semiannually.
75 to 100	Monthly	Quarterly	Semiannually.

Subpart G—Closed Vent Systems, Control Devices, and Routing to a Fuel Gas System or a Process

§ 65.140 Applicability.

The provisions of this subpart and of subpart A of this part (including the startup, shutdown, and malfunction provisions in § 65.6) apply to routing emissions to processes, fuel gas systems, closed vent systems, control devices, and recovery devices where another subpart expressly references the use of this subpart.

§ 65.141 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

§ 65.142 Standards.

(a) *Storage vessel requirements.* The owner or operator expressly referenced to this subpart from subpart C of this part shall comply with the following requirements, as applicable:

(1) *Closed vent system and flare.* Owners or operators subject to § 65.42(b)(4) who route storage vessel emissions through a closed vent system to a flare shall meet the requirements in § 65.143 for closed vent systems; § 65.147 for flares; and § 65.157(a), (b), and (c) for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to storage vessel emissions routed through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device.* Owners or operators subject to § 65.42(b)(5) who route storage vessel emissions through a closed vent system to a nonflare control device shall meet the requirements in § 65.143 for closed vent systems and § 65.145 for nonflare control devices and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to storage vessel emissions routed through a closed vent system to a nonflare control device unless specifically required in the monitoring plan submitted under § 65.145(c).

(3) *Route to a fuel gas system or process.* Owners or operators subject to § 65.42(b)(6) who route storage vessel emissions to a fuel gas system or to a process shall meet the requirements in § 65.144 and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to storage vessel emissions being routed to a fuel gas system or to a process.

(b) *Process vent requirements.* The owner or operator expressly referenced to this subpart from subpart D of this part or 40 CFR part 60, subpart DDD, shall comply with the following requirements, as applicable:

(1) *Flare.* Owners or operators subject to § 65.63(a)(1) or 40 CFR 60.562–1(a)(1)(i)(C) who route process vent emissions to a flare shall meet the applicable requirements in § 65.143 for closed vent systems; § 65.147 for flares; and § 65.157(a), (b), and (c) for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to process vent emissions routed through a closed vent system to a flare.

(2) *Nonflare control device.* Owners or operators subject to § 65.63(a)(2) or 40 CFR 60.562–1(a)(1)(i)(A) or (B) who route process vent emissions to a nonflare control device shall meet the applicable requirements in § 65.143 for closed vent systems; the requirements applicable to the control devices being used in §§ 65.148 through 65.152 or § 65.155; the applicable general monitoring requirements of § 65.156; the applicable performance test requirements and procedures of §§ 65.157 and 65.158; and the monitoring, recordkeeping, and reporting requirements referenced therein. Owners or operators subject to the halogen reduction device requirements of § 65.63(b)(1) must also comply with § 65.154 and the monitoring, recordkeeping, and reporting requirements referenced therein. The requirements of §§ 65.144 through 65.146 do not apply to process vents. No other provisions of this subpart apply to process vent emissions routed through a closed vent system to a nonflare control device.

(3) *Final recovery devices.* Owners or operators subject to § 65.63(a)(3) who use a final recovery device to maintain the TRE index value of a Group 2A process vent above 1.0 shall meet the requirements in § 65.153, and the monitoring, recordkeeping, and reporting requirements referenced therein applicable to the recovery device being used and the applicable monitoring requirements in § 65.156, and the recordkeeping and reporting requirements referenced therein, except for § 65.156(c)(2)(ii). No other provisions of this subpart apply to Group 2A process vents.

(c) *Transfer rack requirements.* The owner or operator expressly referenced to this subpart from subpart E of this part shall comply with the following requirements, as applicable:

(1) *Closed vent system and flare.* Owners or operators subject to § 65.83(a)(2) who route transfer rack emissions through a closed vent system to a flare shall meet the applicable requirements in § 65.143 for closed vent systems; § 65.147 for flares; and § 65.157(a), (b), and (c) for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to transfer rack emissions routed through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device for low-throughput transfer racks.* Owners or operators of low-throughput transfer racks subject to § 65.83(a)(1) who route low-throughput transfer rack emissions through a closed vent system to a nonflare control device shall meet the applicable requirements in § 65.143 for closed vent systems and § 65.145 for nonflare control devices and the monitoring, recordkeeping, and reporting requirements referenced therein. Owners or operators subject to the halogen reduction requirements of § 65.83(b)(1) must also comply with the recordkeeping requirement of § 65.160(d) and the reporting requirement of § 65.165(d). No other provisions of this subpart apply to low-throughput transfer rack emissions routed through a closed vent system to a nonflare control device unless specifically required in the monitoring plan submitted under § 65.145(c).

(3) *Closed vent system and nonflare control devices for high-throughput transfer racks.* Owners or operators of high-throughput transfer racks subject to § 65.83(a)(1) who route high-throughput transfer rack emissions through a closed vent system to a nonflare control device shall meet the applicable requirements in § 65.143 for closed vent systems; the requirements applicable to the control device being used in §§ 65.148 through 65.152 or § 65.155; the applicable general monitoring of § 65.156; the applicable performance test requirements and procedures of §§ 65.157 and 65.158; and the monitoring, recordkeeping, and reporting requirements referenced therein. Owners or operators subject to the halogen reduction device requirements of § 65.83(b)(1) must also comply with § 65.154 and the monitoring, recordkeeping, and reporting requirements referenced therein. The requirements of §§ 65.144 through 65.146 do not apply to high-throughput transfer rack emissions routed through a closed vent system to a nonflare control device. No other provisions of this subpart apply to high-throughput transfer rack emissions routed through a closed vent system to a nonflare control device.

(4) *Route to a fuel gas system or to a process.* Owners or operators subject to § 65.83(a)(4) of this part who route transfer rack emissions to a fuel gas system or to a process shall meet the applicable requirements in § 65.144 and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to transfer rack emissions being routed to a fuel gas system or to a process.

(d) *Equipment leak requirements.* The owner or operator expressly referenced to this subpart from subpart F of this part shall comply with the following requirements, as applicable:

(1) *Closed vent system and flare.* Owners or operators subject to § 65.115(b) who route equipment leak emissions through a closed vent system to a flare shall meet the requirements in § 65.143 for closed vent systems; § 65.147 for flares; and § 65.157(a), (b), and (c) for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to equipment leak emissions routed through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device.* Owners or operators subject to § 65.115(b) who route equipment leak emissions through a closed vent system to a nonflare control device shall meet the requirements in § 65.143 for closed vent systems, § 65.146 for nonflare control devices used for equipment leak emissions, and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to equipment leak emissions routed through a closed vent system to a nonflare control device.

(3) *Route to a fuel gas system or to a process.* Owners or operators subject to § 65.115(b) who route equipment leak emissions to a fuel gas system or to a process shall meet the requirements in § 65.144 and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to equipment leak emissions being routed to a fuel gas system or to a process.

(e) *Combined emissions.* When emissions of different kinds (for example, emissions from process vents, transfer racks, and/or storage vessels) are combined, the owner or operator shall comply with the requirements of either paragraph (e)(1) or (2) of this section:

(1) Comply with the applicable requirements of this subpart for each kind of emissions in the stream (for example, the requirements of § 65.142(b) for process vents, and the requirements of § 65.142(c) for transfer racks); or

(2) Comply with the first set of requirements identified in paragraphs (e)(2)(i) through (iii) of this section which applies to any individual emission stream that is included in the combined stream. Compliance with the first applicable set of requirements identified in paragraphs (e)(2)(i) through (iii) of this section constitutes compliance with all other requirements in paragraphs (e)(2)(i) through (iii) of this section applicable to other types of emissions in the combined stream. The hierarchy is as follows:

(i) The requirements of § 65.142(b) for Group 1 process vents, including applicable monitoring, recordkeeping, and reporting;

(ii) The requirements of § 65.142(c) for high-throughput transfer racks, including applicable monitoring, recordkeeping, and reporting;

(iii) The requirements of § 65.142(a) for control of emissions from storage vessels or low-throughput transfer racks, including monitoring, recordkeeping, and reporting.

§ 65.143 Closed vent systems.

(a) *Closed vent system equipment and operating requirements.* The provisions of paragraph (a) of this section apply to closed vent systems collecting regulated material from a storage vessel, process vent, transfer rack, or equipment leaks.

(1) *Collection of emissions.* Each closed vent system shall be designed and operated to collect the regulated material vapors from the emission point and to route the collected vapors to a control device.

(2) *Period of operation.* Closed vent systems used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(3) *Bypass monitoring.* Except for pressure relief devices needed for safety purposes, low leg drains, high point bleeds, analyzer vents, and open-ended valves or lines, the owner or operator shall comply with either of the following provisions for each closed vent system that contains bypass lines that could divert a vent stream to the atmosphere:

(i) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. Records shall be generated as specified in §65.163(a)(1)(i). The flow indicator shall be installed at the entrance to any bypass line.

(ii) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass line. Records shall be generated as specified in §65.163(a)(1)(ii).

(4) *Loading arms at transfer racks.* Each closed vent system collecting regulated material from a transfer rack shall be designed and operated so that regulated material vapors collected at one loading arm will not pass through another loading arm in the rack to the atmosphere.

(5) *Pressure relief devices in a transfer rack's closed vent system.* The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the transfer rack's closed vent system shall open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to paragraph (a)(5) of this section.

(b) *Closed vent system inspection requirements.* The provisions of paragraph (b) of this section apply to closed vent systems collecting regulated material from a storage vessel, transfer rack or equipment leaks. Inspection records shall be generated as specified in §65.163(a)(3) and (4).

(1) Except for closed vent systems operated and maintained under negative pressure and as provided in paragraphs (b)(2) and (3) of this section, each closed vent system shall be inspected as specified in paragraph (b)(1)(i) or (ii) of this section.

(i) If the closed vent system is constructed of hard-piping, the owner or operator shall comply with the following requirements:

(A) Conduct an initial inspection according to the procedures in paragraph (c) of this section; and

(B) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(ii) If the closed vent system is constructed of ductwork, the owner or operator shall conduct an initial and annual inspection according to the procedures in paragraph (c) of this section.

(2) Any parts of the closed vent system that are designated as described in §65.163(a)(2) as unsafe to inspect are exempt from the inspection requirements of paragraph (b)(1) of this section if the following conditions are met:

(i) The owner or operator determines that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraph (b)(1) of this section; and

(ii) The owner or operator has a written plan that requires inspection of the equipment as frequently as practical during safe-to-inspect times. Inspection is not required more than once annually.

(3) Any parts of the closed vent system that are designated, as described in §65.163(a)(2), as difficult-to-inspect are exempt from the inspection requirements of paragraph (b)(1) of this section if the following provisions apply:

(i) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters (7 feet) above a support surface; and

(ii) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years.

(c) *Closed vent system inspection procedures.* The provisions of paragraph (c) of this section apply to closed vent systems collecting regulated material from a storage vessel, transfer rack, or equipment leaks.

(1) Each closed vent system subject to paragraph (c) of this section shall be

inspected according to the procedures specified in paragraphs (c)(1)(i) through (vii) of this section.

(i) Inspections shall be conducted in accordance with Method 21 of appendix A of 40 CFR part 60 except as specified in this section.

(ii) Except as provided in paragraph (c)(1)(iii) of this section, the detection instrument shall meet the performance criteria of Method 21 of appendix A of 40 CFR part 60, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the representative composition of the process fluid not each individual organic compound in the stream. For process streams that contain nitrogen, air, water, or other inerts that are not organic hazardous air pollutants or volatile organic compounds, the response factor shall be determined on an inert-free basis. The response factor may be determined at any concentration for which the monitoring for leaks will be conducted. Maintain the record specified by § 65.163(a)(5).

(iii) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (c)(1)(ii) of this section, the instrument readings may be adjusted by multiplying by the representative response factor of the process fluid calculated on an inert-free basis as described in paragraph (c)(1)(ii) of this section.

(iv) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of appendix A of 40 CFR part 60.

(v) Calibration gases shall be as specified in the following:

(A) Zero air (less than 10 parts per million hydrocarbon in air).

(B) Mixtures of methane in air at a concentration less than 10,000 parts per million. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (c)(1)(ii) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(C) If the detection instrument's design allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,500 parts per million.

(vi) An owner or operator may elect to adjust or not adjust instrument readings for background. If an owner or operator elects not to adjust readings for background, all such instrument readings shall be compared directly to 500 parts per million to determine whether there is a leak. If an owner or operator elects to adjust instrument readings for background, the owner or operator shall measure background concentration using the procedures in this section. The owner or operator shall subtract the background reading from the maximum concentration indicated by the instrument.

(vii) If the owner or operator elects to adjust for background, the arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared with 500 parts per million for determining whether there is a leak.

(2) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Method 21 of appendix A of 40 CFR part 60.

(3) Except as provided in paragraph (c)(4) of this section, inspections shall be performed when the equipment is in regulated material service or in use with any other detectable gas or vapor.

(4) Inspections of the closed vent system collecting regulated material from a transfer rack shall be performed only while a tank truck or railcar is being loaded or is otherwise pressurized to normal operating conditions with regulated material or any other detectable gas or vapor.

(d) *Closed vent system leak repair provisions.* The provisions of paragraph (d) of this section apply to closed vent systems collecting regulated material from a storage vessel, transfer rack, or equipment leak.

(1) If there are visible, audible, or olfactory indications of leaks at the time of the annual visual inspections required by paragraph (b)(1)(i)(B) of this section, the owner or operator shall follow either of the following procedures:

(i) The owner or operator shall eliminate the indications of the leak.

(ii) The owner or operator shall monitor the equipment according to the procedures in paragraph (c) of this section.

(2) Leaks as indicated by an instrument reading greater than 500 parts per million by volume above background shall be repaired as soon as practical except as provided in paragraph (d)(3) of this section. Records shall be generated as specified in § 65.163(a)(3) when a leak is detected.

(i) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(ii) Except as provided in paragraph (d)(3) of this section, repairs shall be completed no later than 15 calendar days after the leak is detected or at the beginning of the next introduction of vapors to the system, whichever is later.

(3) Delay of repair of a closed vent system for which leaks have been detected is allowed if repair within 15 days after a leak is detected is technically infeasible without a closed vent system shutdown, as defined in § 65.2, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the emissions likely to result from delay of repair. Repair of such equipment shall be completed as soon as practical, but not later than the end of the next closed vent system shutdown.

§ 65.144 Fuel gas systems and processes to which storage vessel, transfer rack, or equipment leak regulated material emissions are routed.

(a) *Equipment and operating requirements for fuel gas systems and processes.* (1) Except during periods of startup, shutdown, and malfunction as specified in § 65.3(a), the fuel gas system or process shall be operating at all times when regulated material emissions are routed to it.

(2) The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the transfer rack's system returning vapors to a fuel gas system or process shall open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to this paragraph (a)(2).

(3) Each process piping system collecting regulated material from a transfer rack shall be designed and operated so that regulated material vapors collected at one loading arm will not pass through another loading arm in the rack to the atmosphere.

(b) *Fuel gas system and process compliance determination.* (1) If emissions are routed to a fuel gas system, there is no requirement to conduct a performance test or design evaluation.

(2) For storage vessels and transfer racks, and if emissions are routed to a process, the regulated material in the emissions shall predominantly meet one of, or a combination of, the following conditions, and the compliance demonstration requirements in paragraph (b)(3) of this section, if applicable:

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not regulated materials;

(iii) Incorporated into a product; and/or

(iv) Recovered.

(3) To demonstrate compliance with paragraph (b)(2) of this section for a storage vessel, the owner or operator shall prepare a design evaluation (or engineering assessment) that demonstrates the extent to which one or more of the conditions specified in paragraphs (b)(2)(i) through (iv) of this section are being met. The owner or operator shall submit the design evaluation as specified in § 65.165(a)(1).

(c) *Statement of connection to fuel gas system.* For storage vessels and transfer racks, the owner or operator shall submit the statement of connection reports for fuel gas systems specified in § 65.165(a)(2) and/or (a)(3), as appropriate.

§ 65.145 Nonflare control devices used to control emissions from storage vessels or low-throughput transfer racks.

(a) *Nonflare control device equipment and operating requirements.* The owner or operator shall operate and maintain the nonflare control device, including a

halogen reduction device for a low-throughput transfer rack, so that the monitored parameters defined as required in paragraph (c) of this section remain within the ranges specified in the Initial Compliance Status Report whenever emissions of regulated material are routed to the control device and halogen reduction device, except during periods of startup, shutdown, and malfunction as specified in § 65.3(a).

(b) *Nonflare control device design evaluation or performance test requirements.* When using a control device other than a flare, the owner or operator shall comply with the requirements in paragraph (b)(1)(i), (ii), or (iii) of this section except as provided in paragraph (b)(2) of this section. Owners or operators of halogenated low-throughput transfer rack vent streams routed to a combustion device and then to a halogen reduction device to meet the specifications of § 65.83(b)(1), must also meet the requirements of paragraph (b)(3) of this section.

(1) Unless a design evaluation or performance test as required in the referencing subpart was previously conducted and submitted for the storage vessel or low-throughput transfer rack, the owner or operator shall either prepare and submit with the Initial Compliance Status Report, as specified in § 65.165(b), a design evaluation that includes the information specified in paragraph (b)(1)(i) of this section, or the results of the performance test as described in paragraph (b)(1)(ii) or (iii) of this section.

(i) *Design evaluation.* The design evaluation shall include documentation demonstrating that the control device being used achieves the required control efficiency during the reasonably expected maximum storage vessel filling or transfer loading rate. This documentation is to include a description of the gas stream that enters the control device, including flow and regulated material content; and additionally for storage vessels, the effects of varying liquid level conditions; and the information specified in paragraphs (b)(1)(i)(A) through (E) of this section, as applicable. This documentation shall be submitted with the Initial Compliance Status Report as specified in § 65.165(b).

(A) The efficiency determination is to include consideration of all vapors, gases, and liquids, other than fuels, received by the control device.

(B) If an enclosed combustion device with a minimum residence time of 0.5 seconds and a minimum temperature of 760 °C is used to meet the emission reduction requirement specified in § 65.42(b)(5) for storage vessels, or § 65.83(a)(1) for transfer racks, documentation that those conditions exist is sufficient to meet the requirements of paragraph (b)(1)(i) of this section.

(C) Except as provided in paragraph (b)(1)(i)(B) of this section for enclosed combustion devices, the design evaluation shall include the estimated autoignition temperature of the stream being combusted, the flow rate of the stream, the combustion temperature, and the residence time at the combustion temperature.

(D) For carbon adsorbers, the design evaluation shall include the estimated affinity of the regulated pollutant vapors for carbon, the amount of carbon in each bed, the number of beds, the humidity, the temperature, the flow rate of the inlet stream and, if applicable, the desorption schedule, the regeneration stream pressure or temperature, and the flow rate of the regeneration stream. For vacuum desorption, pressure drop shall be included.

(E) For condensers, the design evaluation shall include the final temperature of the stream vapors, the type of condenser, and the design flow rate of the emission stream.

(ii) *Performance test.* A performance test is acceptable to demonstrate compliance with § 65.42(b)(5) for storage vessels, and § 65.83(a)(1) for low-throughput transfer racks. The owner or operator is not required to prepare a design evaluation for the control device as described in paragraph (b)(1)(i) of this section if a performance test will be performed that meets the following criteria:

(A) The performance test demonstrates that the control device achieves greater than or equal to the required control efficiency specified in § 65.42(b)(5) for storage vessels, or § 65.83(a)(1) for transfer racks; and

(B) The performance test meets the applicable performance test requirements of §§ 65.157 and 65.158, and the results are submitted as part of the Initial Compliance Status Report as specified in § 65.165(b).

(iii) If the control device used to comply with § 65.42(b)(5) for storage vessels, or with § 65.83(a)(1) for low-throughput transfer racks, as applicable, is also used to comply with § 65.63(a)(2) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, a performance test required by § 65.148(b), § 65.149(b), § 65.150(b), § 65.151(b), § 65.152(b), or § 65.155(b) is acceptable to demonstrate compliance with § 65.42(b)(5) for storage vessels, or § 65.83(a)(1) for low-throughput transfer racks, as applicable. The owner or operator is not required to prepare a design evaluation for the control device as described in paragraph (b)(1)(i) of this section, if a performance test will be performed which meets the following criteria:

(A) The performance test demonstrates that the control device achieves greater than or equal to the required control efficiency specified in § 65.42(b)(5) for storage vessels, or § 65.83(a)(1) for transfer racks; and

(B) The performance test is submitted as part of the Initial Compliance Status Report as specified in § 65.165(b).

(2) A design evaluation or performance test is not required if the owner or operator uses a combustion device meeting the criteria in paragraph (b)(2)(i), (ii), (iii), or (iv) of this section and reports as specified in § 65.165(f).

(i) A boiler or process heater with a design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater.

(ii) A boiler or process heater burning hazardous waste for which the owner or operator meets either of the following requirements:

(A) The boiler or process heater has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(B) The boiler or process heater has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(iii) A hazardous waste incinerator for which the owner or operator meets either of the following requirements:

(A) The incinerator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O; or

(B) The incinerator has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(iv) A boiler or process heater into which the vent stream is introduced with the primary fuel.

(3) *Halogen reduction devices used for transfer racks.* Unless a design evaluation or performance test as required in the referencing subpart was previously conducted and submitted for a halogen reduction device following a combustion device for a low-throughput transfer rack, the owner or operator shall either prepare and submit with the Initial Compliance Status Report, as specified in § 65.165(b), a design evaluation that includes the information specified in paragraph (b)(3)(i) of this section, or the results of the performance test as described in paragraph (b)(3)(ii) or (iii) of this section. The provisions of this paragraph (b)(3) apply to owners or operators using a halogen reduction device following a combustion device to comply with § 65.83(b)(1).

(i) *Design evaluation.* The design evaluation shall include documentation demonstrating that the halogen reduction device being used achieves the required control efficiency during the reasonably expected maximum transfer loading rate. This documentation is to include a description of the gas stream that enters the halogen reduction device, including flow and regulated material content. The efficiency determination is to include consideration of all vapors, gases, and liquids, other than fuels, received by the halogen reduction device. This documentation shall be submitted with the Initial Compliance Status Report as specified in § 65.165(b).

(ii) *Performance test.* A performance test is acceptable to demonstrate compliance with § 65.83(b)(1) for low-throughput transfer racks. The owner or operator is not required to prepare a

design evaluation for the halogen reduction device as described in paragraph (b)(3)(i) of this section if a performance test will be performed that meets the following criteria:

(A) The performance test demonstrates that the halogen reduction device achieves greater than or equal to the required control efficiency specified in § 65.83(b)(1) for transfer racks; and

(B) The performance test meets the applicable performance test requirements of §§ 65.157 and 65.158, and the results are submitted as part of the Initial Compliance Status Report as specified in § 65.165(b).

(iii) If the halogen reduction device used to comply with § 65.83(b)(1) for low-throughput transfer racks, is also used to comply with § 65.63(b)(1) for process vents, or § 65.83(b)(1) for high-throughput transfer racks, a performance test required by § 65.154(b) is acceptable to demonstrate compliance with § 65.83(b)(1) for low-throughput transfer racks. The owner or operator is not required to prepare a design evaluation for the halogen reduction device as described in paragraph (b)(3)(i) of this section, if a performance test will be performed which meets the following criteria:

(A) The performance test demonstrates that the halogen reduction device achieves greater than or equal to the required control efficiency specified in § 65.83(b)(1) for transfer racks; and

(B) The performance test is submitted as part of the Initial Compliance Status Report as specified in § 65.165(b).

(c) *Nonflare control device monitoring requirements.* (1) Unless previously established under an applicable standard prior to the implementation date of this part as specified in § 65.1(f), the owner or operator shall submit with the Initial Compliance Status Report a monitoring plan containing the information specified in § 65.165(b) to identify the parameters that will be monitored to assure proper operation of the control device. The owner or operator of a halogenated low-throughput transfer rack vent stream routed to a combustion device and then to a halogen reduction device to meet the specifications of § 65.83(b)(1) shall submit with the Initial Compliance Status Report a monitoring plan containing the information specified in § 65.165(b) to identify the parameters that will be monitored to assure proper operation of the halogen reduction device.

(2) The owner or operator shall monitor the parameters specified in the Initial Compliance Status Report or in the operating permit. Records shall be generated as specified in § 65.163(b)(1).

§ 65.146 Nonflare control devices used for equipment leaks only.

(a) *Equipment and operating requirements.* (1) Owners or operators using a nonflare control device to meet the applicable requirements in § 65.115(b) shall meet the requirements of this section.

(2) Control devices used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Performance test requirements.* A performance test is not required for any nonflare control device used only to control emissions from equipment leaks.

(c) *Monitoring requirements.* Owners or operators of control devices that are used only to comply with the provisions of § 65.115(b) shall monitor these control devices to ensure that they are operated and maintained in conformance with their design. The owner or operator shall maintain the records as specified in § 65.163(d).

§ 65.147 Flares.

(a) *Flare equipment and operating requirements.* Flares subject to this subpart shall meet the performance requirements of paragraphs (a)(1) through (7) of this section.

(1) Flares shall be operated at all times when emissions are vented to them.

(2) Flares shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (b)(3)(i) of this section, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(3) Flares shall be operated with a flare flame or at least one pilot flame present at all times, as determined by

the methods specified in paragraph (c) of this section.

(4) An owner/operator has the choice of adhering to either the heat content specifications in paragraph (a)(4)(ii) of this section and the maximum tip velocity specifications in paragraph (a)(6) of this section, or adhering to the requirements in paragraph (a)(4)(i) of this section.

(i)(A) Flares shall be used that have a diameter of 3 inches or greater, are nonassisted, have a hydrogen content of 8.0 percent (by volume), or greater, and are designed for and operated with an exit velocity less than 37.2 m/sec (122 ft/sec) and less than the velocity, V_{max}, as determined by Equation 147–1 of this section:

$$V_{max} = \left(X_{H2} - K_1\right) * K_2 \qquad \text{(Eq. 147-1)}$$

Where:

V_{max} = Maximum permitted velocity, m/sec.

K_1 = Constant, 6.0 volume-percent hydrogen.

K_2 = Constant, 3.9 (m/sec)/volume-percent hydrogen.

X_{H2} = The volume-percent of hydrogen, on a wet basis, as calculated by using the American Society for Testing and Materials (ASTM) Method D1946–77 (incorporated by reference as specified in § 65.13).

(B) The actual exit velocity of a flare shall be determined by the method specified in paragraph (b)(3)(iii) of this section.

(ii) Flares shall be used only when the net heating value of the gas being combusted is 11.2 megajoules per standard cubic meter (300 British thermal units per standard cubic foot) or greater if the flare is steam-assisted or air-assisted, or when the net heating value of the gas being combusted is 7.45 megajoules per standard cubic meter (200 British thermal units per standard cubic foot) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (b)(3)(ii) of this section.

(5) Flares used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.

(6) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (b)(3)(iii) of this section, less than 18.3 meters per second (60 feet per sec) except as provided in the following two paragraphs, as applicable:

(i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (b)(3)(iii) of this section, equal to or less than 122 meters per second (400 feet per second) if the net heating value of the gas being combusted is greater than 37.3 megajoules per standard cubic meter (1,000 British thermal units per standard cubic foot).

(ii) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (b)(3)(iii) of this section, less than the velocity, V max, and less than 122 meters per second (400 feet per sec), where the maximum permitted velocity, V_{max}, is determined by Equation 147–2 of this section:

$$\text{Log10}\left(V_{max}\right) = \left(H_T + 28.8\right)/31.7 \qquad \text{(Eq. 147-2)}$$

Where:

V_{max} = Maximum permitted velocity, meters per second.

28.8 = Constant.

31.7 = Constant.

H_T = The net heating value as determined in paragraph (b)(3)(ii) of this section.

(7) Air-assisted flares shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (b)(3)(iii) of this section, less than the velocity, V_{max}, where the maximum permitted velocity, V_{max}, is determined by Equation 147–3 of this section:

$$V_{max} = 8.706 + 0.7084\left(H_T\right) \qquad \text{(Eq. 147-3)}$$

Where:

V_{max} = Maximum permitted velocity, meters per second.

8.706 = Constant.

0.7084 = Constant.

H_T = The net heating value as determined in paragraph (b)(3)(ii) of this section.

(b) *Flare compliance determination.* (1) Unless an initial flare compliance determination of the flare was previously conducted and submitted under the referencing subpart, the owner or operator shall conduct an initial flare compliance determination of any flare used to comply with the provisions of this subpart. Flare compliance determination records shall be kept as specified in § 65.159(a) and (b) and a flare compliance determination report shall be submitted as specified in § 65.164. An owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet regulated material or TOC concentration when a flare is used.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a flare to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a). Upon implementing the change, a flare compliance determination shall be performed using the methods specified in paragraph (b)(3) of this section within 180 days. The compliance determination report shall be submitted to the Administrator within 60 days of completing the determination as provided in § 65.164(b)(2). If an owner or operator elects to use a flare to replace an existing final recovery device that is used on a Group 2A process vent, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) and submit the notification specified in § 65.167(a).

(3) Flare compliance determinations shall meet the requirements specified in paragraphs (b)(3)(i) through (iv) of this section.

(i) Method 22 of appendix A of part 60 shall be used to determine the compliance of flares with the visible emission provisions of this subpart. The observation period is 2 hours, except for transfer racks as provided in either one of the following:

(A) For transfer racks, if the loading cycle is less than 2 hours, then the observation period for that run shall be for the entire loading cycle.

(B) For transfer racks, if additional loading cycles are initiated within the 2-hour period, then visible emissions observations shall be conducted for the additional cycles.

(ii) The net heating value of the gas being combusted in a flare shall be calculated using Equation 147–4 of this section:

$$H_T = K_1 \sum_{j=1}^{n} D_j H_j \qquad \text{(Eq. 147-4)}$$

Where:

H_T = Net heating value of the sample, megajoules per standard cubic meter; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 millimeters of mercury (30 inches of mercury), but the standard temperature for determining the volume corresponding to 1 mole is 20 °C;

K_1 = 1.740×10^{-7} (parts per million by volume)$^{-1}$ (gram-mole per standard cubic meter) (megajoules per kilocalories), where the standard temperature for gram mole per standard cubic meter is 20 °C;

D_j = Concentration of sample component j, in parts per million by volume on a wet basis, as measured for organics by Method 18 of appendix A of 40 CFR part 60 and measured for hydrogen and carbon monoxide by American Society for Testing and Materials (ASTM) D1946–77 (incorporated by reference as specified in § 65.13); and

H_j = Net heat of combustion of sample component j, kilocalories per gram-mole at 25 °C and 760 millimeters of mercury (30 inches of mercury). The heats of combustion of stream components may be determined using ASTM D2382–76 (incorporated by reference as specified in § 65.13) if published values are not available or cannot be calculated.

(iii) The actual exit velocity of a flare shall be determined by dividing

the volumetric flow rate (in units of standard temperature and pressure), as determined by Method 2, 2A, 2C, or 2D of appendix A of 40 CFR part 60 as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(iv) Flare flame or pilot monitors, as applicable, shall be operated during any flare compliance determination.

(c) *Flare monitoring requirements.* Where a flare is used, a device (including but not limited to a thermocouple, ultraviolet beam sensor, or infrared sensor) capable of continuously detecting that at least one pilot flame or the flare flame is present is required. Flame monitoring and compliance records shall be kept as specified in § 65.159(c) and (d).

§ 65.148 Incinerators.

(a) *Incinerator equipment and operating requirements.* (1) Owners or operators using incinerators to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirement as specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(A) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) Incinerators used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Incinerator performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart and except as specified in § 65.157(b) and paragraph (b)(2) of this section, the owner or operator shall conduct an initial performance test of any incinerator used to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required for equipment leaks.

(2) An owner or operator is not required to conduct a performance test for a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O. The owner or operator shall report as specified in § 65.165(f).

(3) Unless already permitted by the applicable title V permit, if an owner or operator elects to use an incinerator to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, an incinerator performance test shall be performed using the methods specified in § 65.157 and within 180 days if required by paragraph (b)(1) of this section. The performance test report shall be submitted to the Administrator within 60 days of completing the determination as provided in § 65.164(b)(2). If an owner or operator elects to use an incinerator to replace an existing recovery device that is used on a Group 2A process vent, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) and submit the notification specified in § 65.167(a).

(c) *Incinerator monitoring requirements.* (1) Where an incinerator is used, a temperature monitoring device capable of providing a continuous record that meets the provisions specified in paragraph (c)(1)(i) or (ii) of this section is required. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(i) Where an incinerator other than a catalytic incinerator is used, a temperature monitoring device shall be installed in the fire box or in the ductwork immediately downstream of the fire box in a position before any substantial heat exchange occurs.

(ii) Where a catalytic incinerator is used, temperature monitoring devices

shall be installed in the gas stream immediately before and after the catalyst bed.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the incinerator. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications of § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.149 Boilers and process heaters.

(a) *Boiler and process heater equipment and operating requirements.* (1) Owners or operators using boilers and process heaters to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirement as specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(B) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) The vent stream shall be introduced into the flame zone of the boiler or process heater.

(3) Boilers and process heaters used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Boiler and process heater performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart, and except as specified in § 65.157(b) and paragraph (b)(2) of this section, the owner or operator shall conduct an initial performance test of any boiler or process heater used to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) An owner or operator is not required to conduct a performance test when any of the control devices specified in paragraphs (b)(2)(i) through (iii) of this section are used. The owner or operator shall report as specified in § 65.165(f).

(i) A boiler or process heater with a design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater.

(ii) A boiler or process heater into which the vent stream is introduced with the primary fuel or is used as the primary fuel.

(iii) A boiler or process heater burning hazardous waste for which the owner or operator meets either of the following requirements:

(A) The boiler or process heater has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(B) The boiler or process heater has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(3) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a boiler or process heater to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, a boiler or process heater performance test shall be performed using the methods specified in §§ 65.157 and 65.158 within 180 days if required by paragraph (b)(1) of this section. The performance test report shall be submitted to the Administrator within 60 days of completing the determination as provided in § 65.164(b)(2). If an owner or operator elects to use a boiler or process heater to replace an existing recovery device that is used on a Group 2A process vent, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) and submit the notification specified in § 65.167(a).

(c) *Boiler and process heater monitoring requirements.* (1) Where a boiler or process heater of less than 44 megawatts

(150 million British thermal units per hour) design heat input capacity is used and the regulated vent stream is not introduced as or with the primary fuel, a temperature monitoring device in the fire box capable of providing a continuous record is required. Any boiler or process heater in which all vent streams are introduced with primary fuel or are used as the primary fuel is exempt from monitoring. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) Where monitoring is required, the owner or operator shall establish a range for monitored parameters that indicates proper operation of the boiler or process heater. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications of § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.150 Absorbers used as control devices.

(a) *Absorber equipment and operating requirements.* (1) Owners or operators using absorbers to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirements as specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(A) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) Absorbers used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Absorber performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart and except as specified in § 65.157(b), the owner or operator shall conduct an initial performance test of any absorber used as a control device to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use an absorber to replace an existing recovery or control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, either of the following provisions, as applicable, shall be followed:

(i) *Replace final recovery device.* If an owner or operator elects to replace the final recovery device on a process vent with an absorber used as a control device, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b).

(ii) *Replace control device.* If an owner or operator elects to replace a control device on a Group 1 process vent or a high-throughput transfer rack with an absorber used as a control device, the owner or operator shall perform a performance test using the methods specified in §§ 65.157 and 65.158 within 180 days. The performance test report shall be submitted to the Administrator within 60 days of completing the test as provided in § 65.164(b)(2).

(c) *Absorber monitoring requirements.* (1) Where an absorber is used as a control device, either an organic monitoring device capable of providing a continuous record or a scrubbing liquid temperature monitoring device and a specific gravity monitoring device, each capable of providing a continuous record, shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) The owner or operator shall establish a range for monitored parameters

that indicates proper operation of the absorber. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications of § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.151 Condensers used as control devices.

(a) *Condenser equipment and operating requirements.* (1) Owners or operators using condensers to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirements as specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(A) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) Condensers used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Condenser performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart and except as specified in § 65.157(b), the owner or operator shall conduct an initial performance test of any condenser used as a control device to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a condenser to replace an existing recovery or control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, either of the following provisions, as applicable, shall be followed:

(i) *Replace final recovery device.* If an owner or operator elects to replace the final recovery device on a process vent with a condenser used as a control device, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b).

(ii) *Replace control device.* If an owner or operator elects to replace a control device on a Group 1 process vent or a high-throughput transfer rack with a condenser used as a control device, the owner or operator shall perform a performance test using the methods specified in §§ 65.157 and 65.158 within 180 days. The performance test report shall be submitted to the Administrator within 60 days of completing the test as provided in § 65.164(b)(2).

(c) *Condenser monitoring requirements.* (1) Where a condenser is used as a control device, an organic monitoring device capable of providing a continuous record or a condenser exit (product side) temperature monitoring device capable of providing a continuous record shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the condenser. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.152 Carbon adsorbers used as control devices.

(a) *Carbon adsorber equipment and operating requirements.* (1) Owners or operators using carbon adsorbers to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirements as

specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(A) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) Carbon adsorbers used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Carbon adsorber performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart and except as specified in § 65.157(b), the owner or operator shall conduct an initial performance test of any carbon absorber used as a control device to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a carbon adsorber to replace an existing recovery or control device at a later date, the owner or operator shall notify the Administrator either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, either of the following provisions, as applicable, shall be followed:

(i) *Replace final recovery device.* If an owner or operator elects to replace the final recovery device on a process vent with a carbon adsorber used as a control device, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b).

(ii) *Replace control device.* If an owner or operator elects to replace a control device on a Group 1 process vent or high-throughput transfer rack with a carbon adsorber used as a control device, the owner or operator shall perform a performance test using the methods specified in §§ 65.157 and 65.158 within 180 days. The performance test report shall be submitted to the Administrator within 60 days of completing the test as provided in § 65.164(b)(2).

(c) *Carbon adsorber monitoring requirements.* (1) Where a carbon adsorber is used as a control device, an organic monitoring device capable of providing a continuous record, or an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent or better capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle, and a carbon-bed temperature monitoring device capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle, shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the carbon adsorber. Where the regeneration stream flow and carbon-bed temperature are monitored, the range shall be in terms of the total regeneration stream flow per regeneration cycle and the temperature of the carbon-bed determined within 15 minutes of the completion of the regeneration cooling cycle. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.153 Absorbers, condensers, carbon adsorbers, and other recovery devices used as final recovery devices.

(a) *Final recovery device equipment and operating requirements.* (1) Owners or operators using a recovery device to meet the requirement to operate and maintain a TRE above 1.0 as specified in § 65.63(a)(3) for process vents shall meet the requirements of this section.

(2) Recovery devices used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Recovery device performance test requirements.* (1) There are no performance test requirements for recovery devices. Records of TRE index value determination shall be generated as specified in § 65.160(c).

(2) *Replace a final recovery device or control device.* Unless already permitted by the applicable title V permit, if an owner or operator elects to use a recovery device to replace an existing final recovery or control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b).

(c) *Recovery device monitoring requirements.* (1) Where an absorber is the final recovery device in the recovery system and the TRE index value is between 1.0 and 4.0, either an organic monitoring device capable of providing a continuous record, or a scrubbing liquid temperature monitoring device and a specific gravity monitoring device, each capable of providing a continuous record, shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) Where a condenser is the final recovery device in the recovery system and the TRE index value is between 1.0 and 4.0, an organic monitoring device capable of providing a continuous record, or a condenser exit (product side) temperature monitoring device capable of providing a continuous record, shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(3) Where a carbon adsorber is the final recovery device in the recovery system and the TRE index value is between 1.0 and 4.0, an organic monitoring device capable of providing a continuous record, or an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent or better capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle, and a carbon-bed temperature monitoring device capable of recording the carbon-bed temperature after each regeneration and within 15 minutes of completing any cooling cycle, shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(4) Unless previously approved by the Administrator under an applicable standard prior to the implementation date of this part, as specified in § 65.1(f), if an owner or operator uses a recovery device other than those listed in this subpart, the owner or operator shall submit a description of planned monitoring, reporting and recordkeeping procedures as required under § 65.162(e). The Administrator will approve or deny the proposed monitoring, reporting and recordkeeping requirements as part of the review of the submission or permit application or by other appropriate means.

(5) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the recovery device. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart. Where the regeneration stream flow and carbon-bed temperature are monitored, the range shall be in terms of the total regeneration stream flow per regeneration cycle, and the temperature of the carbon-bed determined within 15 minutes of the completion of the regeneration cooling cycle.

§ 65.154 Halogen scrubbers and other halogen reduction devices.

(a) *Halogen scrubber and other halogen reduction device equipment and operating requirements.* (1) An owner or operator

of halogen scrubbers and other halogen reduction devices subject to this subpart shall reduce the overall emissions of hydrogen halides and halogens by 99 percent, or reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilograms per hour (0.99 pound per hour) as specified in § 65.63(b) for process vents, or § 65.83(b) for transfer racks, as applicable, and shall meet the requirements of this section.

(2) Halogen scrubbers and other halogen reduction devices used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Halogen scrubber and other halogen reduction device performance test requirements.* Unless an initial performance test was previously conducted and submitted under the referencing subpart, an owner or operator of a combustion device followed by a halogen scrubber or other halogen reduction device to control halogenated vent streams in accordance with § 65.63(b)(1) for process vents, or § 65.83(b)(1) for transfer racks shall conduct an initial performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164.

(c) *Halogen scrubber and other halogen reduction device monitoring requirements.* (1) Where a halogen scrubber is used, the monitoring equipment specified in paragraphs (c)(1)(i) and (ii) of this section is required for the scrubber. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(i) A pH monitoring device capable of providing a continuous record shall be installed to monitor the pH of the scrubber effluent.

(ii) A flow meter capable of providing a continuous record shall be located at the scrubber influent for liquid flow. Gas stream flow shall be determined using one of the following procedures:

(A) The owner or operator may determine gas stream flow using the design blower capacity, with appropriate adjustments for pressure drop.

(B) If the scrubber is subject to regulations in 40 CFR parts 264 through 266 that have required a determination of the liquid to gas (L/G) ratio prior to the applicable compliance date for the chemical manufacturing process unit of which it is part, as specified in 40 CFR 63.100(k) (if the referencing subpart is 40 CFR part 63, subpart F), or prior to the implementation date as specified in § 65.1(f) (for all other referencing subparts), the owner or operator may determine gas stream flow by the method that had been utilized to comply with those regulations. A determination that was conducted prior to that compliance date may be utilized to comply with this subpart if it is still representative.

(C) The owner or operator may prepare and implement a gas stream flow determination plan that documents an appropriate method that will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method that will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than startups, shutdowns, or malfunctions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in § 65.5.

(2) Where a halogen reduction device other than a scrubber is used, the procedures in § 65.162(e) shall be followed to establish monitoring parameters.

(3) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the scrubber or other halogen reduction device. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1), or upon existing

ranges or limits established under a referencing subpart.

§ 65.155 Other control devices.

(a) *Other control device equipment and operating requirements.* (1) Owners or operators using a control device other than one listed in §§ 65.147 through 65.152 to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirements specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(A) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) Other control devices used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Other control device performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart, an owner or operator of a control device other than those specified in §§ 65.147 through 65.152, to comply with § 65.63(a)(2) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, shall perform an initial performance test according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use another control device to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, another control device performance test shall be performed using the methods specified in §§ 65.157 and 65.158 within 180 days if required by paragraph (b)(1) of this section. The performance test report shall be submitted to the Administrator within 60 days of completing the determination as provided in § 65.164(b)(2). If an owner or operator elects to use a control device to replace an existing recovery device that is used on a Group 2A process vent, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) and submit the notification specified in § 65.167(a).

(c) *Other control device monitoring requirements.* (1) Unless previously submitted and approved under the referencing subpart, if an owner or operator uses a control device other than those listed in this subpart, the owner or operator shall submit a description of planned monitoring, reporting, and recordkeeping procedures as required under § 65.162(e). The Administrator will approve, deny, or modify based on the reasonableness of the proposed monitoring, reporting, and recordkeeping requirements as part of the review of the submission or permit application or by other appropriate means.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the control device. To establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.156 General monitoring requirements for control and recovery devices.

(a) *General monitoring requirement applicability.* (1) This section applies to the owner or operator of a regulated source required to monitor under this subpart.

(2) Flares subject to § 65.147(c) are not subject to the requirements of this section.

(3) Flow indicators are not subject to the requirements of this section.

(b) *Conduct of monitoring.* (1) Monitoring shall be conducted as set forth in this section and in the relevant sections of this subpart unless either of the following provisions applies:

(i) The Administrator specifies or approves the use of minor or intermediate changes in the specified monitoring requirements or procedures as provided in § 65.7(b), (c), and (d); or

(ii) The Administrator specifies or approves the use of major changes in the specified monitoring requirements or procedures as provided in § 65.7(b), (c), and (d).

(2) When one CPMS is used as a backup to another CPMS, the owner or operator shall report the results from the CPMS used to meet the monitoring requirements of this subpart. If both such CPMS are used during a particular reporting period to meet the monitoring requirements of this part, then the owner or operator shall report the results from each CPMS for the relevant compliance period.

(c) *Operation and maintenance of continuous parameter monitoring systems.* (1) All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturers specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(2) The owner or operator of a regulated source shall maintain and operate each CPMS as specified in this section or in a relevant subpart and in a manner consistent with good air pollution control practices.

(i) The owner or operator of a regulated source shall ensure the immediate repair or replacement of CPMS parts to correct ''routine'' or otherwise predictable CPMS malfunctions. The necessary parts for routine repairs of the affected equipment shall be readily available.

(ii) Except for Group 2A process vents, if the startup, shutdown, and malfunction plan is followed during a CPMS startup, shutdown, or malfunction and the CPMS is repaired immediately, this action shall be reported in the semiannual startup, shutdown, and malfunction report required under § 65.6(c).

(iii) The Administrator's determination of whether acceptable operation and maintenance procedures are being used for the CPMS will be based on information that may include, but is not limited to, review of operation and maintenance procedures, operation and maintenance records, manufacturer's recommendations and specifications, and inspection of the CPMS.

(3) All CPMS shall be installed and operational, and the data verified as specified in this subpart either prior to or in conjunction with conducting performance tests. Verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(4) All CPMS shall be installed such that representative measurements of parameters from the regulated source are obtained.

(5) In accordance with § 65.3(a)(3), except for system breakdowns, repairs, maintenance periods, instrument adjustments or checks to maintain precision and accuracy, calibration checks, and zero and span adjustments, all CPMS shall be in continuous operation when emissions are being routed to the monitored device.

(d) Except for Group 2A process vents, the parameter monitoring data shall be used to determine compliance with the required operating conditions for the monitored control devices. For each excursion, except for excused excursions and the excursions described in paragraph (d)(3) of this section, the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating conditions.

(1) An excursion means any of the three cases listed in paragraphs (d)(1)(i) through (iii) of this section. For a control device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraph (d)(1)(i), (ii), or (iii) of this section, this is considered a single excursion for the day for the control device.

(i) When the daily average value of one or more monitored parameters is outside the permitted range.

(ii) When the period of control or recovery device operation is 4 hours or greater in an operating day, and monitoring data are insufficient to constitute a valid hour of data for at least 75 percent of the operating hours.

(iii) When the period of control or recovery device operation is less than 4 hours in an operating day, and more than 1 hour during the period of operation does not constitute a valid hour of data due to insufficient monitoring data.

(iv) Monitoring data are insufficient to constitute a valid hour of data as used in paragraphs (d)(1)(ii) and (iii) of this section, if measured values are unavailable for any of the 15-minute periods within the hour. For data compression systems approved under § 65.162(d)(4), monitoring data are insufficient to calculate a valid hour of data if there are less than four data values recorded during the hour.

(2) One excused excursion for each control device or recovery device for each semiannual period is allowed.

(3) The following excursions are not violations and do not count as excused excursions:

(i) Excursions which occur during periods of startup, shutdown, and malfunction, when the source is being operated during such periods to minimize emissions in accordance with § 65.3(a)(3).

(ii) Excursions which occur due to failure to collect a valid hour of data during periods of startup, shutdown, and malfunction, when the source is being operated during such periods in accordance with § 65.3(a)(3).

(iii) Excursions which occur during periods of nonoperation of the regulated source or portion thereof, resulting in cessation of the emissions to which monitoring applies.

(4) Nothing in paragraph (d) of this section shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this part.

(5) Paragraph (d) of this section applies to emission points and control devices for which continuous monitoring is required by this subpart, and to alternatives to continuous monitoring systems such as provided in § 65.162(d)(3) and (d)(4). Paragraph (d)(3) of this section also applies to emission points and control devices which are not subject to continuous monitoring requirements, such as inspections of the closed vent system.

(e) *Alternative monitoring parameter.* An owner or operator may request approval to monitor control, recovery, halogen scrubber, or halogen reduction device operating parameters other than those specified in this subpart by following the procedures specified in § 65.162(e).

[65 FR 78285, Dec. 14, 2000, as amended at 71 FR 20472, Apr. 20, 2006]

§ 65.157 Performance test and flare compliance determination requirements.

(a) *Performance tests and flare compliance determinations.* Where §§ 65.145 through 65.155 require, or the owner or operator elects to conduct, a performance test of a nonflare control device or a halogen reduction device, or a compliance determination for a flare, the requirements of paragraphs (b) through (d) of this section apply.

(b) *Prior test results and waivers.* Initial performance tests and initial flare compliance determinations are required only as specified in this subpart.

(1) Unless requested by the Administrator, an owner or operator is not required to conduct a performance test or flare compliance determination under this subpart if a prior performance test or compliance determination was conducted using the same methods specified in § 65.158, and either no process changes have been made since the test or the owner or operator can demonstrate to the Administrator's satisfaction that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(2) Individual performance tests and flare compliance determinations may be waived upon written application to the Administrator per § 65.164(b)(3) if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, or the source is being operated under an extension of compliance under 40 CFR part 63, or a waiver of compliance under 40 CFR part 61, or the owner or operator has requested an extension of compliance under 40 CFR part 63, or a waiver of compliance under 40 CFR part 61, and the Administrator is still considering that request.

(3) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notification is given to the owner or operator of the source.

(c) *Performance tests and flare compliance determinations schedule.* Except as specified in paragraphs (c)(1)(viii), (c)(1)(ix), (c)(1)(x), and (c)(1)(xi) of this section, unless a waiver of performance testing or flare compliance determination is obtained under this section or the conditions of another subpart of this part, the owner or operator shall perform such tests specified in the following:

(1) Unless a waiver of performance testing or flare compliance determination is obtained under this section or the conditions of another subpart of this part, the owner or operator shall perform such tests specified in the following:

(i) Within 180 days after the effective date of a relevant standard for a new source that has an initial startup date before the effective date of that standard; or

(ii) Within 180 days after initial startup for a new source that has an initial startup date after the effective date of a relevant standard; or

(iii) Within 180 days after the compliance date specified in a referencing subpart for an existing source or within 180 days after startup of an existing source if the source begins operation after the effective date of the relevant 40 CFR part 63 emission standard; or

(iv) Within 180 days after the compliance date for an existing source subject to an emission standard established pursuant to section 112(f) of the Act; or

(v) Within 180 days after the termination date of the source's extension of compliance or a waiver of compliance for an existing source that obtains an extension of compliance under 40 CFR 63.6(i) or a waiver of compliance under 40 CFR 61.11; or

(vi) Within 180 days after the compliance date for a new source, subject to an emission standard established pursuant to section 112(f) of the Act, for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of the relevant standard established pursuant to section 112(f) of the Act (see 40 CFR 63.6(b)(4)); or

(vii) When a promulgated emission standard under 40 CFR part 63 is more stringent than the standard that was proposed (see 40 CFR 63.6(b)(3)), the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the proposal and promulgation dates of the standard shall comply with performance testing requirements within 180 days after the standard's effective date or within 180 days after startup of the source, whichever is later. If the promulgated standard is more stringent than the proposed standard, the owner or operator may choose to demonstrate compliance initially with either the proposed or the promulgated standard. If the owner or operator chooses to comply with the proposed standard initially, the owner or operator shall conduct a second performance test within 3 years and 180 days after the effective date of the standard, or after startup of the source, whichever is later, to demonstrate compliance with the promulgated standard.

(viii) If a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends to assert a claim of force majeure, the owner or operator shall notify the Administrator, in writing as soon as practicable following the date the owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline, but the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall occur as soon as practicable.

(ix) The owner or operator shall provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to

minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.

(x) The decision as to whether or not to grant an extension to the performance test deadline is solely within the discretion of the Administrator. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.

(xi) Until an extension of the performance test deadline has been approved by the Administrator under paragraphs (c)(1)(viii), (c)(1)(ix), and (c)(1)(x) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.

(2) The Administrator may require an owner or operator to conduct performance tests and compliance determinations at the regulated source at any time when the action is authorized by section 114 of the Act.

(d) *Performance testing facilities.* If required to do performance testing, the owner or operator of each new regulated source and, at the request of the Administrator, the owner or operator of each existing regulated source, shall provide performance testing facilities as specified in the following:

(1) Sampling ports adequate for test methods applicable to such source. This includes, as applicable, the following requirements:

(i) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(ii) Providing a stack or duct free of cyclonic flow during performance tests as demonstrated by applicable test methods and procedures;

(2) Safe sampling platform(s);

(3) Safe access to sampling platform(s);

(4) Utilities for sampling and testing equipment; and

(5) Any other facilities that the Administrator deems necessary for safe and adequate testing of a source.

[65 FR 78285, Dec. 14, 2000, as amended at 72 FR 48942, Aug. 27, 2007; 72 FR 73626, Dec. 28, 2007]

§ 65.158 Performance test procedures for control devices.

(a) *General procedures.* Where §§ 65.145 through 65.155 require, or the owner or operator elects to conduct, a performance test of a control device or a halogen reduction device, an owner or operator shall comply with the requirements of (a)(1) through (3) of this section, as applicable.

(1) Performance tests shall be conducted at maximum representative operating conditions for the process unless the Administrator specifies or approves alternate operating conditions. During the performance test, an owner or operator may operate the control or halogen reduction device at maximum or minimum representative operating conditions for monitored control or halogen reduction device parameters, whichever results in lower emission reduction. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(2) Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in this subpart, in each relevant standard, and, if required, in applicable appendices of 40 CFR parts 51, 60, 61, and 63 unless the Administrator allows revisions to the test methods as specified in one or more of the following five paragraphs:

(i) The Administrator specifies or approves, in specific cases, the use of a test method with minor or intermediate changes in methodology; or

(ii) The Administrator approves the use of a major change to a test method, the results of which the Administrator has determined to be adequate for indicating whether a specific regulated source is in compliance; or

(iii) Intermediate and major changes to a test method shall be validated using the applicable procedures of Method 301 of appendix A of 40 CFR part 63; or

(iv) The Administrator waives the requirement for the performance test as provided in § 65.157(b)(2) because the owner or operator of a regulated source has demonstrated by other means to the Administrator's satisfaction that the regulated source is in compliance with the relevant standard; or

(v) The Administrator approves the use of an equivalent method.

(3) Each performance test shall consist of three separate runs using the applicable test method. Except as provided in paragraphs (a)(3)(i) and (ii) of this section, each run shall be conducted for at least 1 hour and under the conditions specified in this section. For the purpose of determining compliance with an applicable standard, the arithmetic mean of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Administrator's approval, be determined using the arithmetic mean of the results of the two other runs.

(i) For control devices that are used to control emissions from high-throughput transfer racks, and that are capable of continuous vapor processing but do not handle continuous emissions or emissions from high-throughput transfer racks that load simultaneously from multiple loading arms, each run shall represent at least one complete tank truck or tank car loading period during which regulated materials are loaded, and samples shall be collected using integrated sampling or grab samples taken at least four times per hour at approximately equal intervals of time, such as 15-minute intervals.

(ii) For intermittent vapor processing systems used for controlling high-throughput transfer rack emissions that do not handle continuous emissions or multiple loading arms of a high-throughput transfer rack that load simultaneously, each run shall represent at least one complete control device cycle, and samples shall be collected using integrated sampling or grab samples taken at least four times per hour at approximately equal intervals of time, such as 15-minute intervals.

(b) *Test methods.* Where §§ 65.145 through 65.155 require, or the owner or operator elects to conduct, a performance test of a control device or a halogen reduction device, an owner or operator shall conduct that performance test using the procedures in paragraphs (b)(1) through (4) of this section, as applicable. The regulated material concentration and percent reduction may be measured as either total regulated material or as TOC (minus methane and ethane) according to the procedures specified.

(1) Method 1 or 1A of appendix A of 40 CFR part 60 as appropriate, shall be used for selection of the sampling sites.

(i) For determination of compliance with a percent reduction requirement of total regulated material or TOC, sampling sites shall be located at the inlet of the control device as specified in the following and at the outlet of the control device:

(A) For process vents, the control device inlet sampling site shall be located after the final product recovery device.

(B) If a vent stream is introduced with the combustion air or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts (150 million British thermal units per hour), selection of the location of the inlet sampling sites shall ensure the measurement of total regulated material or TOC (minus methane and ethane) concentrations, as applicable, in all vent streams and primary and secondary fuels introduced into the boiler or process heater.

(ii) For determination of compliance with the 20 parts per million by volume total regulated material or TOC limit in § 65.63(a)(2), § 65.83(a)(1), and 40 CFR 60.562–1(a)(1)(i)(A), the sampling site shall be located at the outlet of the control device.

(2) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of appendix A of 40 CFR part 60, as appropriate.

(3) To determine compliance with the 20 parts per million by volume total regulated material or TOC (minus

methane and ethane) limit, the owner or operator shall use Method 18 of appendix A of 40 CFR part 60 to measure either TOC minus methane and ethane or total regulated material, as applicable. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63 may be used. Method 25A may be used for transfer racks as detailed in paragraph (b)(3)(iv) of this section. The procedures specified in paragraphs (b)(3)(i) through (iv) of this section shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen.

(i) Except as provided in paragraphs (a)(3)(i) and (ii) of this section, the minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(ii) The concentration of either TOC (minus methane or ethane) or total regulated material shall be calculated according to the following two paragraphs, as appropriate:

(A) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using Equation 158–1 of this section:

$$C_{REG,\ or}\ C_{TOC} = \sum_{i-1}^{x} \frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x} \qquad \text{(Eq. 158-1)}$$

Where:

C_{REG}, or C_{TOC}= Concentration of total regulated material or concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

x = Number of samples in the sample run.

n = Number of components in the sample.

C_{ji} = Concentration of sample components j of sample i, dry basis, parts per million by volume.

(B) The total regulated material (C_{REG}) shall be computed according to equation 158–1 of this section except that only the regulated species shall be summed. Where the regulated material is organic HAP's, the list of organic HAP's provided in table 2 of 40 CFR part 63, subpart F, shall be used.

(iii) The concentration of TOC or total regulated material, as applicable, shall be corrected to 3 percent oxygen if a combustion device is the control device.

(A) The emission rate correction factor (or excess air) integrated sampling and analysis procedures of Method 3B of appendix A of 40 CFR part 60 shall be used to determine the oxygen concentration. The sampling site shall be the same as that of the regulated material or organic compound samples, and the samples shall be taken during the same time that the regulated material or organic compound samples are taken.

(B) The concentration corrected to 3 percent oxygen (C_c) shall be computed using Equation 158–2 of this section:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O2_d}\right) \qquad \text{(Eq. 158-2)}$$

Where:

C_c = Concentration of TOC or regulated material corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m = Concentration of TOC (minus methane and ethane) or regulated material, dry basis, parts per million by volume.

$\%O2_d$ = Concentration of oxygen, dry basis, percentage by volume.

(iv) Method 25A of appendix A of 40 CFR part 60 may be used for the purpose of determining compliance with the 20 parts per million by volume limit specified in § 65.83(a)(1) for transfer racks. If Method 25A of appendix A of 40 CFR part 60 is used, the following procedures shall be used to calculate the concentration of organic compounds (C_{TOC}):

(A) The principal organic HAP in the vent stream shall be used as the calibration gas.

(B) The span value for Method 25A of appendix A of 40 CFR part 60 shall be between 1.5 and 2.5 times the concentration being measured.

(C) Use of Method 25A of appendix A of 40 CFR part 60 is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(D) The concentration of TOC shall be corrected to 3 percent oxygen using the procedures and equation in paragraph (b)(3)(iii) of this section.

(4) To determine compliance with a percent reduction requirement, the owner or operator shall use Method 18 of appendix A of 40 CFR part 60; alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63 may be used. Method 25A of appendix A of 40 CFR part 60 may be used for transfer racks as detailed in paragraph (b)(4)(v) of this section. Procedures specified in paragraphs (b)(4)(i) through (v) of this section shall be used to calculate percent reduction efficiency.

(i) Except as provided in paragraphs (a)(3)(i) and (ii) of this section, the minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(ii) The mass rate of either TOC (minus methane and ethane) or total regulated material (E_i, E_o) shall be computed as applicable.

(A) Equations 158–3 and 158–4 of this section shall be used:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i \qquad \text{(Eq. 158-3)}$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o \qquad \text{(Eq. 158-4)}$$

Where:

E_i, E_o = Emission rate of TOC (minus methane and ethane) (E_{TOC}) or emission rate of total organic HAP (E_{HAP}) in the sample at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram per gram) (minute per hour), where standard temperature (gram-mole per standard cubic meter) is 20 °C.

n = Number of components in the sample.

C_{ij}, C_{oj} = Concentration on a dry basis of organic compound j in parts per million by volume of the gas stream at the inlet and outlet of the control device, respectively. If the TOC emission rate is being calculated, C_{ij} and C_{oj} include all organic compounds measured minus methane and ethane; if the total organic HAP emissions rate is being calculated, only organic HAP are included.

M_{ij}, M_{oj} = Molecular weight of organic compound j, gram per gram-mole, of the gas stream at the inlet and outlet of the control device, respectively.

Q_i, Q_o = Process vent flow rate, dry standard cubic meter per minute, at a temperature of 20 °C, at the inlet and outlet of the control device, respectively.

(B) Where the mass rate of TOC is being calculated, all organic compounds (minus methane and ethane) measured by Method 18 of appendix A of 40 CFR part 60 are summed using equations 158–3 and 158–4 of this section.

(C) Where the mass rate of total regulated material is being calculated, only the species comprising the regulated material shall be summed using equations 158–3 and 158–4 of this section. Where the regulated material is organic HAP's, the list of organic HAP's provided in table 2 of 40 CFR part 63, subpart F, shall be used.

(iii) The percent reduction in TOC (minus methane and ethane) or total regulated material shall be calculated using Equation 158–5 of this section:

$$R = \frac{E_i - E_o}{E_i}(100) \qquad \text{(Eq. 158-5)}$$

Where:

R = Control efficiency of control device, percent.

E_i = Mass rate of TOC (minus methane and ethane) or total regulated material at the inlet to the control device as calculated under paragraph (b)(4)(ii) of this section, kilograms TOC per hour or kilograms regulated material per hour.

E_o = Mass rate of TOC (minus methane and ethane) or total regulated material at the outlet of the control device, as calculated under paragraph (b)(4)(ii) of this section, kilograms TOC per hour or kilograms total regulated material per hour.

(iv) If the vent stream entering a boiler or process heater with a design capacity less than 44 megawatts (150 million British thermal units) is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total regulated material or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total regulated material in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total regulated material exiting the combustion device, respectively.

(v) Method 25A of appendix A of 40 CFR part 60 may also be used for the purpose of determining compliance with the percent reduction requirement for transfer racks.

(A) If Method 25A of appendix A of 40 CFR part 60 is used to measure the concentration of organic compounds (C_{TOC}), the principal regulated material in the vent stream shall be used as the calibration gas.

(B) An emission testing interval shall consist of each 15-minute period during the performance test. For each interval, a reading from each measurement shall be recorded.

(C) The average organic compound concentration and the volume measurement shall correspond to the same emissions testing interval.

(D) The mass at the inlet and outlet of the control device during each testing interval shall be calculated using Equation 158–6 of this section:

$$M_j = F\,K\,V_s C_t \qquad \text{(Eq. 158-6)}$$

Where:

M_j = Mass of organic compounds emitted during testing interval j, kilograms.

$F = 10^{-6}$ = Conversion factor, (cubic meters regulated material per cubic meters air) * (parts per million by volume) $^{-1}$.

K = Density, kilograms per standard cubic meter regulated material. You may use 659 kilograms per standard cubic meter regulated material. (Note: The density term cancels out when the percent reduction is calculated. Therefore, the density used has no effect. The density of hexane is given so that it can be used to maintain the units of M_j.)

V_s = Volume of air-vapor mixture exhausted at standard conditions, 20 °C and 760 millimeters of mercury (30 inches of mercury), standard cubic meters.

C_t = Total concentration of organic compounds (as measured) at the exhaust vent, parts per million by volume, dry basis.

(E) The organic compound mass emission rates at the inlet and outlet of the control device shall be calculated as follows:

$$E_i = \frac{\sum_{j=1}^{n} M_{ij}}{T} \qquad \text{(Eq. 158-7)}$$

$$E_o = \frac{\sum_{j=1}^{n} M_{oj}}{T} \qquad \text{(Eq. 158-8)}$$

Where:

E_i, E_o = Mass flow rate of organic compounds at the inlet (i) and outlet (o) of the control device, kilograms per hour.

n = Number of testing intervals.

M_{ij}, M_{oj} = Mass of organic compounds at the inlet (i) or outlet (o) during testing interval j, kilograms.

T = Total time of all testing intervals, hours.

(c) *Halogen test method.* An owner or operator using a halogen scrubber or other halogen reduction device to control halogenated vent streams in compliance with § 65.63(b)(1) for process vents, or § 65.83(b)(1) for transfer racks, who is required to conduct a performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens, as specified in § 65.154(b), shall comply with the following procedures:

(1) For an owner or operator determining compliance with the percent reduction of total hydrogen halides and halogens, sampling sites shall be located at the inlet and outlet of the scrubber or other halogen reduction device used to reduce halogen emissions. For an owner or operator determining compliance with the less than 0.45 kilogram per hour (0.99 pounds per hour) outlet emission limit for total hydrogen halides and halogens, the sampling site shall be located at the outlet of

the scrubber or other halogen reduction device and prior to any releases to the atmosphere.

(2) Except as provided in paragraph (a)(2) of this section, Method 26 or Method 26A of appendix A of 40 CFR part 60 shall be used to determine the concentration, in milligrams per dry standard cubic meter, of total hydrogen halides and halogens that may be present in the vent stream. The mass emissions of each hydrogen halide and halogen compound shall be calculated from the measured concentrations and the gas stream flow rate.

(3) To determine compliance with the percent removal efficiency, the mass emissions for any hydrogen halides and halogens present at the inlet of the halogen reduction device shall be summed together. The mass emissions of the compounds present at the outlet of the scrubber or other halogen reduction device shall be summed together. Percent reduction shall be determined by comparison of the summed inlet and outlet measurements.

(4) To demonstrate compliance with the less than 0.45 kilogram per hour (0.99 pound per hour) outlet emission limit, the test results must show that the mass emission rate of total hydrogen halides and halogens measured at the outlet of the scrubber or other halogen reduction device is below 0.45 kilogram per hour (0.99 pound per hour).

§ 65.159 Flare compliance determination and monitoring records.

(a) *Conditions of flare compliance determination records.* Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of flare compliance determinations performed pursuant to § 65.147(b).

(b) *Flare compliance determination records.* When using a flare to comply with this subpart, record the following information for each flare compliance determination performed pursuant to § 65.147(b):

(1) Flare design (*i.e.*, steam-assisted, air-assisted, or nonassisted);

(2) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the flare compliance determination; and

(3) All periods during the flare compliance determination when all pilot flames are absent or, if only the flare flame is monitored, all periods when the flare flame is absent.

(c) *Monitoring records.* Each owner or operator shall keep up to date and readily accessible hourly records of whether the flare flame or pilot flame monitors are continuously operating during the hour and whether the flare flame or at least one pilot flame is continuously present during the hour. For transfer racks, hourly records are required only while the transfer vent stream is being vented.

(d) *Compliance records.* (1) Each owner or operator shall keep records of the times and duration of all periods during which the flare flame and all the pilot flames are absent. This record shall be submitted in the periodic reports as specified in § 65.166(c).

(2) Each owner or operator shall keep records of the times and durations of all periods during which the flare flame or pilot flame monitors are not operating.

§ 65.160 Performance test and TRE index value determination records.

(a) *Availability of performance tests records.* Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests performed pursuant to § 65.148(b), § 65.149(b), § 65.150(b), § 65.151(b), § 65.152(b), § 65.154(b), or § 65.155(b).

(b) *Nonflare control device and halogen reduction device performance test records.* Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of the data specified in paragraphs (b)(1) through (3) of this section, as applicable, measured during each performance test performed pursuant to § 65.148(b), § 65.149(b), § 65.150(b), § 65.151(b), § 65.152(b), § 65.154(b), or § 65.155(b), and also include that data in the Initial Compliance Status Report as specified in § 65.164(a). The same data specified in paragraphs (b)(1) through (3) of this section, as applicable, shall

be submitted in the reports of all subsequently required performance tests where either the emission control efficiency of a nonflare control device or the outlet concentration of TOC or regulated material is determined.

(1) *Nonflare combustion device.* Where an owner or operator subject to the provisions of paragraph (b) of this section seeks to demonstrate compliance with a percent reduction requirement or a parts per million by volume requirement using a nonflare combustion device, the following information shall be recorded:

(i) For thermal incinerators, record the fire box temperature measured at least every 15 minutes and averaged over the full period of the performance test.

(ii) For catalytic incinerators, record the upstream and downstream temperatures and the temperature difference across the catalyst bed measured at least every 15 minutes and averaged over the full period of the performance test.

(iii) For an incinerator, record the percent reduction of regulated material or TOC achieved by the incinerator determined as specified in § 65.158(b)(4), as applicable, or the concentration of regulated material or TOC (parts per million by volume, by compound) determined as specified in § 65.158(b)(3) at the outlet of the incinerator.

(iv) For a boiler or process heater, record a description of the location at which the vent stream is introduced into the boiler or process heater.

(v) For boilers or process heaters with a design heat input capacity less than 44 megawatts (150 British thermal units per hour) and where the vent stream is not introduced with or as the primary fuel, record the fire box temperature measured at least every 15 minutes and averaged over the full period of the performance test.

(vi) For a boiler or process heater with a design heat input capacity of less than 44 megawatts (150 British thermal units per hour) and where the vent stream is not introduced with or as the primary fuel, record the percent reduction of regulated material or TOC, or the concentration of regulated material or TOC (parts per million by volume, by compound) determined as specified in § 65.158(b)(3) at the outlet of the combustion device.

(2) *Other nonflare control devices.* Where an owner or operator seeks to use an absorber, condenser, or carbon adsorber as a control device, the following information shall be recorded, as applicable:

(i) Where an absorber is used as the control device, the exit specific gravity and average exit temperature of the absorbing liquid measured at least every 15 minutes and averaged over the same time period as the performance test (both measured while the vent stream is normally routed and constituted); or

(ii) Where a condenser is used as the control device, the average exit (product side) temperature measured at least every 15 minutes and averaged over the same time period as the performance test while the vent stream is routed and constituted normally; or

(iii) Where a carbon adsorber is used as the control device, the total regeneration stream mass flow during each carbon-bed regeneration cycle during the period of the performance test measured at least every 15 minutes and averaged over the same time period as the performance test (full carbon-bed cycle), and temperature of the carbon-bed after each regeneration during the period of the performance test (and within 15 minutes of completion of any cooling cycle or cycles); or

(iv) As an alternative to paragraph (b)(2)(i), (ii), or (iii) of this section, the concentration level or reading indicated by the organics monitoring device at the outlet of the absorber, condenser, or carbon adsorber measured at least every 15 minutes and averaged over the same time period as the performance test while the vent stream is normally routed and constituted; and

(v) For an absorber, condenser, or carbon adsorber used as a control device, the percent reduction of regulated material or TOC achieved by the control device determined as specified in § 65.158(b)(4), or the concentration of regulated material or TOC (parts per million by volume, by compound) determined as specified in § 65.158(b)(3) at the outlet of the control device.

(3) *Halogen reduction devices.* When using a scrubber following a combustion device to control a halogenated

vent stream, record the following information:

(i) The percent reduction or scrubber outlet mass emission rate of total hydrogen halides and halogens as specified in §65.158(c);

(ii) The pH of the scrubber effluent averaged over the time period of the performance test; and

(iii) The scrubber liquid-to-gas ratio averaged over the time period of the performance test.

(c) *Recovery device monitoring records during the TRE index value determination.* For Group 2A process vents, the following records, as applicable, shall be maintained and reported as specified in §65.164(a)(3):

(1) Where an absorber is the final recovery device in the recovery system, the exit specific gravity and average exit temperature of the absorbing liquid measured at least every 15 minutes and averaged over the same time period as the TRE index value determination (both measured while the vent stream is normally routed and constituted); or

(2) Where a condenser is the final recovery device in the recovery system, the average exit (product side) temperature measured at least every 15 minutes and averaged over the same time period as the TRE index value determination while the vent stream is routed and constituted normally; or

(3) Where a carbon adsorber is the final recovery device in the recovery system, the total regeneration stream mass flow measured at least every 15 minutes and averaged over the same time during each carbon-bed regeneration cycle during the period of the TRE index value determination, and temperature of the carbon-bed after each regeneration during the period of the TRE index value determination (and within 15 minutes of completion of any cooling cycle or cycles); or

(4) As an alternative to paragraph (c)(1), (2), or (3) of this section, the concentration level or reading indicated by an organics monitoring device at the outlet of the absorber, condenser, or carbon adsorber measured at least every 15 minutes and averaged over the same time period as the TRE index value determination while the vent stream is normally routed and constituted; and

(5) All measurements and calculations performed to determine the TRE index value of the vent stream as specified in §65.64(h).

(d) *Halogen concentration records.* Record the halogen concentration in the vent stream determined according to the procedures as specified in §65.63(b) or §65.83(b). Submit this record in the Initial Compliance Status Report, as specified in §65.165(d). If the owner or operator designates the vent stream as halogenated, then this shall be recorded and reported in the Initial Compliance Status Report.

§65.161 Continuous records and monitoring system data handling.

(a) *Continuous records.* Where this subpart requires a monitoring device capable of providing a continuous record, the owner or operator shall maintain the record specified in paragraph (a)(1), (2), (3), or (4) of this section, as applicable (The provisions of this section apply to owners and operators of storage vessels and low-throughput transfer racks only if specified by the applicable monitoring plan established under §65.165(c)(1) and (2)):

(1) A record of values measured at least once every 15 minutes or each measured value for systems that measure more frequently than once every 15 minutes; or

(2) A record of block average values for 15-minute or shorter periods calculated from all measured data values during each period or from at least one measured data value per minute if measured more frequently than once per minute; or

(3) For data collected from an automated continuous parameter monitoring system, a record of block hourly average values calculated from each 15-minute block average period or from at least one measured value per minute if measured more frequently than once per minute, and a record of the most recent 3 valid hours of continuous (15-minute or shorter) records meeting the requirements of paragraph (a)(1) or (2) of this section. Records meeting the requirements of paragraph (a)(1) or (2) of this section shall also be kept for all periods that include CPMS breakdown

or malfunction. During these periods, it is not necessary to calculate hourly averages; or

(4) A record as required by an alternative approved under § 65.162(d).

(b) *Excluded data.* Monitoring data recorded during the following periods shall not be included in any average computed to determine compliance under this subpart:

(1) Monitoring system breakdowns, repairs, preventive maintenance, calibration checks, and zero (low-level) and high-level adjustments;

(2) Periods of non-operation of the process unit (or portion thereof), resulting in cessation of the emissions to which the monitoring applies; and

(3) Startups, shutdowns, and malfunctions.

(c) *Records of daily averages.* In addition to the records specified in paragraph (a) of this section, owners or operators shall also keep records as specified in paragraphs (c)(1) and (2) of this section unless an alternative monitoring or recordkeeping system has been requested and approved under § 65.162(d).

(1) Except as specified in paragraph (c)(2) of this section, daily average values of each continuously monitored parameter shall be calculated for each operating day. Data meeting the specifications of paragraph (b) of this section shall not be included in the average. The data shall be reported in the periodic report as specified in § 65.166(f), if applicable.

(i) The daily average shall be calculated as the average of all values for a monitored parameter recorded during the operating day as specified in paragraph (a)(1), (2), or (3) of this section. The average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per operating day if operation is not continuous (for example, for high-throughput transfer racks, the average shall cover periods of loading). If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the daily average instead of all measured values.

(ii) The operating day shall be the period defined in the operating permit or the Initial Compliance Status Report. It may be from midnight to midnight or another daily period.

(2) If all monitored parameter values recorded under paragraph (a)(1), (2), or (3) of this section, during an operating day are within the range established in the Initial Compliance Status Report or in the operating permit, the owner or operator does not have to calculate a daily average value for the operating day and may record that all values were within the range. The owner or operator must continue to retain the raw data, 15-minute averages, or the hourly averages required under paragraph (a)(1), (2), or (3) of this section.

(d) *Valid data.* Unless determined to be excluded data according to paragraph (b) of this section, the data collected pursuant to paragraphs (a) through (c) of this section shall be considered valid.

(e) *Alternative recordkeeping.* For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements in paragraph (e)(1) or (2) of this section as alternatives to the continuous parameter monitoring and recordkeeping provisions listed in paragraphs (a) through (c) of this section. The owner or operator shall retain each record required by paragraph (e)(1) or (2) of this section as provided in § 65.4.

(1) The owner or operator may retain only the daily average value and is not required to retain more frequently monitored operating parameter values for a monitored parameter with respect to an item of equipment if the requirements of paragraphs (e)(1)(i) through (vi) of this section are met. The owner or operator shall notify the Administrator of implementation of paragraph (e)(1) of this section in the Initial Compliance Status Report as required in § 65.165(e) or, if the Initial Compliance Status Report has already been submitted, in the periodic report as required in § 65.166(f)(4) immediately preceding implementation of the requirements of paragraph (e)(1) of this section.

(i) The monitoring system can detect unrealistic or impossible data during periods of operation other than startups, shutdowns, or malfunctions (for example, a temperature reading of −200 °C on a boiler) and will alert the

operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(ii) The monitoring system shall generate a running average of the monitoring values, updated at least hourly throughout each operating day, that have been obtained during that operating day, and the capability to observe this average is readily available to the Administrator on-site during the operating day. All instances in an operating day constitute a single occurrence. The owner or operator shall record the occurrence of any period meeting the following criteria:

(A) The running average is above the maximum or below the minimum established limits;

(B) The running average is based on at least six 1-hour average values;

(C) The running average reflects a period of operation other than a startup, shutdown, or malfunction.

(iii) The monitoring system shall be capable of detecting unchanging data during periods of operation other than startups, shutdowns, or malfunctions except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (for example, pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(iv) The monitoring system shall alert the owner or operator by an alarm if the running average parameter value calculated under paragraph (e)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

(v) The owner or operator shall verify and document the proper functioning of the monitoring system, including its ability to comply with the requirements of paragraph (e)(1) of this section, at the following times:

(A) Upon initial installation;

(B) Annually after initial installation; and

(C) After any change to the programming or equipment constituting the monitoring system, that might reasonably be expected to alter the monitoring system's ability to comply with the requirements of this section.

(vi) The owner or operator shall retain the following records:

(A) Identification of each parameter for each item of equipment for which the owner or operator has elected to comply with the requirements of § 65.162(e).

(B) A description of the applicable monitoring system(s) and of how compliance will be achieved with each requirement of paragraphs (e)(1)(i) through (v) of this section. The description shall identify the location and format (for example, on-line storage; log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent outdated description.

(C) A description and the date of any change to the monitoring system that would reasonably be expected to affect its ability to comply with the requirements of paragraph (e)(1) of this section.

(D) Owners and operators shall retain the current description of the monitoring system as long as the description is current, but not less than 5 years from the date of its creation. The current description shall be retained on-site at all times or be accessible from a central location by computer or other means that provide access within 2 hours after a request. The owner or operator shall retain the most recent outdated description at least until 5 years from the date of its creation. The outdated description shall be retained on-site (or accessible from a central location by computer that provides access within 2 hours after a request) at least 6 months after being outdated. Thereafter, the outdated description may be stored off-site.

(2) If an owner or operator has elected to implement the requirements of paragraph (e)(1) of this section and a period of 6 consecutive months has passed without an excursion as defined in paragraph (e)(2)(iv) of this section, the owner or operator is no longer required to record the daily average value for that parameter for that unit of equipment for any operating day when the daily average value is less

than the maximum or greater than the minimum established limit. With approval by the Administrator, monitoring data generated prior to the compliance date of this subpart shall be credited toward the period of 6 consecutive months if the parameter limit and the monitoring were required and/or approved by the Administrator.

(i) If the owner or operator elects not to retain the daily average values, the owner or operator shall notify the Administrator in the next periodic report. The notification shall identify the parameter and unit of equipment.

(ii) If there is an excursion as defined in paragraph (e)(2)(iv) of this section on any operating day after the owner or operator has ceased recording daily averages as provided in paragraph (e)(2) of this section, the owner or operator shall immediately resume retaining the daily average value for each day and shall notify the Administrator in the next periodic report. The owner or operator shall continue to retain each daily average value until another period of 6 consecutive months has passed without an excursion.

(iii) The owner or operator shall retain the records specified in paragraphs (e)(1)(i) through (vi) of this section for the duration specified in § 65.4. For any calendar week, if compliance with paragraphs (e)(1)(i) through (iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a startup, shutdown, or malfunction.

(iv) For purposes of paragraph (e) of this section, an excursion means that the daily average value of monitoring data for a parameter is greater than the maximum or less than the minimum established value except as provided in the following:

(A) The daily average value during any startup, shutdown, or malfunction shall not be considered an excursion for purposes of this paragraph (e) if the owner or operator operates the source in accordance with § 65.3(a).

(B) Excused excursions described in § 65.156(d)(2) and excursions described in § 65.156(d)(3) do not count toward the number of excursions for purposes of this paragraph (e).

[65 FR 78285, Dec. 14, 2000, as amended at 71 FR 20472, Apr. 20, 2006]

§ 65.162 Nonflare control and recovery device monitoring records.

(a) *Monitoring system records.* For process vents and high-throughput transfer racks, the owner or operator subject to this subpart shall keep the records specified in paragraph (a) of this section as well as records specified elsewhere in this part.

(1) For CPMS used to comply with this part, a record of the procedure used for calibrating the CPMS.

(2) For CPMS used to comply with this subpart, records of the following information, as applicable:

(i) The date and time of completion of calibration and preventive maintenance of the CPMS;

(ii) The ''as found'' and ''as left'' CPMS readings whenever an adjustment is made that affects the CPMS reading and a ''no adjustment'' statement otherwise;

(iii) The start time and duration or start and stop time of any periods when the CPMS is inoperative or malfunctioning;

(iv) Records of the occurrence and duration of each startup, shutdown, and malfunction of CPMS used to comply with this part during which excess emissions (as defined in § 65.3(a)(4)) occur; and

(v) For each startup, shutdown, and malfunction during which excess emissions as defined in § 65.3(a)(4) of this part occur, records whether the procedures specified in the source's startup, shutdown, and malfunction plan were followed and documentation of actions taken that are not consistent with the plan. These records may take the form of a checklist, or other form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for the event.

(3) Records of startup, shutdown, and malfunction and CPMS calibration and maintenance are not required if they pertain solely to Group 2A process vents.

(b) *Combustion control and halogen reduction device monitoring records.* (1)

Each owner or operator using a combustion control or halogen reduction device to comply with this subpart shall keep, as applicable, up-to-date and readily accessible continuous records, as specified in § 65.161(a); and records of the equipment operating parameters specified to be monitored under § 65.148(c) (incinerator monitoring); § 65.149(c) (boiler and process heater monitoring); § 65.154(c) (halogen reduction device monitoring); § 65.155(c) (other control device monitoring); or specified by the Administrator in accordance with paragraph (e) of this section.

(2) Each owner or operator shall keep records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 65.161(c)(1). For catalytic incinerators, record the daily average of the temperature upstream of the catalyst bed and the daily average of the temperature differential across the bed. For halogen scrubbers, record the daily average pH and the liquid-to-gas ratio.

(3) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of periods of operation during which the parameter boundaries are exceeded and report these exceedances as specified in § 65.166(f)(1). The parameter boundaries are established pursuant to § 65.148(c)(2) (incinerator monitoring), § 65.149(c)(2) (boiler and process heater monitoring), § 65.154(c)(2) (halogen reduction device monitoring), or § 65.155(c)(2) (other control device monitoring), as applicable.

(c) *Monitoring records for recovery devices on Group 2A process vents and for absorbers, condensers, carbon adsorbers, or other noncombustion systems used as control devices.* (1) Each owner or operator using a recovery device to achieve and maintain a TRE index value greater than 1.0 but less than 4.0 or using an absorber, condenser, carbon adsorber, or other noncombustion system as a control device shall keep readily accessible, continuous records, as specified in § 65.161(a), of the equipment operating parameters specified to be monitored under § 65.150(c) (absorber monitoring), § 65.151(c) (condenser monitoring), § 65.152(c) (carbon adsorber monitoring), § 65.153(c) (recovery device monitoring) or § 65.155(c) (other control device monitoring), or specified by the Administrator in accordance with paragraph (e) of this section. For transfer racks, continuous records are required while the transfer vent stream is being vented.

(2) Each owner or operator shall keep records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 65.161(c)(1). If carbon adsorber regeneration stream flow and carbon bed regeneration temperature are monitored, the following records shall be kept instead of the daily averages, and the records shall be reported as specified in § 65.166(f)(2):

(i) Records of total regeneration stream mass or volumetric flow for each carbon-bed regeneration cycle; and

(ii) Records of the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle.

(3) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of periods of operation during which the parameter boundaries are exceeded and report these exceedances as specified in § 65.166(f)(1). The parameter boundaries are established pursuant to § 65.150(c)(2) (absorber monitoring), § 65.151(c)(2) (condenser monitoring), § 65.152(c)(2) (carbon adsorber monitoring), or § 65.155(c)(2) (other control device monitoring), as applicable.

(d) *Alternatives to the continuous operating parameter monitoring and recordkeeping provisions.* An owner or operator may request approval to use alternatives to the continuous operating parameter monitoring and recordkeeping provisions listed in §§ 65.148(c), 65.149(c), 65.150(c), 65.151(c), 65.152(c), 65.153(c), 65.154(c), 65.160, and paragraphs (b) and (c) of this section.

(1) Requests shall be included in the operating permit application or as otherwise specified by the permitting authority and shall contain the information specified in paragraphs (d)(3) through (5) of this section, as applicable.

(2) The provisions in § 65.7(c) shall govern the review and approval of requests.

(3) An owner or operator of a source that does not have an automated monitoring and recording system capable of measuring parameter values at least once every 15 minutes and generating continuous records may request approval to use a nonautomated system with less frequent monitoring.

(i) The requested system shall include manual reading and recording of the value of the relevant operating parameter no less frequently than once per hour. Daily average values shall be calculated from these hourly values and recorded.

(ii) The request shall contain the following information:

(A) A description of the planned monitoring and recordkeeping system;

(B) Documentation that the source does not have an automated monitoring and recording system capable of meeting the specified requirements;

(C) Justification for requesting an alternative monitoring and recordkeeping system; and

(D) Demonstration to the Administrator's satisfaction that the proposed monitoring frequency is sufficient to represent control device operating conditions considering typical variability of the specific process and control device operating parameter being monitored.

(4) An owner or operator may request approval to use an automated data compression recording system that does not record monitored operating parameter values at a set frequency (for example, once every 15 minutes) but records all values that meet set criteria for variation from previously recorded values.

(i) The requested system shall be designed to perform the following functions:

(A) Measure the operating parameter value at least once every 15 minutes;

(B) Record at least four values each hour during periods of operation;

(C) Record the date and time when monitors are turned off or on;

(D) Recognize unchanging data that may indicate the monitor is not functioning properly, alert the operator, and record the incident; and

(E) Compute daily average values of the monitored operating parameter based on recorded data. If the daily average is not an excursion as defined in § 65.161(e)(2)(iv), the data for that operating day may be converted to hourly average values, and the four or more individual records for each hour in the operating day may be discarded.

(ii) The request shall contain a description of the monitoring system and data compression recording system, including the criteria used to determine which monitored values are recorded and retained, the method for calculating averages, and a demonstration that the system meets all criteria in paragraph (d)(4)(i) of this section.

(5) An owner or operator may request approval to use other alternative monitoring and recordkeeping systems as specified in § 65.7(b). The application shall contain a description of the proposed alternative system. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring method, such as the technical or economic infeasibility, or the impracticality, of the regulated source using the required method.

(e) *Monitoring a different parameter than those listed.* The owner or operator who has been directed by § 65.154(c)(2) or § 65.155(c)(1) to set monitoring parameters, or who requests as allowed by § 65.156(e) approval to monitor a different parameter than those listed in § 65.148(c), § 65.149(c), § 65.150(c), § 65.151(c), § 65.152(c), § 65.153(c), § 65.154(c), § 65.160, or paragraph (b) or (c) of this section, shall submit the following information with the operating permit application or as otherwise specified by the permitting authority:

(1) A description of the parameter(s) to be monitored to ensure the process, control technology, or pollution prevention measure is operated in conformance with its design and achieves the specified emission limit, percent reduction, or nominal efficiency, and an explanation of the criteria used to select the parameter(s).

(2) A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the control device, the schedule for this demonstration,

and a statement that the owner or operator will establish a range for the monitored parameter as part of the Initial Compliance Status Report required in § 65.5(d) unless this information has already been included in the operating permit application or previously established under a referencing subpart.

(3) The frequency and content of monitoring, recording, and reporting if monitoring and recording is not continuous, or if reports of daily average values when the monitored parameter value is outside the range established in the operating permit or Initial Compliance Status Report will not be included in Periodic Reports as specified in § 65.166(e). The rationale for the proposed monitoring, recording, and reporting system shall be included.

§ 65.163 Other records.

(a) *Closed vent system records.* For closed vent systems, the owner or operator shall record the following information, as applicable:

(1) For each closed vent system that contains bypass lines that could divert a vent stream away from the control device and to the atmosphere, the owner or operator shall keep a record of the information specified in either paragraph (a)(1)(i) or (ii) of this section, as applicable. The information shall be reported as specified in § 65.166(b).

(i) Hourly records of whether the flow indicator specified under § 65.143(a)(3)(i) was operating and whether a diversion was detected at any time during the hour, as well as records of the times of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(ii) Where a seal mechanism is used to comply with § 65.143(a)(3)(ii), hourly records of flow are not required. In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanisms has been done and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has been broken.

(2) For closed vent systems collecting regulated material from a storage vessel, transfer rack, or equipment leak, the owner or operator shall record the identification of all parts of the closed vent system that are designated as unsafe or difficult-to-inspect pursuant to § 65.143(b)(2) or (3), an explanation of why the equipment is unsafe or difficult-to-inspect, and the plan for inspecting the equipment as required by § 65.143(b)(2)(ii) or (b)(3)(ii).

(3) For a closed vent system collecting regulated material from a storage vessel, transfer rack, or equipment leaks, when a leak is detected as specified in § 65.143(d)(1), the information specified in paragraphs (a)(3)(i) through (vi) of this section shall be recorded. The data shall be reported as specified in § 65.166(b)(1).

(i) The instrument and the equipment identification number and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of the first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) The maximum instrument reading measured by the procedures in § 65.143(c) after the leak is successfully repaired or determined to be nonrepairable.

(v) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak. The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(vi) Copies of the periodic reports if records are not maintained on a computerized database capable of generating summary reports from the records.

(4) For each instrumental or visual inspection conducted in accordance with § 65.143(b)(1) for closed vent systems collecting regulated material from a storage vessel, transfer rack, or equipment leaks during which no leaks are detected, the owner or operator shall record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(5) For instrument response factor criteria determinations performed pursuant to § 65.143(c)(1)(ii), the owner or operator shall maintain a record of an engineering assessment that identifies the representative composition of the process fluid. This assessment shall be based on knowledge of the compounds present in the process, similarity of response factors for the materials present, the range of compositions encountered during monitoring, or other information available to the owner or operator.

(b) *Storage vessel and transfer rack records.* For storage vessels, an owner or operator shall keep readily accessible records of the information specified in paragraphs (b)(1) through (3) of this section, as applicable. For low-throughput transfer racks, an owner or operator shall keep readily accessible records of the information specified in paragraph (b)(1) of this section.

(1) A record of the measured values of the parameters monitored in accordance with § 65.145(c)(2) and report in the periodic report as specified in § 65.166(e), if applicable.

(2) A record of the planned routine maintenance performed on the control system during which the control system does not meet the applicable specifications of § 65.143(a), § 65.145(a), or § 65.147(a), as applicable, due to the planned routine maintenance. Such a record shall include the information specified in paragraphs (b)(2)(i) through (iii) of this section. This information shall be submitted in the periodic reports as specified in § 65.166(d)(1).

(i) The first time of day and date the requirements of § 65.143(a), § 65.145(a), or § 65.147(a), as applicable, were not met at the beginning of the planned routine maintenance.

(ii) The first time of day and date the requirements of § 65.143(a), § 65.145(a), or § 65.147(a), as applicable, were met at the conclusion of the planned routine maintenance.

(iii) A description of the type of maintenance performed.

(3) *Bypass records for storage vessel emissions routed to a process or fuel gas system.* An owner or operator who uses the bypass provisions of § 65.144(a)(2) shall keep in a readily accessible location the following records:

(i) The reason it was necessary to bypass the process equipment or fuel gas system;

(ii) The duration of the period when the process equipment or fuel gas system was bypassed;

(iii) Documentation or certification of compliance with the applicable provisions of § 65.42(b)(6).

(c) *Regulated source and control equipment startup, shutdown and malfunction records.* (1) Records of the occurrence and duration of each startup, shutdown, and malfunction of process equipment or of air pollution control equipment used to comply with this part during which excess emissions (as defined in § 65.3(a)(4)) occur.

(2) For each startup, shutdown, and malfunction during which excess emissions occur, records whether the procedures specified in the source's startup, shutdown, and malfunction plan were followed, and a description of actions taken to minimize emissions. For example, if a startup, shutdown, and malfunction plan includes procedures for routing control device emissions to a backup control device (for example, the incinerator for a halogenated stream could be routed to a flare during periods when the primary control device is out of service), records must be kept of whether the plan was followed. These records may take the form of a checklist or other form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for the event.

(3) Records of startup, shutdown, and malfunction and continuous monitoring system calibration and maintenance are not required if they pertain solely to Group 2A process vents.

(d) *Equipment leak records.* The owner or operator shall maintain records of the information specified in paragraphs (d)(1) and (2) of this section for closed vent systems and control devices subject to the provisions of subpart F of this part. The owner or operator shall meet the record retention requirements of § 65.4, except the records specified in paragraph (d)(1) of this section shall be kept as long as the equipment is in operation.

(1) The following design specifications and performance demonstrations:

(i) Detailed schematics, design specifications of the control device, and piping and instrumentation diagrams.

(ii) The dates and descriptions of any changes in the design specifications.

(iii) A description of the parameter or parameters monitored as required in § 65.146(c) to ensure that control devices are operated and maintained in conformance with their design, and an explanation of why that parameter (or parameters) was selected for the monitoring.

(2) The following records of operation of closed vent systems and control devices:

(i) Dates and durations when the closed vent systems and control devices required in § 65.115(b) are not operated as designed as indicated by the monitored parameters, including periods when a flare flame or at least one pilot flame is not present.

(ii) Dates and durations during which the monitoring system or monitoring device is inoperative.

(iii) Dates and durations of startups and shutdowns of control devices required in § 65.115(b).

(e) *Records of monitored parameters outside of range.* The owner or operator shall record the occurrences and the cause of periods when the monitored parameters are outside of the parameter ranges documented in the Initial Compliance Status Report in accordance with § 65.165(b). This information shall be reported in the periodic report as specified in § 65.166(e).

[65 FR 78285, Dec. 14, 2000, as amended at 71 FR 20472, Apr. 20, 2006]

§ 65.164 Performance test and flare compliance determination notifications and reports.

(a) *Performance test and flare compliance determination reports.* Performance test reports and flare compliance determination reports shall be submitted as specified in paragraphs (a)(1) through (3) of this section.

(1) For performance tests or flare compliance determinations, the Initial Compliance Status Report or report required by paragraph (b)(2) of this section shall include one complete test report as specified in paragraph (a)(2) of this section for each test method used for a particular kind of emission point, and other applicable information specified in paragraph (a)(3) of this section. For additional tests performed for the same kind of emission point using the same method, the results and any other information required in applicable sections of this subpart or in other subparts of this part shall be submitted, but a complete test report is not required.

(2) A complete test report shall include a brief process description, sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(3) The performance test or flare compliance determination report shall also include the following information, as applicable:

(i) For flare compliance determinations, the owner or operator shall submit the records specified in § 65.159(b).

(ii) For nonflare combustion device and halogen reduction device performance tests as required under § 65.148(b), § 65.149(b), § 65.150(b), § 65.151(b), § 65.152(b), § 65.154(b), or § 65.155(b), the owner or operator shall submit the applicable records specified in § 65.160(b).

(iii) For Group 2A process vents, the owner or operator shall submit the records specified in § 65.160(c), as applicable.

(b) *Other notifications and reports.* (1) The owner or operator shall notify the Administrator of the intention to conduct a performance test at least 30 calendar days before the performance test is scheduled to allow the Administrator the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the Administrator as soon as possible of any delay in the original test date. The owner or operator shall provide at least 7 days prior

notice of the rescheduled date of the performance test or arrange a rescheduled date with the Administrator by mutual agreement.

(2) Unless specified differently in this subpart or another subpart of this part, performance test and flare compliance determination reports not submitted as part of an Initial Compliance Status Report shall be submitted to the Administrator within 60 days of completing the test or determination.

(3) Any application for a waiver of an initial performance test or flare compliance determination as allowed by § 65.157(b)(2), shall be submitted no later than 90 calendar days before the performance test or flare compliance determination is required. The application for a waiver shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the source performing the test.

§ 65.165 Initial Compliance Status Reports.

(a) An owner or operator who elects to comply with § 65.144 by routing emissions from a storage vessel or transfer rack to a process or to a fuel gas system shall submit as part of the Initial Compliance Status Report the following information, as applicable:

(1) If storage vessel emissions are routed to a process, the owner or operator shall submit the information specified in § 65.144(b)(3).

(2) As specified in § 65.144(c), if storage vessel emissions are routed to a fuel gas system, the owner or operator shall submit a statement that the emission stream is connected to a fuel gas system.

(3) As specified in § 65.144(c), report that the transfer rack emission stream is being routed to a fuel gas system or process when complying with the requirements of § 65.83(a)(4).

(b) An owner or operator who elects to comply with § 65.145 by routing emissions from a storage vessel or low-throughput transfer rack to a nonflare control device or halogen reduction device shall submit with the Initial Compliance Status Report required by § 65.5(d) the applicable information specified in paragraphs (b)(1) through (6) of this section. Owners and operators who elect to comply with § 65.145(b)(1)(i) or (b)(3)(i) by submitting a design evaluation shall submit the information specified in paragraphs (b)(1) through (4) of this section. Owners and operators who elect to comply with § 65.145(b)(1)(ii) or (b)(3)(ii) by submitting performance test results shall submit the information specified in paragraphs (b)(1), (2), (4), and (5) of this section. Owners and operators who elect to comply with § 65.145(b)(1)(iii) or (b)(3)(iii) by submitting performance test results for a shared control device or halogen reduction device shall submit the information specified in paragraph (b)(6) of this section.

(1) A description of the parameter or parameters to be monitored to ensure that the control device or halogen reduction device is being properly operated and maintained, an explanation of the criteria used for selection of that parameter (or parameters), and the frequency with which monitoring will be performed (for example, when the liquid level in the storage vessel is being raised). If continuous records are specified, indicate whether the provisions of § 65.166(f) apply.

(2) The operating range for each monitoring parameter identified in the monitoring plan required by § 65.145(c)(1). The specified operating range shall represent the conditions for which the control device or halogen reduction device is being properly operated and maintained.

(3) The documentation specified in § 65.145(b)(1)(i), if the owner or operator elects to prepare a design evaluation; and the documentation specified in § 65.145(b)(3)(i), if the owner or operator elects to prepare a design evaluation for a halogen reduction device.

(4) The provisions of § 65.166(f) do not apply to any low-throughput transfer rack for which the owner or operator has elected to comply with § 65.145 or to any storage vessel for which the owner or operator is not required to keep continuous records, as specified by the applicable monitoring plan established under § 65.145(c)(1) and (2). If continuous records are required, the owner or operator shall specify in the monitoring plan whether the provisions of § 65.166(f) apply.

(5) A summary of the results of the performance test described in § 65.145(b)(1)(ii), (1)(iii), (3)(ii), and/or (3)(iii), as applicable. If a performance test is conducted as provided in § 65.145(b)(1)(ii) and/or (b)(3)(ii), submit the results of the performance test, including the information specified in § 65.164(a)(1) and (2).

(6) Identification of the storage vessel or low-throughput transfer rack and control device and/or halogen reduction device for which the performance test will be submitted, and identification of the emission point(s), if any, that share the control device and/or halogen reduction device with the storage vessel or low-throughput transfer rack and for which the performance test will be conducted.

(c) The owner or operator shall submit as part of the Initial Compliance Status Report the operating range for each monitoring parameter identified for each control, recovery, or halogen reduction device as determined in §§ 65.148(c)(2), 65.149(c)(2), 65.150(c)(2), 65.151(c)(2), 65.152(c)(2), 65.153(c)(5), 65.154(c)(3), and 65.155(c)(2). The specified operating range shall represent the conditions for which the control, recovery, or halogen reduction device is being properly operated and maintained. This report shall include the information in paragraphs (c)(1) through (3) of this section, as applicable, unless the range and the operating day definition have been established in the operating permit:

(1) The specific range of the monitored parameter(s) for each emission point.

(2) The rationale for the specific range for each parameter for each emission point, including any data and calculations used to develop the range and a description of why the range indicates proper operation of the control, recovery, or halogen reduction device, as specified in the following, as applicable:

(i) If a performance test or TRE index value determination is required by this subpart or another subpart of this part for a control, recovery or halogen removal device, the range shall be based on the parameter values measured during the TRE index value determination or performance test and may be supplemented by engineering assessments and/or manufacturer's recommendations. The TRE index value determinations and performance testing is not required to be conducted over the entire range of permitted parameter values.

(ii) If a performance test or TRE index value determination is not required by this subpart or other subparts of this part for a control, recovery, or halogen reduction device, the range may be based solely on engineering assessments and/or manufacturer's recommendations.

(iii) The range may be based on ranges or limits previously established under a referencing subpart.

(3) A definition of the source's operating day for purposes of determining daily average values of monitored parameters. The definition shall specify the times at which an operating day begins and ends.

(d) *Halogen reduction device.* The owner or operator shall submit as part of the Initial Compliance Status Report the information recorded pursuant to § 65.160(d).

(e) *Alternative recordkeeping.* The owner or operator shall notify the Administrator in the Initial Compliance Status Report if the alternative recordkeeping provisions of § 65.161(e)(1) are being implemented. If the Initial Compliance Status Report has been submitted, the notification must be in the periodic report submitted immediately preceding implementation of the alternative, as provided in § 65.166(f)(4).

(f) *Exemptions from performance tests and design evaluation.* The owner or operator shall identify in the Initial Compliance Status Report whether an exemption from performance testing or conducting a design evaluation, as provided in § 65.145(b)(2), § 65.148(b)(2), or § 65.149(b)(2), is being invoked, and which of the provisions of § 65.145(b)(2), § 65.148(b)(2), or § 65.149(b)(2) apply.

§ 65.166 Periodic reports.

(a) Periodic reports shall include the reporting period dates, the total source operating time for the reporting period, and, as applicable, all information specified in this section and in other subparts of this part, including reports

of periods when monitored parameters are outside their established ranges.

(b) For closed vent systems subject to the requirements of § 65.143, the owner or operator shall submit as part of the periodic report the following information, as applicable:

(1) The information recorded in § 65.163(a)(3)(ii) through (v);

(2) Reports of the times of all periods recorded under § 65.163(a)(1)(i) when the vent stream is diverted from the control device through a bypass line; and

(3) Reports of all times recorded under § 65.163(a)(1)(ii) when maintenance is performed on car-sealed valves, when the seal is broken, when the bypass line valve position is changed, or the key for a lock-and-key type configuration has been checked out.

(c) For flares subject to this subpart, report all periods when all pilot flames were absent or the flare flame was absent as recorded in § 65.159(d)(1).

(d) For storage vessels, the owner or operator shall include in each periodic report required the following information:

(1) For the 6-month period covered by the periodic report, the information recorded in § 65.163(b)(2)(i) through (iii).

(2) For the time period covered by the periodic report and the previous periodic report, the total number of hours that the control system did not meet the requirements of § 65.143(a), § 65.145(a), or § 65.147(a) due to planned routine maintenance.

(3) A description of the planned routine maintenance that is anticipated to be performed for the control system during the next 6-month periodic reporting period when the control system is not expected to meet the required control efficiency. This description shall include the type of maintenance necessary, planned frequency of maintenance, and expected lengths of maintenance periods.

(e) If a nonflare control device, including a halogen reduction device for a low-throughput transfer rack, is used to control emissions from storage vessels or low-throughput transfer racks, the periodic report shall identify and state the cause for each occurrence when the monitored parameters were outside of the parameter ranges documented in the Initial Compliance Status Report in accordance with § 65.165(b).

(f) For process vents and high-throughput transfer racks, periodic reports shall include the following information:

(1) Periodic reports shall include the daily average values of monitored parameters, calculated as specified in § 65.161(c)(1) for any days when the daily average value is outside the bounds as specified in § 65.162(b)(3) or (c)(3), or the data availability requirements defined in § 65.156(d)(1) are not met, whether these excursions are excused or unexcused excursions. For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be specified.

(2) Report all carbon-bed regeneration cycles during which the parameters recorded under § 65.162(c)(2) were outside the ranges established in the Initial Compliance Status Report or in the operating permit.

(3) The provisions of paragraphs (f)(1) and (2) of this section do not apply to any low-throughput transfer rack for which the owner or operator has elected to comply with § 65.145, or to any storage vessel for which the owner or operator is not required by the applicable monitoring plan established under § 65.165(c)(1) and (2) to keep continuous records. If continuous records are required, the owner or operator shall specify in the monitoring plan whether the provisions of paragraphs (f)(1) and (2) of this section apply.

(4) If the owner or operator has chosen to use the alternative recordkeeping provisions of § 65.161(e)(1) and has not notified the Administrator in the Initial Compliance Status Report that the alternative recordkeeping provisions are being implemented as provided in § 65.165(e), the owner or operator shall notify the Administrator in the periodic report submitted immediately before implementation of the alternative.

§ 65.167 Other reports.

(a) *Replacing an existing control or recovery device.* As specified in § 65.147(b)(2), § 65.148(b)(3), § 65.149(b)(3), § 65.150(b)(2), § 65.151(b)(2), § 65.152(b)(2),

or §65.153(b)(2), if an owner or operator at a facility not required to obtain a title V permit elects at a later date to use a different control or recovery device, then the Administrator shall be notified by the owner or operator before implementing the change. This notification may be included in the facility's periodic reporting and shall include a description of any changes made to the closed vent system.

(b) *Startup, shutdown, and malfunction periodic reports.* Startup, shutdown, and malfunction periodic reports shall be submitted as required in §65.6(c).

§§65.168–65.169 [Reserved]

PART 66—ASSESSMENT AND COLLECTION OF NONCOMPLIANCE PENALTIES BY EPA

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AUTHORITY: Sec. 120, Clean Air Act, as amended, 42 U.S.C. 7420.

SOURCE: 45 FR 50110, July 28, 1980, unless otherwise noted.

Subpart A—Purpose and Scope

§66.1 Applicability and effective date.

(a) This part applies to all proceedings for the assessment by EPA of a noncompliance penalty as provided by section 120 of the Clean Air Act. This penalty is designed to recover the economic advantage which might otherwise accrue to a source by reason of its failure to comply with air pollution control standards after receipt of a notice of noncompliance.

(b) These regulations shall be effective October 27, 1980.

§ 66.2 Program description.

This part sets forth the procedures by which EPA will administer the noncompliance penalty provisions of section 120 of the Clean Air Act. Subpart A describes the scope of the part, defines key terms and states the manner of operation of these provisions subpart B states which sources of air pollution are subject to these penalties and the form and substance of the notice of noncompliance. Subpart C and the accompanying Technical Support Document and Manual state how a source must compute the penalty which it owes. Subpart D describes the conditions under which an exemption from the penalty may be available, and subpart E sets forth the procedures for requesting such an exemption. Subpart F states how EPA will review penalties calculated by sources under subpart C, and subpart G describes the method of payment. Subpart H provides for adjustment of the penalty after the source has come into compliance and the actual costs of doing so are known. Finally, subpart I states which actions under these regulations are subject to judicial review and on what conditions, and subpart J provides supplemental procedures for adjudicatory hearings.

§ 66.3 Definitions.

In this part and part 67:

(a) *Act* means the Clean Air Act, 42 U.S.C. 7401 *et seq.* as amended on August 7, 1977, except where the context specifically indicates otherwise.

(b) *Affiliated entity* means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the owner or operator of a source.

(c) *Applicable legal requirements* means any of the following:

(1) In the case of any major source, any emission limitation, emission standard, or compliance schedule under any EPA-approved State implementation plan (regardless of whether the source is subject to a Federal or State consent decree);

(2) In the case of any source, an emission limitation, emission standard, standard of performance, or other requirement (including, but not limited to, work practice standards) established under section 111 or 112 of the Act;

(3) In the case of a source that is subject to a federal or federally approved state judicial consent decree or EPA approved extension, order, or suspension, any interim emission control requirement or schedule of compliance under that consent decree, extension, order or suspension;

(4) In the case of a nonferrous smelter which has received a primary nonferrous smelter order issued or approved by EPA under Section 119 of the Act, any interim emission control requirement (including a requirement relating to the use of supplemental or intermittent controls) or schedule of compliance under that order.

(d) *Approved Section 120 program* means a State program to assess and collect Section 120 penalties that has been approved by the Administrator.

(e) *Computer program* means the computer program used to calculate noncompliance penalties under section 120 of the Clean Air Act. This computer program appears as appendix C to these regulations.

(f) *Control* (including the terms *controlling*, *controlled by*, and *under common control with*) means the power to direct or cause the direction of the management and policies of a person or organization, whether by the ownership of stock, voting rights, by contract, or otherwise.

(g) *Environmental Appeals Board* shall mean the Board within the Agency described in § 1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this part. Appeals directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this part to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or

motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

(h) *Major stationary source* means any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant regulated by EPA under the Clean Air Act.

(i) *Manual* means the *Noncompliance Penalties Instruction Manual* which accompanies these regulations. This Manual appears as appendix B to these regulations.

(j) *Owner or operator* means any person who owns, leases, operates or supervises a facility, building, structure or installation which emits or has the potential to emit any air pollutant regulated by EPA under the Act.

(k) *Potential to emit* means the capability at maximum design capacity to emit a pollutant after the application of air pollution control equipment. Annual potential shall be based on the larger of the maximum annual rated capacity of the stationary source assuming continuous operation, or on a projection of actual annual emissions. Enforceable permit conditions on the type of materials combusted or processed may be used in determining the annual potential. Fugitive emissions, to the extent quantifiable, will be considered in determining annual potential for those stationary sources whose fugitive emissions are regulated by the applicable state implementation plan.

(l) *Source* means any source of air pollution subject to applicable legal requirements as defined in paragraph (c).

(m) *Technical Support Document* means the *Noncompliance Penalties Technical Support Document* which accompanies these regulations. The Technical Support Document appears as appendix A to these regulations.

All other terms are defined as they are in the Act.

[45 FR 50110, July 28, 1980, as amended at 57 FR 5328, Feb. 13, 1992]

§66.4 Limitation on review of regulations.

No applicable legal requirement, which could have been reviewed or challenged by means of the timely filing of an appropriate petition, no provision of this part or part 67 or appendices A, B or C, may be challenged, reviewed or re-examined in any hearing conducted under this part or part 67. This limitation on review includes, but is not limited to:

(a) Arguments that the statute is more or less restrictive than the regulations, e.g., that exemptions other than those provided herein should be granted.

(b) Arguments that the economic model does not accurately calculate the economic benefits of noncompliance, or that parameters, terms and conditions other than those provided for in the model should be used or that evidence other than that described in the Technical Support Document for establishing inputs should be considered.

§66.5 Savings clause.

Proceedings under these regulations for imposition of a penalty under section 120 are in addition to any other proceedings related to permits, orders, payments, sanctions or other requirements of State or Federal law. No action under this part or part 67 shall affect in any way any administrative, civil or criminal enforcement proceeding brought under any provision of the Clean Air Act or State or local law.

§66.6 Effect of litigation; time limits.

(a) The existence of any litigation on the validity of these regulations shall not affect the authority of the Agency to issue notices of noncompliance or to conduct subsequent administrative proceedings under parts 66 and 67.

(b) Failure of the Environmental Appeals Board or the Presiding Officer at a hearing to meet any of the time limits contained in this part 66 and part 67 of this chapter shall not affect the validity of any proceeding under these regulations.

(c) The filing of any petition for reconsideration under this part or part 67 or the institution of EPA review of a State determination under part 67 shall

not toll the accrual of noncompliance penalties. The penalty will be calculated from the date on which the source owner or operator receives a notice of noncompliance.

[45 FR 50110, July 28, 1980, as amended at 57 FR 5329, Feb. 13, 1992]

Subpart B—Notice of Noncompliance

§ 66.11 Issuance of notices of noncompliance.

(a) The Administrator shall issue a notice of noncompliance to the owner or operator of any source which he determines is in violation of applicable legal requirements and which is located in a State without an approved section 120 program.

(b) The Administrator shall send a notice of noncompliance to the owner or operator of any source located in a State with an approved section 120 program when he determines as provided in part 67 that the source is in violation of applicable legal requirements and the State has failed to send a notice of noncompliance to it, or has failed to pursue diligently any subsequent steps for the assessment or collection of the penalty.

(c) Failure of EPA or a State to issue a notice of noncompliance within 30 days after discovery of a violation shall not affect the obligation of a source owner or operator to pay a noncompliance penalty but shall affect the date from which the penalty is calculated. The penalty shall be calculated from the earliest date that the owner or operator of the source received a notice of noncompliance under this section, whether issued by EPA or the State.

§ 66.12 Content of notices of noncompliance.

(a) Each notice of noncompliance shall be in writing and shall include:

(1) A specific reference to each applicable legal requirement of which the source is in violation;

(2) A brief statement of the factual basis for the finding of violation, together with a reference to any supporting materials and a statement of when and where they may be inspected;

(3) Instructions on calculating the amount of the penalty owed and the schedule for payments. Such instructions shall include (i) a statement of the date from which penalties should be calculated and (ii) a copy of the Technical Support Document and the Manual;

(4) Notice of the right to petition for a hearing to challenge the finding of noncompliance or to claim an exemption; and

(5) Notice that the penalty continues to accrue during the pendency of any hearings granted under this part or part 67.

(b) Each notice of noncompliance shall be transmitted to the source owner or operator either by personal service or by registered or certified mail, return receipt requested.

§ 66.13 Duties of source owner or operator upon receipt of a notice of noncompliance.

(a) Within forty-five days after receiving a notice of noncompliance a source owner or operator shall either:

(1) Calculate the amount of the penalty owed and the appropriate quarterly payment schedule, as provided in the Technical Support Document and Instruction Manual, and transmit that calculation, together with supporting data sufficient to allow verification of the penalty calculation, to the Administrator; or

(2) Submit a petition for reconsideration, alleging that the source is not in violation of applicable legal requirements or that the source owner or operator is entitled to an exemption pursuant to §§ 66.31 through 66.33, or both. A source owner or operator must present both grounds in the petition if he wishes to preserve a claim to an exemption in the event that the source is found to be in violation. Issues relating to the existence of a violation or entitlement to an exemption not raised in the petition shall be deemed waived.

(b) Any submittal pursuant to this subsection shall specify the identity of the person responsible for the payment of any noncompliance penalty, and to whom any reimbursement, if necessary, shall be sent.

(c) A source owner or operator may amend any petition for reconsideration pursuant to paragraph (a) of this section within 45 days from receipt of a

notice of noncompliance. Amendment of such petition after 45 days will be permitted only if based on unforeseeable conditions occurring after termination of the 45 day period, or upon consent of the Administrator.

Subpart C—Calculation of Noncompliance Penalties

§66.21 How to calculate the penalty.

(a) All noncompliance penalties shall be calculated in accordance with the Technical Support Document and the Manual.

(b) Where the Administrator determines that no existing technology or other emissions control method results in emission levels which satisfy the applicable legal requirement, the penalty calculation shall be based on the cost of the capital equipment, operation and maintenance practices, or other methods of control which best approximates the degree of control required. In such a case, the Administrator may include in the penalty the costs of participation in an EPA approved research and development program where he determines that such participation would be appropriate. Information on appropriate research and development programs will be available from the regional offices or from the Office of Research and Development.

§66.22 Contracting out penalty calculation.

Upon the failure of a source owner or operator, who does not submit a petition for reconsideration as provided in §66.13(a)(2), to submit the information described in §66.13(a)(1) within 45 days of receipt of a notice of noncompliance, or upon submission of incorrect information as determined pursuant to §66.51, the Administrator may enter into a contract with any qualified person who is not an affiliated entity and who has no financial interest in the owner or operator of the source to assist in determining the amount of the penalty assessment or payment schedule with respect to such source owner or operator. The cost of this contract may be added to the penalty to be assessed against the owner or operator of the source. The data used in calculating the penalty shall be furnished to the source owner or operator at the time that the penalty calculation is reported.

§66.23 Interim recalculation of penalty.

(a) The Administrator, upon concluding that a previously approved penalty calculation no longer is accurate, may:

(1) Request, in writing, that the source owner or operator submit a revised calculation in the form specified in §66.13(a). The Administrator shall respond to any information submitted in accordance with the provisions of §66.51.

(2) Notify the source owner or operator, in writing, that the penalty has been recalculated based upon information in the Administrator's possession. The source owner or operator shall respond as provided in §66.52.

(b) If a source owner or operator believes that, because of changed circumstances, a penalty calculation which has been accepted by EPA no longer is accurate, he may submit a revised penalty calculation and schedule to the Administrator. The revised calculation shall be in the form specified in §66.13(a)(1). The Administrator shall respond in accordance with the provisions of §66.51. The decision to accept the interim calculation or to grant a hearing on this issue shall be solely within the discretion of the Administrator.

Subpart D—Exemption Requests; Revocation of Exemptions

§66.31 Exemptions based on an order, extension or suspension.

(a) A source owner or operator who would otherwise be subject to a noncompliance penalty will be exempted from that penalty during the period for which, and upon a demonstration that, its noncompliance with applicable legal requirements is or was due solely to;

(1) A conversion by such source from the burning of petroleum products or natural gas, or both, as the permanent primary energy source to the burning of coal pursuant to an order under section 113(d)(5) or section 119 of the Act as in effect before August 7, 1977.

(2) In the case of a coal-burning source, the issuance of a prohibition to that source against burning petroleum products or natural gas, or both, by means of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, the Powerplant and Industrial Fuel Use Act, or under any legislation which amends or supersedes these provisions, *Provided,* That the source had received an extension under the second sentence of section 119(c)(1) of the Act as in effect before August 7, 1977.

(3) The use of innovative technology by the source owner or operator pursuant to an enforcement order under section 113(d)(4) of the Act.

(4) An inability to comply with an applicable legal requirement resulting from reasons entirely beyond the control of the owner or operator of such source or of any affiliated entity, *Provided,* That

(i) The source owner or operator has received an order under section 113(d) (or an order under section 113 issued before August 7, 1977) or a federal or EPA-approved State judicial decree or order which has the effect of permitting a delay in complying with the legal requirement at issue, and

(ii) That the source owner or operator meets the requirements of paragraphs (c) and (d) of this section.

(5) The existence of an energy or employment emergency demonstrated by issuance of an order under section 110(f) or 110(g) of the Act, unless such order is disapproved by EPA.

(b) To qualify for an exemption under this section, the source owner or operator must have received the order, extension or suspension or consent decree described in the paragraph of the section pursuant to which the exemption is claimed. No exemption may be sought which, if granted, would exceed the terms of the relevant extension, order, suspension, or consent decree, except as provided in paragraph (e) of this section. No exemption may be sought which is based on a claim that the source owner or operator is entitled to any such order, extension, suspension, or consent decree even though it has not been issued.

(c) In any exemption claim based on paragraph (a)(4) of this section, the source owner or operator must demonstrate:

(1) That the source owner or operator or an affiliated entity in no manner sought, caused, encouraged or contributed to the inability; and

(2) That the source owner or operator in no way unduly delayed negotiation for needed equipment or fuel supply or made unusual demands not typical in its industry, or placed unusual restrictions on the supplier, or delayed in any other manner the delivery of goods or the completion of the necessary construction.

(d)(1) No exemption will be granted pursuant to paragraph (a)(4) of this section unless the owner or operator of the source demonstrates that, with respect to a situation described in paragraph (c), all reasonable steps were taken to prevent the situation causing the inability to comply, that procuring the needed pollution control equipment or fuel supply was given and continues to be given the highest possible priority in the planning and budgeting process of the owner or operator of the source, and that alternative sources of equipment and fuel have been explored without success.

(2) Any exemption granted under paragraph (a)(4) of this section shall cease to be effective when the inability to comply ceases to be entirely beyond the control of the source owner or operator as defined in this section.

(e) Except in the case of exemptions based on orders under section 113 (d)(4) or (d)(5) or suspensions under section 110(g), the Administrator may grant an exemption with retroactive effect to the date of the event giving rise to the section 120 predicate order, extension, suspension, or consent decree. In such cases, the exemption from the noncompliance penalty shall run from the date that the basis for the exemption first occurred.

[45 FR 50110, July 20, 1980, as amended at 50 FR 36734, Sept. 9, 1985]

§ 66.32 De Minimis exemptions.

(a) The Administrator may, upon notice and opportunity for public hearing, exempt the owner or operator of any source from a penalty where he

finds that a particular instance of noncompliance was *de minimis* in nature and duration.

(b) A petition for an exemption on the ground that the violation described in a notice of noncompliance was *de minimis* in nature and duration may only raise issues related to entitlement to an exemption and shall contain or be accompanied by supporting documentation. Issues relating to entitlement to a *de minimis* exemption not raised in the petition shall be deemed waived.

(c) In ruling upon such a petition, the Administrator shall consider:

(1) The magnitude of the excess emissions and whether the source's noncompliance is recurring or persistent;

(2) The steps the source owner or operator is taking to eliminate the cause of the excess emissions and to minimize such emissions;

(3) Whether any significant economic savings are likely to accrue to the owner or operator of the source as a result of the noncompliance;

(4) The character of the emissions, and their impact on ambient air quality; and

(5) The duration of the violation.

(d) A hearing on a petition for a *de minimis* exemption shall be informal. The hearing shall be scheduled upon notice to the public. Reasonable opportunity to testify and for submission of questions by the public to the petitioner shall be afforded. The decision of the hearing officer will be made in writing within a reasonable period of time after the close of the hearing.

§ 66.33 De Minimis exemptions: malfunctions.

(a) The Administrator may, upon notice and opportunity for a public hearing, exempt the owner or operator of a source if he finds with respect to a particular instance of noncompliance, that such noncompliance was *de minimis* in nature and duration, and was caused solely by a sudden and unavoidable breakdown of process or pollution control equipment.

(b) A petition for an exemption on the ground that the violation was *de minimis* and was caused by a sudden and unavoidable breakdown of process or pollution control equipment may only raise issues related to entitlement to an exemption and shall contain or be accompanied by supporting documentation. Issues relating to entitlement to an exemption that are not raised in the petition shall be deemed waived. In making such finding the Administrator shall consider whether:

(1) The violation was *de minimis* in nature and duration within the meaning of § 66.32;

(2) The air pollution control equipment, process equipment, or processes, including appropriate back-up systems, were designed, and have been maintained and operated in a manner consistent with good practice for minimizing emissions;

(3) Repair of the malfunctioning equipment was undertaken and carried out in an expeditious fashion as soon as the owner or operator knew or should have known that the malfunction existed or that applicable emission limitations were being violated or were likely to be violated;

(4) All practicable steps were taken to minimize the impact of the excess emissions (including any bypass) on ambient air quality;

(5) The excess emissions were not part of a pattern indicative of inadequate design, operation, or maintenance;

(6) Off-shift and overtime labor were utilized where necessary to ensure that repairs were made as expeditiously as possible or that emissions were minimized to the maximum extent possible; and

(7) The level of economic savings, if any, accruing to the source owner or operator was *de minimis*.

(c) Any activity that could have been foreseen, avoided or planned for, or any breakdown that could have been avoided by the exercise of reasonable diligence shall not constitute grounds for an exemption under this section. Such activities include, but are not limited to, sudden breakdowns avoidable by better maintenance procedures, phasing in and out of process equipment and routine maintenance.

(d) A hearing on any petition for an exemption based upon the unavoidable breakdown of pollution control equipment shall be informal. The hearing shall be scheduled upon notice to the

public. Reasonable opportunity to testify and for submission of questions by the public to the petitioner shall be afforded. The decision of the hearing officer will be made in writing within a reasonable period of time after the close of the hearing.

§ 66.34 Termination of exemptions.

(a) Exemptions pursuant to § 66.31(a)(1), (2), (3), and (5) will cease to be effective upon termination or revocation of the order on which the exemption is based.

(b) Exemptions pursuant to § 66.31(a)(4) will cease to be effective when the order or decree is terminated or revoked, or the inability to comply ceases to be for reasons entirely beyond the control of the source owner or operator as defined in § 66.31(c).

(c) Exemptions granted pursuant to § 66.32 or § 66.33 shall terminate at the time specified in the exemption.

(d) The Administrator shall notify the source owner or operator, in writing, that the exemption has terminated, and shall specify the date from which the penalty shall be calculated. The notice shall be transmitted as required by § 66.12. The source owner or operator shall respond to this notice within 45 days of its receipt and in the form provided in § 66.13.

§ 66.35 Revocation of exemptions.

(a) The Administrator may upon notice and opportunity for a hearing revoke an exemption granted to the owner or operator of any source at any time in accordance with paragraphs (b) and (c) below.

(b) An exemption may be revoked and a penalty for the period of non-exempted noncompliance assessed if:

(1) The grounds for the exemption no longer exist or never did exist, or

(2) In the case of an exemption under § 66.31, the source owner or operator has failed to comply with any interim emission control requirements or schedules of compliance (including increments of progress) contained in the extension, order, suspension or EPA-approved consent decree on which the exemption was based.

(c) The Administrator shall provide the source owner or operator written notice containing the information required by § 66.12 and a statement of the reasons for revocation. The notice shall also specify the date from which the source owner or operator must calculate a penalty. The notice shall be transmitted as required by § 66.12. The source owner or operator shall respond to this notice within 45 days of its receipt and in the form provided in § 66.13.

Subpart E—Decisions on Exemption Requests and Challenges to Notices of Noncompliance

§ 66.41 Decision on petitions.

(a) Within thirty days after receiving a petition filed under § 66.13, the Administrator shall notify the source owner or operator in writing that:

(1) The petition demonstrates that the source owner or operator is entitled to part or all of the relief requested and that the notice of noncompliance is withdrawn or modified accordingly;

(2) The petition does not contain sufficient information to demonstrate that the source owner or operator is entitled to part or all of the relief requested. The Administrator shall specify what deficiencies exist and request that the source owner or operator supplement his petition within thirty days of receipt of that request. If the petition is not supplemented adequately within this time, or, if supplemented adequately, still fails to demonstrate entitlement to relief, the Administrator shall grant a hearing under paragraph (a)(3) of this section. Any supplemental material provided pursuant to the Administrator's request shall be evaluated as provided in paragraphs (a)(1) and (a)(3) of this section.

(3) A hearing is granted on the issue of whether the source is in violation of applicable legal requirements or is entitled to an exemption under § 66.31, § 66.32, § 66.33, or on both.

[45 FR 50110, July 20, 1980, as amended at 50 FR 36734, Sept. 9, 1985]

§ 66.42 Procedure for hearings.

(a) Except as provided in §§ 66.32 and 66.33, hearings granted under

§66.41(a)(3) shall be held as provided in subpart J.

(b) If hearings are granted pursuant to both §66.32 or §66.33 and under subpart J, a consolidated hearing in accordance with subpart J shall be held. At the consolidated hearing the issues that would otherwise have been considered at a hearing under §66.32 or §66.33 shall be considered pursuant to the procedures for a hearing provided in those sections.

(c) The Presiding Officer at a hearing granted under §66.41 shall issue an initial decision within 90 days after the Administrator grants the hearing, unless the duration of the hearing or the deadline for decision is extended by the Presiding Officer upon agreement of the parties. Failure to issue a decision (whether or not by consent) within 90 days shall not affect the validity of the proceedings or the accrual of penalties in any manner.

§66.43 Final decision; submission of penalty calculation.

Within forty-five days after EPA has notified the owner or operator of a source of the final Agency decision that it is in violation of applicable legal requirements or is not entitled to an exemption, the owner or operator shall submit the information required by §66.13(a), including appropriate compliance and payment schedules and extra interest owed for the period of delay. The penalty shall be calculated from the date of receipt of the original notice of noncompliance.

Subpart F—Review of Penalty Calculation

§66.51 Action upon receipt of penalty calculation.

(a) Within thirty days after receipt of a penalty calculation provided pursuant to §66.13(a)(1) or §66.43, the Administrator shall notify the source owner or operator in writing, that:

(1) The penalty is provisionally accepted as calculated, subject to any recalculation that may be necessary under §66.72 after the source has achieved compliance; or

(2) The penalty is incorrect and has been recalculated based on the data provided by the source owner or operator, or other data. The Administrator shall provide a brief statement of the basis for the recalculation and shall identify when and where any supporting data may be examined. The Administrator shall also notify the source owner or operator of the right to petition for a hearing under §66.52; or

(3) The source owner or operator has not submitted any calculation, or the information submitted is inadequate to enable EPA to verify the owner or operator's penalty calculation. The Administrator shall specify what deficiencies exist and request the source owner or operator to supplement his submission within thirty days of receipt of that request. If an inadequate supplemental submission is made within this time, EPA may calculate the penalty itself or as provided in §66.22.

(b) Supplemental material provided pursuant to paragraph (a)(3) of this section shall be evaluated as provided in paragraph (a).

§66.52 Petitions for reconsideration of calculation.

Within forty-five days after receipt of notice under §66.51(a)(2) that the penalty has been recalculated by EPA, a source owner or operator who wishes to challenge EPA's recalculation shall petition in writing for reconsideration. A statement of all arguments on which the owner or operator relies, including all necessary supporting data and a substitute penalty calculation and payment schedule shall be included in or accompany this petition. Issues not raised in the petition shall be deemed waived.

§66.53 Decisions on petitions.

Within thirty days after receiving a petition for reconsideration under §66.52 the Administrator shall:

(a) Accept the penalty calculation of the owner or operator to the extent the Administrator concludes it is correct; or

(b) Grant a hearing to the extent he does not conclude that the petition is correct.

[45 FR 50110, July 20, 1980, as amended at 50 FR 36734, Sept. 9, 1985]

§ 66.54 Procedures for hearing.

(a) Hearings granted under § 66.53 shall be held as provided in subpart J.

(b) The Presiding Officer at a hearing granted under § 66.53 shall issue an initial decision within ninety days after the Administrator grants the hearing, unless the duration of the hearing or the deadline for decision is extended by the Presiding Officer upon agreement of the parties. Failure to issue a decision (whether or not by consent) within 90 days shall not affect the validity of the proceedings or the accrual of penalties in any manner.

Subpart G—Payment

§ 66.61 Duty to pay.

(a) Except where the owner or operator has submitted a petition pursuant to § 66.13(a)(2), the first installment of the penalty shall be paid on the date six months after receipt of the notice of noncompliance.

(b) Where the source owner has filed a petition pursuant to § 66.13(a)(2), the first installment consisting of payment of penalties for all quarters ''missed'' as well as for the upcoming quarter shall be paid on the date six months after a final administrative decision affirming the source owner or operator's liability. Installments shall be paid quarterly thereafter until compliance is achieved. Quarters shall be measured in increments of three calendar months from the date the first payment is due.

(c) A source owner or operator who submits a petition pursuant to § 66.52 shall pay the penalty amount calculated by the owner or operator under § 66.13 or § 66.43 or any penalty calculated by EPA where the owner or operator has failed to calculate such penalty. Within 45 days after EPA has notified the owner or operator of a final administrative action after hearings on such petition, the owner or operator shall submit any necessary modification to the penalty. The revised penalty will be calculated in accordance with the Technical Support Document and the Manual, and a revised schedule, including appropriate adjustments for overpayments or underpayments made, will be established.

§ 66.62 Method of payment.

Payments in excess of $10,000 under this part shall be made by wire transfer payable to the U.S. Treasury. Payments under this part which are less than $10,000 shall be made by cashier's or certified check made payable to the United States Treasury, sent by registered mail, return receipt requested, and addressed to the Administrator, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Payment by check is made on the due date if it is postmarked on or before the due date. Payment by wire transfer is made on the due date if the Treasury's account is credited on or before the due date.

§ 66.63 Nonpayment penalty.

(a) Any source owner or operator who fails to make timely payment under § 66.61 shall pay in addition to the penalty owed a quarterly nonpayment penalty. The nonpayment penalty shall be calculated as of the due date of the noncompliance penalty payment and shall be equal to 20 percent of the aggregate amount of the noncompliance penalties and nonpayment penalties due and owing from the owner or operator on the due date. Partial payments shall be credited first against the nonpayment penalty, then against the noncompliance penalty.

(b) The Administrator shall notify the source owner or operator in writing of the amount of any nonpayment penalty for which the owner or operator is liable. Failure of the Administrator to provide such notice immediately shall not affect the legal obligation of the source owner or operator to pay such penalty. Such nonpayment penalty, as well as the past due noncompliance penalty, shall be payable immediately.

Subpart H—Compliance and Final Adjustment

§ 66.71 Determination of compliance.

(a) An owner or operator of a source who is paying a noncompliance penalty under this part shall notify the Administrator in writing when he believes that the source has come into and is maintaining compliance with all applicable legal requirements. The notice

shall be accompanied by any factual data, analytical materials, and legal arguments which the source owner or operator believes support such claim.

(b) Within 30 days of receipt of a source owner's submittal, the Administrator shall determine whether the source has achieved and is maintaining compliance with applicable legal requirements, and shall notify the source owner or operator of this determination in writing. If the Administrator is unable to conclude, on the basis of the information submitted, whether the source has achieved and is maintaining compliance with applicable legal requirements, he shall inform the owner or operator of any additional material that is needed. Within 30 days of receipt of such additional material, the Administrator shall determine whether the source has achieved and is maintaining compliance, and shall notify the source owner or operator of this determination in writing.

(c) If the Administrator determines that the source has not achieved or is not maintaining compliance with applicable legal requirements, the source owner or operator may petition for reconsideration within 30 days of receipt of the determination. The source owner or operator shall include in this petition any necessary supporting material. Issues not raised in the petition will be deemed waived. The procedures of §66.41 shall be followed upon the receipt of such petition.

(d) In the event that the applicable legal requirement (as defined in §66.3(c)) the violation of which forms the basis for the penalty is superseded by another applicable legal requirement (as defined in §66.3(c)) the owner or operator of a source liable for a noncompliance penalty under this part shall notify the Administrator in writing that the owner or operator believes that the applicable legal requirement is superseded and that the period of noncompliance covered by the notice of noncompliance is ended. The notice shall be accompanied by the legal arguments which the source owner or operator believes support such a claim. Within 30 days of receipt of a source owner or operator's notice, the Administrator shall determine whether the period of covered noncompliance is ended and shall notify the source owner or operator of this determination in writing. In cases where the superseding EPA-approved requirement was not approved by EPA within the time period required by statute, the period of covered noncompliance shall be deemed to have ended on the date when EPA under the statute should have acted.

[45 FR 50110, July 20, 1980, as amended at 50 FR 36734, Sept. 9, 1985]

§66.72 Additional payment or reimbursement.

(a) Within 120 days after the source owner or operator receives notification pursuant to §66.71(b) that it has achieved and is maintaining compliance with applicable legal requirements, or within 120 days after receipt of a decision to that effect upon petition and hearing, or within 120 days after receipt of a decision to that effect upon an appeal to the Environmental Appeals Board, the source owner or operator shall submit to the Administrator a revised penalty calculation as provided in the Technical Support Document and the Manual, together with data necessary for verification. The revised calculation shall include interest on any underpayment.

(b) Within thirty days after receiving a revised penalty calculation provided pursuant to paragraph (a) of this section, the Administrator shall inform the source owner or operator in writing that:

(1) The revised penalty is correct as calculated;

(2) The revised penalty is incorrect and has been recalculated based on the data provided by the source owner or operator or on other data. The Administrator shall provide to the source owner or operator a brief statement of the basis of the recalculation and shall identify when and where any supporting data may be examined. The Administrator shall also notify the source owner or operator of the right to petition for reconsideration under §66.73; or

(3) The source owner or operator has not submitted any penalty calculation, or has not submitted enough material to enable EPA to verify the penalty calculation. The Administrator shall

specify what deficiencies exist and shall require the source owner or operator to furnish the supplemental material within thirty days of receipt of the notice. The supplemental material submitted will be evaluated in the same manner as the original submittal.

(c) If a source owner or operator fails to submit or to complete a revised penalty calculation when due under this section or the calculation submitted is incorrect, the Administrator may recalculate the penalty or may enter into a contract for independent calculation of the penalty as provided in § 66.22.

(d) Within 120 days after the source owner or operator receives notification pursuant to § 66.71(d) that the period of covered noncompliance ended on the date the applicable legal requirement was superseded (or, in event of EPA delay past an applicable statutory deadline, on the date the applicable legal requirement would have been superseded if there had been no delay past the statutory deadline), the source owner or operator shall submit to the Administrator a revised penalty calculation as provided in the Technical Support Document and Manual together with data necessary for verification. The revised calculation shall include interest on any underpayment. Paragraphs (b) and (c) shall apply to calculations submitted under this paragraph.

[45 FR 50110, July 20, 1980 as amended at 50 FR 36734, Sept. 9, 1985; 57 FR 5329, Feb. 13, 1992]

§ 66.73 Petition for reconsideration and procedure for hearing.

Within forty-five days of receipt of a notice under § 66.72(b) (2) a source owner or operator may petition for reconsideration in the form and manner provided in § 66.52. The petition shall be evaluated as provided in § 66.53 and any hearing shall be held in conformity with § 66.54.

§ 66.74 Payment or reimbursement.

(a) Within thirty days after any adjustment of a noncompliance penalty under this subpart has become administratively final:

(1) Any deficiency owed by the source owner or operator shall be paid as provided in § 66.62.

(2) Any reimbursement shall be paid by check from the United States payable to the order of the source owner or operator, and sent by registered or certified mail, return receipt requested.

(b) Any payment under paragraph (a) of this section, shall include interest on the amount of the deficiency or reimbursement due, from the date the deficiency or reimbursement arose, at a rate determined by the Secretary of the Treasury. Such payment shall be calculated in accordance with the Technical Support Document and the Manual.

(c) Any source owner or operator who fails to make timely payment of a deficiency shall pay a nonpayment penalty. The nonpayment penalty shall be calculated as of the due date of the deficiency payment and shall be equal to 20% of the deficiency not paid. Such nonpayment penalty (in addition to the amount of the deficiency owed) shall be payable immediately. If any part of the nonpayment penalty or deficiency shall remain unpaid at the end of three calendar months from the due date of the deficiency, a further nonpayment penalty shall be due equal to 20% of the sum of all payments due and owing. Partial payments shall be credited first against the nonpayment penalty, then the deficiency.

Subpart I—Final Action

§ 66.81 Final action.

(a) A final Agency action appealable to the courts by the source owner or operator includes and is limited to the following, provided the conditions of paragraph (b) of this section are met:

(1) A notice of determination that a source is in violation of applicable legal requirements;

(2) A notice of decision to deny or revoke an exemption under subpart D;

(3) A notice of revision by EPA of a penalty calculation or schedule under subpart F;

(4) A notice of decision by EPA that the source is not in final compliance or any revision by EPA of a final penalty calculation under subpart H; and

(5) A notice of denial of a petition for reconsideration under § 66.71 or § 66.73.

(6) A decision by the Administrator upon completion of any review of a State action pursuant to part 67.

(b) The actions listed in paragraph (a) of this section constitute final Agency action only if all administrative remedies have been exhausted. To exhaust administrative remedies, a source owner or operator must first petition for reconsideration of the decision in question and, if unsuccessful after hearing or after denial of hearing, appeal the decision in question to the Environmental Appeals Board. The action becomes final upon the completion of review by the Environmental Appeals Board and notice thereof to the owner or operator of the source.

(c) Where a petition seeks reconsideration both of the finding of noncompliance and of the finding of liability on the ground that the source owner or operator is entitled to an exemption, both questions must be decided before any review by the Environmental Appeals Board is sought, except on agreement of the parties.

[45 FR 50110, July 20, 1980, as amended at 50 FR 36734, Sept. 9, 1985; 57 FR 5329, Feb. 13, 1992]

Subpart J—Supplemental Rules for Formal Adjudicatory Hearings

§66.91 Applicability of supplemental rules.

The Supplemental Rules in this subpart, in conjunction with the Consolidated Rules of Practice (40 CFR part 22) shall govern all hearings held under this part. To the extent that the provisions of these Supplemental Rules or any other provision of this part are inconsistent with the Consolidated Rules, the provisions of this part shall govern.

§66.92 Commencement of hearings.

(a) The provisions of 40 CFR 22.08 (Consolidated Rules of Practice) shall become applicable when the Administrator grants a hearing.

(b) Upon granting a hearing the Administrator shall immediately transmit to the appropriate Regional Hearing Clerk two copies of the notice granting the hearing and:

(1) In the case of a hearing pursuant to §66.42, two copies of the notice of noncompliance under §66.11 (or the revocation notice under §66.34) and of the petition of the owner or operator under §66.13, together with supporting documents; and

(2) In the case of a hearing pursuant to §66.53 or §66.73, two copies of the penalty calculation of the source owner or operator provided pursuant to §66.13(a) or §66.72, and of any Agency recalculation pursuant to §66.51(a)(2) or §66.72(b)(2), and of the petition of the source owner or operator for reconsideration pursuant to §66.52 or §66.73, together with supporting documents.

(3) The Regional Hearing Clerk shall open and maintain the official file of the proceeding upon receipt of the documents referred to in paragraphs (b)(1) and (2) of this section.

(c) Upon granting a hearing the Administrator shall request the Chief Administrative Law Judge to designate an Administrative Law Judge to serve as the Presiding Officer. The Chief Administrative Law Judge shall make this designation within seven days of receiving the request, and shall notify the Regional Hearing Clerk of his action. The Regional Hearing Clerk shall forward to the Presiding Officer one set of the documents described in paragraph (b).

§66.93 Time limits.

The Presiding Officer upon designation shall notify the parties and shall, if appropriate, schedule a prehearing conference (or alternative procedures) under 40 CFR 22.19 and shall notify the parties of the date of hearing under 40 CFR 22.21. The Presiding Officer shall issue an initial decision no later than ninety days after the hearing is granted, unless an extension of the hearing schedule or of the deadline for decision is agreed to by the parties. To that end, the Presiding Officer may establish such deadlines as are reasonable and necessary. Failure to issue a decision within 90 days or further extended deadline (whether or not by consent) shall not affect the validity of the proceedings.

§66.94 Presentation of evidence.

(a) In hearings pursuant to §66.42 EPA shall present evidence of violation of applicable legal requirements. The

source owner or operator shall then present any rebuttal evidence.

(b) In hearings under § 66.42 the source owner or operator shall present evidence of entitlement to an exemption. EPA shall then present any rebuttal evidence.

(c) In hearings under §§ 66.54 and 66.73 EPA shall present evidence that its calculation or revisions of the source owner or operator's penalty calculations are correct. The source owner or operator shall then present any rebuttal evidence.

(d) Each matter of controversy shall be determined by the Presiding Officer upon a preponderance of the evidence.

(e) Any documentation submitted pursuant to § 66.92(b) shall automatically be received into evidence in the hearing.

§ 66.95 Decisions of the Presiding Officer; Appeal to the Administrator.

(a) The Presiding Officer shall dispose of the issues raised in the hearing in a single written decision. Such decision shall terminate the Presiding Officer's consideration of those issues.

(b) Penalty calculations and payment schedules, if any, established by the decision of the Presiding Officer shall be based solely on the parameters, terms and conditions of the Technical Support Document, Manual, and Computer Program.

(c) An appeal to the Environmental Appeals Board from a decision of the Presiding Officer shall be made by petition filed within twenty (20) days from receipt by a party of the Presiding Officer's decision. The Environmental Appeals Board shall rule on the appeal within 30 days of receipt of a petition. No appeal may be made before receipt of the decision of the Presiding Officer.

[45 FR 50110, July 20, 1980, as amended at 57 FR 5329, Feb. 13, 1992]

APPENDIX A TO PART 66—TECHNICAL SUPPORT DOCUMENT

NOTE: For text of appendix A see appendix A to part 67.

APPENDIX B TO PART 66—INSTRUCTION MANUAL

NOTE: For text of appendix B see appendix B to part 67.

APPENDIX C TO PART 66—COMPUTER PROGRAM

NOTE: For text of appendix C see appendix C to part 67.

PART 67—EPA APPROVAL OF STATE NONCOMPLIANCE PENALTY PROGRAM

Subpart A—Purpose and Scope

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67.1 Purpose and scope.

Subpart B—Approval of State Programs

67.11 Standards for approval of State programs.
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67.21 Federal notice of noncompliance to owners or operators of sources in States with approved programs.

Subpart D—EPA Review of State Compliance or Exemption Decisions

67.31 Review by the Administrator.
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APPENDIX A TO PART 67—TECHNICAL SUPPORT DOCUMENT [NOTE]
APPENDIX B TO PART 67—INSTRUCTION MANUAL [NOTE]
APPENDIX C TO PART 67—COMPUTER PROGRAM [NOTE]

AUTHORITY: Sec. 120 of the Clean Air Act, as amended, 42 U.S.C. 7420, unless otherwise noted.

SOURCE: 45 FR 50117, July 28, 1980, unless otherwise noted.

Subpart A—Purpose and Scope

§67.1 Purpose and scope.

This part describes the standards and procedures under which EPA will approve State programs for administering the noncompliance penalty program under section 120 of the Clean Air Act and will evaluate actions taken by States with approved programs. Subpart A describes the purpose of the part. Subpart B states the conditions under which EPA will approve State programs to administer the noncompliance penalty provisions. Subparts C and D state when and how EPA will issue its own notices to owners or operators of sources in States with approved programs, and how it will review State decisions to grant or deny exemptions from the penalty. Finally, subpart E states how EPA will review State assessments of a penalty.

Subpart B—Approval of State Programs

§67.11 Standards for approval of State programs.

(a) The Administrator shall approve any program submitted by a State, or by a local governmental agency where no program has been submitted by a State, for administering the noncompliance penalty provisions of section 120 of the Clean Air Act upon finding that the program conforms to the requirements of the Act and to those of this part and 40 CFR part 66. References to ''State program'' in this part shall be read as including local governmental agencies and their programs.

(b) The Administrator shall not approve any State program that does not provide explicitly for:

(1) Issuance of a notice of noncompliance, in a manner consistent with procedures under part 66, upon discovery by the State or upon notification by EPA of a violation of applicable legal requirements, which notice satisfies the informational requirements set forth in §66.13.

(2) Levels of staffing and funding satisfactory, in the judgment of the Administrator, to implement and enforce the requirements of section 120 in that State, together with adequate provision for maintaining such levels;

(3) A capability to carry out the financial analysis and procedures specified in these regulations and the Technical Support Document, Instruction Manual, and related Computer Program, available from the Director of Stationary Source Compliance Division, EN–341, 1200 Pennsylvania Ave., NW., Washington, DC 20460, together with adequate provision for maintaining such capability. Such capability may be provided by trained State personnel or through qualified contractors;

(4) Except as provided in paragraph (a)(6) of this section, an administrative hearing whenever the owner or operator of a source submits a petition for reconsideration of a notice of noncompliance on the ground that the source either is not in violation of applicable legal requirements, or is entitled to an exemption, or both, or submits a petition to challenge a recalculation of the penalty by the State, provided that such petitions raise issues of fact that would require a hearing under part 66. This hearing need not conform to the requirements of 5 U.S.C. 554 as long as its procedures provide for:

(i) An initial decision by the hearing officer on the record;

(ii) A hearing officer who has not performed investigative or litigating functions in any enforcement action against the source owner or operator in question;

(iii) Opportunity for public participation on reasonable notice, including intervention, by interested persons;

(iv) Opportunity for cross-examination or an equivalent opportunity for confrontation between persons advocating differing positions on material factual matters; and

(v) An initial decision by the hearing officer within ninety days of commencement of the hearing unless such period is extended upon agreement of the parties.

(5) Explicit provision for:

(i) Notice to the Administrator of any determination granting an exemption, or finding a source in violation of applicable legal requirements, and any penalty calculation and payment

schedule approved or calculated by the State, together with any information necessary to verify its accuracy;

(ii) Within 30 days of receipt of a request from the Administrator, transmission of a copy of the record of the hearing held under paragraph (a)(4) or (6) of this section, including any proffered evidence and a ruling on its admissibility and the State's decision on the merits; and

(iii) Additional reporting and recordkeeping, if necessary, adequate to enable the Administrator to review the State's administration of the program and determine whether it conforms to the Act and to part 66 of these regulations. Such requirements will be specified in the Notice of Delegation to the State.

(6) A hearing on the question of whether the owner or operator of a source is entitled to an exemption pursuant to § 66.32 or § 66.33 may be informal. The hearing shall be scheduled upon notice to the public. Reasonable opportunity to testify and for submission of questions to the petitioner by members of the public shall be afforded. A record of the hearing shall be made, and the decision of the hearing officer made in writing within a reasonable period of time after the close of the hearing.

(c) The State may delegate all or part of its responsibilities under its program to a local governmental agency to implement the program within the jurisdiction of the local agency, *Provided* that the program of the local government agency meets the requirements of this section.

(d) No State penalty program or program of one of its agents shall be disapproved because it is more stringent than the program established by part 66 or by section 120 where the State or local agent concludes that it has independent authority under State or local law to implement and administer the more stringent portions of the program.

[45 FR 50117, July 28, 1980, as amended at 54 FR 25259, June 14, 1989]

§ 67.12 Application for approval of programs.

A state that wishes to administer a section 120 program shall submit an application in writing to the Administrator describing its proposed program. All necessary supporting materials shall accompany the application.

§ 67.13 Approval.

(a) The Administrator shall evaluate any application submitted under § 67.12 and shall:

(1) Approve the program and delegate authority to the State to administer the program if he determines that the requirements of § 67.11 have been and will be met; or

(2) Request additional information if he determines that the information submitted is not sufficient to allow him to determine whether the requirements of § 67.11 have been and will be met; or

(3) Disapprove the State program if he determines that the information submitted establishes that the requirements of § 67.11 have not been or will not be met.

(b) The Administrator shall notify the State in writing of his action under paragraph (a) of this section and shall state the reasons for his action.

(c) In all cases of delegation (whether or not express provision is made in the notice of delegation) the Administrator shall retain continuing authority to issue notices of noncompliance, review exemption requests or penalty calculations, or take any other steps set forth in part 66 to assess and collect these penalties. Such authority shall be exercised pursuant to the provisions of § 67.21.

(d) The Administrator shall retain exclusive authority to assess and collect penalties against source owners or operators of facilities in the State who were issued notices of noncompliance pursuant to part 66 prior to the effective date of the delegation, except to the extent the Administrator specifically delegates such authority to the State.

§ 67.14 Amendments to the program.

A State or local agent with a program approved pursuant to § 67.13 may propose amendments to that program to the Administrator. The Administrator shall evaluate whether the State or local agent's program as amended would conform to the requirements of

§67.11 and shall respond as provided in §67.13.

§67.15 Revocation.

If the Administrator determines that a State with a program approved under §67.13 is not administering the program in conformity with the requirements of the Act or §67.11, or the delegation of authority, he shall provide the State written notice of that determination, setting forth his reasons. Copies of all supporting materials shall accompany the notice if requested, or shall be placed on file in the appropriate Regional Office and made available for inspection during normal business hours. The State shall have 90 days in which to respond in writing to this determination. If the Administrator finds after reviewing the State response that (a) the State is in fact administering the program in conformity with §67.11, or (b) there are reasonable grounds to believe the State program will immediately be brought into conformity with that section, he shall withdraw his determination. If he finds that neither of these conditions has been met, he shall withdraw the delegation of authority to the State.

Subpart C—Federal Notice of Noncompliance to Sources in States With Approved Programs

§67.21 Federal notice of noncompliance to owners or operators of sources in States with approved programs.

(a) The Administrator shall issue a notice of noncompliance to the owner or operator of any source in a State with an approved program if he determines that the State or its local agent has failed to issue such notice, provided that he shall first give 30 days notice to the State of his intent to issue a notice of noncompliance to the owner or operator of the source in question unless the State or its agent does so first. Any notice issued by the Administrator pursuant to this section shall be deemed to be issued pursuant to the provisions of part 66.

(b) The issuance of a notice of noncompliance shall operate to withdraw EPA delegation of authority to the State with respect to the particular facility in question.

(c) If the Administrator determines that the State or local agent has issued a notice of noncompliance but has failed to pursue diligently subsequent steps for the assessment and collection of the penalty, he shall notify the State of his intent to withdraw delegation of authority to the State with respect to the facility in question and take appropriate actions pursuant to part 66 unless the State or local agent, within 30 days, takes appropriate action in accordance with the requirements of this part. In either case the penalty will be calculated from the date of the State notice.

Subpart D—EPA Review of State Compliance or Exemption Decisions

§67.31 Review by the Administrator.

(a) The Administrator may, on his own initiative, review any determination by a State or its agent that a source owner or operator is or is not in compliance with applicable legal requirements or is or is not entitled to an exemption, to determine whether that determination conforms to the requirements of the Act and part 66 (as modified by §67.11).

(b) The Administrator shall review any such determination upon receipt of a petition alleging that the State's determination does not conform to the requirements of the Act and part 66 (as modified by §67.11). Such petition must be filed within 20 days of issuance of the State's decision.

(c) The Administrator shall give notice in writing to the State or local agent, to the owner or operator of the source, and to the petitioner of his intent to review the determination. Such notice shall be given within 90 days of the Administrator's receipt of the State or local agent's determination. Unless otherwise provided, such notice shall not withdraw EPA's delegation of authority to the State or local agent over the particular facility in question.

(d) No such State determination shall become final until the expiration of 90 days after the Administrator's receipt of the notice required by §67.11(b)(5).

(1) If the Administrator does not issue a notice of intent to review within that period, the State determination shall, upon expiration of such period, constitute final action of the Administrator under section 120 of the Act.

(2) If the Administrator issues a notice of intent to review within that period, the State determination shall not become final until the Administrator takes final action after reviewing the determination.

(e) Except as otherwise provided, a State determination shall be approved if there was a reasonable basis in law and in fact for making the determination.

§ 67.32 Procedure where no formal State hearing was held.

(a) In reviewing a decision that a source is in compliance with applicable legal requirements or entitled to an exemption for which no hearing conforming to § 67.11(b) (4) or (6) was held, the Administrator shall evaluate the accuracy and adequacy of the documents transmitted to him pursuant to § 67.11(b)(5) and shall invite submission of comments on issues identified by him as relevant to his review.

(b) If the Administrator concludes that no hearing need have been held and that the State determination was correct, he shall notify the State, the source owner or operator, and other participants of his determination, which shall constitute final agency action by EPA under authority of section 120. If the Administrator concludes that the petition of the source owner or operator presented information which, if true, would have altered the owner or operator's liability for a penalty, he shall upon notice to the State or local agent schedule a hearing in accordance with subpart E of part 66. Such notice shall operate as a withdrawal of EPA's delegation of authority to the State or local agent over the facility in question unless the State or local agent schedules a hearing within 15 days of receipt of the notice.

(c) If the Administrator concludes that the State determination did not conform to the requirements of the Act or of part 66 (as modified by § 67.11), he shall by written notice revoke the determination. Such revocation shall operate as a withdrawal of EPA's delegation of authority to the State or local agent over the facility in question. The source owner or operator may then petition for review of the Administrator's decision pursuant to the provisions of § 66.13.

(d) Unless otherwise provided in the Administrator's notice to the State or local agent, any noncompliance penalties owed by the source owner or operator shall be paid to the State or local agent. The Administrator shall send a copy of this notice to the source owner or operator.

§ 67.33 Procedure where a formal State hearing was held.

(a) In reviewing a decision that a source is in compliance with applicable legal requirements or is entitled to an exemption for which a hearing conforming to § 67.11(b) (4) or (6) was held, the Administrator may invite comment on issues identified by him as relevant to his review and shall propose or make findings as to the correctness of the determination and the accuracy and adequacy of the material transmitted pursuant to § 67.11(b)(5).

(b) The Administrator shall notify all participants in the State hearing of his findings and conclusions. If the Administrator concludes that the State determination conformed to the requirements of the Act and of part 66 (as modified by § 66.11), the Administrator's determination shall constitute final administrative action by EPA under authority of Section 120. If the Administrator finds that the State determination did not conform to the requirements of the Act and of part 66 (as modified by § 67.11), the findings shall constitute proposed findings and the notice shall invite participants to file exceptions thereto. If the Administrator considers it desirable, he may schedule a time for argument.

(c) Within 60 days of receipt of any briefs or exceptions or after oral argument pursuant to paragraph (b), the Administrator shall affirm, modify, or revoke his proposed findings that the State's determination did not conform to the requirements of the Act or of part 66 (as modified by § 67.11). The decision shall be in writing. Notice and a copy of the decision shall be provided

to the source owner or operator and to all other participants in the State hearing. The decision shall constitute a final administrative action by EPA under authority of section 120.

(d) If the Administrator finds that deficiencies in the hearing record prevent him from determining whether the determination of the State or local agent conformed to the requirements of the Act and part 66 (as modified by §67.11), he shall notify the State or local agent of his finding and specify what deficiencies exist and schedule a hearing pursuant to subpart E of part 66. Such notice shall operate as a withdrawal of EPA's delegation of authority to the State or local agent over the facility in question unless the State or local agent schedules a supplemental hearing to correct the deficiencies within 15 days of receipt of the notice.

(e) If the Administrator concludes that the source is in violation of applicable legal requirements or is not entitled to an exemption, or both, and unless otherwise ordered in the decision, the source owner or operator shall submit a penalty calculation to the State within 45 days of receipt of the notice of determination.

Subpart E—EPA Review of State Penalty Assessments

§67.41 When EPA may review.

(a) The Administrator may on his own initiative or on petition review any initial, interim, or final penalty calculation made or approved by the State or local agent to determine whether it conforms to the requirements of the Act, of part 66, of the Technical Support Document and the Instruction Manual. The Administrator shall notify the State or local agent in writing of his intention to review the calculation within 60 days of receipt by EPA of the calculation or any item considered by the State in making or approving such calculation, whichever occurs later.

(b) No such State determination shall become final until the expiration of 90 days after the Administrator's receipt of the notice required by §67.11(b)(5).

(1) If the Administrator does not issue a notice of intent to review within that period, the State determination shall, upon expiration of such period, constitute final action of the Administrator under section 120 of the Act.

(2) If the Administrator issues a notice of intent to review within that period, the State determination shall not become final until the Administrator takes final action after reviewing the determination.

(c) Except as otherwise provided, a State determination shall be approved if there was a reasonable basis in law and in fact for making the determination.

§67.42 Procedure where no formal State hearing was held.

(a) In reviewing a penalty calculation for which no hearing conforming to the requirements of §67.11(b)(4) was held, the Administrator shall evaluate the accuracy and adequacy of the data contained in the documents transmitted to him pursuant to §67.11(b)(5) and shall invite comments on issues identified by him as relevant to his review.

(b) If the Administrator concludes that no hearing need have been held and that the State determination was correct, he shall notify the State, the source owner or operator, and other participants of his determination, which shall constitute final agency action by EPA under authority of section 120. If the Administrator concludes that the petition of the source owner or operator for reconsideration of a recalculation presented information which, if true, would have altered the amount of the penalty calculated, he shall upon notice to the State schedule a hearing in accordance with subpart F of part 66. Such notice shall operate as a withdrawal of EPA's delegation of authority to the State or local agent over the facility in question unless the State or local agent schedules a hearing within 15 days of receipt of the notice.

(c) If the Administrator concludes that the determination of the State or local agent not to hold a hearing was proper but that the penalty calculation does not conform to the requirements of the Act or of part 66, he shall by written notice revoke the determination and issue a notice of recalculation

to the source owner or operator pursuant to § 66.51. A copy of the notice of recalculation shall be provided to the State or local agent. The notice of recalculation shall constitute final administrative action by EPA under authority of section 120 unless the source owner or operator petitions for reconsideration under § 66.52, in which case it shall operate as a withdrawal by EPA of its delegation of authority to the State or local agent over the facility in question.

(d) Unless otherwise provided in the Administrator's notice, noncompliance penalties finally determined to be owed shall be paid to the State or local agent.

§ 67.43 Procedure where a formal State hearing was held.

(a) In reviewing a penalty calculation for which a hearing conforming to § 67.11(b)(4) was held, the Administrator may invite comment on issues identified by him as relevant to his review and shall propose or make findings as to the correctness of the determination and shall evaluate the accuracy and adequacy of the material transmitted pursuant to § 67.11(b)(5).

(b) The Administrator shall notify all participants in the State hearing of his findings and conclusions. If the Administrator finds that the State determination conformed to the requirements of the Act, part 66 (as modified by § 67.11), the Technical Support Document, and the Instruction Manual, his determination shall constitute a final action pursuant to section 120. If the Administrator finds that the State determination did not conform to the requirements of the Act or of part 66 (as modified by § 67.11) or to the Technical Support Document or Instruction Manual, the findings shall constitute proposed findings, and the notice shall invite participants to file exceptions to his proposed findings and, if necessary, schedule a time for argument.

(c) Within 60 days of receipt of any briefs or exceptions or after oral argument, the Administrator shall affirm, modify, or revoke his proposed findings that the State or local agent's determination did not conform to the requirements of the Act or of part 66 (as modified by § 67.11) or the Technical Support Document or Instruction Manual. The decision shall be in writing. Notice and a copy of the decision, which shall constitute final administrative action by EPA pursuant to section 120, shall be provided to the source owner or operator and to all other participants in the State hearing.

(d) If the Administrator finds that deficiencies in the State or local agent's hearing record prevent him from determining whether the State or local agent's determination conformed to the requirements of the Act and part 66 (as modified by § 67.11) or the Technical Support Document or Instruction Manual, he shall notify the State or local agent of his decision and specify what dificiencies exist and schedule a hearing in accordance with subpart F of part 66. Such notice shall operate to withdraw EPA's delegation of authority to the State or local agent over the facility in question unless the State or local agent within 15 days schedules a supplemental hearing to correct the deficiencies.

(e) Unless otherwise provided in the Administrator's notice to the State or local agent, any noncompliance penalties owed by the source owner or operator shall be paid to the State or local agent.

APPENDIX A TO PART 67—TECHNICAL SUPPORT DOCUMENT

NOTE: EPA will make copies of appendix A available from: Director, Stationary Source Compliance Division, EN–341, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

[54 FR 25259, June 20, 1989]

APPENDIX B TO PART 67—INSTRUCTION MANUAL

NOTE: EPA will make copies of appendix B available from: Director, Stationary Source Compliance Division, EN–341, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

[54 FR 25259, June 20, 1989]

APPENDIX C TO PART 67—COMPUTER PROGRAM

NOTE: EPA will make copies of appendix C available from: Director, Stationary Source Compliance Division, EN–341, 1200 Pennsylvania., NW., Washington, DC 20460.

[54 FR 25259, June 20, 1989]

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

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APPENDIX A TO PART 68—TABLE OF TOXIC ENDPOINTS

AUTHORITY: 42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f.

SOURCE: 59 FR 4493, Jan. 31, 1994, unless otherwise noted.

Subpart A—General

§68.1 Scope.

This part sets forth the list of regulated substances and thresholds, the petition process for adding or deleting substances to the list of regulated substances, the requirements for owners or operators of stationary sources concerning the prevention of accidental releases, and the State accidental release prevention programs approved under section 112(r). The list of substances, threshold quantities, and accident prevention regulations promulgated under this part do not limit in any way the general duty provisions under section 112(r)(1).

§68.3 Definitions.

For the purposes of this part:

Accidental release means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

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

Administrative controls mean written procedural mechanisms used for hazard control.

Administrator means the administrator of the U.S. Environmental Protection Agency.

AIChE/CCPS means the American Institute of Chemical Engineers/Center for Chemical Process Safety.

API means the American Petroleum Institute.

Article means a manufactured item, as defined under 29 CFR 1910.1200(b), that is formed to a specific shape or design during manufacture, that has end use functions dependent in whole or in part upon the shape or design during end use, and that does not release or otherwise result in exposure to a regulated substance under normal conditions of processing and use.

ASME means the American Society of Mechanical Engineers.

CAS means the Chemical Abstracts Service.

Catastrophic release means a major uncontrolled emission, fire, or explosion, involving one or more regulated substances that presents imminent and substantial endangerment to public health and the environment.

Classified information means ''classified information'' as defined in the Classified Information Procedures Act, 18 U.S.C. App. 3, section 1(a) as ''any information or material that has been determined by the United States Government pursuant to an executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security.''

Condensate means hydrocarbon liquid separated from natural gas that condenses due to changes in temperature, pressure, or both, and remains liquid at standard conditions.

Covered process means a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

Crude oil means any naturally occurring, unrefined petroleum liquid.

Designated agency means the state, local, or Federal agency designated by the state under the provisions of § 68.215(d) .

DOT means the United States Department of Transportation.

Environmental receptor means natural areas such as national or state parks, forests, or monuments; officially designated wildlife sanctuaries, preserves, refuges, or areas; and Federal wilderness areas, that could be exposed at any time to toxic concentrations, radiant heat, or overpressure greater than or equal to the endpoints provided in § 68.22(a) , as a result of an accidental release and that can be identified on local U. S. Geological Survey maps.

Field gas means gas extracted from a production well before the gas enters a natural gas processing plant.

Hot work means work involving electric or gas welding, cutting, brazing, or similar flame or spark-producing operations.

Implementing agency means the state or local agency that obtains delegation for an accidental release prevention program under subpart E, 40 CFR part 63. The implementing agency may, but is not required to, be the state or local air permitting agency. If no state or local agency is granted delegation, EPA will be the implementing agency for that state.

Injury means any effect on a human that results either from direct exposure to toxic concentrations; radiant heat; or overpressures from accidental releases or from the direct consequences of a vapor cloud explosion (such as flying glass, debris, and other projectiles) from an accidental release and that requires medical treatment or hospitalization.

Major change means introduction of a new process, process equipment, or regulated substance, an alteration of process chemistry that results in any change to safe operating limits, or other alteration that introduces a new hazard.

Mechanical integrity means the process of ensuring that process equipment is fabricated from the proper materials of construction and is properly installed, maintained, and replaced to prevent failures and accidental releases.

Medical treatment means treatment, other than first aid, administered by a physician or registered professional personnel under standing orders from a physician.

Mitigation or mitigation system means specific activities, technologies, or equipment designed or deployed to capture or control substances upon loss of containment to minimize exposure of the public or the environment. Passive mitigation means equipment, devices, or technologies that function without human, mechanical, or other energy input. Active mitigation means equipment, devices, or technologies that need human, mechanical, or other energy input to function.

NAICS means North American Industry Classification System.

NFPA means the National Fire Protection Association.

Natural gas processing plant (gas plant) means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both, classified as North American Industrial Classification System (NAICS) code 211112 (previously Standard Industrial Classification (SIC) code 1321).

Offsite means areas beyond the property boundary of the stationary source, and areas within the property boundary to which the public has routine and unrestricted access during or outside business hours.

OSHA means the U.S. Occupational Safety and Health Administration. Owner or operator means any person who owns, leases, operates, controls, or supervises a stationary source.

Petroleum refining process unit means a process unit used in an establishment primarily engaged in petroleum refining as defined in NAICS code 32411 for petroleum refining (formerly SIC code 2911) and used for the following: Producing transportation fuels (such as gasoline, diesel fuels, and jet fuels), heating fuels (such as kerosene, fuel gas distillate, and fuel oils), or lubricants; Separating petroleum; or Separating, cracking, reacting, or reforming intermediate petroleum streams. Examples of such units include, but are not limited to, petroleum based solvent units, alkylation units, catalytic hydrotreating, catalytic hydrorefining, catalytic hydrocracking, catalytic reforming, catalytic cracking, crude distillation, lube oil processing, hydrogen production, isomerization, polymerization, thermal processes, and blending, sweetening, and treating processes. Petroleum refining process units include sulfur plants.

Population means the public.

Process means any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

Produced water means water extracted from the earth from an oil or natural gas production well, or that is separated from oil or natural gas after extraction.

Public means any person except employees or contractors at the stationary source.

Public receptor means offsite residences, institutions (e.g., schools, hospitals), industrial, commercial, and office buildings, parks, or recreational areas inhabited or occupied by the public at any time without restriction by the stationary source where members of the public could be exposed to toxic concentrations, radiant heat, or overpressure, as a result of an accidental release.

Regulated substance is any substance listed pursuant to section 112(r)(3) of the Clean Air Act as amended, in §68.130.

Replacement in kind means a replacement that satisfies the design specifications.

Retail facility means a stationary source at which more than one-half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program.

RMP means the risk management plan required under subpart G of this part.

Stationary source means any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties,

which are under the control of the same person (or persons under common control), and from which an accidental release may occur. The term stationary source does not apply to transportation, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this part. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading. Transportation includes, but is not limited to, transportation subject to oversight or regulation under 49 CFR parts 192, 193, or 195, or a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. section 60105. A stationary source does not include naturally occurring hydrocarbon reservoirs. Properties shall not be considered contiguous solely because of a railroad or pipeline right-of-way.

Threshold quantity means the quantity specified for regulated substances pursuant to section 112(r)(5) of the Clean Air Act as amended, listed in § 68.130 and determined to be present at a stationary source as specified in § 68.115 of this part.

Typical meteorological conditions means the temperature, wind speed, cloud cover, and atmospheric stability class, prevailing at the site based on data gathered at or near the site or from a local meteorological station.

Vessel means any reactor, tank, drum, barrel, cylinder, vat, kettle, boiler, pipe, hose, or other container.

Worst-case release means the release of the largest quantity of a regulated substance from a vessel or process line failure that results in the greatest distance to an endpoint defined in § 68.22(a).

[59 FR 4493, Jan. 31, 1994, as amended at 61 FR 31717, June 20, 1996; 63 FR 644, Jan. 6, 1998; 64 FR 979, Jan. 6, 1999; 65 FR 13250, Mar. 13, 2000]

§ 68.10 Applicability.

(a) An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under § 68.115, shall comply with the requirements of this part no later than the latest of the following dates:

(1) June 21, 1999;

(2) Three years after the date on which a regulated substance is first listed under § 68.130; or

(3) The date on which a regulated substance is first present above a threshold quantity in a process.

(b) *Program 1 eligibility requirements.* A covered process is eligible for Program 1 requirements as provided in § 68.12(b) if it meets all of the following requirements:

(1) For the five years prior to the submission of an RMP, the process has not had an accidental release of a regulated substance where exposure to the substance, its reaction products, overpressure generated by an explosion involving the substance, or radiant heat generated by a fire involving the substance led to any of the following offsite:

(i) Death;

(ii) Injury; or

(iii) Response or restoration activities for an exposure of an environmental receptor;

(2) The distance to a toxic or flammable endpoint for a worst-case release assessment conducted under subpart B and § 68.25 is less than the distance to any public receptor, as defined in § 68.30; and

(3) Emergency response procedures have been coordinated between the stationary source and local emergency planning and response organizations.

(c) Program 2 eligibility requirements. A covered process is subject to Program 2 requirements if it does not meet the eligibility requirements of either paragraph (b) or paragraph (d) of this section.

(d) Program 3 eligibility requirements. A covered process is subject to Program 3 if the process does not meet the requirements of paragraph (b) of this section, and if either of the following conditions is met:

(1) The process is in NAICS code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or

(2) The process is subject to the OSHA process safety management standard, 29 CFR 1910.119.

(e) If at any time a covered process no longer meets the eligibility criteria of its Program level, the owner or operator shall comply with the requirements of the new Program level that applies to the process and update the RMP as provided in §68.190.

(f) The provisions of this part shall not apply to an Outer Continental Shelf (''OCS'') source, as defined in 40 CFR 55.2.

[61 FR 31717, June 20, 1996, as amended at 63 FR 645, Jan. 6, 1998; 64 FR 979, Jan. 6, 1999]

§68.12 General requirements.

(a) General requirements. The owner or operator of a stationary source subject to this part shall submit a single RMP, as provided in §§68.150 to 68.185. The RMP shall include a registration that reflects all covered processes.

(b) Program 1 requirements. In addition to meeting the requirements of paragraph (a) of this section, the owner or operator of a stationary source with a process eligible for Program 1, as provided in §68.10(b), shall:

(1) Analyze the worst-case release scenario for the process(es), as provided in §68.25; document that the nearest public receptor is beyond the distance to a toxic or flammable endpoint defined in §68.22(a); and submit in the RMP the worst-case release scenario as provided in §68.165;

(2) Complete the five-year accident history for the process as provided in §68.42 of this part and submit it in the RMP as provided in §68.168;

(3) Ensure that response actions have been coordinated with local emergency planning and response agencies; and

(4) Certify in the RMP the following: ''Based on the criteria in 40 CFR 68.10, the distance to the specified endpoint for the worst-case accidental release scenario for the following process(es) is less than the distance to the nearest public receptor: [list process(es)]. Within the past five years, the process(es) has (have) had no accidental release that caused offsite impacts provided in the risk management program rule (40 CFR 68.10(b)(1)). No additional measures are necessary to prevent offsite impacts from accidental releases. In the event of fire, explosion, or a release of a regulated substance from the process(es), entry within the distance to the specified endpoints may pose a danger to public emergency responders. Therefore, public emergency responders should not enter this area except as arranged with the emergency contact indicated in the RMP. The undersigned certifies that, to the best of my knowledge, information, and belief, formed after reasonable inquiry, the information submitted is true, accurate, and complete. [Signature, title, date signed].''

(c) Program 2 requirements. In addition to meeting the requirements of paragraph (a) of this section, the owner or operator of a stationary source with a process subject to Program 2, as provided in §68.10(c), shall:

(1) Develop and implement a management system as provided in §68.15;

(2) Conduct a hazard assessment as provided in §§68.20 through 68.42;

(3) Implement the Program 2 prevention steps provided in §§68.48 through 68.60 or implement the Program 3 prevention steps provided in §§68.65 through 68.87;

(4) Develop and implement an emergency response program as provided in §§68.90 to 68.95; and

(5) Submit as part of the RMP the data on prevention program elements for Program 2 processes as provided in §68.170.

(d) Program 3 requirements. In addition to meeting the requirements of paragraph (a) of this section, the owner or operator of a stationary source with a process subject to Program 3, as provided in §68.10(d) shall:

(1) Develop and implement a management system as provided in §68.15;

(2) Conduct a hazard assessment as provided in §§68.20 through 68.42;

(3) Implement the prevention requirements of §§68.65 through 68.87;

(4) Develop and implement an emergency response program as provided in §§68.90 to 68.95 of this part; and

(5) Submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in §68.175.

[61 FR 31718, June 20, 1996]

§68.15 Management.

(a) The owner or operator of a stationary source with processes subject

to Program 2 or Program 3 shall develop a management system to oversee the implementation of the risk management program elements.

(b) The owner or operator shall assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements.

(c) When responsibility for implementing individual requirements of this part is assigned to persons other than the person identified under paragraph (b) of this section, the names or positions of these people shall be documented and the lines of authority defined through an organization chart or similar document.

[61 FR 31718, June 20, 1996]

Subpart B—Hazard Assessment

SOURCE: 61 FR 31718, June 20, 1996, unless otherwise noted.

§ 68.20 Applicability.

The owner or operator of a stationary source subject to this part shall prepare a worst-case release scenario analysis as provided in § 68.25 of this part and complete the five-year accident history as provided in § 68.42. The owner or operator of a Program 2 and 3 process must comply with all sections in this subpart for these processes.

§ 68.22 Offsite consequence analysis parameters.

(a) Endpoints. For analyses of offsite consequences, the following endpoints shall be used:

(1) Toxics. The toxic endpoints provided in appendix A of this part.

(2) Flammables. The endpoints for flammables vary according to the scenarios studied:

(i) Explosion. An overpressure of 1 psi.

(ii) Radiant heat/exposure time. A radiant heat of 5 kw/m^2 for 40 seconds.

(iii) Lower flammability limit. A lower flammability limit as provided in NFPA documents or other generally recognized sources.

(b) Wind speed/atmospheric stability class. For the worst-case release analysis, the owner or operator shall use a wind speed of 1.5 meters per second and F atmospheric stability class. If the owner or operator can demonstrate that local meteorological data applicable to the stationary source show a higher minimum wind speed or less stable atmosphere at all times during the previous three years, these minimums may be used. For analysis of alternative scenarios, the owner or operator may use the typical meteorological conditions for the stationary source.

(c) Ambient temperature/humidity. For worst-case release analysis of a regulated toxic substance, the owner or operator shall use the highest daily maximum temperature in the previous three years and average humidity for the site, based on temperature/humidity data gathered at the stationary source or at a local meteorological station; an owner or operator using the RMP Offsite Consequence Analysis Guidance may use 25 °C and 50 percent humidity as values for these variables. For analysis of alternative scenarios, the owner or operator may use typical temperature/humidity data gathered at the stationary source or at a local meteorological station.

(d) Height of release. The worst-case release of a regulated toxic substance shall be analyzed assuming a ground level (0 feet) release. For an alternative scenario analysis of a regulated toxic substance, release height may be determined by the release scenario.

(e) Surface roughness. The owner or operator shall use either urban or rural topography, as appropriate. Urban means that there are many obstacles in the immediate area; obstacles include buildings or trees. Rural means there are no buildings in the immediate area and the terrain is generally flat and unobstructed.

(f) Dense or neutrally buoyant gases. The owner or operator shall ensure that tables or models used for dispersion analysis of regulated toxic substances appropriately account for gas density.

(g) Temperature of released substance. For worst case, liquids other than gases liquified by refrigeration only shall be considered to be released

at the highest daily maximum temperature, based on data for the previous three years appropriate for the stationary source, or at process temperature, whichever is higher. For alternative scenarios, substances may be considered to be released at a process or ambient temperature that is appropriate for the scenario.

§ 68.25 Worst-case release scenario analysis.

(a) The owner or operator shall analyze and report in the RMP:

(1) For Program 1 processes, one worst-case release scenario for each Program 1 process;

(2) For Program 2 and 3 processes:

(i) One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint provided in appendix A of this part resulting from an accidental release of regulated toxic substances from covered processes under worst-case conditions defined in § 68.22;

(ii) One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint defined in § 68.22(a) resulting from an accidental release of regulated flammable substances from covered processes under worst-case conditions defined in § 68.22; and

(iii) Additional worst-case release scenarios for a hazard class if a worst-case release from another covered process at the stationary source potentially affects public receptors different from those potentially affected by the worst-case release scenario developed under paragraphs (a)(2)(i) or (a)(2)(ii) of this section.

(b) *Determination of worst-case release quantity*. The worst-case release quantity shall be the greater of the following:

(1) For substances in a vessel, the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity; or

(2) For substances in pipes, the greatest amount in a pipe, taking into account administrative controls that limit the maximum quantity.

(c) *Worst-case release scenario—toxic gases*. (1) For regulated toxic substances that are normally gases at ambient temperature and handled as a gas or as a liquid under pressure, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is released as a gas over 10 minutes. The release rate shall be assumed to be the total quantity divided by 10 unless passive mitigation systems are in place.

(2) For gases handled as refrigerated liquids at ambient pressure:

(i) If the released substance is not contained by passive mitigation systems or if the contained pool would have a depth of 1 cm or less, the owner or operator shall assume that the substance is released as a gas in 10 minutes;

(ii) If the released substance is contained by passive mitigation systems in a pool with a depth greater than 1 cm, the owner or operator may assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled instantaneously to form a liquid pool. The volatilization rate (release rate) shall be calculated at the boiling point of the substance and at the conditions specified in paragraph (d) of this section.

(d) *Worst-case release scenario—toxic liquids*. (1) For regulated toxic substances that are normally liquids at ambient temperature, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled instantaneously to form a liquid pool.

(i) The surface area of the pool shall be determined by assuming that the liquid spreads to 1 centimeter deep unless passive mitigation systems are in place that serve to contain the spill and limit the surface area. Where passive mitigation is in place, the surface area of the contained liquid shall be used to calculate the volatilization rate.

(ii) If the release would occur onto a surface that is not paved or smooth, the owner or operator may take into account the actual surface characteristics.

(2) The volatilization rate shall account for the highest daily maximum temperature occurring in the past three years, the temperature of the

substance in the vessel, and the concentration of the substance if the liquid spilled is a mixture or solution.

(3) The rate of release to air shall be determined from the volatilization rate of the liquid pool. The owner or operator may use the methodology in the RMP Offsite Consequence Analysis Guidance or any other publicly available techniques that account for the modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly available models to local emergency planners upon request.

(e) *Worst-case release scenario—flammable gases.* The owner or operator shall assume that the quantity of the substance, as determined under paragraph (b) of this section and the provisions below, vaporizes resulting in a vapor cloud explosion. A yield factor of 10 percent of the available energy released in the explosion shall be used to determine the distance to the explosion endpoint if the model used is based on TNT equivalent methods.

(1) For regulated flammable substances that are normally gases at ambient temperature and handled as a gas or as a liquid under pressure, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is released as a gas over 10 minutes. The total quantity shall be assumed to be involved in the vapor cloud explosion.

(2) For flammable gases handled as refrigerated liquids at ambient pressure:

(i) If the released substance is not contained by passive mitigation systems or if the contained pool would have a depth of one centimeter or less, the owner or operator shall assume that the total quantity of the substance is released as a gas in 10 minutes, and the total quantity will be involved in the vapor cloud explosion.

(ii) If the released substance is contained by passive mitigation systems in a pool with a depth greater than 1 centimeter, the owner or operator may assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled instantaneously to form a liquid pool. The volatilization rate (release rate) shall be calculated at the boiling point of the substance and at the conditions specified in paragraph (d) of this section. The owner or operator shall assume that the quantity which becomes vapor in the first 10 minutes is involved in the vapor cloud explosion.

(f) *Worst-case release scenario—flammable liquids.* The owner or operator shall assume that the quantity of the substance, as determined under paragraph (b) of this section and the provisions below, vaporizes resulting in a vapor cloud explosion. A yield factor of 10 percent of the available energy released in the explosion shall be used to determine the distance to the explosion endpoint if the model used is based on TNT equivalent methods.

(1) For regulated flammable substances that are normally liquids at ambient temperature, the owner or operator shall assume that the entire quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled instantaneously to form a liquid pool. For liquids at temperatures below their atmospheric boiling point, the volatilization rate shall be calculated at the conditions specified in paragraph (d) of this section.

(2) The owner or operator shall assume that the quantity which becomes vapor in the first 10 minutes is involved in the vapor cloud explosion.

(g) *Parameters to be applied.* The owner or operator shall use the parameters defined in § 68.22 to determine distance to the endpoints. The owner or operator may use the methodology provided in the RMP Offsite Consequence Analysis Guidance or any commercially or publicly available air dispersion modeling techniques, provided the techniques account for the modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly

available models to local emergency planners upon request.

(h) *Consideration of passive mitigation.* Passive mitigation systems may be considered for the analysis of worst case provided that the mitigation system is capable of withstanding the release event triggering the scenario and would still function as intended.

(i) *Factors in selecting a worst-case scenario.* Notwithstanding the provisions of paragraph (b) of this section, the owner or operator shall select as the worst case for flammable regulated substances or the worst case for regulated toxic substances, a scenario based on the following factors if such a scenario would result in a greater distance to an endpoint defined in § 68.22(a) beyond the stationary source boundary than the scenario provided under paragraph (b) of this section:

(1) Smaller quantities handled at higher process temperature or pressure; and

(2) Proximity to the boundary of the stationary source.

[61 FR 31718, June 20, 1996, as amended at 64 FR 28700, May 26, 1999]

§ 68.28 Alternative release scenario analysis.

(a) The number of scenarios. The owner or operator shall identify and analyze at least one alternative release scenario for each regulated toxic substance held in a covered process(es) and at least one alternative release scenario to represent all flammable substances held in covered processes.

(b) *Scenarios to consider.* (1) For each scenario required under paragraph (a) of this section, the owner or operator shall select a scenario:

(i) That is more likely to occur than the worst-case release scenario under § 68.25; and

(ii) That will reach an endpoint offsite, unless no such scenario exists.

(2) Release scenarios considered should include, but are not limited to, the following, where applicable:

(i) Transfer hose releases due to splits or sudden hose uncoupling;

(ii) Process piping releases from failures at flanges, joints, welds, valves and valve seals, and drains or bleeds;

(iii) Process vessel or pump releases due to cracks, seal failure, or drain, bleed, or plug failure;

(iv) Vessel overfilling and spill, or overpressurization and venting through relief valves or rupture disks; and

(v) Shipping container mishandling and breakage or puncturing leading to a spill.

(c) Parameters to be applied. The owner or operator shall use the appropriate parameters defined in § 68.22 to determine distance to the endpoints. The owner or operator may use either the methodology provided in the RMP Offsite Consequence Analysis Guidance or any commercially or publicly available air dispersion modeling techniques, provided the techniques account for the specified modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly available models to local emergency planners upon request.

(d) Consideration of mitigation. Active and passive mitigation systems may be considered provided they are capable of withstanding the event that triggered the release and would still be functional.

(e) Factors in selecting scenarios. The owner or operator shall consider the following in selecting alternative release scenarios:

(1) The five-year accident history provided in § 68.42; and

(2) Failure scenarios identified under § 68.50 or § 68.67.

§ 68.30 Defining offsite impacts—population.

(a) The owner or operator shall estimate in the RMP the population within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in § 68.22(a).

(b) *Population to be defined.* Population shall include residential population. The presence of institutions (schools, hospitals, prisons), parks and

recreational areas, and major commercial, office, and industrial buildings shall be noted in the RMP.

(c) *Data sources acceptable.* The owner or operator may use the most recent Census data, or other updated information, to estimate the population potentially affected.

(d) *Level of accuracy.* Population shall be estimated to two significant digits.

§ 68.33 Defining offsite impacts—environment.

(a) The owner or operator shall list in the RMP environmental receptors within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in § 68.22(a) of this part.

(b) *Data sources acceptable.* The owner or operator may rely on information provided on local U.S. Geological Survey maps or on any data source containing U.S.G.S. data to identify environmental receptors.

§ 68.36 Review and update.

(a) The owner or operator shall review and update the offsite consequence analyses at least once every five years.

(b) If changes in processes, quantities stored or handled, or any other aspect of the stationary source might reasonably be expected to increase or decrease the distance to the endpoint by a factor of two or more, the owner or operator shall complete a revised analysis within six months of the change and submit a revised risk management plan as provided in § 68.190.

§ 68.39 Documentation.

The owner or operator shall maintain the following records on the offsite consequence analyses:

(a) For worst-case scenarios, a description of the vessel or pipeline and substance selected as worst case, assumptions and parameters used, and the rationale for selection; assumptions shall include use of any administrative controls and any passive mitigation that were assumed to limit the quantity that could be released. Documentation shall include the anticipated effect of the controls and mitigation on the release quantity and rate.

(b) For alternative release scenarios, a description of the scenarios identified, assumptions and parameters used, and the rationale for the selection of specific scenarios; assumptions shall include use of any administrative controls and any mitigation that were assumed to limit the quantity that could be released. Documentation shall include the effect of the controls and mitigation on the release quantity and rate.

(c) Documentation of estimated quantity released, release rate, and duration of release.

(d) Methodology used to determine distance to endpoints.

(e) Data used to estimate population and environmental receptors potentially affected.

§ 68.42 Five-year accident history.

(a) The owner or operator shall include in the five-year accident history all accidental releases from covered processes that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage.

(b) *Data required.* For each accidental release included, the owner or operator shall report the following information:

(1) Date, time, and approximate duration of the release;

(2) Chemical(s) released;

(3) Estimated quantity released in pounds and, for mixtures containing regulated toxic substances, percentage concentration by weight of the released regulated toxic substance in the liquid mixture;

(4) Five- or six-digit NAICS code that most closely corresponds to the process;

(5) The type of release event and its source;

(6) Weather conditions, if known;

(7) On-site impacts;

(8) Known offsite impacts;

(9) Initiating event and contributing factors if known;

(10) Whether offsite responders were notified if known; and

(11) Operational or process changes that resulted from investigation of the release and that have been made by the

time this information is submitted in accordance with § 68.168.

(c) *Level of accuracy*. Numerical estimates may be provided to two significant digits.

[61 FR 31718, June 20, 1996, as amended at 64 FR 979, Jan. 6, 1999; 69 FR 18831, Apr. 9, 2004]

Subpart C—Program 2 Prevention Program

SOURCE: 61 FR 31721, June 20, 1996, unless otherwise noted.

§ 68.48 Safety information.

(a) The owner or operator shall compile and maintain the following up-to-date safety information related to the regulated substances, processes, and equipment:

(1) Material Safety Data Sheets that meet the requirements of 29 CFR 1910.1200(g);

(2) Maximum intended inventory of equipment in which the regulated substances are stored or processed;

(3) Safe upper and lower temperatures, pressures, flows, and compositions;

(4) Equipment specifications; and

(5) Codes and standards used to design, build, and operate the process.

(b) The owner or operator shall ensure that the process is designed in compliance with recognized and generally accepted good engineering practices. Compliance with Federal or state regulations that address industry-specific safe design or with industry-specific design codes and standards may be used to demonstrate compliance with this paragraph.

(c) The owner or operator shall update the safety information if a major change occurs that makes the information inaccurate.

§ 68.50 Hazard review.

(a) The owner or operator shall conduct a review of the hazards associated with the regulated substances, process, and procedures. The review shall identify the following:

(1) The hazards associated with the process and regulated substances;

(2) Opportunities for equipment malfunctions or human errors that could cause an accidental release;

(3) The safeguards used or needed to control the hazards or prevent equipment malfunction or human error; and

(4) Any steps used or needed to detect or monitor releases.

(b) The owner or operator may use checklists developed by persons or organizations knowledgeable about the process and equipment as a guide to conducting the review. For processes designed to meet industry standards or Federal or state design rules, the hazard review shall, by inspecting all equipment, determine whether the process is designed, fabricated, and operated in accordance with the applicable standards or rules.

(c) The owner or operator shall document the results of the review and ensure that problems identified are resolved in a timely manner.

(d) The review shall be updated at least once every five years. The owner or operator shall also conduct reviews whenever a major change in the process occurs; all issues identified in the review shall be resolved before startup of the changed process.

§ 68.52 Operating procedures.

(a) The owner or operator shall prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process. Operating procedures or instructions provided by equipment manufacturers or developed by persons or organizations knowledgeable about the process and equipment may be used as a basis for a stationary source's operating procedures.

(b) The procedures shall address the following:

(1) Initial startup;

(2) Normal operations;

(3) Temporary operations;

(4) Emergency shutdown and operations;

(5) Normal shutdown;

(6) Startup following a normal or emergency shutdown or a major change that requires a hazard review;

(7) Consequences of deviations and steps required to correct or avoid deviations; and

(8) Equipment inspections.

(c) The owner or operator shall ensure that the operating procedures are updated, if necessary, whenever a major change occurs and prior to startup of the changed process.

§ 68.54 Training.

(a) The owner or operator shall ensure that each employee presently operating a process, and each employee newly assigned to a covered process have been trained or tested competent in the operating procedures provided in § 68.52 that pertain to their duties. For those employees already operating a process on June 21, 1999, the owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as provided in the operating procedures.

(b) Refresher training. Refresher training shall be provided at least every three years, and more often if necessary, to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees operating the process, shall determine the appropriate frequency of refresher training.

(c) The owner or operator may use training conducted under Federal or state regulations or under industry-specific standards or codes or training conducted by covered process equipment vendors to demonstrate compliance with this section to the extent that the training meets the requirements of this section.

(d) The owner or operator shall ensure that operators are trained in any updated or new procedures prior to startup of a process after a major change.

§ 68.56 Maintenance.

(a) The owner or operator shall prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment. The owner or operator may use procedures or instructions provided by covered process equipment vendors or procedures in Federal or state regulations or industry codes as the basis for stationary source maintenance procedures.

(b) The owner or operator shall train or cause to be trained each employee involved in maintaining the on-going mechanical integrity of the process. To ensure that the employee can perform the job tasks in a safe manner, each such employee shall be trained in the hazards of the process, in how to avoid or correct unsafe conditions, and in the procedures applicable to the employee's job tasks.

(c) Any maintenance contractor shall ensure that each contract maintenance employee is trained to perform the maintenance procedures developed under paragraph (a) of this section.

(d) The owner or operator shall perform or cause to be performed inspections and tests on process equipment. Inspection and testing procedures shall follow recognized and generally accepted good engineering practices. The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations, industry standards or codes, good engineering practices, and prior operating experience.

§ 68.58 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed.

(b) The compliance audit shall be conducted by at least one person knowledgeable in the process.

(c) The owner or operator shall develop a report of the audit findings.

(d) The owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit and document that deficiencies have been corrected.

(e) The owner or operator shall retain the two (2) most recent compliance audit reports. This requirement does not apply to any compliance audit report that is more than five years old.

§ 68.60 Incident investigation.

(a) The owner or operator shall investigate each incident which resulted in,

or could reasonably have resulted in a catastrophic release.

(b) An incident investigation shall be initiated as promptly as possible, but not later than 48 hours following the incident.

(c) A summary shall be prepared at the conclusion of the investigation which includes at a minimum:

(1) Date of incident;

(2) Date investigation began;

(3) A description of the incident;

(4) The factors that contributed to the incident; and,

(5) Any recommendations resulting from the investigation.

(d) The owner or operator shall promptly address and resolve the investigation findings and recommendations. Resolutions and corrective actions shall be documented.

(e) The findings shall be reviewed with all affected personnel whose job tasks are affected by the findings.

(f) Investigation summaries shall be retained for five years.

Subpart D—Program 3 Prevention Program

SOURCE: 61 FR 31722, June 20, 1996, unless otherwise noted.

§68.65 Process safety information.

(a) In accordance with the schedule set forth in §68.67, the owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by the rule. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

(b) Information pertaining to the hazards of the regulated substances in the process. This information shall consist of at least the following:

(1) Toxicity information;

(2) Permissible exposure limits;

(3) Physical data;

(4) Reactivity data:

(5) Corrosivity data;

(6) Thermal and chemical stability data; and

(7) Hazardous effects of inadvertent mixing of different materials that could foreseeably occur.

NOTE TO PARAGRAPH (b): Material Safety Data Sheets meeting the requirements of 29 CFR 1910.1200(g) may be used to comply with this requirement to the extent they contain the information required by this subparagraph.

(c) Information pertaining to the technology of the process.

(1) Information concerning the technology of the process shall include at least the following:

(i) A block flow diagram or simplified process flow diagram;

(ii) Process chemistry;

(iii) Maximum intended inventory;

(iv) Safe upper and lower limits for such items as temperatures, pressures, flows or compositions; and,

(v) An evaluation of the consequences of deviations.

(2) Where the original technical information no longer exists, such information may be developed in conjunction with the process hazard analysis in sufficient detail to support the analysis.

(d) Information pertaining to the equipment in the process.

(1) Information pertaining to the equipment in the process shall include:

(i) Materials of construction;

(ii) Piping and instrument diagrams (P&ID's);

(iii) Electrical classification;

(iv) Relief system design and design basis;

(v) Ventilation system design;

(vi) Design codes and standards employed;

(vii) Material and energy balances for processes built after June 21, 1999; and

(viii) Safety systems (e.g. interlocks, detection or suppression systems).

(2) The owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.

(3) For existing equipment designed and constructed in accordance with codes, standards, or practices that are

no longer in general use, the owner or operator shall determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

§ 68.67 Process hazard analysis.

(a) The owner or operator shall perform an initial process hazard analysis (hazard evaluation) on processes covered by this part. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process. The owner or operator shall determine and document the priority order for conducting process hazard analyses based on a rationale which includes such considerations as extent of the process hazards, number of potentially affected employees, age of the process, and operating history of the process. The process hazard analysis shall be conducted as soon as possible, but not later than June 21, 1999. Process hazards analyses completed to comply with 29 CFR 1910.119(e) are acceptable as initial process hazards analyses. These process hazard analyses shall be updated and revalidated, based on their completion date.

(b) The owner or operator shall use one or more of the following methodologies that are appropriate to determine and evaluate the hazards of the process being analyzed.

(1) What-If;

(2) Checklist;

(3) What-If/Checklist;

(4) Hazard and Operability Study (HAZOP);

(5) Failure Mode and Effects Analysis (FMEA);

(6) Fault Tree Analysis; or

(7) An appropriate equivalent methodology.

(c) The process hazard analysis shall address:

(1) The hazards of the process;

(2) The identification of any previous incident which had a likely potential for catastrophic consequences.

(3) Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases. (Acceptable detection methods might include process monitoring and control instrumentation with alarms, and detection hardware such as hydrocarbon sensors.);

(4) Consequences of failure of engineering and administrative controls;

(5) Stationary source siting;

(6) Human factors; and

(7) A qualitative evaluation of a range of the possible safety and health effects of failure of controls.

(d) The process hazard analysis shall be performed by a team with expertise in engineering and process operations, and the team shall include at least one employee who has experience and knowledge specific to the process being evaluated. Also, one member of the team must be knowledgeable in the specific process hazard analysis methodology being used.

(e) The owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

(f) At least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements in paragraph (d) of this section, to assure that the process hazard analysis is consistent with the current process. Updated and revalidated process hazard analyses completed to comply with 29 CFR 1910.119(e) are acceptable to meet the requirements of this paragraph.

(g) The owner or operator shall retain process hazards analyses and updates or revalidations for each process covered by this section, as well as the documented resolution of recommendations described in paragraph (e) of this section for the life of the process.

§68.69 Operating procedures.

(a) The owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements.

(1) Steps for each operating phase:

(i) Initial startup;

(ii) Normal operations;

(iii) Temporary operations;

(iv) Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner.

(v) Emergency operations;

(vi) Normal shutdown; and,

(vii) Startup following a turnaround, or after an emergency shutdown.

(2) Operating limits:

(i) Consequences of deviation; and

(ii) Steps required to correct or avoid deviation.

(3) Safety and health considerations:

(i) Properties of, and hazards presented by, the chemicals used in the process;

(ii) Precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment;

(iii) Control measures to be taken if physical contact or airborne exposure occurs;

(iv) Quality control for raw materials and control of hazardous chemical inventory levels; and,

(v) Any special or unique hazards.

(4) Safety systems and their functions.

(b) Operating procedures shall be readily accessible to employees who work in or maintain a process.

(c) The operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

(d) The owner or operator shall develop and implement safe work practices to provide for the control of hazards during operations such as lockout/tagout; confined space entry; opening process equipment or piping; and control over entrance into a stationary source by maintenance, contractor, laboratory, or other support personnel. These safe work practices shall apply to employees and contractor employees.

§68.71 Training.

(a) *Initial training.* (1) Each employee presently involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in §68.69. The training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

(2) In lieu of initial training for those employees already involved in operating a process on June 21, 1999 an owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures.

(b) *Refresher training.* Refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.

(c) *Training documentation.* The owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by this paragraph. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

§ 68.73 Mechanical integrity.

(a) *Application.* Paragraphs (b) through (f) of this section apply to the following process equipment:

(1) Pressure vessels and storage tanks;

(2) Piping systems (including piping components such as valves);

(3) Relief and vent systems and devices;

(4) Emergency shutdown systems;

(5) Controls (including monitoring devices and sensors, alarms, and interlocks) and,

(6) Pumps.

(b) *Written procedures.* The owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment.

(c) *Training for process maintenance activities.* The owner or operator shall train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.

(d) *Inspection and testing.* (1) Inspections and tests shall be performed on process equipment.

(2) Inspection and testing procedures shall follow recognized and generally accepted good engineering practices.

(3) The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

(4) The owner or operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

(e) *Equipment deficiencies.* The owner or operator shall correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

(f) *Quality assurance.* (1) In the construction of new plants and equipment, the owner or operator shall assure that equipment as it is fabricated is suitable for the process application for which they will be used.

(2) Appropriate checks and inspections shall be performed to assure that equipment is installed properly and consistent with design specifications and the manufacturer's instructions.

(3) The owner or operator shall assure that maintenance materials, spare parts and equipment are suitable for the process application for which they will be used.

§ 68.75 Management of change.

(a) The owner or operator shall establish and implement written procedures to manage changes (except for ''replacements in kind'') to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process.

(b) The procedures shall assure that the following considerations are addressed prior to any change:

(1) The technical basis for the proposed change;

(2) Impact of change on safety and health;

(3) Modifications to operating procedures;

(4) Necessary time period for the change; and,

(5) Authorization requirements for the proposed change.

(c) Employees involved in operating a process and maintenance and contract employees whose job tasks will be affected by a change in the process shall be informed of, and trained in, the change prior to start-up of the process or affected part of the process.

(d) If a change covered by this paragraph results in a change in the process safety information required by § 68.65 of this part, such information shall be updated accordingly.

(e) If a change covered by this paragraph results in a change in the operating procedures or practices required by § 68.69, such procedures or practices shall be updated accordingly.

§ 68.77 Pre-startup review.

(a) The owner or operator shall perform a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information.

(b) The pre-startup safety review shall confirm that prior to the introduction of regulated substances to a process:

(1) Construction and equipment is in accordance with design specifications;

(2) Safety, operating, maintenance, and emergency procedures are in place and are adequate;

(3) For new stationary sources, a process hazard analysis has been performed and recommendations have been resolved or implemented before startup; and modified stationary sources meet the requirements contained in management of change, § 68.75.

(4) Training of each employee involved in operating a process has been completed.

§ 68.79 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.

(b) The compliance audit shall be conducted by at least one person knowledgeable in the process.

(c) A report of the findings of the audit shall be developed.

(d) The owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

(e) The owner or operator shall retain the two (2) most recent compliance audit reports.

[61 FR 31722, June 20, 1996, as amended at 64 FR 979, Jan. 6, 1999]

§ 68.81 Incident investigation.

(a) The owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release of a regulated substance.

(b) An incident investigation shall be initiated as promptly as possible, but not later than 48 hours following the incident.

(c) An incident investigation team shall be established and consist of at least one person knowledgeable in the process involved, including a contract employee if the incident involved work of the contractor, and other persons with appropriate knowledge and experience to thoroughly investigate and analyze the incident.

(d) A report shall be prepared at the conclusion of the investigation which includes at a minimum:

(1) Date of incident;

(2) Date investigation began;

(3) A description of the incident;

(4) The factors that contributed to the incident; and,

(5) Any recommendations resulting from the investigation.

(e) The owner or operator shall establish a system to promptly address and resolve the incident report findings and recommendations. Resolutions and corrective actions shall be documented.

(f) The report shall be reviewed with all affected personnel whose job tasks are relevant to the incident findings including contract employees where applicable.

(g) Incident investigation reports shall be retained for five years.

§ 68.83 Employee participation.

(a) The owner or operator shall develop a written plan of action regarding the implementation of the employee participation required by this section.

(b) The owner or operator shall consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management in this rule.

(c) The owner or operator shall provide to employees and their representatives access to process hazard analyses and to all other information required to be developed under this rule.

§ 68.85 Hot work permit.

(a) The owner or operator shall issue a hot work permit for hot work operations conducted on or near a covered process.

(b) The permit shall document that the fire prevention and protection requirements in 29 CFR 1910.252(a) have been implemented prior to beginning the hot work operations; it shall indicate the date(s) authorized for hot work; and identify the object on which hot work is to be performed. The permit shall be kept on file until completion of the hot work operations.

§ 68.87 Contractors.

(a) *Application*. This section applies to contractors performing maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to a covered process. It does not apply to contractors providing incidental services which do not influence process safety, such as janitorial work, food and drink services, laundry, delivery or other supply services.

(b) *Owner or operator responsibilities*. (1) The owner or operator, when selecting a contractor, shall obtain and evaluate information regarding the contract owner or operator's safety performance and programs.

(2) The owner or operator shall inform contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process.

(3) The owner or operator shall explain to the contract owner or operator the applicable provisions of subpart E of this part.

(4) The owner or operator shall develop and implement safe work practices consistent with § 68.69(d), to control the entrance, presence, and exit of the contract owner or operator and contract employees in covered process areas.

(5) The owner or operator shall periodically evaluate the performance of the contract owner or operator in fulfilling their obligations as specified in paragraph (c) of this section.

(c) *Contract owner or operator responsibilities*. (1) The contract owner or operator shall assure that each contract employee is trained in the work practices necessary to safely perform his/her job.

(2) The contract owner or operator shall assure that each contract employee is instructed in the known potential fire, explosion, or toxic release hazards related to his/her job and the process, and the applicable provisions of the emergency action plan.

(3) The contract owner or operator shall document that each contract employee has received and understood the training required by this section. The contract owner or operator shall prepare a record which contains the identity of the contract employee, the date of training, and the means used to verify that the employee understood the training.

(4) The contract owner or operator shall assure that each contract employee follows the safety rules of the stationary source including the safe work practices required by § 68.69(d).

(5) The contract owner or operator shall advise the owner or operator of any unique hazards presented by the contract owner or operator's work, or of any hazards found by the contract owner or operator's work.

Subpart E—Emergency Response

SOURCE: 61 FR 31725, June 20, 1996, unless otherwise noted.

§ 68.90 Applicability.

(a) Except as provided in paragraph (b) of this section, the owner or operator of a stationary source with Program 2 and Program 3 processes shall comply with the requirements of § 68.95.

(b) The owner or operator of stationary source whose employees will not respond to accidental releases of regulated substances need not comply with § 68.95 of this part provided that they meet the following:

(1) For stationary sources with any regulated toxic substance held in a process above the threshold quantity, the stationary source is included in the community emergency response plan developed under 42 U.S.C. 11003;

(2) For stationary sources with only regulated flammable substances held in a process above the threshold quantity, the owner or operator has coordinated

response actions with the local fire department; and

(3) Appropriate mechanisms are in place to notify emergency responders when there is a need for a response.

§ 68.95 Emergency response program.

(a) The owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment. Such program shall include the following elements:

(1) An emergency response plan, which shall be maintained at the stationary source and contain at least the following elements:

(i) Procedures for informing the public and local emergency response agencies about accidental releases;

(ii) Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; and

(iii) Procedures and measures for emergency response after an accidental release of a regulated substance;

(2) Procedures for the use of emergency response equipment and for its inspection, testing, and maintenance;

(3) Training for all employees in relevant procedures; and

(4) Procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes.

(b) A written plan that complies with other Federal contingency plan regulations or is consistent with the approach in the National Response Team's Integrated Contingency Plan Guidance (''One Plan'') and that, among other matters, includes the elements provided in paragraph (a) of this section, shall satisfy the requirements of this section if the owner or operator also complies with paragraph (c) of this section.

(c) The emergency response plan developed under paragraph (a)(1) of this section shall be coordinated with the community emergency response plan developed under 42 U.S.C. 11003. Upon request of the local emergency planning committee or emergency response officials, the owner or operator shall promptly provide to the local emergency response officials information necessary for developing and implementing the community emergency response plan.

Subpart F—Regulated Substances for Accidental Release Prevention

SOURCE: 59 FR 4493, Jan. 31, 1994, unless otherwise noted. Redesignated at 61 FR 31717, June 20, 1996.

§ 68.100 Purpose.

This subpart designates substances to be listed under section 112(r)(3), (4), and (5) of the Clean Air Act, as amended, identifies their threshold quantities, and establishes the requirements for petitioning to add or delete substances from the list.

§ 68.115 Threshold determination.

(a) A threshold quantity of a regulated substance listed in § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.

(b) For the purposes of determining whether more than a threshold quantity of a regulated substance is present at the stationary source, the following exemptions apply:

(1) *Concentrations of a regulated toxic substance in a mixture.* If a regulated substance is present in a mixture and the concentration of the substance is below one percent by weight of the mixture, the amount of the substance in the mixture need not be considered when determining whether more than a threshold quantity is present at the stationary source. Except for oleum, toluene 2,4-diisocyanate, toluene 2,6-diisocyanate, and toluene diisocyanate (unspecified isomer), if the concentration of the regulated substance in the mixture is one percent or greater by weight, but the owner or operator can demonstrate that the partial pressure of the regulated substance in the mixture (solution) under handling or storage conditions in any portion of the process is less than 10 millimeters of mercury (mm Hg), the amount of the substance in the mixture in that portion of the process need not be considered when determining whether more than a threshold quantity is present at

the stationary source. The owner or operator shall document this partial pressure measurement or estimate.

(2) *Concentrations of a regulated flammable substance in a mixture.* (i) *General provision.* If a regulated substance is present in a mixture and the concentration of the substance is below one percent by weight of the mixture, the mixture need not be considered when determining whether more than a threshold quantity of the regulated substance is present at the stationary source. Except as provided in paragraph (b)(2) (ii) and (iii) of this section, if the concentration of the substance is one percent or greater by weight of the mixture, then, for purposes of determining whether a threshold quantity is present at the stationary source, the entire weight of the mixture shall be treated as the regulated substance unless the owner or operator can demonstrate that the mixture itself does not have a National Fire Protection Association flammability hazard rating of 4. The demonstration shall be in accordance with the definition of flammability hazard rating 4 in the NFPA 704, Standard System for the Identification of the Hazards of Materials for Emergency Response, National Fire Protection Association, Quincy, MA, 1996. Available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269–9101. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Environmental Protection Agency Air Docket (6102), Attn: Docket No. A–96–O8, Waterside Mall, 401 M. St. SW., Washington DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Boiling point and flash point shall be defined and determined in accordance with NFPA 30, Flammable and Combustible Liquids Code, National Fire Protection Association, Quincy, MA, 1996. Available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269–9101. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Environmental Protection Agency Air Docket (6102), Attn: Docket No. A–96–O8, Waterside Mall, 401 M. St. SW., Washington DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* The owner or operator shall document the National Fire Protection Association flammability hazard rating.

(ii) *Gasoline.* Regulated substances in gasoline, when in distribution or related storage for use as fuel for internal combustion engines, need not be considered when determining whether more than a threshold quantity is present at a stationary source.

(iii) *Naturally occurring hydrocarbon mixtures.* Prior to entry into a natural gas processing plant or a petroleum refining process unit, regulated substances in naturally occurring hydrocarbon mixtures need not be considered when determining whether more than a threshold quantity is present at a stationary source. Naturally occurring hydrocarbon mixtures include any combination of the following: condensate, crude oil, field gas, and produced water, each as defined in § 68.3 of this part.

(3) *Articles.* Regulated substances contained in articles need not be considered when determining whether more than a threshold quantity is present at the stationary source.

(4) *Uses.* Regulated substances, when in use for the following purposes, need not be included in determining whether more than a threshold quantity is present at the stationary source:

(i) Use as a structural component of the stationary source;

(ii) Use of products for routine janitorial maintenance;

(iii) Use by employees of foods, drugs, cosmetics, or other personal items containing the regulated substance; and

(iv) Use of regulated substances present in process water or non-contact

cooling water as drawn from the environment or municipal sources, or use of regulated substances present in air used either as compressed air or as part of combustion.

(5) *Activities in laboratories*. If a regulated substance is manufactured, processed, or used in a laboratory at a stationary source under the supervision of a technically qualified individual as defined in § 720.3(ee) of this chapter, the quantity of the substance need not be considered in determining whether a threshold quantity is present. This exemption does not apply to:

(i) Specialty chemical production;

(ii) Manufacture, processing, or use of substances in pilot plant scale operations; and

(iii) Activities conducted outside the laboratory.

[59 FR 4493, Jan. 31, 1994. Redesignated at 61 FR 31717, June 20, 1996, as amended at 63 FR 645, Jan. 6, 1998; 69 FR 18803, Apr. 9, 2004]

§ 68.120 Petition process.

(a) Any person may petition the Administrator to modify, by addition or deletion, the list of regulated substances identified in § 68.130. Based on the information presented by the petitioner, the Administrator may grant or deny a petition.

(b) A substance may be added to the list if, in the case of an accidental release, it is known to cause or may be reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment.

(c) A substance may be deleted from the list if adequate data on the health and environmental effects of the substance are available to determine that the substance, in the case of an accidental release, is not known to cause and may not be reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment.

(d) No substance for which a national primary ambient air quality standard has been established shall be added to the list. No substance regulated under title VI of the Clean Air Act, as amended, shall be added to the list.

(e) The burden of proof is on the petitioner to demonstrate that the criteria for addition and deletion are met. A petition will be denied if this demonstration is not made.

(f) The Administrator will not accept additional petitions on the same substance following publication of a final notice of the decision to grant or deny a petition, unless new data becomes available that could significantly affect the basis for the decision.

(g) Petitions to modify the list of regulated substances must contain the following:

(1) Name and address of the petitioner and a brief description of the organization(s) that the petitioner represents, if applicable;

(2) Name, address, and telephone number of a contact person for the petition;

(3) Common chemical name(s), common synonym(s), Chemical Abstracts Service number, and chemical formula and structure;

(4) Action requested (add or delete a substance);

(5) Rationale supporting the petitioner's position; that is, how the substance meets the criteria for addition and deletion. A short summary of the rationale must be submitted along with a more detailed narrative; and

(6) Supporting data; that is, the petition must include sufficient information to scientifically support the request to modify the list. Such information shall include:

(i) A list of all support documents;

(ii) Documentation of literature searches conducted, including, but not limited to, identification of the database(s) searched, the search strategy, dates covered, and printed results;

(iii) Effects data (animal, human, and environmental test data) indicating the potential for death, injury, or serious adverse human and environmental impacts from acute exposure following an accidental release; printed copies of the data sources, in English, should be provided; and

(iv) Exposure data or previous accident history data, indicating the potential for serious adverse human health or environmental effects from an accidental release. These data may

include, but are not limited to, physical and chemical properties of the substance, such as vapor pressure; modeling results, including data and assumptions used and model documentation; and historical accident data, citing data sources.

(h) Within 18 months of receipt of a petition, the Administrator shall publish in the FEDERAL REGISTER a notice either denying the petition or granting the petition and proposing a listing.

§ 68.125 Exemptions.

Agricultural nutrients. Ammonia used as an agricultural nutrient, when held by farmers, is exempt from all provisions of this part.

§ 68.126 Exclusion.

Flammable Substances Used as Fuel or Held for Sale as Fuel at Retail Facilities. A flammable substance listed in Tables 3 and 4 of § 68.130 is nevertheless excluded from all provisions of this part when the substance is used as a fuel or held for sale as a fuel at a retail facility.

[65 FR 13250, Mar. 13, 2000]

§ 68.130 List of substances.

(a) Regulated toxic and flammable substances under section 112(r) of the Clean Air Act are the substances listed in Tables 1, 2, 3, and 4. Threshold quantities for listed toxic and flammable substances are specified in the tables.

(b) The basis for placing toxic and flammable substances on the list of regulated substances are explained in the notes to the list.

TABLE 1 TO § 68.130—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[Alphabetical Order—77 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Acrolein [2-Propenal].	107–02–8	5,000	b
Acrylonitrile [2-Propenenitrile].	107–13–1	20,000	b
Acrylyl chloride [2-Propenoyl chloride].	814–68–6	5,000	b
Allyl alcohol [2-Propen-l-ol].	107–18–61	15,000	b
Allylamine [2-Propen-l-amine].	107–11–9	10,000	b

TABLE 1 TO § 68.130—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—77 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Ammonia (anhydrous).	7664–41–7	10,000	a, b
Ammonia (conc 20% or greater).	7664–41–7	20,000	a, b
Arsenous trichloride.	7784–34–1	15,000	b
Arsine	7784–42–1	1,000	b
Boron trichloride [Borane, trichloro-].	10294–34–5	5,000	b
Boron trifluoride [Borane, trifluoro-].	7637–07–2	5,000	b
Boron trifluoride compound with methyl ether (1:1) [Boron, trifluoro [oxybis [metane]]-, T-4-.	353–42–4	15,000	b
Bromine	7726–95–6	10,000	a, b
Carbon disulfide	75–15–0	20,000	b
Chlorine	7782–50–5	2,500	a, b
Chlorine dioxide [Chlorine oxide (ClO2)].	10049–04–4	1,000	c
Chloroform [Methane, trichloro-].	67–66–3	20,000	b
Chloromethyl ether [Methane, oxybis[chloro-].	542–88–1	1,000	b
Chloromethyl methyl ether [Methane, chloromethoxy-].	107–30–2	5,000	b
Crotonaldehyde [2-Butenal].	4170–30–3	20,000	b
Crotonaldehyde, (E)- [2-Butenal, (E)-].	123–73–9	20,000	b
Cyanogen chloride.	506–77–4	10,000	c
Cyclohexylamine [Cyclohexanamine].	108–91–8	15,000	b
Diborane	19287–45–7	2,500	b
Dimethyldichlorosilane [Silane, dichlorodimethyl-].	75–78–5	5,000	b
1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-].	57–14–7	15,000	b
Epichlorohydrin [Oxirane, (chloromethyl)-].	106–89–8	20,000	b
Ethylenediamine [1,2-Ethanediamine].	107–15–3	20,000	b
Ethyleneimine [Aziridine].	151–56–4	10,000	b

TABLE 1 TO § 68.130—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—77 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Ethylene oxide [Oxirane].	75–21–8	10,000	a, b
Fluorine	7782–41–4	1,000	b
Formaldehyde (solution).	50–00–0	15,000	b
Furan	110–00–9	5,000	b
Hydrazine	302–01–2	15,000	b
Hydrochloric acid (conc 37% or greater).	7647–01–0	15,000	d
Hydrocyanic acid	74–90–8	2,500	a, b
Hydrogen chloride (anhydrous) [Hydrochloric acid].	7647–01–0	5,000	a
Hydrogen fluoride/ Hydrofluoric acid (conc 50% or greater) [Hydrofluoric acid].	7664–39–3	1,000	a, b
Hydrogen selenide.	7783–07–5	500	b
Hydrogen sulfide	7783–06–4	10,000	a, b
Iron, pentacarbonyl- [Iron carbonyl (Fe(CO)5), (TB-5-11)-].	13463–40–6	2,500	b
Isobutyronitrile [Propanenitrile, 2-methyl-].	78–82–0	20,000	b
Isopropyl chloroformate [Carbonochloridic acid, 1-methylethyl ester].	108–23–6	15,000	b
Methacrylonitrile [2-Propenenitrile, 2-methyl-].	126–98–7	10,000	b
Methyl chloride [Methane, chloro-].	74–87–3	10,000	a
Methyl chloroformate [Carbonochloridic acid, methylester].	79–22–1	5,000	b
Methyl hydrazine [Hydrazine, methyl-].	60–34–4	15,000	b
Methyl isocyanate [Methane, isocyanato-].	624–83–9	10,000	a, b
Methyl mercaptan [Methanethiol].	74–93–1	10,000	b
Methyl thiocyanate [Thiocyanic acid, methyl ester].	556–64–9	20,000	b

TABLE 1 TO § 68.130—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—77 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Methyltrichlorosilane [Silane, trichloromethyl-].	75–79–6	5,000	b
Nickel carbonyl	13463–39–3	1,000	b
Nitric acid (conc 80% or greater).	7697–37–2	15,000	b
Nitric oxide [Nitrogen oxide (NO)].	10102–43–9	10,000	b
Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide] [1].	8014–95–7	10,000	e
Peracetic acid [Ethaneperoxoic acid].	79–21–0	10,000	b
Perchloromethylmercaptan [Methanesulfenyl chloride, trichloro-].	594–42–3	10,000	b
Phosgene [Carbonic dichloride].	75–44–5	500	a, b
Phosphine	7803–51–2	5,000	b
Phosphorus oxychloride [Phosphoryl chloride].	10025–87–3	5,000	b
Phosphorus trichloride [Phosphorous trichloride].	7719–12–2	15,000	b
Piperidine	110–89–4	15,000	b
Propionitrile [Propanenitrile].	107–12–0	10,000	b
Propyl chloroformate [Carbonochloridic acid, propylester].	109–61–5	15,000	b
Propyleneimine [Aziridine, 2-methyl-].	75–55–8	10,000	b
Propylene oxide [Oxirane, methyl-].	75–56–9	10,000	b
Sulfur dioxide (anhydrous).	7446–09–5	5,000	a, b
Sulfur tetrafluoride [Sulfur fluoride (SF4), (T-4)-].	7783–60–0	2,500	b
Sulfur trioxide	7446–11–9	10,000	a, b
Tetramethyllead [Plumbane, tetramethyl-].	75–74–1	10,000	b
Tetranitromethane [Methane, tetranitro-].	509–14–8	10,000	b

TABLE 1 TO § 68.130—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—77 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Titanium tetrachloride [Titanium chloride (TiCl4) (T-4)-].	7550–45–0	2,500	b
Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-] [1].	584–84–9	10,000	a
Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-] [1].	91–08–7	10,000	a
Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-] [1].	26471–62–5	10,000	a
Trimethylchlorosilane [Silane, chlorotrimethyl-].	75–77–4	10,000	b
Vinyl acetate monomer [Acetic acid ethenyl ester].	108–05–4	15,000	b

[1] The mixture exemption in § 68.115(b)(1) does not apply to the substance.

NOTE: Basis for Listing:

a Mandated for listing by Congress.

b On EHS list, vapor pressure 10 mmHg or greater.

c Toxic gas.

d Toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents.

e Toxicity of sulfur trioxide and sulfuric acid, potential to release sulfur trioxide, and history of accidents.

TABLE 2 TO § 68.130—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[CAS Number Order—77 Substances]

CAS No.	Chemical name	Threshold quantity (lbs)	Basis for listing
50–00–0	Formaldehyde (solution)	15,000	b
57–14–7	1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-]	15,000	b
60–34–4	Methyl hydrazine [Hydrazine, methyl-]	15,000	b
67–66–3	Chloroform [Methane, trichloro-]	20,000	b
74–87–3	Methyl chloride [Methane, chloro-]	10,000	a
74–90–8	Hydrocyanic acid	2,500	a, b
74–93–1	Methyl mercaptan [Methanethiol]	10,000	b
75–15–0	Carbon disulfide	20,000	b
75–21–8	Ethylene oxide [Oxirane]	10,000	a, b
75–44–5	Phosgene [Carbonic dichloride]	500	a, b
75–55–8	Propyleneimine [Aziridine, 2-methyl-]	10,000	b
75–56–9	Propylene oxide [Oxirane, methyl-]	10,000	b
75–74–1	Tetramethyllead [Plumbane, tetramethyl-]	10,000	b
75–77–4	Trimethylchlorosilane [Silane, chlorotrimethyl-]	10,000	b
75–78–5	Dimethyldichlorosilane [Silane, dichlorodimethyl-]	5,000	b
75–79–6	Methyltrichlorosilane [Silane, trichloromethyl-]	5,000	b
78–82–0	Isobutyronitrile [Propanenitrile, 2-methyl-]	20,000	b
79–21–0	Peracetic acid [Ethaneperoxoic acid]	10,000	b
79–22–1	Methyl chloroformate [Carbonochloridic acid, methylester]	5,000	b
91–08–7	Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-] [1]	10,000	a
106–89–8	Epichlorohydrin [Oxirane, (chloromethyl)-]	20,000	b
107–02–8	Acrolein [2-Propenal]	5,000	b
107–11–9	Allylamine [2-Propen-1-amine]	10,000	b
107–12–0	Propionitrile [Propanenitrile]	10,000	b
107–13–1	Acrylonitrile [2-Propenenitrile]	20,000	b
107–15–3	Ethylenediamine [1,2-Ethanediamine]	20,000	b
107–18–6	Allyl alcohol [2-Propen-1-ol]	15,000	b
107–30–2	Chloromethyl methyl ether [Methane, chloromethoxy-]	5,000	b
108–05–4	Vinyl acetate monomer [Acetic acid ethenyl ester]	15,000	b
108–23–6	Isopropyl chloroformate [Carbonochloridic acid, 1-methylethyl ester]	15,000	b
108–91–8	Cyclohexylamine [Cyclohexanamine]	15,000	b
109–61–5	Propyl chloroformate [Carbonochloridic acid, propylester]	15,000	b
110–00–9	Furan	5,000	b
110–89–4	Piperidine	15,000	b
123–73–9	Crotonaldehyde, (E)- [2-Butenal, (E)-]	20,000	b

TABLE 2 TO § 68.130—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[CAS Number Order—77 Substances]

CAS No.	Chemical name	Threshold quantity (lbs)	Basis for listing
126–98–7	Methacrylonitrile [2-Propenenitrile, 2-methyl-]	10,000	b
151–56–4	Ethyleneimine [Aziridine]	10,000	b
302–01–2	Hydrazine	15,000	b
353–42–4	Boron trifluoride compound with methyl ether (1:1) [Boron, trifluoro[oxybis[methane]]-, T-4-.	15,000	b
506–77–4	Cyanogen chloride	10,000	c
509–14–8	Tetranitromethane [Methane, tetranitro-]	10,000	b
542–88–1	Chloromethyl ether [Methane, oxybis[chloro-]	1,000	b
556–64–9	Methyl thiocyanate [Thiocyanic acid, methyl ester]	20,000	b
584–84–9	Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-][1]	10,000	a
594–42–3	Perchloromethylmercaptan [Methanesulfenyl chloride, trichloro-]	10,000	b
624–83–9	Methyl isocyanate [Methane, isocyanato-]	10,000	a, b
814–68–6	Acrylyl chloride [2-Propenoyl chloride]	5,000	b
4170–30–3	Crotonaldehyde [2-Butenal]	20,000	b
7446–09–5	Sulfur dioxide (anhydrous)	5,000	a, b
7446–11–9	Sulfur trioxide	10,000	a, b
7550–45–0	Titanium tetrachloride [Titanium chloride (TiCl4) (T-4)-]	2,500	b
7637–07–2	Boron trifluoride [Borane, trifluoro-]	5,000	b
7647–01–0	Hydrochloric acid (conc 37% or greater)	15,000	d
7647–01–0	Hydrogen chloride (anhydrous) [Hydrochloric acid]	5,000	a
7664–39–3	Hydrogen fluoride/Hydrofluoric acid (conc 50% or greater) [Hydrofluoric acid]	1,000	a, b
7664–41–7	Ammonia (anhydrous)	10,000	a, b
7664–41–7	Ammonia (conc 20% or greater)	20,000	a, b
7697–37–2	Nitric acid (conc 80% or greater)	15,000	b
7719–12–2	Phosphorus trichloride [Phosphorous trichloride]	15,000	b
7726–95–6	Bromine	10,000	a, b
7782–41–4	Fluorine	1,000	b
7782–50–5	Chlorine	2,500	a, b
7783–06–4	Hydrogen sulfide	10,000	a, b
7783–07–5	Hydrogen selenide	500	b
7783–60–0	Sulfur tetrafluoride [Sulfur fluoride (SF4), (T-4)-]	2,500	b
7784–34–1	Arsenous trichloride	15,000	b
7784–42–1	Arsine	1,000	b
7803–51–2	Phosphine	5,000	b
8014–95–7	Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide][1]	10,000	e
10025–87–3	Phosphorus oxychloride [Phosphoryl chloride]	5,000	b
10049–04–4	Chlorine dioxide [Chlorine oxide (ClO_2)]	1,000	c
10102–43–9	Nitric oxide [Nitrogen oxide (NO)]	10,000	b
10294–34–5	Boron trichloride [Borane, trichloro-]	5,000	b
13463–39–3	Nickel carbonyl	1,000	b
13463–40–6	Iron, pentacarbonyl- [Iron carbonyl ($Fe(CO)_5$), (TB-5-11)-]	2,500	b
19287–45–7	Diborane	2,500	b
26471–62–5	Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-1][1].	10,000	a

[1] The mixture exemption in § 68.115(b)(1) does not apply to the substance.

NOTE: Basis for Listing:
a Mandated for listing by Congress.
b On EHS list, vapor pressure 10 mmHg or greater.
c Toxic gas.
d Toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents.
e Toxicity of sulfur trioxide and sulfuric acid, potential to release sulfur trioxide, and history of accidents.

TABLE 3 TO § 68.130—LIST OF REGULATED FLAMMABLE SUBSTANCES [1] AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[Alphabetical Order—63 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Acetaldehyde	75–07–0	10,000	g
Acetylene [Ethyne]	74–86–2	10,000	f
Bromotrifluorethylene [Ethene, bromotrifluoro-]	598–73–2	10,000	f
1,3-Butadiene	106–99–0	10,000	f
Butane	106–97–8	10,000	f
1-Butene	106–98–9	10,000	f
2-Butene	107–01–7	10,000	f

TABLE 3 TO § 68.130—LIST OF REGULATED FLAMMABLE SUBSTANCES [1] AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—63 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Butene	25167–67–3	10,000	f
2-Butene-cis	590–18–1	10,000	f
2-Butene-trans [2-Butene, (E)]	624–64–6	10,000	f
Carbon oxysulfide [Carbon oxide sulfide (COS)]	463–58–1	10,000	f
Chlorine monoxide [Chlorine oxide]	7791–21–1	10,000	f
2-Chloropropylene [1-Propene, 2-chloro-]	557–98–2	10,000	g
1-Chloropropylene [1-Propene, 1-chloro-]	590–21–6	10,000	g
Cyanogen [Ethanedinitrile]	460–19–5	10,000	f
Cyclopropane	75–19–4	10,000	f
Dichlorosilane [Silane, dichloro-]	4109–96–0	10,000	f
Difluoroethane [Ethane, 1,1-difluoro-]	75–37–6	10,000	f
Dimethylamine [Methanamine, N-methyl-]	124–40–3	10,000	f
2,2-Dimethylpropane [Propane, 2,2-dimethyl-]	463–82–1	10,000	f
Ethane	74–84–0	10,000	f
Ethyl acetylene [1-Butyne]	107–00–6	10,000	f
Ethylamine [Ethanamine]	75–04–7	10,000	f
Ethyl chloride [Ethane, chloro-]	75–00–3	10,000	f
Ethylene [Ethene]	74–85–1	10,000	f
Ethyl ether [Ethane, 1,1′-oxybis-]	60–29–7	10,000	g
Ethyl mercaptan [Ethanethiol]	75–08–1	10,000	g
Ethyl nitrite [Nitrous acid, ethyl ester]	109–95–5	10,000	f
Hydrogen	1333–74–0	10,000	f
Isobutane [Propane, 2-methyl]	75–28–5	10,000	f
Isopentane [Butane, 2-methyl-]	78–78–4	10,000	g
Isoprene [1,3-Butadinene, 2-methyl-]	78–79–5	10,000	g
Isopropylamine [2-Propanamine]	75–31–0	10,000	g
Isopropyl chloride [Propane, 2-chloro-]	75–29–6	10,000	g
Methane	74–82–8	10,000	f
Methylamine [Methanamine]	74–89–5	10,000	f
3-Methyl-1-butene	563–45–1	10,000	f
2-Methyl-1-butene	563–46–2	10,000	g
Methyl ether [Methane, oxybis-]	115–10–6	10,000	f
Methyl formate [Formic acid, methyl ester]	107–31–3	10,000	g
2-Methylpropene [1-Propene, 2-methyl-]	115–11–7	10,000	f
1,3-Pentadinene	504–60–9	10,000	f
Pentane	109–66–0	10,000	g
1-Pentene	109–67–1	10,000	g
2-Pentene, (E)-	646–04–8	10,000	g
2-Pentene, (Z)-	627–20–3	10,000	g
Propadiene [1,2-Propadiene]	463–49–0	10,000	f
Propane	74–98–6	10,000	f
Propylene [1-Propene]	115–07–1	10,000	f
Propyne [1-Propyne]	74–99–7	10,000	f
Silane	7803–62–5	10,000	f
Tetrafluoroethylene [Ethene, tetrafluoro-]	116–14–3	10,000	f
Tetramethylsilane [Silane, tetramethyl-]	75–76–3	10,000	g
Trichlorosilane [Silane, trichloro-]	10025–78–2	10,000	g
Trifluorochloroethylene [Ethene, chlorotrifluoro-]	79–38–9	10,000	f
Trimethylamine [Methanamine, N,N-dimethyl-]	75–50–3	10,000	f
Vinyl acetylene [1-Buten-3-yne]	689–97–4	10,000	f
Vinyl chloride [Ethene, chloro-]	75–01–4	10,000	a, f
Vinyl ethyl ether [Ethene, ethoxy-]	109–92–2	10,000	g
Vinyl fluoride [Ethene, fluoro-]	75–02–5	10,000	f
Vinylidene chloride [Ethene, 1,1-dichloro-]	75–35–4	10,000	g
Vinylidene fluoride [Ethene, 1,1-difluoro-]	75–38–7	10,000	f
Vinyl methyl ether [Ethene, methoxy-]	107–25–5	10,000	f

[1] A flammable substance when used as a fuel or held for sale as a fuel at a retail facility is excluded from all provisions of this part (see § 68.126).

NOTE: Basis for Listing:
[a] Mandated for listing by Congress.
[f] Flammable gas.
[g] Volatile flammable liquid.

TABLE 4 TO § 68.130—LIST OF REGULATED FLAMMABLE SUBSTANCES [1] AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[CAS Number Order—63 Substances]

CAS No.	Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
60–29–7	Ethyl ether [Ethane, 1,1′-oxybis-]	60–29–7	10,000	g
74–82–8	Methane	74–82–8	10,000	f
74–84–0	Ethane	74–84–0	10,000	f
74–85–1	Ethylene [Ethene]	74–85–1	10,000	f
74–86–2	Acetylene [Ethyne]	74–86–2	10,000	f
74–89–5	Methylamine [Methanamine]	74–89–5	10,000	f
74–98–6	Propane	74–98–6	10,000	f
74–99–7	Propyne [1-Propyne]	74–99–7	10,000	f
75–00–3	Ethyl chloride [Ethane, chloro-]	75–00–3	10,000	f
75–01–4	Vinyl chloride [Ethene, chloro-]	75–01–4	10,000	a, f
75–02–5	Vinyl fluoride [Ethene, fluoro-]	75–02–5	10,000	f
75–04–7	Ethylamine [Ethanamine]	75–04–7	10,000	f
75–07–0	Acetaldehyde	75–07–0	10,000	g
75–08–1	Ethyl mercaptan [Ethanethiol]	75–08–1	10,000	g
75–19–4	Cyclopropane	75–19–4	10,000	f
75–28–5	Isobutane [Propane, 2-methyl]	75–28–5	10,000	f
75–29–6	Isopropyl chloride [Propane, 2-chloro-]	75–29–6	10,000	g
75–31–0	Isopropylamine [2-Propanamine]	75–31–0	10,000	g
75–35–4	Vinylidene chloride [Ethene, 1,1-dichloro-]	75–35–4	10,000	g
75–37–6	Difluoroethane [Ethane, 1,1-difluoro-]	75–37–6	10,000	f
75–38–7	Vinylidene fluoride [Ethene, 1,1-difluoro-]	75–38–7	10,000	f
75–50–3	Trimethylamine [Methanamine, N, N-dimethyl-]	75–50–3	10,000	f
75–76–3	Tetramethylsilane [Silane, tetramethyl-]	75–76–3	10,000	g
78–78–4	Isopentane [Butane, 2-methyl-]	78–78–4	10,000	g
78–79–5	Isoprene [1,3,-Butadiene, 2-methyl-]	78–79–5	10,000	g
79–38–9	Trifluorochloroethylene [Ethene, chlorotrifluoro-]	79–38–9	10,000	f
106–97–8	Butane	106–97–8	10,000	f
106–98–9	1-Butene	106–98–9	10,000	f
196–99–0	1,3-Butadiene	106–99–0	10,000	f
107–00–6	Ethyl acetylene [1-Butyne]	107–00–6	10,000	f
107–01–7	2-Butene	107–01–7	10,000	f
107–25–5	Vinyl methyl ether [Ethene, methoxy-]	107–25–5	10,000	f
107–31–3	Methyl formate [Formic acid, methyl ester]	107–31–3	10,000	g
109–66–0	Pentane	109–66–0	10,000	g
109–67–1	1-Pentene	109–67–1	10,000	g
109–92–2	Vinyl ethyl ether [Ethene, ethoxy-]	109–92–2	10,000	g
109–95–5	Ethyl nitrite [Nitrous acid, ethyl ester]	109–95–5	10,000	f
115–07–1	Propylene [1-Propene]	115–07–1	10,000	f
115–10–6	Methyl ether [Methane, oxybis-]	115–10–6	10,000	f
115–11–7	2-Methylpropene [1-Propene, 2-methyl-]	115–11–7	10,000	f
116–14–3	Tetrafluoroethylene [Ethene, tetrafluoro-]	116–14–3	10,000	f
124–40–3	Dimethylamine [Methanamine, N-methyl-]	124–40–3	10,000	f
460–19–5	Cyanogen [Ethanedinitrile]	460–19–5	10,000	f
463–49–0	Propadiene [1,2-Propadiene]	463–49–0	10,000	f
463–58–1	Carbon oxysulfide [Carbon oxide sulfide (COS)]	463–58–1	10,000	f
463–82–1	2,2-Dimethylpropane [Propane, 2,2-dimethyl-]	463–82–1	10,000	f
504–60–9	1,3-Pentadiene	504–60–9	10,000	f
557–98–2	2-Chloropropylene [1-Propene, 2-chloro-]	557–98–2	10,000	g
563–45–1	3-Methyl-1-butene	563–45–1	10,000	f
563–46–2	2-Methyl-1-butene	563–46–2	10,000	g
590–18–1	2-Butene-cis	590–18–1	10,000	f
590–21–6	1-Chloropropylene [1-Propene, 1-chloro-]	590–21–6	10,000	g
598–73–2	Bromotrifluorethylene [Ethene, bromotrifluoro-]	598–73–2	10,000	f
624–64–6	2-Butene-trans [2-Butene, (E)]	624–64–6	10,000	f
627–20–3	2-Pentene, (Z)-	627–20–3	10,000	g
646–04–8	2-Pentene, (E)-	646–04–8	10,000	g
689–97–4	Vinyl acetylene [1-Buten-3-yne]	689–97–4	10,000	f
1333–74–0	Hydrogen	1333–74–0	10,000	f
4109–96–0	Dichlorosilane [Silane, dichloro-]	4109–96–0	10,000	f
7791–21–1	Chlorine monoxide [Chlorine oxide]	7791–21–1	10,000	f
7803–62–5	Silane	7803–62–5	10,000	f
10025–78–2	Trichlorosilane [Silane,trichloro-]	10025–78–2	10,000	g
25167–67–3	Butene	25167–67–3	10,000	f

[1] A flammable substance when used as a fuel or held for sale as a fuel at a retail facility is excluded from all provisions of this part (see § 68.126).

NOTE: Basis for Listing:

[a] Mandated for listing by Congress.

[f] Flammable gas.
[g] Volatile flammable liquid.

[59 FR 4493, Jan. 31, 1994. Redesignated at 61 FR 31717, June 20, 1996, as amended at 62 FR 45132, Aug. 25, 1997; 63 FR 645, Jan. 6, 1998; 65 FR 13250, Mar. 13, 2000]

Subpart G—Risk Management Plan

SOURCE: 61 FR 31726, June 20, 1996, unless otherwise noted.

§ 68.150 Submission.

(a) The owner or operator shall submit a single RMP that includes the information required by §§ 68.155 through 68.185 for all covered processes. The RMP shall be submitted in the method and format to the central point specified by EPA as of the date of submission.

(b) The owner or operator shall submit the first RMP no later than the latest of the following dates:

(1) June 21, 1999;

(2) Three years after the date on which a regulated substance is first listed under § 68.130; or

(3) The date on which a regulated substance is first present above a threshold quantity in a process.

(c) The owner or operator of any stationary source for which an RMP was submitted before June 21, 2004, shall revise the RMP to include the information required by § 68.160(b)(6) and (14) by June 21, 2004 in the manner specified by EPA prior to that date. Any such submission shall also include the information required by § 68.160(b)(20) (indicating that the submission is a correction to include the information required by § 68.160(b)(6) and (14) or an update under § 68.190).

(d) RMPs submitted under this section shall be updated and corrected in accordance with §§ 68.190 and 68.195.

(e) Notwithstanding the provisions of §§ 68.155 to 68.190, the RMP shall exclude classified information. Subject to appropriate procedures to protect such information from public disclosure, classified data or information excluded from the RMP may be made available in a classified annex to the RMP for review by Federal and state representatives who have received the appropriate security clearances.

(f) Procedures for asserting that information submitted in the RMP is entitled to protection as confidential business information are set forth in §§ 68.151 and 68.152.

[61 FR 31726, June 20, 1996, as amended at 64 FR 979, Jan. 6, 1999; 69 FR 18831, Apr. 9, 2004]

§ 68.151 Assertion of claims of confidential business information.

(a) Except as provided in paragraph (b) of this section, an owner or operator of a stationary source required to report or otherwise provide information under this part may make a claim of confidential business information for any such information that meets the criteria set forth in 40 CFR 2.301.

(b) Notwithstanding the provisions of 40 CFR part 2, an owner or operator of a stationary source subject to this part may not claim as confidential business information the following information:

(1) Registration data required by § 68.160(b)(1) through (b)(6) and (b)(8), (b)(10) through (b)(13) and NAICS code and Program level of the process set forth in § 68.160(b)(7);

(2) Offsite consequence analysis data required by § 68.165(b)(4), (b)(9), (b)(10), (b)(11), and (b)(12).

(3) Accident history data required by § 68.168;

(4) Prevention program data required by § 68.170(b), (d), (e)(1), (f) through (k);

(5) Prevention program data required by § 68.175(b), (d), (e)(1), (f) through (p); and

(6) Emergency response program data required by § 68.180.

(c) Notwithstanding the procedures specified in 40 CFR part 2, an owner or operator asserting a claim of CBI with respect to information contained in its RMP, shall submit to EPA at the time it submits the RMP the following:

(1) The information claimed confidential, provided in a format to be specified by EPA;

(2) A sanitized (redacted) copy of the RMP, with the notation ''CBI'' substituted for the information claimed

confidential, except that a generic category or class name shall be substituted for any chemical name or identity claimed confidential; and

(3) The document or documents substantiating each claim of confidential business information, as described in § 68.152.

[64 FR 979, Jan. 6, 1999]

§ 68.152 Substantiating claims of confidential business information.

(a) An owner or operator claiming that information is confidential business information must substantiate that claim by providing documentation that demonstrates that the claim meets the substantive criteria set forth in 40 CFR 2.301.

(b) Information that is submitted as part of the substantiation may be claimed confidential by marking it as confidential business information. Information not so marked will be treated as public and may be disclosed without notice to the submitter. If information that is submitted as part of the substantiation is claimed confidential, the owner or operator must provide a sanitized and unsanitized version of the substantiation.

(c) The owner, operator, or senior official with management responsibility of the stationary source shall sign a certification that the signer has personally examined the information submitted and that based on inquiry of the persons who compiled the information, the information is true, accurate, and complete, and that those portions of the substantiation claimed as confidential business information would, if disclosed, reveal trade secrets or other confidential business information.

[64 FR 980, Jan. 6, 1999]

§ 68.155 Executive summary.

The owner or operator shall provide in the RMP an executive summary that includes a brief description of the following elements:

(a) The accidental release prevention and emergency response policies at the stationary source;

(b) The stationary source and regulated substances handled;

(c) The general accidental release prevention program and chemical-specific prevention steps;

(d) The five-year accident history;

(e) The emergency response program; and

(f) Planned changes to improve safety.

[61 FR 31726, June 20, 1996, as amended at 69 FR 18831, Apr. 9, 2004]

§ 68.160 Registration.

(a) The owner or operator shall complete a single registration form and include it in the RMP. The form shall cover all regulated substances handled in covered processes.

(b) The registration shall include the following data:

(1) Stationary source name, street, city, county, state, zip code, latitude and longitude, method for obtaining latitude and longitude, and description of location that latitude and longitude represent;

(2) The stationary source Dun and Bradstreet number;

(3) Name and Dun and Bradstreet number of the corporate parent company;

(4) The name, telephone number, and mailing address of the owner or operator;

(5) The name and title of the person or position with overall responsibility for RMP elements and implementation, and (optional) the e-mail address for that person or position;

(6) The name, title, telephone number, 24-hour telephone number, and, as of June 21, 2004, the e-mail address (if an e-mail address exists) of the emergency contact;

(7) For each covered process, the name and CAS number of each regulated substance held above the threshold quantity in the process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits, the five- or six-digit NAICS code that most closely corresponds to the process, and the Program level of the process;

(8) The stationary source EPA identifier;

(9) The number of full-time employees at the stationary source;

(10) Whether the stationary source is subject to 29 CFR 1910.119;

(11) Whether the stationary source is subject to 40 CFR part 355;

(12) If the stationary source has a CAA Title V operating permit, the permit number; and

(13) The date of the last safety inspection of the stationary source by a Federal, state, or local government agency and the identity of the inspecting entity.

(14) As of June 21, 2004, the name, the mailing address, and the telephone number of the contractor who prepared the RMP (if any);

(15) Source or Parent Company E-Mail Address (Optional);

(16) Source Homepage address (Optional)

(17) Phone number at the source for public inquiries (Optional);

(18) Local Emergency Planning Committee (Optional);

(19) OSHA Voluntary Protection Program status (Optional);

(20) As of June 21, 2004, the type of and reason for any changes being made to a previously submitted RMP; the types of changes to RMP are categorized as follows:

(i) Updates and re-submissions required under § 68.190(b);

(ii) Corrections under § 68.195 or for purposes of correcting minor clerical errors, updating administrative information, providing missing data elements or reflecting facility ownership changes, and which do not require an update and re-submission as specified in § 68.190(b);

(iii) De-registrations required under § 68.190(c); and

(iv) Withdrawals of an RMP for any facility that was erroneously considered subject to this part 68.

[61 FR 31726, June 20, 1996, as amended at 64 FR 980, Jan. 6, 1999; 69 FR 18831, Apr. 9, 2004]

§ 68.165 Offsite consequence analysis.

(a) The owner or operator shall submit in the RMP information:

(1) One worst-case release scenario for each Program 1 process; and

(2) For Program 2 and 3 processes, one worst-case release scenario to represent all regulated toxic substances held above the threshold quantity and one worst-case release scenario to represent all regulated flammable substances held above the threshold quantity. If additional worst-case scenarios for toxics or flammables are required by § 68.25(a)(2)(iii), the owner or operator shall submit the same information on the additional scenario(s). The owner or operator of Program 2 and 3 processes shall also submit information on one alternative release scenario for each regulated toxic substance held above the threshold quantity and one alternative release scenario to represent all regulated flammable substances held above the threshold quantity.

(b) The owner or operator shall submit the following data:

(1) Chemical name;

(2) Percentage weight of the chemical in a liquid mixture (toxics only);

(3) Physical state (toxics only);

(4) Basis of results (give model name if used);

(5) Scenario (explosion, fire, toxic gas release, or liquid spill and evaporation);

(6) Quantity released in pounds;

(7) Release rate;

(8) Release duration;

(9) Wind speed and atmospheric stability class (toxics only);

(10) Topography (toxics only);

(11) Distance to endpoint;

(12) Public and environmental receptors within the distance;

(13) Passive mitigation considered; and

(14) Active mitigation considered (alternative releases only);

[61 FR 31726, June 20, 1996, as amended at 64 FR 980, Jan. 6, 1999]

§ 68.168 Five-year accident history.

The owner or operator shall submit in the RMP the information provided in § 68.42(b) on each accident covered by § 68.42(a).

§ 68.170 Prevention program/Program 2.

(a) For each Program 2 process, the owner or operator shall provide in the RMP the information indicated in paragraphs (b) through (k) of this section. If the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies.

(b) The five- or six-digit NAICS code that most closely corresponds to the process.

(c) The name(s) of the chemical(s) covered.

(d) The date of the most recent review or revision of the safety information and a list of Federal or state regulations or industry-specific design codes and standards used to demonstrate compliance with the safety information requirement.

(e) The date of completion of the most recent hazard review or update.

(1) The expected date of completion of any changes resulting from the hazard review;

(2) Major hazards identified;

(3) Process controls in use;

(4) Mitigation systems in use;

(5) Monitoring and detection systems in use; and

(6) Changes since the last hazard review.

(f) The date of the most recent review or revision of operating procedures.

(g) The date of the most recent review or revision of training programs;

(1) The type of training provided—classroom, classroom plus on the job, on the job; and

(2) The type of competency testing used.

(h) The date of the most recent review or revision of maintenance procedures and the date of the most recent equipment inspection or test and the equipment inspected or tested.

(i) The date of the most recent compliance audit and the expected date of completion of any changes resulting from the compliance audit.

(j) The date of the most recent incident investigation and the expected date of completion of any changes resulting from the investigation.

(k) The date of the most recent change that triggered a review or revision of safety information, the hazard review, operating or maintenance procedures, or training.

[61 FR 31726, June 20, 1996, as amended at 64 FR 980, Jan. 6, 1999]

§ 68.175 Prevention program/Program 3.

(a) For each Program 3 process, the owner or operator shall provide the information indicated in paragraphs (b) through (p) of this section. If the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies.

(b) The five- or six-digit NAICS code that most closely corresponds to the process.

(c) The name(s) of the substance(s) covered.

(d) The date on which the safety information was last reviewed or revised.

(e) The date of completion of the most recent PHA or update and the technique used.

(1) The expected date of completion of any changes resulting from the PHA;

(2) Major hazards identified;

(3) Process controls in use;

(4) Mitigation systems in use;

(5) Monitoring and detection systems in use; and

(6) Changes since the last PHA.

(f) The date of the most recent review or revision of operating procedures.

(g) The date of the most recent review or revision of training programs;

(1) The type of training provided—classroom, classroom plus on the job, on the job; and

(2) The type of competency testing used.

(h) The date of the most recent review or revision of maintenance procedures and the date of the most recent equipment inspection or test and the equipment inspected or tested.

(i) The date of the most recent change that triggered management of change procedures and the date of the most recent review or revision of management of change procedures.

(j) The date of the most recent prestartup review.

(k) The date of the most recent compliance audit and the expected date of completion of any changes resulting from the compliance audit;

(l) The date of the most recent incident investigation and the expected date of completion of any changes resulting from the investigation;

(m) The date of the most recent review or revision of employee participation plans;

(n) The date of the most recent review or revision of hot work permit procedures;

(o) The date of the most recent review or revision of contractor safety procedures; and

(p) The date of the most recent evaluation of contractor safety performance.

[61 FR 31726, June 20, 1996, as amended at 64 FR 980, Jan. 6, 1999]

§ 68.180 Emergency response program.

(a) The owner or operator shall provide in the RMP the following information:

(1) Do you have a written emergency response plan?

(2) Does the plan include specific actions to be taken in response to an accidental releases of a regulated substance?

(3) Does the plan include procedures for informing the public and local agencies responsible for responding to accidental releases?

(4) Does the plan include information on emergency health care?

(5) The date of the most recent review or update of the emergency response plan;

(6) The date of the most recent emergency response training for employees.

(b) The owner or operator shall provide the name and telephone number of the local agency with which emergency response activities and the emergency response plan is coordinated.

(c) The owner or operator shall list other Federal or state emergency plan requirements to which the stationary source is subject.

[61 FR 31726, June 20, 1996, as amended at 64 FR 980, Jan. 6, 1999]

§ 68.185 Certification.

(a) For Program 1 processes, the owner or operator shall submit in the RMP the certification statement provided in § 68.12(b)(4).

(b) For all other covered processes, the owner or operator shall submit in the RMP a single certification that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete.

§ 68.190 Updates.

(a) The owner or operator shall review and update the RMP as specified in paragraph (b) of this section and submit it in the method and format to the central point specified by EPA as of the date of submission.

(b) The owner or operator of a stationary source shall revise and update the RMP submitted under § 68.150 as follows:

(1) At least once every five years from the date of its initial submission or most recent update required by paragraphs (b)(2) through (b)(7) of this section, whichever is later. For purposes of determining the date of initial submissions, RMPs submitted before June 21, 1999 are considered to have been submitted on that date.

(2) No later than three years after a newly regulated substance is first listed by EPA;

(3) No later than the date on which a new regulated substance is first present in an already covered process above a threshold quantity;

(4) No later than the date on which a regulated substance is first present above a threshold quantity in a new process;

(5) Within six months of a change that requires a revised PHA or hazard review;

(6) Within six months of a change that requires a revised offsite consequence analysis as provided in § 68.36; and

(7) Within six months of a change that alters the Program level that applied to any covered process.

(c) If a stationary source is no longer subject to this part, the owner or operator shall submit a de-registration to EPA within six months indicating that the stationary source is no longer covered.

[61 FR 31726, June 20, 1996, as amended at 69 FR 18832, Apr. 9, 2004]

§ 68.195 Required corrections.

The owner or operator of a stationary source for which a RMP was submitted shall correct the RMP as follows:

(a) New accident history information—For any accidental release meeting the five-year accident history reporting criteria of § 68.42 and occurring after April 9, 2004, the owner or operator shall submit the data required under §§ 68.168, 68.170(j), and 68.175(l)

with respect to that accident within six months of the release or by the time the RMP is updated under § 68.190, whichever is earlier.

(b) Emergency contact information—Beginning June 21, 2004, within one month of any change in the emergency contact information required under § 68.160(b)(6), the owner or operator shall submit a correction of that information.

[69 FR 18832, Apr. 9, 2004]

Subpart H—Other Requirements

SOURCE: 61 FR 31728, June 20, 1996, unless otherwise noted.

§ 68.200 Recordkeeping.

The owner or operator shall maintain records supporting the implementation of this part for five years unless otherwise provided in subpart D of this part.

§ 68.210 Availability of information to the public.

(a) The RMP required under subpart G of this part shall be available to the public under 42 U.S.C. 7414(c).

(b) The disclosure of classified information by the Department of Defense or other Federal agencies or contractors of such agencies shall be controlled by applicable laws, regulations, or executive orders concerning the release of classified information.

§ 68.215 Permit content and air permitting authority or designated agency requirements.

(a) These requirements apply to any stationary source subject to this part 68 and parts 70 or 71 of this chapter. The 40 CFR part 70 or part 71 permit for the stationary source shall contain:

(1) A statement listing this part as an applicable requirement;

(2) Conditions that require the source owner or operator to submit:

(i) A compliance schedule for meeting the requirements of this part by the date provided in § 68.10(a) or;

(ii) As part of the compliance certification submitted under 40 CFR 70.6(c)(5), a certification statement that the source is in compliance with all requirements of this part, including the registration and submission of the RMP.

(b) The owner or operator shall submit any additional relevant information requested by the air permitting authority or designated agency.

(c) For 40 CFR part 70 or part 71 permits issued prior to the deadline for registering and submitting the RMP and which do not contain permit conditions described in paragraph (a) of this section, the owner or operator or air permitting authority shall initiate permit revision or reopening according to the procedures of 40 CFR 70.7 or 71.7 to incorporate the terms and conditions consistent with paragraph (a) of this section.

(d) The state may delegate the authority to implement and enforce the requirements of paragraph (e) of this section to a state or local agency or agencies other than the air permitting authority. An up-to-date copy of any delegation instrument shall be maintained by the air permitting authority. The state may enter a written agreement with the Administrator under which EPA will implement and enforce the requirements of paragraph (e) of this section.

(e) The air permitting authority or the agency designated by delegation or agreement under paragraph (d) of this section shall, at a minimum:

(1) Verify that the source owner or operator has registered and submitted an RMP or a revised plan when required by this part;

(2) Verify that the source owner or operator has submitted a source certification or in its absence has submitted a compliance schedule consistent with paragraph (a)(2) of this section;

(3) For some or all of the sources subject to this section, use one or more mechanisms such as, but not limited to, a completeness check, source audits, record reviews, or facility inspections to ensure that permitted sources are in compliance with the requirements of this part; and

(4) Initiate enforcement action based on paragraphs (e)(1) and (e)(2) of this section as appropriate.

§ 68.220 Audits.

(a) In addition to inspections for the purpose of regulatory development and enforcement of the Act, the implementing agency shall periodically audit RMPs submitted under subpart G of this part to review the adequacy of such RMPs and require revisions of RMPs when necessary to ensure compliance with subpart G of this part.

(b) The implementing agency shall select stationary sources for audits based on any of the following criteria:

(1) Accident history of the stationary source;

(2) Accident history of other stationary sources in the same industry;

(3) Quantity of regulated substances present at the stationary source;

(4) Location of the stationary source and its proximity to the public and environmental receptors;

(5) The presence of specific regulated substances;

(6) The hazards identified in the RMP; and

(7) A plan providing for neutral, random oversight.

(c) Exemption from audits. A stationary source with a Star or Merit ranking under OSHA's voluntary protection program shall be exempt from audits under paragraph (b)(2) and (b)(7) of this section.

(d) The implementing agency shall have access to the stationary source, supporting documentation, and any area where an accidental release could occur.

(e) Based on the audit, the implementing agency may issue the owner or operator of a stationary source a written preliminary determination of necessary revisions to the stationary source's RMP to ensure that the RMP meets the criteria of subpart G of this part. The preliminary determination shall include an explanation for the basis for the revisions, reflecting industry standards and guidelines (such as AIChE/CCPS guidelines and ASME and API standards) to the extent that such standards and guidelines are applicable, and shall include a timetable for their implementation.

(f) *Written response to a preliminary determination.* (1) The owner or operator shall respond in writing to a preliminary determination made in accordance with paragraph (e) of this section. The response shall state the owner or operator will implement the revisions contained in the preliminary determination in accordance with the timetable included in the preliminary determination or shall state that the owner or operator rejects the revisions in whole or in part. For each rejected revision, the owner or operator shall explain the basis for rejecting such revision. Such explanation may include substitute revisions.

(2) The written response under paragraph (f)(1) of this section shall be received by the implementing agency within 90 days of the issue of the preliminary determination or a shorter period of time as the implementing agency specifies in the preliminary determination as necessary to protect public health and the environment. Prior to the written response being due and upon written request from the owner or operator, the implementing agency may provide in writing additional time for the response to be received.

(g) After providing the owner or operator an opportunity to respond under paragraph (f) of this section, the implementing agency may issue the owner or operator a written final determination of necessary revisions to the stationary source's RMP. The final determination may adopt or modify the revisions contained in the preliminary determination under paragraph (e) of this section or may adopt or modify the substitute revisions provided in the response under paragraph (f) of this section. A final determination that adopts a revision rejected by the owner or operator shall include an explanation of the basis for the revision. A final determination that fails to adopt a substitute revision provided under paragraph (f) of this section shall include an explanation of the basis for finding such substitute revision unreasonable.

(h) Thirty days after completion of the actions detailed in the implementation schedule set in the final determination under paragraph (g) of this section, the owner or operator shall be in violation of subpart G of this part and this section unless the owner or operator revises the RMP prepared

under subpart G of this part as required by the final determination, and submits the revised RMP as required under § 68.150.

(i) The public shall have access to the preliminary determinations, responses, and final determinations under this section in a manner consistent with § 68.210.

(j) Nothing in this section shall preclude, limit, or interfere in any way with the authority of EPA or the state to exercise its enforcement, investigatory, and information gathering authorities concerning this part under the Act.

APPENDIX A TO PART 68—TABLE OF TOXIC ENDPOINTS

[As defined in § 68.22 of this part]

CAS No.	Chemical name	Toxic endpoint (mg/L)
107–02–8	Acrolein [2-Propenal]	0.0011
107–13–1	Acrylonitrile [2-Propenenitrile]	0.076
814–68–6	Acrylyl chloride [2-Propenoyl chloride]	0.00090
107–18–6	Allyl alcohol [2-Propen-1-ol]	0.036
107–11–9	Allylamine [2-Propen-1-amine]	0.0032
7664–41–7	Ammonia (anhydrous)	0.14
7664–41–7	Ammonia (conc 20% or greater)	0.14
7784–34–1	Arsenous trichloride	0.010
7784–42–1	Arsine	0.0019
10294–34–5	Boron trichloride [Borane, trichloro-]	0.010
7637–07–2	Boron trifluoride [Borane, trifluoro-]	0.028
353–42–4	Boron trifluoride compound with methyl ether (1:1) [Boron, trifluoro[oxybis[methane]]-, T-4	0.023
7726–95–6	Bromine	0.0065
75–15–0	Carbon disulfide	0.16
7782–50–5	Chlorine	0.0087
10049–04–4	Chlorine dioxide [Chlorine oxide (ClO2)]	0.0028
67–66–3	Chloroform [Methane, trichloro-]	0.49
542–88–1	Chloromethyl ether [Methane, oxybis[chloro-]	0.00025
107–30–2	Chloromethyl methyl ether [Methane, chloromethoxy-]	0.0018
4170–30–3	Crotonaldehyde [2-Butenal]	0.029
123–73–9	Crotonaldehyde, (E)-, [2-Butenal, (E)-]	0.029
506–77–4	Cyanogen chloride	0.030
108–91–8	Cyclohexylamine [Cyclohexanamine]	0.16
19287–45–7	Diborane	0.0011
75–78–5	Dimethyldichlorosilane [Silane, dichlorodimethyl-]	0.026
57–14–7	1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-]	0.012
106–89–8	Epichlorohydrin [Oxirane, (chloromethyl)-]	0.076
107–15–3	Ethylenediamine [1,2-Ethanediamine]	0.49
151–56–4	Ethyleneimine [Aziridine]	0.018
75–21–8	Ethylene oxide [Oxirane]	0.090
7782–41–4	Fluorine	0.0039
50–00–0	Formaldehyde (solution)	0.012
110–00–9	Furan	0.0012
302–01–2	Hydrazine	0.011
7647–01–0	Hydrochloric acid (conc 37% or greater)	0.030
74–90–8	Hydrocyanic acid	0.011
7647–01–0	Hydrogen chloride (anhydrous) [Hydrochloric acid]	0.030
7664–39–3	Hydrogen fluoride/Hydrofluoric acid (conc 50% or greater) [Hydrofluoric acid]	0.016
7783–07–5	Hydrogen selenide	0.00066
7783–06–4	Hydrogen sulfide	0.042
13463–40–6	Iron, pentacarbonyl- [Iron carbonyl (Fe(CO)5), (TB–5–11)-]	0.00044
78–82–0	Isobutyronitrile [Propanenitrile, 2-methyl-]	0.14
108–23–6	Isopropyl chloroformate [Carbonochloride acid, 1-methylethyl ester]	0.10
126–98–7	Methacrylonitrile [2-Propenenitrile, 2-methyl-]	0.0027
74–87–3	Methyl chloride [Methane, chloro-]	0.82
79–22–1	Methyl chloroformate [Carbonochloridic acid, methylester]	0.0019
60–34–4	Methyl hydrazine [Hydrazine, methyl-]	0.0094
624–83–9	Methyl isocyanate [Methane, isocyanato-]	0.0012
74–93–1	Methyl mercaptan [Methanethiol]	0.049
556–64–9	Methyl thiocyanate [Thiocyanic acid, methyl ester]	0.085
75–79–6	Methyltrichlorosilane [Silane, trichloromethyl-]	0.018
13463–39–3	Nickel carbonyl	0.00067
7697–37–2	Nitric acid (conc 80% or greater)	0.026
10102–43–9	Nitric oxide [Nitrogen oxide (NO)]	0.031
8014–95–7	Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide]	0.010
79–21–0	Peracetic acid [Ethaneperoxoic acid]	0.0045

[As defined in § 68.22 of this part]

CAS No.	Chemical name	Toxic end-point (mg/L)
594–42–3	Perchloromethylmercaptan [Methanesulfenyl chloride, trichloro-]	0.0076
75–44–5	Phosgene [Carbonic dichloride]	0.00081
7803–51–2	Phosphine	0.0035
10025–87–3	Phosphorus oxychloride [Phosphoryl chloride]	0.0030
7719–12–2	Phosphorus trichloride [Phosphorous trichloride]	0.028
110–89–4	Piperidine	0.022
107–12–0	Propionitrile [Propanenitrile]	0.0037
109–61–5	Propyl chloroformate [Carbonochloridic acid, propylester]	0.010
75–55–8	Propyleneimine [Aziridine, 2-methyl-]	0.12
75–56–9	Propylene oxide [Oxirane, methyl-]	0.59
7446–09–5	Sulfur dioxide (anhydrous)	0.0078
7783–60–0	Sulfur tetrafluoride [Sulfur fluoride (SF4), (T-4)-]	0.0092
7446–11–9	Sulfur trioxide	0.010
75–74–1	Tetramethyllead [Plumbane, tetramethyl-]	0.0040
509–14–8	Tetranitromethane [Methane, tetranitro-]	0.0040
7750–45–0	Titanium tetrachloride [Titanium chloride (TiCl4) (T-4)-]	0.020
584–84–9	Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-]	0.0070
91–08–7	Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-]	0.0070
26471–62–5	Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-]	0.0070
75–77–4	Trimethylchlorosilane [Silane, chlorotrimethyl-]	0.050
108–05–4	Vinyl acetate monomer [Acetic acid ethenyl ester]	0.26

[61 FR 31729, June 20, 1996, as amended at 62 FR 45132, Aug. 25, 1997]

PART 69—SPECIAL EXEMPTIONS FROM REQUIREMENTS OF THE CLEAN AIR ACT

Subpart A—Guam

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AUTHORITY: 42 U.S.C. 7545(c), (g) and (i), and 7625–1.

SOURCE: 50 FR 25577, June 20, 1985, unless otherwise noted.

Subpart A—Guam

§ 69.11 New exemptions.

(a) Pursuant to section 325(a) of the Clean Air Act (''CAA'') and a petition submitted by the Governor of Guam (''Petition''), the Administrator of the Environmental Protection Agency (''EPA'') conditionally exempts electric generating units on Guam from certain CAA requirements.

(1) A waiver of the requirement to obtain a prevention of significant deterioration (''PSD'') permit prior to construction is granted for the electric generating units identified in the Petition as Cabras Diesel No. 1, the Tenjo project, and three 6-megawatt diesel generators to be constructed at Orote, with the following conditions:

(i) Each electric generating unit shall not be operated until a final PSD permit is issued for that unit;

(ii) Each electric generating unit shall not be operated until that unit complies with all requirements of its PSD permit, including, if necessary, retrofitting with the best available control technology (''BACT'');

(iii) The PSD application for each electric generating unit shall be deemed complete without the submittal of the required one year of on-site meteorological data, however, EPA

will not issue a PSD permit to such a unit prior to submission of such data or data which the EPA finds to be an equivalent and acceptable substitute; and

(iv) If any electric generating unit covered by this paragraph is operated either prior to the issuance of a final PSD permit or without BACT equipment, that electric generating unit shall be deemed in violation of this waiver and the CAA beginning on the date of commencement of construction of that unit.

(2) A waiver of the three nonattainment area requirements (a construction ban, the use of lowest achievable emission rate control equipment, and emission offset requirements) currently applicable to the Cabras-Piti area is granted for electric generating units with the following conditions:

(i) A tower and meteorological station shall be constructed in the Cabras-Piti area by May 1, 1993;

(ii) Meteorological data shall be collected from the Cabras-Piti station which is sufficient to run air quality models both to demonstrate no current exceedences of the primary national ambient air quality standard for sulfur dioxide (''sulfur dioxide NAAQS''), as set forth at 40 CFR 50.4, and sufficient to submit a complete request for redesignation of the area to attainment;

(iii) Ambient sulfur dioxide monitors shall be installed and operated in accordance with the procedures set forth at 40 CFR part 58, the PSD air monitoring requirements, and any additional monitoring requested by EPA to verify the efficacy of the intermittent control strategy (''ICS'') of fuel switching;

(iv) Within three years from the effective date of this waiver, the Governor of Guam shall submit to the EPA a complete request that the Cabras-Piti area be redesignated to attainment for the sulfur dioxide NAAQS;

(v) Electric generating units to be constructed in the Cabras-Piti area must submit applications for PSD permits as though the area had been redesignated to attainment for the sulfur dioxide NAAQS;

(vi) The Cabras-Piti area electric generating units shall comply with the fuel switching ICS described in paragraph (a)(3)(i) of this section;

(vii) If the collected data and air quality analysis does not demonstrate to the EPA's satisfaction that there are no current or likely future exceedences of the sulfur dioxide NAAQS, the EPA will so notify the Governor of Guam;

(viii) Within six months of such notification, the Governor of Guam shall submit to the EPA an implementation plan which includes a schedule of emission reductions and/or control measures that will ensure achievement of the sulfur dioxide NAAQS within one year of submission of the implementation plan; and

(ix) If the Governor of Guam fails to submit an implementation plan in a timely fashion, or if EPA disapproves that implementation plan, all electric generating units subject to the fuel switching ICS described in paragraph (a)(3)(i) of this section shall be fueled exclusively with low sulfur fuel.

(3) A waiver of the prohibition on the use of the ICS of fuel switching is granted for electric generating units with the following conditions:

(i) The protocol to be followed for the ICS of fuel switching for electric generating units shall be the one set forth in a separate EPA document entitled Cabras-Piti Area Intermittent Control Strategy; and

(ii) This protocol may be modified by the EPA to protect against exceedences of the sulfur dioxide NAAQS and to accommodate additional electric generating units.

(b) The waiver will be periodically reviewed (at intervals no longer than three years) and, as deemed appropriate by the Administrator, can be modified or terminated at any time through rulemaking procedures.

(c) Pursuant to Section 325(a) of the CAA and a petition submitted by the Governor of Guam on July 14, 1995 (''1995 Petition''), the Administrator of EPA conditionally exempts Guam Power Authority (''GPA'') from certain CAA requirements.

(1) A waiver of the requirement to obtain a PSD permit prior to construction is granted for the electric generating unit identified in the 1995 Petition as Cabras Unit No. 4, with the following conditions:

(i) Cabras Unit No. 4 shall not operate until a final PSD permit is received by GPA for this unit;

(ii) Cabras Unit No. 4 shall not operate until it complies with all requirements of its PSD permit, including, if necessary, retrofitting with BACT;

(iii) If Cabras Unit No. 4 operates either prior to the issuance of a final PSD permit or without BACT equipment, Cabras Unit No. 4 shall be deemed in violation of this waiver and the CAA beginning on the date of commencement of construction of the unit.

(2) A waiver of the requirement to obtain a PSD permit prior to the operation of the unit identified in the 1995 Petition as Cabras Unit No. 3 is granted subject to the following conditions:

(i) The protocol to be followed for the ICS of fuel switching for electric generating units shall be modified to require the use of fuel oil with a sulfur content of 2.00 percent or less during offshore wind conditions. This fuel shall be fired in Cabras Power Plant Units Nos. 1 through 3 and in Piti Power Plant Units Nos. 4 and 5.

(ii) Cabras Unit No. 3 shall operate in compliance with all applicable requirements in its permits to construct and to operate as issued by Guam Environmental Protection Agency.

(iii) The waiver provisions allowing Cabras Unit No. 3 to operate prior to issuance of a PSD permit shall expire on August 15, 1996, or upon the receipt by GPA of a PSD permit for Cabras Unit No. 3, whichever event occurs first.

(3) On or before October 15, 1995, GPA shall submit to EPA, Region IX, a report concerning the operation of Cabras Unit No. 3 and the construction of Cabras Unit No. 4. The report shall contain:

(i) A summary of GPA's conclusions from its wind tunnel study;

(ii) A description of the alternatives available to assure compliance with all air quality requirements, including PSD requirements, during the operation of Cabras Units Nos. 3 and 4;

(iii) A description of the alternative GPA chooses to assure compliance with all air quality requirements, including PSD requirements, during the operation of Cabras Units Nos. 3 and 4; and

(iv) A plan of implementation by GPA.

(d)(1) Pursuant to Section 325(a) of the CAA and a petition submitted by the Governor of Guam on February 11, 1997 (''1997 Petition''), the Administrator of EPA conditionally exempts Piti Power Plant Units No. 8 and No. 9 from certain CAA requirements.

(2) A waiver of the requirement to obtain a PSD permit prior to construction is granted for the electric generating units identified in the 1997 Petition as Piti Units No. 8 and No. 9 (two 45 megawatt baseload diesel electric generators and associated waste heat recovery boilers with a steam generator), with the following conditions:

(i) Piti Units No. 8 and No. 9 shall not operate until final PSD permits are received for these units;

(ii) Piti Units No. 8 and No. 9 shall not operate until they comply with all requirements of their PSD permits, including, if necessary, retrofitting with BACT;

(iii) If either Piti Units No. 8 or No. 9 operate either prior to the issuance of a final PSD permit or without BACT equipment, the Piti Unit(s) shall be deemed in violation of this waiver and the CAA beginning on the date of commencement of construction of the unit(s).

[58 FR 43043, Aug. 12, 1993, as amended at 60 FR 48038, Sept. 18, 1995; 62 FR 44416, Aug. 21, 1997]

§ 69.12 Continuing exemptions.

(a) Effective on the expiration date of the initial eighteen month exemption provided under section 325(b) of ''the Act'', the Administrator of the Environmental Protection Agency (EPA) exempts the Guam Power Authority's two sixty-six megawatt oil-fired steam units which comprise the Cabras Power Plant from sulfur dioxide requirements associated with New Source Performance Standards (NSPS) under section 111 of the Clean Air Act and from the related NSPS limitation on sulfur dioxide emissions contained in the Guam SIP.

(b) The exemption will be reviewed at intervals and upon occasions to be specified by EPA (not longer than 2 years), allowing EPA to determine whether the factual circumstances upon which it is based, including commitments made by GPA in the application for extension and the continuing attainment of the National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide, have changed. The commitments include reporting requirements specified by the Guam Environmental Protection Agency (GEPA), including but not limited to strict implementation of both the monitoring (wind direction and ambient SO_2 concentration) and fuel switching portions of the control strategy, reporting to GEPA of all applications of the strategy, and reporting to GEPA of laboratory analyses of percent sulfur in all new fuel stocks acquired GPA. A finding by EPA that the source is not in compliance with the terms of the exemption will be grounds for enforcement of the terms of the exemption under section 113. A finding by EPA that factual circumstances have changed will be grounds for revocation of the exemption and enforcement of the underlying Clean Air Act requirements.

(c) It is a condition of this action that GPA provide to EPA a copy of any GPA application for rate changes or for commercial credit for construction or replacement of capital assets, simultaneously with submission of such application to the rate making authority or commercial credit institution. No later than the 90th day after a finding by EPA that the circumstances upon which the determination for continuing the exemption was originally made have changed, this exemption shall terminate unless within that time GPA submits information that it is taking all practicable steps to comply with NSPS and SIP requirements related to SO_2. EPA shall review such information under the procedures it has established and shall, as appropriate, extend or terminate the exemption.

§69.13 Title V conditional exemption.

(a) *Conditional exemption*. In response to a petition submitted by the Governor of Guam and pursuant to section 325(a) of the Clean Air Act (Act), the Administrator of the United States EPA (EPA) grants the following conditional exemptions:

(1) Guam is exempted from the requirement to develop, submit for approval, and implement an operating permit program under title V of the Clean Air Act on the condition that Guam meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (e) of this section.

(2) Except for sources listed under paragraph (a)(4) of this section, owners or operators of sources located in Guam subject to the operating permit requirements of title V of the Clean Air Act are exempt from the requirement to apply for and obtain a title V operating permit, on the condition that the owner or operator of each such source must apply for and obtain an operating permit under an EPA approved alternate program that meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (e) of this section. The owner or operator of each such source shall apply for and obtain a permit under the alternate operating permit program by the deadlines set forth in the approved program, but in any event shall obtain a permit no later than January 13, 2003. If the owner or operator of any source has not obtained an operating permit under an alternate operating program approved by EPA for Guam by January 13, 2003, the exemption for such source shall expire and the owner or operator of such source shall become subject to the permitting requirements of 40 CFR part 71 on that date, consistent with paragraph (d)(4) of this section.

(3) Upon EPA approval of an alternate operating permit program adopted by Guam in accordance with this §69.13, a person shall not violate any permit condition or term in a permit that has been issued under such alternate permit program.

(4) This exemption does not apply to owners or operators of major sources of hazardous air pollutants (HAPs) as defined under section 112 of the Clean Air Act or to owners or operators of solid waste incinerators subject to the title

V requirements of section 129(e) of the Act. Owners or operators of major sources of HAPs or solid waste incinerators shall be subject to the requirements of 40 CFR part 71 and shall apply for and obtain a part 71 permit by the deadlines specified in 40 CFR part 71. Any owner or operator of a major source of HAPs subject to 40 CFR part 63, subpart B, shall submit a timely part 71 permit application as required by 40 CFR part 71 and 40 CFR part 63, subpart B, requesting a case-by-case section 112(g) or 112(j) Maximum Achievable Control Technology (MACT) determination.

(b) *Requirements for the alternate operating program.* Guam shall develop and submit an alternate operating permit program (the program) to EPA for approval. Upon approval by EPA, Guam shall implement the program. The program, including the necessary statutory and regulatory authority, must be submitted by January 13, 1999 for approval. The submittal shall include the following elements:

(1) The program must contain regulations that ensure that:

(i) The permits shall include emission limits and standards, and other terms or conditions necessary to ensure compliance with all applicable federal requirements, as defined under 40 CFR 70.2.

(ii) The limitations, controls, and requirements in the permits shall be permanent, quantifiable, and otherwise enforceable as a practical matter.

(iii) Permits shall contain monitoring, recordkeeping and reporting requirements sufficient to ensure compliance with applicable federal requirements during the reporting period.

(iv) The program shall require that the owner or operator of each source submit permit applications with compliance certifications describing the source's compliance status with all applicable requirements. The program shall also provide that each permit contain a requirement that the owner or operator of a source submit annual compliance certifications. The compliance certification shall contain a compliance plan, and shall contain a schedule for expeditiously achieving compliance if the source is not in compliance with all applicable requirements. The program must provide that approval of a permit with a compliance plan and schedule does not sanction noncompliance.

(v) If the program chooses to accept electronic documents it must satisfy the requirements of 40 CFR part 3—(Electronic reporting).

(2) The program shall provide for the collection of fees from permitted sources or other revenues in an amount that will pay for the cost of operation of such a program and ensure that these funds are used solely to support the program.

(3) The program shall provide for public notice and a public comment period of at least 30 days for each permit, significant permit modification, and permit renewal, and shall include submittal to EPA of each permit, significant permit modification, and permit renewal.

(4) The program shall provide EPA at least 45 days from receipt of a permit, modification, or renewal for EPA review and objection prior to issuance. The program shall provide that if EPA objects to a permit sent to EPA for review, Guam cannot issue such permit until the permit is revised in a manner that resolves EPA's objections. The program shall provide that Guam will have no more than 180 days to resolve EPA's objections and that if the objections are not resolved within that time period, EPA shall issue the permit under 40 CFR part 71.

(5) The program shall provide that all documents other than confidential business information will be made available to the public.

(6) The program shall provide Guam with the authority to enforce permits, including the authority to assess civil and criminal penalties up to $10,000 per day per violation and to enjoin activities that are in violation of the permit, the program, or the Act without first revoking the permit.

(7) The program shall require that owners or operators of nonmajor sources of hazardous air pollutants that are required to obtain title V permits, and owners or operators of major sources of all other air pollutants as defined at 40 CFR 70.2 that are exempted from 40 CFR part 71 under paragraph (a) of this section, obtain an operating

permit under the approved program. The program shall include a schedule for issuing permits to all subject sources within three years of EPA approval of the program.

(8) The program shall include a system of regular inspections of permitted sources, a system to identify any unpermitted major sources, and guidelines for appropriate responses to violations.

(9) The program shall provide for the issuance of permits with a fixed term that shall not exceed five years.

(10) The program shall allow Guam or the EPA to reopen a permit for cause. The program shall provide that if EPA provides Guam with written notice that a permit must be reopened for cause, Guam shall issue a revised permit within 180 days (including public notice and comment) that sufficiently addresses EPA's concerns. The program shall provide that if Guam fails to issue a permit that resolves EPA's concerns within 180 days, then EPA will terminate, modify, or revoke and reissue the permit under part 71 after providing the permittee and the public with notice and opportunity for comment.

(c) *State Implementation Plan (SIP) submittal.* In conjunction with the submittal of the alternative operating permit program, Guam shall, no later than January 13, 1999 submit a revision to its SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by Guam pursuant to the exemption authorized in this §69.13.

(d) *Expiration and revocation of the exemption.* This exemption shall expire or may be revoked under the following circumstances:

(1) If Guam fails to submit an alternate operating permit program by January 13, 1999, the exemption shall automatically expire with no further rulemaking and 40 CFR part 71 shall become effective for all subject sources in Guam on that date.

(2) In the event that EPA disapproves Guam's alternate operating permit program because the program does not meet the requirements set forth in paragraph (b) of this section, EPA will revoke the exemption by rulemaking.

(3) If, by January 13, 2003, the owner or operator of any subject source has not obtained a federally enforceable operating permit under an EPA approved program, the exemption shall automatically expire for such source and such source shall be subject to the permitting requirements of 40 CFR part 71. Guam will work with EPA to identify such sources prior to expiration of the exemption under this paragraph (d).

(4) EPA shall revoke the exemption in its entirety through rulemaking if Guam does not adequately administer and enforce an alternate operating permit program approved by EPA.

(5) EPA shall revoke the exemption by rulemaking with respect to the owner or operator of any source if, during the 45-day review period, EPA objects to issuance of a permit and Guam fails to resolve EPA's objections within 180 days. EPA shall also revoke the exemption by rulemaking for the owner or operator of any source in the event that EPA reopens a permit for cause and Guam does not issue a permit that resolves the concerns as set forth in EPA's notice to reopen within 180 days.

(6) EPA reserves its authority to revoke or modify this exemption in whole or in part.

(e) *Scope of the exemption.* This exemption applies solely to the requirement that an owner or operator obtain an operating permit under title V of the Clean Air Act and the requirement that Guam implement a title V permit program. In addition, this exemption does not apply to owners or operators of sources set forth in paragraph (a)(4) of this section. Owners and operators of air pollutant sources are required to comply with all other applicable requirements of the Clean Air Act. For purposes of complying with any applicable requirement that is triggered or implemented by the approval of a title V permit program, the approval date for owners or operators to which this exemption applies shall be the date that EPA approves the alternate program for each territory or, for owners or operators of sources that are subject to 40 CFR part 71, the approval date

shall be the effective date of 40 CFR part 71, which is July 31, 1996.

(f) Final approval of alternate permit program.

(1) The following sections of Guam's Air Pollution Control Standards and Regulations are granted final approval as Guam's alternate permit program:

1101.1(a) Administrator
1101.1(d) Air pollutant
1101.1(e) Air pollution
1101.1(i) Air pollution emission source
1101.1(r) CFR
1101.1(s) Clean Air Act
1101.1(t) Commenced
1101.1(v) Compliance Plan
1101.1(aa) Emission
1101.1(cc) Emissions unit
1101.1(ii) Fugitive Emissions
1101.1(jj) GEPA
1101.1(kk) Hazardous air pollutant
1101.1(xx) Owner or operator
1101.1(zz) Permit
1101.1(bbb) Person
1101.1(eee) Potential to emit
1101.1(iii) Regulated air pollutant
1101.1(jjj) Responsible official
1101.1(ooo) Source
1101.1(uuu) USEPA
1101.1(vvv) USEPA Administrator
1102.3 Certification
1102.7 Public Access to Information
1102.9 Prompt Reporting of Deviations
1104.1 Definitions
(a) Administrative Permit Amendment
(b) AP–42
(c) Applicable requirement
(d) Federal oversight source
(e) Insignificant source
(f) Insignificant sources—Type I
(g) Insignificant sources—Type II
(h) Major source
(i) Minor source
(j) Modification
(k) Pollution prevention
(l) Significant modification
(m) Transition period
1104.2 Applicability
1104.3 General conditions for considering applications
1104.4 Holding and transfer of permit
1104.5(a) Cancellation of Air Pollution Control Permit
1104.6 Air Pollution Control Permit Application
1104.7 Duty to Supplement or Correct Permit Applications
1104.8 Compliance Plan
1104.9 Compliance Certification of Air Pollution Emission Sources
1104.10 Transition Period and Deadlines to Submit First Applications
1104.11 Permit Term
1104.12 Permit Content
1104.13 Inspections
1104.14 Federally-Enforceable Permit Terms and Conditions
1104.15 Transmission of Information to USEPA
1104.16 USEPA Oversight
1104.17 Emergency Provision
1104.18 Permit Termination, Suspension, Reopening, and Amendment
1104.19 Public Participation
1104.20 Administrative Permit Amendment
1104.21 General Fee Provisions
1104.22 Air Pollution Control Special Fund
1104.23 Application Fees for Air Pollution Emission Sources
1104.24 Annual Fees for Air Pollution Emission Sources
1104.25 Penalties and Remedies
1106 Standards of Performance for Air Pollution Emission Sources

(2) SIP Revision. Guam shall adopt, pursuant to required procedures, and submit to EPA a revision to Guam's SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by Guam pursuant the exemption authorized in this § 69.13.

[61 FR 58289, Nov. 13, 1996; 61 FR 66077, Dec. 16, 1996, as amended at 68 FR 1167, Jan. 9, 2003; 70 FR 59887, Oct. 13, 2005; 71 FR 9719, Feb. 27, 2006]

Subpart B—American Samoa

§ 69.21 New exemptions. [Reserved]

§ 69.22 Title V conditional exemption.

(a) *Conditional exemption*. In response to a petition submitted by the Governor of American Samoa (American Samoa) and pursuant to section 325(a) of the Clean Air Act (Act), the Administrator of the United States EPA (EPA) grants the following conditional exemptions:

(1) American Samoa is exempted from the requirement to develop, submit for approval, and implement an operating permit program under title V of the Clean Air Act on the condition that American Samoa meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (f) of this section.

(2) Except for sources listed under paragraph (a)(4) of this section, owners or operators of sources located in American Samoa subject to the operating permit requirements of title V of the Clean Air Act are exempt from the requirement to apply for and obtain a title V operating permit, on the condition that the owner or operator of each such source must apply for and obtain an operating permit under an EPA approved alternate program that meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (f) of this section. The owner or operator of each such source shall apply for and obtain a permit under the alternate operating permit program by the deadlines set forth in the approved program, but in any event shall obtain a permit no later than January 13, 2003. If the owner or operator of any source has not obtained an operating permit under an alternate operating program approved by EPA for American Samoa by January 13, 2003, the exemption for such source shall expire and the owner or operator of such source shall become subject to the permitting requirements of 40 CFR part 71 on that date, consistent with paragraph (e)(4) of this section.

(3) Upon EPA approval of an alternate operating permit program adopted by American Samoa in accordance with this §69.22, a person shall not violate any permit condition or term in a permit that has been issued under such alternate permit program.

(4) This exemption does not apply to owners or operators of major sources of hazardous air pollutants (HAPs) as defined under section 112 of the Clean Air Act or to owners or operators of solid waste incinerators subject to the title V requirements of section 129(e) of the Act. Owners or operators of major sources of HAPs or solid waste incinerators shall be subject to the requirements of 40 CFR part 71 and shall apply for and obtain a part 71 permit by the deadlines specified in 40 CFR part 71. Any owner or operator of a major source of HAPs subject to 40 CFR part 63, subpart B, shall submit a timely part 71 permit application as required by 40 CFR part 71 and 40 CFR part 63, subpart B, requesting a case-by-case 112(g) or 112(j) Maximum Achievable Control Technology (MACT) determination.

(b) *Requirements for the alternate operating program.* American Samoa shall develop and submit an alternate operating permit program (the program) to EPA for approval. Upon approval by EPA, American Samoa shall implement the program. The program, including the necessary statutory and regulatory authority, must be submitted by January 13, 1999 for approval. The submittal shall include the following elements:

(1) The program must contain regulations that ensure that:

(i) The permits shall include emission limits and standards, and other terms or conditions necessary to ensure compliance with all applicable federal requirements, as defined under 40 CFR 70.2.

(ii) The limitations, controls, and requirements in the permits shall be permanent, quantifiable, and otherwise enforceable as a practical matter.

(iii) Permits shall contain monitoring, recordkeeping and reporting requirements sufficient to ensure compliance with applicable federal requirements during the reporting period.

(iv) The program shall require that the owner or operator of each source submit permit applications with compliance certifications describing the source's compliance status with all applicable requirements. The program shall also provide that each permit contain a requirement that the owner or operator of a source submit annual compliance certifications. The compliance certification shall contain a compliance plan, and shall contain a schedule for expeditiously achieving compliance if the source is not in compliance with all applicable requirements. The program must provide that approval of a permit with a compliance plan and

schedule does not sanction noncompliance.

(v) If the program chooses to accept electronic documents it must satisfy the requirements of 40 CFR part 3—(Electronic reporting).

(2) The program shall provide for the collection of fees from permitted sources or other revenues in an amount that will pay for the cost of operation of such a program and ensure that these funds are used solely to support the program.

(3) The program shall provide for public notice and a public comment period of at least 30 days for each permit, significant permit modification, and permit renewal, and shall include submittal to EPA of each permit, significant permit modification, and permit renewal.

(4) The program shall provide EPA at least 45 days from receipt of a permit, modification, or renewal for EPA review and objection prior to issuance. The program shall provide that if EPA objects to a permit sent to EPA for review, American Samoa cannot issue such permit until the permit is revised in a manner that resolves EPA's objections. The program will provide that American Samoa will have no more than 180 days to resolve EPA's objections and that if the objections are not resolved within that time period, EPA shall issue the permit under 40 CFR part 71.

(5) The program shall provide that all documents other than confidential business information will be made available to the public.

(6) The program shall provide American Samoa with the authority to enforce permits, including the authority to assess civil and criminal penalties up to $10,000 per day per violation and to enjoin activities that are in violation of the permit, the program, or the Act without first revoking the permit.

(7) The program shall require that owners or operators of nonmajor sources of hazardous air pollutants that are required to obtain title V permits, and owners or operators of major sources of all other air pollutants as defined in 40 CFR 70.2 that are exempted from 40 CFR part 71 under paragraph (a) of this section, obtain an operating permit under the approved program. The program shall include a schedule for issuing permits to all subject sources within three years of EPA approval of the program.

(8) The program shall include a system of regular inspections of permitted sources, a system to identify any unpermitted major sources, and guidelines for appropriate responses to violations.

(9) The program shall provide for the issuance of permits with a fixed term that shall not exceed five years.

(10) The program shall allow American Samoa or the EPA to reopen a permit for cause. The program shall provide that if EPA provides American Samoa with written notice that a permit must be reopened for cause, American Samoa shall issue a revised permit within 180 days (including public notice and comment) that sufficiently addresses EPA's concerns. The program shall provide that if American Samoa fails to issue a permit that resolves EPA's concerns within 180 days, then EPA will terminate, modify, or revoke and reissue the permit under part 71 after providing the permittee and the public with notice and opportunity for comment.

(c) *Ambient air quality program.* American Samoa shall implement the following program to address the National Ambient Air Quality Standards (NAAQS) as a condition of the waiver:

(1) American Samoa shall collect complete meteorological data and complete refined air quality modeling for the Pago Pago Harbor and submit such data and modeling results to EPA by January 13, 1999.

(2) American Samoa shall address any NAAQS exceedances demonstrated through the modeling results with revisions to its SIP that shall be submitted by January 13, 2000. The plan shall ensure compliance with the NAAQS is achieved by January 14, 2002.

(d) *State Implementation Plan (SIP) submittal.* In conjunction with the submittal of the alternative operating permit program, American Samoa shall, no later than January 13, 1999, submit a revision to its SIP that provides that a person shall not violate a permit condition or term in an operating permit

that has been issued under an EPA approved alternate operating permit program adopted by American Samoa pursuant to the exemption authorized in this § 69.22.

(e) *Expiration and revocation of the exemption.* This exemption shall expire or may be revoked under the following circumstances:

(1) If American Samoa fails to submit the required alternate operating permit program or modeling (and supporting data) by March 15, 1999, the exemption shall automatically expire with no further rulemaking and 40 CFR part 71 shall become effective for all subject sources in American Samoa on that date. The exemption will also expire with no further rulemaking in the event that American Samoa fails to submit a SIP revision by January 13, 2000, consistent with paragraph (c)(2) of this section.

(2) In the event that EPA disapproves American Samoa's alternate operating permit program because the program does not meet the requirements set forth in paragraph (b) of this section, EPA will revoke the exemption by rulemaking.

(3) If, by March 14, 2003, the owner or operator of any subject source has not obtained a federally enforceable operating permit under an EPA approved program, the exemption shall automatically expire for such source and such source shall be subject to the permitting requirements of 40 CFR part 71. American Samoa will work with EPA to identify such sources prior to expiration of the exemption under this paragraph (d).

(4) EPA shall revoke the exemption in its entirety through rulemaking if American Samoa does not adequately administer and enforce an alternate operating permit program approved by EPA.

(5) EPA shall revoke the exemption by rulemaking with respect to the owner or operator of any source if, during the 45-day review period, EPA objects to issuance of a permit and American Samoa fails to resolve EPA's objections within 180 days. EPA shall also revoke the exemption by rulemaking for the owner or operator of any source in the event that EPA reopens a permit for cause and American Samoa does not issue a permit that resolves the concerns as set forth in EPA's notice to reopen within 180 days.

(6) EPA reserves its authority to revoke or modify this exemption in whole or in part.

(f) *Scope of the exemption.* This exemption applies solely to the requirement that an owner or operator obtain an operating permit under title V of the Clean Air Act and the requirement that American Samoa implement a title V permit program. In addition, this exemption does not apply to owners or operators of sources set forth in paragraph (a)(4) of this section. Owners and operators of air pollutant sources are required to comply with all other applicable requirements of the Clean Air Act. For purposes of complying with any applicable requirement that is triggered or implemented by the approval of a title V permit program, the approval date for owners or operators to which this exemption applies shall be the date that EPA approves the alternate program for each territory or, for owners or operators of sources that are subject to 40 CFR part 71, the approval date shall be the effective date of 40 CFR part 71, which is July 31, 1996.

[61 FR 58291, Nov. 13, 1996; 61 FR 66077, Dec. 16, 1996, as amended at 70 FR 59887, Oct. 13, 2005]

Subpart C—Commonwealth of the Northern Mariana Islands

§ 69.31 New exemptions. [Reserved]

§ 69.32 Title V conditional exemption.

(a) *Conditional exemption.* In response to a petition submitted by the Governor of The Commonwealth of the Northern Mariana Islands (CNMI) and pursuant to section 325(a) of the Clean Air Act (Act), the Administrator of the United States EPA (EPA) grants the following conditional exemptions:

(1) CNMI is exempted from the requirement to develop, submit for approval, and implement an operating permit program under title V of the Clean Air Act on the condition that CNMI meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (f) of this section.

(2) Except for sources listed under paragraph (a)(4) of this section, owners or operators of sources located in CNMI subject to the operating permit requirements of title V of the Clean Air Act are exempt from the requirement to apply for and obtain a title V operating permit, on the condition that the owner or operator of each such source must apply for and obtain an operating permit under an EPA approved alternate program that meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (f) of this section. The owner or operator of each such source shall apply for and obtain a permit under the alternate operating permit program by the deadlines set forth in the approved program, but in any event shall obtain a permit no later than January 13, 2003. If the owner or operator of any source has not obtained an operating permit under an alternate operating program approved by EPA for CNMI by January 13, 2003, the exemption for such source shall expire and the owner or operator of such source shall become subject to the permitting requirements of 40 CFR part 71 on that date, consistent with paragraph (e)(3) of this section.

(3) Upon EPA approval of an alternate operating permit program adopted by CNMI in accordance with this § 69.32, a person shall not violate any permit condition or term in a permit that has been issued under such alternate permit program.

(4) This exemption does not apply to owners or operators of major sources of hazardous air pollutants (HAPs) as defined under section 112 of the Clean Air Act or to owners or operators of solid waste incinerators subject to the title V requirements of section 129(e) of the Act. Owners or operators of major sources of HAPs or solid waste incinerators shall be subject to the requirements of 40 CFR part 71 and shall apply for and obtain a part 71 permit by the deadlines specified in 40 CFR part 71. Any owner or operator of a major source of HAPs subject to 40 CFR part 63, subpart B, shall submit a timely part 71 permit application as required by 40 CFR part 71 and 40 CFR part 63, subpart B, requesting a case-by-case section 112(g) or 112(j) Maximum Achievable Control Technology (MACT) determination.

(b) *Requirements for the alternate operating program.* CNMI shall develop and submit an alternate operating permit program (the program) to EPA for approval. Upon approval by EPA, CNMI shall implement the program. The program, including the necessary statutory and regulatory authority, must be submitted by January 13, 1999 for approval. The submittal shall include the following elements:

(1) The program must contain regulations that ensure that:

(i) The permits shall include emission limits and standards, and other terms or conditions necessary to ensure compliance with all applicable federal requirements, as defined under 40 CFR 70.2.

(ii) The limitations, controls, and requirements in the permits shall be permanent, quantifiable, and otherwise enforceable as a practical matter.

(iii) Permits shall contain monitoring, recordkeeping and reporting requirements sufficient to ensure compliance with applicable federal requirements during the reporting period.

(iv) The program shall require that the owner or operator of each source submit permit applications with compliance certifications describing the source's compliance status with all applicable requirements. The program shall also provide that each permit contain a requirement that the owner or operator of a source submit annual compliance certifications. The compliance certification shall contain a compliance plan, and shall contain a schedule for expeditiously achieving compliance if the source is not in compliance with all applicable requirements. The program must provide that approval of a permit with a compliance plan and schedule does not sanction noncompliance.

(v) If the program chooses to accept electronic documents it must satisfy the requirements of 40 CFR part 3—(Electronic reporting).

(2) The program shall provide for the collection of fees from permitted sources or other revenues in an amount that will pay for the cost of operation of such a program and ensure that

these funds are used solely to support the program.

(3) The program shall provide for public notice and a public comment period of at least 30 days for each permit, significant permit modification, and permit renewal, and shall include submittal to EPA of each permit, significant permit modification, and permit renewal.

(4) The program shall provide EPA at least 45 days from receipt of a permit, modification, or renewal for EPA review and objection prior to issuance. The program shall provide that if EPA objects to a permit sent to EPA for review, CNMI cannot issue such permit until the permit is revised in a manner that resolves EPA's objections. The program will provide that CNMI will have no more than 180 days to resolve EPA's objections and that if the objections are not resolved within that time period, EPA shall issue the permit under 40 CFR part 71.

(5) The program shall provide that all documents other than confidential business information will be made available to the public.

(6) The program shall provide CNMI with the authority to enforce permits, including the authority to assess civil and criminal penalties up to $10,000 per day per violation and to enjoin activities that are in violation of the permit, the program, or the Act without first revoking the permit.

(7) The program shall require that owners or operators of nonmajor sources of hazardous air pollutants that are required to obtain title V permits, and owners or operators of major sources of all other air pollutants as defined at 40 CFR 70.2 that are exempted from 40 CFR part 71 under paragraph (a) of this section, obtain an operating permit under the approved program. The program shall include a schedule for issuing permits to all subject sources within three years of EPA approval of the program.

(8) The program shall include a system of regular inspections of permitted sources, a system to identify any unpermitted major sources, and guidelines for appropriate responses to violations.

(9) The program shall provide for the issuance of permits with a fixed term that shall not exceed five years.

(10) The program shall allow CNMI or the EPA to reopen a permit for cause. The program shall provide that if EPA provides CNMI with written notice that a permit must be reopened for cause, CNMI shall issue a revised permit within 180 days (including public notice and comment) that sufficiently addresses EPA's concerns. The program shall provide that if CNMI fails to issue a permit that resolves EPA's concerns within 180 days, then EPA will terminate, modify, or revoke and reissue the permit under part 71 after providing the permittee and the public with notice and opportunity for comment.

(c) *Ambient air quality program.* CNMI shall implement the following program to protect attainment of National Ambient Air Quality Standards (NAAQS) as a condition of the waiver:

(1) CNMI shall enforce its January 19, 1987 Air Pollution Control (APC) regulations, including the requirement that all new or modified sources comply with the NAAQS and Prevention of Significant Deterioration (PSD) increments.

(2) CNMI may conduct air emissions modeling, using EPA guidelines, for power plants located on Saipan to assess EPA's preliminary determination of non-compliance with the NAAQS for sulfur dioxide (SO_2). CNMI shall complete and submit any additional modeling to EPA by January 13, 1998 to determine whether existing power plants cause or contribute to violation of the NAAQS and PSD increments in the APC regulations and 40 CFR 52.21.

(3) If CNMI's additional modeling, based on EPA guidelines, predicts exceedances of the NAAQS for SO_2, or if CNMI elects to accept EPA's preliminary determination that the NAAQS for SO_2 have been exceeded, CNMI shall submit a revised SIP that ensures compliance with the NAAQS for SO_2. CNMI shall submit the proposed revision to the SIP by January 13, 1998 or, if CNMI elects to conduct additional modeling, by January 13, 1999. CNMI shall take appropriate corrective actions through the SIP to demonstrate compliance with the NAAQS for SO_2 by January 15, 2001.

(d) *State Implementation Plan (SIP) submittal.* In conjunction with the submittal of the alternative operating permit program, CNMI shall, no later than January 13, 1999 submit a revision to its SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by CNMI pursuant to the exemption authorized in this § 69.32.

(e) *Expiration and revocation of the exemption.* This exemption shall expire or may be revoked under the following circumstances:

(1) If CNMI fails to submit the required alternate operating permit program or any required SIP revision by January 13, 1999, the exemption shall automatically expire with no further rulemaking and 40 CFR part 71 shall become effective for all subject sources in CNMI on that date, consistent with paragraph (c)(3) of this section.

(2) In the event that EPA disapproves CNMI's alternate operating permit program because the program does not meet the requirements set forth in paragraph (b) of this section, EPA will revoke the exemption by rulemaking.

(3) If, by January 13, 2003, the owner or operator of any subject source has not obtained a federally enforceable operating permit under an EPA approved program, the exemption shall automatically expire for such source and such source shall be subject to the permitting requirements of 40 CFR part 71. CNMI will work with EPA to identify such sources prior to expiration of the exemption under this paragraph (e).

(4) EPA shall revoke the exemption in its entirety through rulemaking if CNMI does not adequately administer and enforce an alternate operating permit program approved by EPA.

(5) EPA shall revoke the exemption by rulemaking with respect to the owner or operator of any source if, during the 45-day review period, EPA objects to issuance of a permit and CNMI fails to resolve EPA's objections within 180 days. EPA shall also revoke the exemption by rulemaking for the owner or operator of any source in the event that EPA reopens a permit for cause and CNMI does not issue a permit that resolves the concerns as set forth in EPA's notice to reopen within 180 days.

(6) EPA reserves its authority to revoke or modify this exemption in whole or in part.

(f) *Scope of the exemption.* This exemption applies solely to the requirement that an owner or operator obtain an operating permit under title V of the Clean Air Act and the requirement that CNMI implement a title V permit program. In addition, this exemption does not apply to owners or operators of sources set forth in paragraph (a)(4) of this section. Owners and operators of air pollutant sources are required to comply with all other applicable requirements of the Clean Air Act. For purposes of complying with any applicable requirement that is triggered or implemented by the approval of a title V permit program, the approval date for owners or operators to which this exemption applies shall be the date that EPA approves the alternate program for each territory or, for owners or operators of sources that are subject to 40 CFR part 71, the approval date shall be the effective date of 40 CFR part 71, which is July 31, 1996.

[61 FR 58292, Nov. 13, 1996; 61 FR 66077, Dec. 16, 1996, as amended at 70 FR 59887, Oct. 13, 2005]

Subpart D—The U.S. Virgin Islands

§ 69.41 New exemptions.

(a) Pursuant to section 325(a) of the Clean Air Act and a petition submitted by the Governor of the Virgin Islands, an exemption to section 123 of the Clean Air Act is granted to the Hess Oil Virgin Islands Corporation (HOVIC) at the St. Croix refinery. Specifically, the exemption waives the prohibition on the implementation of an Intermittent Control Strategy (ICS) based upon atmospheric conditions in order to set emission limitations. The emission limitations shall depend upon the sulfur content in the residual oil burned at the refinery.

(b) The protocol to be followed for the ICS shall be set forth in a Prevention of Significant Deterioration of Air Quality (PSD) permit issued to HOVIC; and shall include as a minimum, the conditions listed in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section.

(1) HOVIC shall maintain a meteorological tower on its property for the purpose of the ICS which meets the required EPA QA/QC operating specifications. At a minimum, the wind direction data will be monitored, collected and reported as 1-hour averages, starting on the hour. If the average wind direction for a given hour is from within the designated sector, the wind will be deemed to have flowed from within the sector for that hour. Each ''day'' or ''block period'', for these purposes will start at midnight and end the following midnight.

(2) HOVIC shall maintain SO2 ambient monitors and collect ambient SO2 concentration data for the purpose of implementing the ICS at nearby locations approved by EPA and specified in the PSD permit. The ambient monitors must follow the required EPA QA/QC operating specifications. At a minimum, the data will be collected according to EPA approved State and Local Ambient Monitoring Stations procedures found at 40 CFR 58.20, but will, for these purposes, be averaged by the hour, starting on the hour.

(3) The switch to a lower sulfur fuel (0.5%) will take place when paragraphs (b)(3)(i) or (b)(3)(ii) of this section are met.

(i) The winds blow from a 45 degree sector defined as 143 to 187 degrees inclusive, where zero degrees is due north, for at least 6 consecutive hours during a 24-hour block period or any 12 non-consecutive hours during a 24 hour block period.

(ii) One of HOVIC's ICS monitors measures an average ambient SO2 concentration that is 75% of the 24-hour NAAQS during any rolling 24-hour average. (75% of the 24-hour NAAQS = 274 ug/m3 or 0.105 ppm).

(4) The switch back to the higher sulfur fuel (1.0%) may occur if the conditions in paragraphs (b)(4)(i), (b)(4)(ii), and (b)(4)(iii) of this section are met.

(i) If the ICS was triggered by paragraph (b)(3)(i) of this section, the switch back may occur when the winds blow outside the sector listed in paragraph (b)(3)(i) of this section for at least 3 consecutive hours following the period during which the winds were blowing inside the sector.

(ii) If the ICS was triggered by paragraph (b)(3)(ii) of this section, the switch back may occur after all of HOVIC's ICS ambient monitors measure a 24-hour average concentration which is less than 75% of the NAAQS for at least one 24-hour block period following any occurrence when the monitor measured the concentration which was 75% of the NAAQS.

(iii) If the ICS was triggered by both paragraphs (b)(3)(i) and (b)(3)(ii) of this section, the switch back may occur when both of the conditions in paragraphs (b)(4)(i) and (b)(4)(ii) of this section are met.

(c) The protocol may be modified by EPA to protect against exceedances of the sulfur dioxide NAAQS.

(d) In the event that there is an exceedance of the NAAQS, HOVIC will report the exceedance to EPA and recommend corrective action as well as amendments to the protocol to ensure the protection of the NAAQS.

(e) HOVIC must comply with all fuel switching requirements, contained in HOVIC's PSD permit.

(f) This exemption shall take effect only in the event that a final PSD permit modification becomes effective.

(g) The Administrator may terminate the exemption through rulemaking procedures upon determining that HOVIC's use of the ICS is causing or contributing to an exceedance of the NAAQS.

(h) Pursuant to section 325(a) of the Clean Air Act (CAA) and a petition submitted by the Governor of United States Virgin Islands on July 21, 2003, (''2003 Petition''), the Administrator of EPA conditionally exempts Virgin Islands Water and Power Authority (''VIWAPA'') from certain CAA requirements.

(1) A waiver of the requirement to obtain a PSD permit prior to construction is granted for the electric generating unit identified in the 2003 Petition as Unit 23, St. Krum Bay plant in St. Thomas with the following condition:

(i) Unit 23 shall not operate until a final PSD permit is received by VIWAPA for this unit;

(ii) Unit 23 shall not operate until it complies with all requirements of its

PSD permit, including, if necessary, retrofitting with BACT;

(iii) If Unit 23 operates either prior to the issuance of a final PSD permit or without BACT equipment, Unit 23 shall be deemed in violation of this waiver and the CAA beginning on the date of commencement of construction of the unit.

(2) [Reserved]

[62 FR 61205, Nov. 14, 1997, as amended at 69 FR 10335, Mar. 5, 2004]

Subpart E—Alaska

§ 69.51 Motor vehicle diesel fuel.

(a) *Definitions.* (1) *Areas accessible by the Federal Aid Highway System* are the geographical areas of Alaska designated by the State of Alaska as being accessible by the Federal Aid Highway System.

(2) *Areas not accessible by the Federal Aid Highway System* are all other geographical areas of Alaska.

(b) Diesel fuel that is designated for use only in Alaska and is used only in Alaska, is exempt from the sulfur standard of 40 CFR 80.29(a)(1), the dye provisions of 40 CFR 80.29(a)(3) and (b) and the motor vehicle diesel fuel standards and dye provisions under 40 CFR 80.520 and associated requirements until the implementation dates of 40 CFR 80.500 for refiners and importers, until September 1, 2006 for all downstream parties other than retailers and wholesale purchaser-consumers, and until October 15, 2006 for retailers and wholesale purchaser-consumers, provided that:

(1) The fuel is segregated from nonexempt diesel fuel from the point of such designation;

(2) On each occasion that any person transfers custody or title to the fuel, except when it is dispensed at a retail outlet or wholesale purchaser-consumer facility, the transferor must provide to the transferee a product transfer document stating: ''This diesel fuel is for use only in Alaska. It is exempt from the federal low sulfur standards applicable to highway diesel fuel and red dye requirements applicable to non-highway diesel fuel only if it is used in Alaska.''; and,

(3) After June 1, 2006 and prior to the implementation dates specified above, diesel fuel represented by a downstream party as meeting the 500 ppm sulfur standard or the 15 ppm sulfur standard for highway diesel fuel shall be subject to and must meet such standard.

(c) Beginning on the implementation dates specified in paragraph (b) of this section, motor vehicle diesel fuel that is designated for use in areas of Alaska accessible by the Federal Aid Highway System, or is used in areas of Alaska accessible by the Federal Aid Highway System, is subject to the applicable provisions of 40 CFR part 80, subpart I, except as provided under 40 CFR 69.52(c), (d), and (e) for commingled motor vehicle and non-motor vehicle diesel fuel.

(d) From the implementation dates specified in paragraph (b) of this section, until the implementation dates specified in paragraph (e) of this section, motor vehicle diesel fuel that is designated for use in areas of Alaska not accessible by the Federal Aid Highway System, and is used in areas of Alaska not accessible by the Federal Aid Highway System, is exempt from the sulfur standard of 40 CFR 80.29(a)(1), the dye provisions of 40 CFR 80.29(a)(3) and (b), and the motor vehicle diesel fuel standards and dye provisions under 40 CFR 80.520 and associated requirements, provided that:

(1) The exempt fuel is not used in model year 2007 and later highway vehicles and engines,

(2) The exempt fuel is segregated from nonexempt highway diesel fuel from the point of such designation; and

(3) On each occasion that any person transfers custody or title to the exempt fuel, except when it is dispensed at a retail outlet or wholesale purchaser-consumer facility, the transferor must provide to the transferee a product transfer document stating: ''This fuel is for use only in those areas of Alaska not accessible by the FAHS.''

(4) The exempt fuel must meet the labeling requirements under § 80.570, except the following language shall be substituted for the language on the labels:

''HIGH SULFUR DIESEL FUEL (MAY BE GREATER THAN 15 SULFUR PPM)

WARNING

Federal Law *prohibits* use in model year 2007 and later highway diesel vehicles and engines. Its use may damage these vehicles and engines.''

(e) Beginning on the following implementation dates, motor vehicle diesel fuel that is designated for use in areas of Alaska not accessible by the Federal Aid Highway System, or is used in areas of Alaska not accessible by the Federal Aid Highway System, is subject to the applicable provisions of 40 CFR part 80, subpart I, except as provided under 40 CFR 69.52(c), (d), and (e) for commingled motor vehicle and nonmotor vehicle diesel fuel:

(1) June 1, 2010 for diesel fuel produced or imported by any refiner or importer;

(2) August 1, 2010 at all downstream locations, except at retail outlets and wholesale-purchaser consumers;

(3) October 1, 2010 for:

(i) Retail outlets and wholesale-purchaser consumers, or

(ii) Downstream locations which include retail outlets and wholesale-purchaser consumers; and,

(4) December 1, 2010 at all locations.

[71 FR 32462, June 6, 2006]

§ 69.52 Non-motor vehicle diesel fuel.

(a) *Definitions*. (1) *Areas accessible by the Federal Aid Highway System* are the geographical areas of Alaska designated by the State of Alaska as being accessible by the Federal Aid Highway System.

(2) *Areas not accessible by the Federal Aid Highway System* are all other geographical areas of Alaska.

(3) *Nonroad, locomotive, or marine diesel fuel (NRLM)* has the meaning given in 40 CFR 80.2.

(4) *Heating oil* has the meaning given in 40 CFR 80.2.

(b) *Applicability*. NRLM diesel fuel and heating oil that are used or intended for use in areas of Alaska accessible by the Federal Aid Highway System are subject to the provisions of 40 CFR part 80, subpart I, except as provided in paragraphs (c), (d) and (e) of this section.

(c) *Dye and marker*. (1) NRLM diesel fuel and heating oil referred to in paragraphs (b) and (g) of this section are exempt from the red dye requirements, and the presumptions associated with the red dye requirements, under 40 CFR 80.520(b)(2) and 80.510(d)(5), (e)(5), and (f)(5).

(2) NRLM diesel fuel and heating oil referred to in paragraphs (b) and (g) of this section are exempt from the marker solvent yellow 124 requirements, and the presumptions associated with the marker solvent yellow 124 requirements, under 40 CFR 80.510(d) through (f).

(3) Exempt NRLM diesel fuel and heating oil must be segregated from all non-exempt NRLM diesel fuel and heating oil.

(4) Exempt heating oil must be segregated from exempt NRLM diesel fuel unless it also meets the standards of 40 CFR 80.510 applicable to the NRLM diesel fuel.

(5) Exempt NRLM diesel fuel and heating oil must be segregated from motor vehicle diesel fuel, unless it also meets the standards of 40 CFR 80.520 applicable to the motor vehicle diesel fuel.

(d) *Product transfer documents*. Product Transfer Documents for exempt NRLM diesel fuel and heating oil shall include the language specified in 40 CFR 80.590(a) applicable to undyed diesel fuel for the appropriate sulfur level, and the following additional language as applicable:

(1) For exempt NRLM diesel fuel and heating oil, including commingled fuel under paragraph (c)(4) or (c)(5) of this section: ''Exempt from red dye requirement applicable to diesel fuel for nonhighway purposes if it is used only in Alaska.''

(2) For exempt heating oil, including commingled fuel under paragraph (c)(4) or (c)(5) of this section: ''Exempt from marker solvent yellow 124 requirement applicable to heating oil if it is used only in Alaska.''

(3) For exempt 500 ppm sulfur LM diesel fuel, including commingled fuel under paragraph (c)(4) or (c)(5) of this section: ''Exempt from marker solvent yellow 124 requirement applicable to 500 ppm sulfur LM diesel fuel if it is used only in Alaska.''

(e) *Pump labels.* (1) Pump labels for exempt NRLM diesel fuel and heating oil shall contain the language specified in 40 CFR 80.570 through 80.574 for the applicable fuel type and time frame, unless the fuel is commingled under paragraph (c)(4) or (c)(5) of this section.

(2) Pump labels for exempt NRLM diesel fuel and heating oil that are commingled shall contain the language specified in 40 CFR 80.570 through 80.574 for NRLM diesel fuel and the applicable time frame.

(3) Pump labels for exempt NRLM diesel fuel and heating oil that are commingled with motor vehicle diesel fuel shall contain the following language for the applicable sulfur level and time frame:

(i) *500 ppm sulfur diesel fuel.* From June 1, 2006 through September 30, 2010.

LOW SULFUR DIESEL FUEL (500 ppm Sulfur Maximum)

WARNING

Federal Law prohibits use in model year 2007 and later highway diesel vehicles and engines

Its use may damage these vehicles and engines.

For use in all other diesel vehicles and engines.

(ii) *15 ppm sulfur diesel fuel.* From June 1, 2006 through May 31, 2010.

ULTRA-LOW SULFUR DIESEL FUEL (15 ppm Sulfur Maximum)

Required for model year 2007 and later highway diesel vehicles and engines.

Recommended for use in all diesel vehicles and engines.

(iii) *15 ppm sulfur diesel fuel.* From June 1, 2010, and beyond,

ULTRA-LOW SULFUR DIESEL FUEL (15 ppm Sulfur Maximum)

Required for use in all highway and nonroad diesel engines

Recommended for use in all diesel vehicles and engines.

(f) Non-motor vehicle diesel fuel and heating oil that is intended for use and used only in areas of Alaska not accessible by the Federal Aid Highway System, are excluded from the applicable provisions of 40 CFR part 80, subpart I and 40 CFR part 60, subpart IIII until the implementation dates specified in paragraph (g) of this section, except that:

(1) All model year 2011 and later nonroad and stationary diesel engines and equipment must be fueled only with diesel fuel that meets the specifications for NR fuel in 40 CFR 80.510(b) or (c);

(2) The following language shall be added to any product transfer document: ''This fuel is for use only in those areas of Alaska not accessible by the FAHS;'' and

(3) Pump labels for such fuel that does not meet the specifications of 40 CFR 80.510(b) or 80.510(c) shall contain the following language:

''HIGH SULFUR DIESEL FUEL (MAY BE GREATER THAN 15 SULFUR PPM)

WARNING

Federal Law *prohibits* use in model year 2007 and later highway diesel vehicles and engines, or in model year 2011 and later nonroad and stationary diesel engines and equipment. Its use may damage these vehicles and engines.''

(g) *NRLM and stationary engine standards.* (1) Beginning on the following implementation dates, NRLM diesel fuel that is used or intended for use in areas of Alaska not accessible by the Federal Aid Highway System is subject to the provisions of 40 CFR part 80, subpart I, except as provided in paragraphs (c), (d), (e), and (g)(2) of this section:

(i) June 1, 2010 or diesel fuel produced or imported by any refiner or importer,

(ii) August 1, 2010 at all downstream locations, except at retail facilities and wholesale-purchaser consumers,

(iii) October 1, 2010 at retail facilities and wholesale-purchaser consumers, and

(iv) December 1, 2010 at all locations.

(2) The per-gallon sulfur content standard for all LM diesel fuel shall be 15 ppm maximum.

(3) Diesel fuel used in new stationary internal combustion engines regulated under 40 CFR part 60 shall be subject to the fuel-related provisions of that subpart beginning December 1, 2010.

(h) Alternative labels to those specified in paragraphs (e)(3) and (f)(2) of

this section may be used as approved by EPA.

[69 FR 39165, June 29, 2004, as amended at 71 FR 32463, June 6, 2006]

PART 70—STATE OPERATING PERMIT PROGRAMS

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APPENDIX A TO PART 70—APPROVAL STATUS OF STATE AND LOCAL OPERATING PERMITS PROGRAMS

AUTHORITY: 42 U.S.C. 7401, *et seq.*

SOURCE: 57 FR 32295, July 21, 1992, unless otherwise noted.

§ 70.1 Program overview.

(a) The regulations in this part provide for the establishment of comprehensive State air quality permitting systems consistent with the requirements of title V of the Clean Air Act (Act) (42 U.S.C. 7401, *et seq.*). These regulations define the minimum elements required by the Act for State operating permit programs and the corresponding standards and procedures by which the Administrator will approve, oversee, and withdraw approval of State operating permit programs.

(b) All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements. While title V does not impose substantive new requirements, it does require that fees be imposed on sources and that certain procedural measures be adopted especially with respect to compliance.

(c) Nothing in this part shall prevent a State, or interstate permitting authority, from establishing additional or more stringent requirements not inconsistent with this Act. The EPA will approve State program submittals to the extent that they are not inconsistent with the Act and these regulations. No permit, however, can be less stringent than necessary to meet all applicable requirements. In the case of Federal intervention in the permit process, the Administrator reserves the right to implement the State operating permit program, in whole or in part, or the Federal program contained in regulations promulgated under title V of the Act.

(d) The requirements of part 70, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or modified in regulations promulgated under title IV of the Act (acid rain program).

(e) Issuance of State permits under this part may be coordinated with issuance of permits under the Resource Conservation and Recovery Act and under the Clean Water Act, whether issued by the State, the U.S. Environmental Protection Agency (EPA), or the U.S. Army Corps of Engineers.

(f) States that choose to receive electronic documents must satisfy the requirements of 40 CFR Part 3—(Electronic reporting) in their program.

[57 FR 32295, July 21, 1992, as amended at 70 FR 59887, Oct. 13, 2005]

§ 70.2 Definitions.

The following definitions apply to part 70. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable requirements of the Act.

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

Affected source shall have the meaning given to it in the regulations promulgated under title IV of the Act.

Affected States are all States:

(1) Whose air quality may be affected and that are contiguous to the State in which a part 70 permit, permit modification or permit renewal is being proposed; or

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

Affected unit shall have the meaning given to it in the regulations promulgated under title IV of the Act.

Alternative operating scenario (AOS) means a scenario authorized in a part 70 permit that involves a change at the part 70 source for a particular emissions unit, and that either results in the unit being subject to one or more applicable requirements which differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.

Applicable requirement means all of the following as they apply to emissions units in a part 70 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates):

(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter;

(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;

(3) Any standard or other requirement under section 111 of the Act, including section 111(d);

(4) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(5) Any standard or other requirement of the acid rain program under title IV of the Act or the regulations promulgated thereunder;

(6) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

(7) Any standard or other requirement under section 126(a)(1) and (c) of the Act;

(8) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(9) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(10) Any standard or other requirement for tank vessels under section 183(f) of the Act;

(11) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(12) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a title V permit; and

(13) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

Approved replicable methodology (ARM) means part 70 permit terms that:

(1) Specify a protocol which is consistent with and implements an applicable requirement, or requirement of this part, such that the protocol is based on sound scientific and/or mathematical principles and provides reproducible results using the same inputs; and

(2) Require the results of that protocol to be recorded and used for assuring compliance with such applicable requirement, any other applicable requirement implicated by implementation of the ARM, or requirement of this part, including where an ARM is used for determining applicability of a specific requirement to a particular change.

Designated representative shall have the meaning given to it in section 402(26) of the Act and the regulations promulgated thereunder.

Draft permit means the version of a permit for which the permitting authority offers public participation under § 70.7(h) or affected State review under § 70.8 of this part.

Emissions allowable under the permit means a federally enforceable permit

term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

Emissions unit means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. This term is not meant to alter or affect the definition of the term ''unit'' for purposes of title IV of the Act.

The EPA or the Administrator means the Administrator of the EPA or his designee.

Final permit means the version of a part 70 permit issued by the permitting authority that has completed all review procedures required by §§ 70.7 and 70.8 of this part.

Fugitive emissions are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

General permit means a part 70 permit that meets the requirements of § 70.6(d).

Major source means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining ''major source,'' a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(1) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, ''major source'' shall have the meaning specified by the Administrator by rule.

(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 (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:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under section 111 or 112 of the Act.

(3) A major stationary source as defined in part D of title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as ''marginal'' or ''moderate,'' 50 tpy or more in areas classified as ''serious,'' 25 tpy or more in areas classified as ''severe,'' and 10 tpy or more in areas classified as ''extreme''; except that the references in this paragraph to 100, 50, 25 and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f) (1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas:

(A) That are classified as ''serious,'' and

(B) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM–10) nonattainment areas classified as ''serious,'' sources with the potential to emit 70 tpy or more of PM–10.

Part 70 permit or *permit* (unless the context suggests otherwise) means any permit or group of permits covering a part 70 source that is issued, renewed, amended, or revised pursuant to this part.

Part 70 program or *State program* means a program approved by the Administrator under this part.

Part 70 source means any source subject to the permitting requirements of this part, as provided in §§ 70.3(a) and 70.3(b) of this part.

Permit modification means a revision to a part 70 permit that meets the requirements of § 70.7(e) of this part.

Permit program costs means all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in § 70.9(b) of this part (whether such costs are incurred by the permitting authority or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

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 part.

Potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed,

shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term ''capacity factor'' as used in title IV of the Act or the regulations promulgated thereunder.

Proposed permit means the version of a permit that the permitting authority proposes to issue and forwards to the Administrator for review in compliance with § 70.8.

Regulated air pollutant means the following:

(1) Nitrogen oxides or any volatile organic compounds;

(2) Any pollutant for which a national ambient air quality standard has been promulgated;

(3) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(4) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(5) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act, including sections 112(g), (j), and (r) of the Act, including the following:

(i) Any pollutant subject to requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and

(ii) Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to section 112(g)(2) requirement.

Regulated pollutant (for presumptive fee calculation), which is used only for purposes of § 70.9(b)(2), means any ''regulated air pollutant'' except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance to a standard promulgated under or established by title VI of the Act; or

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Act.

Renewal means the process by which a permit is reissued at the end of its term.

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 representatives is approved in advance by the permitting authority;

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

(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); or

(4) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under part 70.

Section 502(b)(10) changes are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including

test methods), recordkeeping, reporting, or compliance certification requirements.

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, ''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.

Whole program means a part 70 permit program, or any combination of partial programs, that meet all the requirements of these regulations and cover all the part 70 sources in the entire State. For the purposes of this definition, the term ''State'' does not include local permitting authorities, but refers only to the entire State, Commonwealth, or Territory.

[57 FR 32295, July 21, 1992, as amended at 66 FR 59166, Nov. 27, 2001; 69 FR 31505, June 3, 2004; 72 FR 24078, May 1, 2007; 74 FR 51438, Oct. 6, 2009]

EFFECTIVE DATE NOTE: At 75 FR 31607, June 3, 2010, § 70.2 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:

§ 70.2 Definitions.

* * * * *

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 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:

(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 CO_2 equivalent emissions.

(2) The term *tpy CO_2 equivalent emissions (CO_2e)* 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 CO_2e.

* * * * *

§ 70.3 Applicability.

(a) *Part 70 sources*. A State program with whole or partial approval under this part must provide for permitting of the following sources:

(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 this 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, may be exempted by the State from the obligation to obtain a part 70 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 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 section 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 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 70 permit:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to 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 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 70 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 70 program under paragraph (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 70 program.

(d) *Fugitive emissions.* Fugitive emissions from a part 70 source shall be included in the permit application and the part 70 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.

[57 FR 32295, July 21, 1992, as amended at 70 FR 75346, Dec. 19, 2005]

§ 70.4 State program submittals and transition.

(a) *Date for submittal.* Not later than November 15, 1993, the Governor of each State shall submit to the Administrator for approval a proposed part 70 program, under State law or under an interstate compact, meeting the requirements of this part. If part 70 is subsequently revised such that the Administrator determines that it is necessary to require a change to an approved State program, the required revisions to the program shall be submitted within 12 months of the final changes to part 70 or within such other period as authorized by the Administrator.

(b) *Elements of the initial program submission.* Any State that seeks to administer a program under this part shall submit to the Administrator a letter of submittal from the Governor or his designee requesting EPA approval of the program and at least three copies of a program submission. The submission shall contain the following:

(1) A complete program description describing how the State intends to carry out its responsibilities under this part.

(2) The regulations that comprise the permitting program, reasonably available evidence of their procedurally correct adoption, (including any notice of public comment and any significant comments received on the proposed part 70 program as requested by the Administrator), and copies of all applicable State or local statutes and regulations including those governing State administrative procedures that either authorize the part 70 program or restrict its implementation. The State shall include with the regulations any criteria used to determine insignificant

activities or emission levels for purposes of determining complete applications consistent with § 70.5(c) of this part.

(3) A legal opinion from the Attorney General for the State, or the attorney for those State, local, or interstate air pollution control agencies that have independent legal counsel, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out all aspects of the program. This statement shall include citations to the specific states, administrative regulations, and, where appropriate, judicial decisions that demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State states and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as ''independent legal counsel,'' the attorney signing the statement required by this section shall have full authority to independently represent the State agency in court on all matters pertaining to the State program. The legal opinion shall also include a demonstration of adequate legal authority to carry out the requirements of this part, including authority to carry out each of the following:

(i) Issue permits and assure compliance with each applicable requirement and requirement of this part by all part 70 sources.

(ii) Incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into part 70 permits consistent with § 70.6.

(iii) Issue permits for a fixed term of 5 years in the case of permits with acid rain provisions and issue all other permits for a period not to exceed 5 years, except for permits issued for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act.

(iv) Issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and review such permits at least every 5 years. No permit for a solid waste incineration unit may be issued by an agency, instrumentality or person that is also responsible, in whole or in part, for the design and construction or operation of the unit.

(v) Incorporate into permits all applicable requirements and requirements of this part.

(vi) Terminate, modify, or revoke and reissue permits for cause.

(vii) Enforce permits, permit fee requirements, and the requirement to obtain a permit, as specified in § 70.11.

(viii) Make available to the public any permit application, compliance plan, permit, and monitoring and compliance, certification report pursuant to section 503(e) of the Act, except for information entitled to confidential treatment pursuant to section 114(c) of the Act. The contents of a part 70 permit shall not be entitled to protection under section 115(c) of the Act.

(ix) Not issue a permit if the Administrator timely objects to its issuance pursuant to § 70.8(c) of this part or, if the permit has not already been issued, to § 70.8(d) of this part.

(x) Provide an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public participation process provided pursuant to § 70.7(h) of this part, and any other person who could obtain judicial review of such actions under State laws.

(xi) Provide that, solely for the purposes of obtaining judicial review in State court for failure to take final action, final permit action shall include the failure of the permitting authority to take final action on an application for a permit, permit renewal, or permit revision within the time specified in the State program. If the State program allows sources to make changes subject to post hoc review [as set forth in §§ 70.7(e)(2) and (3) of this part], the permitting authority's failure to take final action within 90 days of receipt of an application requesting minor permit modification procedures (or 180 days for modifications subject to group processing requirements) must be subject to judicial review in State court.

(xii) Provide that the opportunity for judicial review described in paragraph

(b)(3)(x) of this section shall be the exclusive means for obtaining judicial review of the terms and conditions of permits, and require that such petitions for judicial review must be filed no later than 90 days after the final permit action, or such shorter time as the State shall designate. Notwithstanding the preceding requirement, petitions for judicial review of final permit actions can be filed after the deadline designated by the State, only if they are based solely on grounds arising after the deadline for judicial review. Such petitions shall be filed no later than 90 days after the new grounds for review arise or such shorter time as the State shall designate. If the final permit action being challenged is the permitting authority's failure to take final action, a petition for judicial review may be filed any time before the permitting authority denies the permit or issues the final permit.

(xiii) Ensure that the authority of the State/local permitting Agency is not used to modify the acid rain program requirements.

(4) Relevant permitting program documentation not contained in the State regulations, including the following:

(i) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program; and

(ii) Relevant guidance issued by the State to assist in the implementation of its permitting program, including criteria for monitoring source compliance (e.g., inspection strategies).

(5) A complete description of the State's compliance tracking and enforcement program or reference to any agreement the State has with EPA that provides this information.

(6) A showing of adequate authority and procedures to determine within 60 days of receipt whether applications (including renewal applications) are complete, to request such other information as needed to process the application, and to take final action on complete applications within 18 months of the date of their submittal, except for initial permit applications, for which the permitting authority may take up to 3 years from the effective date of the program to take final action on the application, as provided for in the transition plan.

(7) A demonstration, consistent with § 70.9, that the permit fees required by the State program are sufficient to cover permit program costs.

(8) A statement that adequate personnel and funding have been made available to develop, administer, and enforce the program. This statement shall include the following:

(i) A description in narrative form of the scope, structure, coverage, and processes of the State program.

(ii) A description of the organization and structure of the agency or agencies that will have responsibility for administering the program, including the information specified in this paragraph. If more than one agency is responsible for administration of a program, the responsibilities of each agency must be delineated, their procedures for coordination must be set forth, and an agency shall be designated as a ''lead agency'' to facilitate communications between EPA and the other agencies having program responsibility.

(iii) A description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(iv) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

(v) An estimate of the permit program costs for the first 4 years after approval, and a description of how the State plans to cover those costs.

(9) A commitment from the State to submit, at least annually to the Administrator, information regarding the State's enforcement activities including, but not limited to, the number of criminal and civil, judicial and administrative enforcement actions either commenced or concluded; the penalties, fines, and sentences obtained in those actions; and the number of administrative orders issued.

(10) A requirement under State law that, if a timely and complete application for a permit renewal is submitted, consistent with § 70.5(a)(2), but the

State has failed to issue or deny the renewal permit before the end of the term of the previous permit, then:

(i) The permit shall not expire until the renewal permit has been issued or denied and any permit shield that may be granted pursuant to § 70.6(f) may extend beyond the original permit term until renewal; or

(ii) All the terms and conditions of the permit including any permit shield that may be granted pursuant to § 70.6(f) shall remain in effect until the renewal permit has been issued or denied.

(11) A transition plan providing a schedule for submittal and final action on initial permit applications for all part 70 sources. This plan shall provide that:

(i) Submittal of permit applications by all part 70 sources (including any sources subject to a partial or interim program) shall occur within 1 year after the effective date of the permit program;

(ii) Final action shall be taken on at least one-third of such applications annually over a period not to exceed 3 years after such effective date;

(iii) Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Act shall be acted on within 9 months of receipt of the complete application; and

(iv) Submittal of permit applications and the permitting of affected sources shall occur in accordance with the deadlines in title IV of the Act and the regulations promulgated thereunder.

(12) Provisions consistent with paragraphs (b)(12)(i) through (iii) of this section to allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in the terms of total emissions): *Provided*, That the facility provides the Administrator and the permitting authority with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different time frame for emergencies. The source, permitting authority, and EPA shall attach each such notice to their copy of the relevant permit. The following provisions implement this requirement of an approvable part 70 permit program:

(i) The program shall allow permitted sources to make section 502(b)(10) changes without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions).

(A) For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(B) The permit shield described in § 70.6(f) of this part shall not apply to any change made pursuant to this paragraph (b)(12)(i) of this section.

(ii) The program may provide for permitted sources to trade increases and decreases in emissions in the permitted facility, where the applicable implementation plan provides for such emissions trades without requiring a permit revision and based on the 7-day notice prescribed in this paragraph (b)(12)(ii) of this section. This provision is available in those cases where the permit does not already provide for such emissions trading.

(A) Under this paragraph (b)(12)(ii) of this section, the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in

the applicable implementation plan and that provide for the emissions trade.

(B) The permit shield described in § 70.6(f) of this part shall not extend to any change made under this paragraph (b)(12)(ii) of this section. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.

(iii) The program shall require the permitting authority, if a permit applicant requests it, to issue permits that contain terms and conditions, including all terms required under § 70.6 (a) and (c) of this part to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The permitting authority shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

(A) Under this paragraph (b)(12)(iii) of this section, the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(B) The permit shield described in § 70.6(f) of this part may extend to terms and conditions that allow such increases and decreases in emissions.

(13) Provisions for adequate, streamlined, and reasonable procedures for expeditious review of permit revisions or modifications. The program may meet this requirement by using procedures that meet the requirements of § 70.7(e) or that are substantially equivalent to those provided in § 70.7(e) of this part.

(14) If a State allows changes that are not addressed or prohibited by the permit, other than those described in paragraph (b)(15) of this section, to be made without a permit revision, provisions meeting the requirements of paragraphs (b)(14) (i) through (iii) of this section. Although a State may, as a matter of State law, prohibit sources from making such changes without a permit revision, any such prohibition shall not be enforceable by the Administrator or by citizens under the Act unless the prohibition is required by an applicable requirement. Any State procedures implementing such a State law prohibition must include the requirements of paragraphs (b)(14) (i) through (iii) of this section.

(i) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(ii) Sources must provide contemporaneous written notice to the permitting authority and EPA of each such change, except for changes that qualify as insignificant under the provisions adopted pursuant to § 70.5(c) of this part. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

(iii) The change shall not qualify for the shield under § 70.6(f) of this part.

(iv) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(15) Provisions prohibiting sources from making, without a permit revision, changes that are not addressed or prohibited by the part 70 permit, if such changes are subject to any requirements under title IV of the Act or are modifications under any provision of title I of the Act.

(16) Provisions requiring the permitting authority to implement the requirements of §§ 70.6 and 70.7 of this part.

(c) *Partial programs.* (1) The EPA may approve a partial program that applies

to all part 70 sources within a limited geographic area (e.g., a local agency program covering all sources within the agency's jurisdiction). To be approvable, any partial program must, at a minimum, ensure compliance with all of the following applicable requirements, as they apply to the sources covered by the partial program:

(i) All requirements of title V of the Act and of part 70;

(ii) All applicable requirements of title IV of the Act and regulations promulgated thereunder which apply to affected sources; and

(iii) All applicable requirements of title I of the Act, including those established under sections 111 and 112 of the Act.

(2) Any partial permitting program, such as that of a local air pollution control agency, providing for the issuance of permits by a permitting authority other than the State, shall be consistent with all the elements required in paragraphs (b) (1) through (16) of this section.

(3) Approval of any partial program does not relieve the State from its obligation to submit a whole program or from application of any sanctions for failure to submit a fully-approvable whole program.

(4) Any partial program may obtain interim approval under paragraph (d) of this section if it substantially meets the requirements of this paragraph (c) of this section.

(d) *Interim approval.* (1) If a program (including a partial permit program) submitted under this part substantially meets the requirements of this part, but is not fully approvable, the Administrator may be rule grant the program interim approval.

(2) Interim approval shall expire on a date set by the Administrator (but not later than 2 years after such approval), and may not be renewed. Sources shall become subject to the program according to the schedule approved in the State program. Permits granted under an interim approval shall expire at the end of their fixed term, unless renewed under a part 70 program.

(3) The EPA may grant interim approval to any program if it meets each of the following minimum requirements and otherwise substantially meets the requirements of this part:

(i) *Adequate fees.* The program must provide for collecting permit fees adequate for it to meet the requirements of § 70.9 of this part.

(ii) *Applicable requirements.* (A) The program must provide for adequate authority to issue permits that assure compliance with the requirements of paragraph (c)(1) of this section for those major sources covered by the program.

(B) Notwithstanding paragraph (d)(3)(ii)(A) of this section, where a State or local permitting authority lacks adequate authority to issue or revise permits that assure compliance with applicable requirements established exclusively through an EPA-approved minor NSR program, EPA may grant interim approval to the program upon a showing by the permitting authority of compelling reasons which support the interim approval.

(C) Any part 70 permit issued during an interim approval granted under paragraph (d)(3)(ii)(B) of this section that does not incorporate minor NSR requirements shall:

(*1*) Note this fact in the permit;

(*2*) Indicate how citizens may obtain access to excluded minor NSR permits;

(*3*) Provide a cross reference, such as a listing of the permit number, for each minor NSR permit containing an excluded minor NSR term; and

(*4*) State that the minor NSR requirements which are excluded are not eligible for the permit shield under § 70.6(f).

(D) A program receiving interim approval for the reason specified in (d)(3)(ii)(B) of this section must, upon or before granting of full approval, institute proceedings to reopen part 70 permits to incorporate excluded minor NSR permits as terms of the part 70 permits, as required by § 70.7(f)(1)(iv). Such reopening need not follow full permit issuance procedures nor the notice requirement of § 70.7(f)(3), but may instead follow the permit revision procedure in effect under the State's approved part 70 program for incorporation of minor NSR permits.

(iii) *Fixed term.* The program must provide for fixed permit terms, consistent with paragraphs (b)(3) (iii) and (iv) of this section.

(iv) *Public participation*. The program must provide for adequate public notice of and an opportunity for public comment and a hearing on draft permits and revisions, except for modifications qualifying for minor permit modification procedures under § 70.7(e) of this part.

(v) *EPA and affected State review*. The program must allow EPA an opportunity to review each proposed permit, including permit revisions, and to object to its issuance consistent with § 70.8(c) of this part. The program must provide for affected State review consistent with § 70.8(b) of this part.

(vi) *Permit issuance*. The program must provide that the proposed permit will not be issued if EPA objects to its issuance.

(vii) *Enforcement*. The program must contain authority to enforce permits, including the authority to assess penalties against sources that do not comply with their permits or with the requirement to obtain a permit.

(viii) *Operational flexibility*. The program must allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the act and the changes do not exceed the emissions allowable under the permit, consistent with paragraph (b)(12) of this section.

(ix) *Streamlined procedures*. The program must provide for streamlined procedures for issuing and revising permits and determining expeditiously after receipt of a permit application or application for a permit revision whether such application is complete.

(x) *Permit application*. The program submittal must include copies of the permit application and reporting form(s) that the State will use in implementing the interim program.

(xi) *Approval of AOSs*. The program submittal must include provisions to insure that AOSs requested by the source as approved by the permitting authority are included in the part 70 permit pursuant to § 70.6(a)(9).

(e) *EPA review of permit program submittals*. Within 1 year after receiving a program submittal, the Administrator shall approve or disapprove the program, in whole or in part, by publishing a notice in the FEDERAL REGISTER. Prior to such notice, the Administrator shall provide an opportunity for public comment on such approval or disapproval. Any EPA action disapproving a program, in whole or in part, shall include a statement of the revisions or modifications necessary to obtain full approval. The Administrator shall approve State programs that conform to the requirements of this part.

(1) Within 60 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete enough to warrant review by EPA for either full, partial, or interim approval. If EPA finds that a State's submission is complete, the 1-year review period (i.e., the period of time allotted for formal EPA review of a proposed State program) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the 1-year review period shall not begin until all the necessary information is received by EPA.

(2) If the State's submission is materially changed during the 1-year review period, the Administrator may extend the review period for no more than 1 year following receipt of the revised submission.

(3) In any notice granting interim or partial approval, the Administrator shall specify the changes or additions that must be made before the program can receive full approval and the conditions for implementation of the program until that time.

(f) *State response to EPA review of program*—(1) *Disapproval*. The State shall submit to EPA program revisions or modifications required by the Administrator's action disapproving the program, or any part thereof, within 180 days of receiving notification of the disapproval.

(2) *Interim approval*. The State shall submit to EPA changes to the program addressing the deficiencies specified in the interim approval no later than 6 months prior to the expiration of the interim approval.

(g) *Effective date*. The effective date of a part 70 program, including any partial or interim program approved under this part, shall be the effective date of approval by the Administrator.

(h) *Individual permit transition.* Upon approval of a State program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program, except that the Administrator will continue to issue phase I acid rain permits. After program approval, EPA shall retain jurisdiction over any permit (including any general permit) that it has issued unless arrangements have been made with the State to assume responsibility for these permits. Where EPA retains jurisdiction, it will continue to process permit appeals and modification requests, to conduct inspections, and to receive and review monitoring reports. If any permit appeal or modification request is not finally resolved when the federally-issued permit expires, EPA may, with the consent of the State, retain jurisdiction until the matter is resolved. Upon request by a State, the Administrator may delegate authority to implement all or part of a permit issued by EPA, if a part 70 program has been approved for the State. The delegation may include authorization for the State to collect appropriate fees, consistent with § 70.9 of this part.

(i) *Program revisions.* Either EPA or a State with an approved program may initiate a program revision. Program revision may be necessary when the relevant Federal or State statutes or regulations are modified or supplemented. The State shall keep EPA apprised of any proposed modifications to its basic statutory or regulatory authority or procedures.

(1) If the Administrator determines pursuant to § 70.10 of this part that a State is not adequately administering the requirements of this part, or that the State's permit program is inadequate in any other way, the State shall revise the program or its means of implementation to correct the inadequacy. The program shall be revised within 180 days, or such other period as the Administrator may specify, following notification by the Administrator, or within 2 years if the State demonstrates that additional legal authority is necessary to make the program revision.

(2) Revision of a State program shall be accomplished as follows:

(i) The State shall submit a modified program description, Attorney General's statement, or such other documents as EPA determines to be necessary.

(ii) After EPA receives a proposed program revision, it will publish in the FEDERAL REGISTER a public notice summarizing the proposed change and provide a public comment period of at least 30 days.

(iii) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Act.

(iv) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the FEDERAL REGISTER. Notice of approval of nonsubstantial program revisions may be given by a letter from the Administrator to the Governor or a designee.

(v) The Governor of any State with an approved part 70 program shall notify EPA whenever the Governor proposes to transfer all or part of the program to any other agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until the revision has been approved by the Administrator under this paragraph.

(3) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as he determines are necessary.

(j) *Sharing of information.* (1) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction and in a form specified by the Administrator, including computer-readable files to the extent practicable. If the information has been submitted to the State under a claim of confidentiality, the State may require the source to submit this information to the Administrator directly. Where the State submits information to the Administrator under a claim of confidentiality, the State shall submit

that claim to EPA when providing information to EPA under this section. Any information obtained from a State or part 70 source accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter.

(2) The EPA will furnish to States with approved programs the information in its files that the State needs to implement its approved program. Any such information submitted to EPA under a claim of confidentiality will be subject to the regulations in part 2 of this chapter.

(k) *Administration and enforcement.* Any State that fails to adopt a complete, approvable part 70 program, or that EPA determines is not adequately administering or enforcing such program shall be subject to certain Federal sanctions as set forth in § 70.10 of this part.

[57 FR 32295, July 21, 1992, as amended at 61 FR 31448, June 20, 1996; 61 FR 56370, Oct. 31, 1996; 66 FR 27010, May 15, 2001; 74 FR 51438, Oct. 6, 2009]

§ 70.5 Permit applications.

(a) *Duty to apply.* For each part 70 source, the owner or operator shall submit a timely and complete permit application in accordance with this section.

(1) *Timely application.* (i) A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.

(ii) Part 70 sources required to meet the requirements under section 112(g) of the Act, or to have a permit under the preconstruction review program approved into the applicable implementation plan under part C or D of title I of the Act, shall file a complete application to obtain the part 70 permit or permit revision within 12 months after commencing operation or on or before such earlier date as the permitting authority may establish. Where an existing part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(iii) For purposes of permit renewal, a timely application is one that is submitted at least 6 months prior to the date of permit expiration, or such other longer time as may be approved by the Administrator that ensures that the term of the permit will not expire before the permit is renewed. In no event shall this time be greater than 18 months.

(iv) Applications for initial phase II acid rain permits shall be submitted to the permitting authority by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(2) *Complete application.* The program shall provide criteria and procedures for determining in a timely fashion when applications are complete. To be deemed complete, an application must provide all information required pursuant to paragraph (c) of this section, except that applications for permit revision need supply such information only if it is related to the proposed change. Information required under paragraph (c) of this section must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. The program shall require that a responsible official certify the submitted information consistent with paragraph (d) of this section. Unless the permitting authority determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in § 70.7(a)(4) of this part. If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in § 70.7(b) of this part, shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.

(3) *Confidential information.* In the case where a source has submitted information to the State under a claim of confidentiality, the permitting authority may also require the source to submit a copy of such information directly to the Administrator.

(b) *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 information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) *Standard application form and required information.* The State program under this part shall provide for a standard application form or forms. Information as described below for each emissions unit at a part 70 source shall be included in the application. The Administrator may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule approved pursuant to § 70.9 of this part. The permitting authority may use discretion in developing application forms that best meet program needs and administrative efficiency. The forms and attachments chosen, however, shall include the elements specified below:

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by Standard Industrial Classification (SIC) Code) including those associated with any proposed AOS identified by the source.

(3) The following emission-related information:

(i) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under this paragraph (c) of this section. The permitting authority shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to § 70.9(b) of this part.

(ii) Identification and description of all points of emissions described in paragraph (c)(3)(i) of this section in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(iii) Emissions rate in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. For emissions units subject to an annual emissions cap, tpy can be reported as part of the aggregate emissions associated with the cap, except where more specific information is needed, including where necessary to determine and/or assure compliance with an applicable requirement.

(iv) The following information to the extent it is needed to determine or regulate emissions: Fuels, fuel use, raw materials, production rates, and operating schedules.

(v) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the part 70 source.

(vii) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

(viii) Calculations on which the information in paragraphs (c)(3 (i) through (vii) of this section is based.

(4) The following air pollution control requirements:

(i) Citation and description of all applicable requirements, and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this part or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the permitting authority to define proposed AOSs identified by the source pursuant to § 70.6(a)(9) of this part or to define permit terms and conditions implementing any AOS under § 70.6(a)(9) or implementing § 70.4(b)(12) or § 70.6(a)(10) of this part. The permit application shall include documentation demonstrating that the source has obtained all authorization(s) required under the applicable requirements relevant to any proposed AOSs, or a certification that the source has submitted all relevant materials to the appropriate permitting authority for obtaining such authorization(s).

(8) A compliance plan for all part 70 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements.

(ii) A description as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(C) For requirements for which the source is not in compliance at the time or permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(D) For applicable requirements associated with a proposed AOS, a statement that the source will meet such requirements upon implementation of the AOS. If a proposed AOS would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) A compliance schedule as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(D) For applicable requirements associated with a proposed AOS, a statement that the source will meet such requirements upon implementation of the AOS. If a proposed AOS would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will

meet in a timely manner applicable requirements that become effective during the permit term will satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iv) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.

(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with paragraph (d) of this section and section 114(a)(3) of the Act;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the permitting authority; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the Act.

(d) Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

[57 FR 32295, July 21, 1992, as amended at 74 FR 51438, Oct. 6, 2009]

§ 70.6 Permit content.

(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements:

(1) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. Such requirements and limitations may include ARMs identified by the source in its part 70 permit application as approved by the permitting authority, provided that no ARM shall contravene any terms needed to comply with any otherwise applicable requirement or requirement of this part or circumvent any applicable requirement that would apply as a result of implementing the ARM.

(i) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(ii) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

(iii) If an applicable implementation plan allows a determination of an alternative emission limit at a part 70 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the State elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) *Permit duration.* The permitting authority shall issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to

exceed 5 years in the case of all other sources. Notwithstanding this requirement, the permitting authority shall issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years.

(3) *Monitoring and related recordkeeping and reporting requirements.* (i) Each permit shall contain the following requirements with respect to monitoring:

(A) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including part 64 of this chapter and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(B) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (a)(3)(iii) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(i)(B) of this section; and

(C) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(ii) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(A) Records of required monitoring information that include the following:

(*1*) The date, place as defined in the permit, and time of sampling or measurements;

(*2*) The date(s) analyses were performed;

(*3*) The company or entity that performed the analyses;

(*4*) The analytical techniques or methods used;

(*5*) The results of such analyses; and

(*6*) The operating conditions as existing at the time of sampling or measurement;

(B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(iii) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

(A) Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with § 70.5(d) of this part.

(B) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define ''prompt'' in relation to the degree and type of deviation likely to occur and the applicable requirements.

(4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the Act or the regulations promulgated thereunder.

(i) No permit revision shall be required for increases in emissions that are authorized by allowances acquired

pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(ii) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(iii) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(i) The permittee must comply with all conditions of the part 70 permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(ii) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iii) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(iv) The permit does not convey any property rights of any sort, or any exclusive privilege.

(v) The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the permitting authority copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality.

(7) A provision to ensure that a part 70 source pays fees to the permitting authority consistent with the fee schedule approved pursuant to § 70.9 of this part.

(8) *Emissions trading.* A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Terms and conditions for reasonably anticipated AOSs identified by the source in its application as approved by the permitting authority. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the AOS under which it is operating;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions under each such AOS; and

(iii) Must ensure that the terms and conditions of each AOS meet all applicable requirements and the requirements of this part. The permitting authority shall not approve a proposed AOS into the part 70 permit until the source has obtained all authorizations required under any applicable requirement relevant to that AOS.

(10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(i) Shall include all terms required under paragraphs (a) and (c) of this section to determine compliance;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions that allow such increases and decreases in emissions; and

(iii) Must meet all applicable requirements and requirements of this part.

(b) *Federally-enforceable requirements.* (1) All terms and conditions in a part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.

(2) Notwithstanding paragraph (b)(1) of this section, the permitting authority shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of §§ 70.7, 70.8, or of this part, other than those contained in this paragraph (b) of this section.

(c) *Compliance requirements.* All part 70 permits shall contain the following elements with respect to compliance:

(1) Consistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a part 70 permit shall contain a certification by a responsible official that meets the requirements of § 70.5(d) for this part.

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority or an authorized representative to perform the following:

(i) Enter upon the permittee's premises where a part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(3) A schedule of compliance consistent with § 70.5(c)(8) of this part.

(4) Progress reports consistent with an applicable schedule of compliance and § 70.5(c)(8) of this part to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the permitting authority. Such progress reports shall contain the following:

(i) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(i) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the permitting authority) of submissions of compliance certifications;

(ii) In accordance with § 70.6(a)(3) of this part, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(iii) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

(A) The identification of each term or condition of the permit that is the basis of the certification;

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section;

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based

on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under part 64 of this chapter occurred; and

(D) Such other facts as the permitting authority may require to determine the compliance status of the source.

(iv) A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority.

(6) Such other provisions as the permitting authority may require.

(d) *General permits*. (1) The permitting authority may, after notice and opportunity for public participation provided under § 70.7(h) of this part, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other part 70 permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the permitting authority shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of paragraph (f) of this section, the source shall be subject to enforcement action for operation without a part 70 permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under title IV of the Act.

(2) Part 70 sources that would qualify for a general permit must apply to the permitting authority for coverage under the terms of the general permit or must apply for a part 70 permit consistent with § 70.5 of this part. The permitting authority may, in the general permit, provide for applications which deviate from the requirements of § 70.5 of this part, provided that such applications meet the requirements of title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under § 70.7(h) of this part, the permitting authority may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

(e) *Temporary sources*. The permitting authority may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the permitting authority at least 10 days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions of this section.

(f) *Permit shield*. (1) Except as provided in this part, the permitting authority may expressly include in a part 70 permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(i) Such applicable requirements are included and are specifically identified in the permit; or

(ii) The permitting authority, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any part 70 permit shall alter or affect the following:

(i) The provisions of section 303 of the Act (emergency orders), including the

authority of the Administrator under that section;

(ii) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) The applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

(iv) The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

(g) *Emergency provision*—(1) *Definition*. An ''emergency'' means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) *Effect of an emergency*. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (g)(3) of this section are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(ii) The permitted facility was at the time being properly operated;

(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(iv) The permittee submitted notice of the emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph (a)(3)(iii)(B) of this section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

[57 FR 32295, July 21, 1992, as amended at 62 FR 54946, Oct. 22, 1997; 66 FR 12876, Mar. 1, 2001; 66 FR 55884, Nov. 5, 2001; 68 FR 38523, June 27, 2003; 74 FR 51439, Oct. 6, 2009]

§ 70.7 Permit issuance, renewal, reopenings, and revisions.

(a) *Action on application*. (1) A permit, permit modification, or renewal may be issued only if all of the following condition have been met:

(i) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under § 70.6(d) of this part;

(ii) Except for modifications qualifying for minor permit modification procedures under paragraphs (e) (2) and (3) of this section, the permitting authority has complied with the requirements for public participation under paragraph (h) of this section;

(iii) The permitting authority has complied with the requirements for notifying and responding to affected States under § 70.8(b) of this part;

(iv) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this part; and

(v) The Administrator has received a copy of the proposed permit and any notices required under §§ 70.8(a) and 70.8(b) of this part, and has not objected to issuance of the permit under § 70.8(c) of this part within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under § 70.4(b)(11) of this part or under regulations promulgated under title IV of title V of the Act for the permitting of affected sources under the acid rain program, the program shall provide that the permitting authority take

final action on each permit application (including a request for permit modification or renewal) within 18 months, or such lesser time approved by the Administrator, after receiving a complete application.

(3) The program shall also contain reasonable procedures to ensure priority is given to taking action on applications for construction or modification under title I, parts C and D of the Act.

(4) The permitting authority shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. For modifications processed through minor permit modification procedures, such as those in paragraphs (e) (2) and (3) of this section, the State program need not require a completeness determination.

(5) The permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it.

(6) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under title I of the Act.

(b) *Requirement for a permit.* Except as provided in the following sentence, § 70.4(b)(12)(i), and paragraphs (e) (2)(v) and (3)(v) of this section, no part 70 source may operate after the time that it is required to submit a timely and complete application under an approved permit program, except in compliance with a permit issued under a part 70 program. The program shall provide that, if a part 70 source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a part 70 permit is not a violation of this part until the permitting authority takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph (a)(4) of this section, and as required by § 70.5(a)(2) of this part, the applicant fails to submit by the deadline specified in writing by the permitting authority any additional information identified as being needed to process the application.

(c) *Permit renewal and expiration.* (1) The program shall provide that:

(i) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance; and

(ii) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with paragraph (b) of this section and § 70.5(a)(1)(iii) of this part.

(2) If the permitting authority fails to act in a timely way on a permit renewal, EPA may invoke its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.

(d) *Administrative permit amendments.* (1) An ''administrative permit amendment'' is a permit revision that:

(i) Corrects typographical errors;

(ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(iii) Requires more frequent monitoring or reporting by the permittee;

(iv) Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority;

(v) Incorporates into the part 70 permit the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to the requirements of §§ 70.7 and 70.8 of this part that would be applicable to the change if it were

subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in § 70.6 of this part; or

(vi) Incorporates any other type of change which the Administrator has determined as part of the approved part 70 program to be similar to those in paragraphs (d)(1) (i) through (iv) of this section.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Act.

(3) *Administrative permit amendment procedures*. An administrative permit amendment may be made by the permitting authority consistent with the following:

(i) The permitting authority shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(ii) The permitting authority shall submit a copy of the revised permit to the Administrator.

(iii) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The permitting authority may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in § 70.6(f) for administrative permit amendments made pursuant to paragraph (d)(1)(v) of this section which meet the relevant requirements of §§ 70.6, 70.7, and 70.8 for significant permit modifications.

(e) *Permit modification*. A permit modification is any revision to a part 70 permit that cannot be accomplished under the program's provisions for administrative permit amendments under paragraph (d) of this section. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Act.

(1) *Program description*. The State shall provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications. The State may meet this obligation by adopting the procedures set forth below or ones substantially equivalent. The State may also develop different procedures for different types of modifications depending on the significance and complexity of the requested modification, but EPA will not approve a part 70 program that has modification procedures that provide for less permitting authority, EPA, or affected State review or public participation than is provided for in this part.

(2) *Minor permit modification procedures*—(i) *Criteria*. (A) Minor permit modification procedures may be used only for those permit modifications that:

(*1*) Do not violate any applicable requirement;

(*2*) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(*3*) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(*4*) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(*A*) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I; and

(*B*) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act;

(*5*) Are not modifications under any provision of title I of the Act; and

(*6*) Are not required by the State program to be processed as a significant modification.

(B) Notwithstanding paragraphs (e)(2)(i)(A) and (e)(3)(i) of this section, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions

trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA.

(ii) *Application*. An application requesting the use of minor permit modification procedures shall meet the requirements of § 70.5(c) of this part and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) The source's suggested draft permit;

(C) Certification by a responsible official, consistent with § 70.5(d), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(D) Completed forms for the permitting authority to use to notify the Administrator and affected States as required under § 70.8.

(iii) *EPA and affected State notification*. Within 5 working days of receipt of a complete permit modification application, the permitting authority shall meet its obligation under § 70.8 (a)(1) and (b)(1) to notify the Administrator and affected States of the requested permit modification. The permitting authority promptly shall send any notice required under § 70.8(b)(2) to the Administrator.

(iv) *Timetable for issuance*. The permitting authority may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification, whichever is first, although the permitting authority can approve the permit modification prior to that time. Within 90 days of the permitting authority's receipt of an application under minor permit modification procedures or 15 days after the end of the Administrator's 45-day review period under § 70.8(c), whichever is later, the permitting authority shall:

(A) Issue the permit modification as proposed;

(B) Deny the permit modification application;

(C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(D) Revise the draft permit modification and transmit to the Administrator the new proposed permit modification as required by § 70.8(a) of this part.

(v) *Source's ability to make change*. The State program may allow the source to make the change proposed in its minor permit modification application immediately after it files such application. After the source makes the change allowed by the preceding sentence, and until the permitting authority takes any of the actions specified in paragraphs (e)(2)(v) (A) through (C) of this section, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(vi) *Permit shield*. The permit shield under § 70.6(f) of this part may not extend to minor permit modifications.

(3) *Group processing of minor permit modifications*. Consistent with this paragraph, the permitting authority may modify the procedure outlined in paragraph (e)(2) of this section to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(i) *Criteria*. Group processing of modifications may be used only for those permit modifications:

(A) That meet the criteria for minor permit modification procedures under paragraph (e)(2)(i)(A) of this section; and

(B) That collectively are below the threshold level approved by the Administrator as part of the approved program. Unless the State sets an alternative threshold consistent with the criteria set forth in paragraphs (e)(3)(i)(B) (*1*) and (*2*) of this section, this threshold shall be 10 percent of the emissions allowed by the permit for the

emissions unit for which the change is requested, 20 percent of the applicable definition of major source in § 70.2 of this part, or 5 tons per year, whichever is least. In establishing any alternative threshold, the State shall consider:

(*1*) Whether group processing of amounts below the threshold levels reasonably alleviates severe administrative burdens that would be imposed by immediate permit modification review, and

(*2*) Whether individual processing of changes below the threshold levels would result in trivial environmental benefits.

(ii) *Application*. An application requesting the use of group processing procedures shall meet the requirements of § 70.5(c) of this part and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft permit.

(C) Certification by a responsible official, consistent with § 70.5(d) of this part, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(D) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under paragraph (e)(3)(i)(B) of this section.

(E) Certification, consistent with § 70.5(d) of this part, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(F) Completed forms for the permitting authority to use to notify the Administrator and affected States as required under § 70.8 of this part.

(iii) *EPA and affected State notification*. On a quarterly basis or within 5 business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under paragraph (e)(3)(i)(B) of this section, whichever is earlier, the permitting authority promptly shall meet its obligations under §§ 70.8 (a)(1) and (b)(1) to notify the Administrator and affected States of the requested permit modifications. The permitting authority shall send any notice required under § 70.8(b)(2) of this part to the Administrator.

(iv) *Timetable for issuance*. The provisions of paragraph (e)(2)(iv) of this section shall apply to modifications eligible for group processing, except that the permitting authority shall take one of the actions specified in paragraphs (e)(2)(iv) (A) through (D) of this section within 180 days of receipt of the application or 15 days after the end of the Administrator's 45-day review period under § 70.8(c) of this part, whichever is later.

(v) *Source's ability to make change*. The provisions of paragraph (e)(2)(v) of this section shall apply to modifications eligible for group processing.

(vi) *Permit shield*. The provisions of paragraph (e)(2)(vi) of this section shall also apply to modifications eligible for group processing.

(4) *Significant modification procedures*—(i) *Criteria*. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. The State program shall contain criteria for determining whether a change is significant. At a minimum, every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this part that would render existing permit compliance terms and conditions irrelevant.

(ii) The State program shall provide that significant permit modifications shall meet all requirements of this part, including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The permitting authority shall design and implement this review process to complete review on the majority of significant permit modifications within 9 months after receipt of a complete application.

(f) *Reopening for cause.* (1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(i) Additional applicable requirements under the Act become applicable to a major part 70 source with a remaining permit term of 3 or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to § 70.4(b)(10) (i) or (ii) of this part.

(ii) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(iii) The permitting authority or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(iv) The Administrator or the permitting authority determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under paragraph (f)(1) of this section shall not be initiated before a notice of such intent is provided to the part 70 source by the permitting authority at least 30 days in advance of the date that the permit is to be reopened, except that the permitting authority may provide a shorter time period in the case of an emergency.

(g) *Reopenings for cause by EPA.* (1) If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to paragraph (f) of this section, the Administrator will notify the permitting authority and the permittee of such finding in writing.

(2) The permitting authority shall, within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the permitting authority must require the permittee to submit additional information.

(3) The Administrator will review the proposed determination from the permitting authority within 90 days of receipt.

(4) The permitting authority shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with the Administrator's objection.

(5) If the permitting authority fails to submit a proposed determination pursuant to paragraph (g)(2) of this section or fails to resolve any objection pursuant to paragraph (g)(4) of this section, the Administrator will terminate, modify, or revoke and reissue the permit after taking the following actions:

(i) Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in paragraphs (g) (1) through (4) of this section.

(ii) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

(h) *Public participation.* Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. These procedures shall include the following:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice; to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public;

(2) The notice shall identify the affected facility; the name and address of the permittee; the name and address of the permitting authority processing the permit; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including those set forth in § 70.4(b)(3)(viii) of this part, and all other materials available to the permitting authority that are relevant to the permit decision; a brief description of the comment procedures required by this part; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled);

(3) The permitting authority shall provide such notice and opportunity for participation by affected States as is provided for by § 70.8 of this part;

(4) *Timing*. The permitting authority shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(5) The permitting authority shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his obligation under section 505(b)(2) of the Act to determine whether a citizen petition may be granted, and such records shall be available to the public.

§ 70.8 Permit review by EPA and affected States.

(a) *Transmission of information to the Administrator*. (1) The permit program shall require that the permitting authority provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final part 70 permit. The applicant may be required by the permitting authority to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the permitting authority may submit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(2) The Administrator may waive the requirements of paragraphs (a)(1) and (b)(1) of this section for any category of sources (including any class, type, or size within such category) other than major sources according to the following:

(i) By regulation for a category of sources nationwide, or

(ii) At the time of approval of a State program for a category of sources covered by an individual permitting program.

(3) Each State permitting authority shall keep for 5 years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of this part.

(b) *Review by affected States*. (1) The permit program shall provide that the permitting authority give notice of each draft permit to any affected State on or before the time that the permitting authority provides this notice to the public under § 70.7(h) of this part, except to the extent § 70.7(e) (2) or (3) of this part requires the timing of the notice to be different.

(2) The permit program shall provide that the permitting authority, as part of the submittal of the proposed permit to the Administrator [or as soon as possible after the submittal for minor permit modification procedures allowed under § 70.7(e) (2) or (3) of this part], shall notify the Administrator

and any affected State in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the permitting authority's reasons for not accepting any such recommendation. The permitting authority is not required to accept recommendations that are not based on applicable requirements or the requirements of this part.

(c) *EPA objection*. (1) The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part. No permit for which an application must be transmitted to the Administrator under paragraph (a) of this section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

(2) Any EPA objection under paragraph (c)(1) of this section shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The Administrator will provide the permit applicant a copy of the objection.

(3) Failure of the permitting authority to do any of the following also shall constitute grounds for an objection:

(i) Comply with paragraphs (a) or (b) of this section;

(ii) Submit any information necessary to review adequately the proposed permit; or

(iii) Process the permit under the procedures approved to meet § 70.7(h) of this part except for minor permit modifications.

(4) If the permitting authority fails, within 90 days after the date of an objection under paragraph (c)(1) of this section, to revise and submit a proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of the Federal program promulgated under title V of this Act.

(d) *Public petitions to the Administrator*. The program shall provide that, if the Administrator does not object in writing under paragraph (c) of this section, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in § 70.7(h) of this part, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the permitting authority shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the permitting authority has issued a permit prior to receipt of an EPA objection under this paragraph, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in § 70.7(g) (4) or (5) (i) and (ii) of this part except in unusual circumstances, and the permitting authority may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(e) *Prohibition on default issuance*. Consistent with § 70.4(b)(3)(ix) of this part, for the purposes of Federal law and title V of the Act, no State program may provide that a part 70 permit (including a permit renewal or modification) will issue until affected States and EPA have had an opportunity to review the proposed permit as required under this section. When the program is submitted for EPA review, the State Attorney General or independent legal counsel shall certify that no applicable provision of State law requires that a part 70 permit or renewal be issued after a certain time if the permitting authority has failed to take action on the application (or includes any other similar provision

providing for default issuance of a permit), unless EPA has waived such review for EPA and affected States.

§ 70.9 Fee determination and certification.

(a) *Fee requirement*. The State program shall require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs.

(b) *Fee schedule adequacy*. (1) The State program shall establish a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs. These costs include, but are not limited to, the costs of the following activities as they relate to the operating permit program for stationary sources:

(i) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(ii) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

(iii) General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;

(iv) Implementing and enforcing the terms of any part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(v) Emissions and ambient monitoring;

(vi) Modeling, analyses, or demonstrations;

(vii) Preparing inventories and tracking emissions; and

(viii) Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program contained in section 507 of the Act in determining and meeting their obligations under this part.

(2)(i) The Administrator will presume that the fee schedule meets the requirements of paragraph (b)(1) of this section if it would result in the collection and retention of an amount not less than $25 per year [as adjusted pursuant to the criteria set forth in paragraph (b)(2)(iv) of this section] times the total tons of the actual emissions of each regulated pollutant (for presumptive fee calculation) emitted from part 70 sources.

(ii) The State may exclude from such calculation:

(A) The actual emissions of sources for which no fee is required under paragraph (b)(4) of this section;

(B) The amount of a part 70 source's actual emissions of each regulated pollutant (for presumptive fee calculation) that the source emits in excess of four thousand (4,000) tpy;

(C) A part 70 source's actual emissions of any regulated pollutant (for presumptive fee calculation), the emissions of which are already included in the minimum fees calculation; or

(D) The insignificant quantities of actual emissions not required in a permit application pursuant to § 70.5(c).

(iii) ''Actual emissions'' means the actual rate of emissions in tons per year of any regulated pollutant (for presumptive fee calculation) emitted from a part 70 source over the preceding calendar year or any other period determined by the permitting authority to be representative of normal source operation and consistent with the fee schedule approved pursuant to this section. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and in-place control equipment, types of materials processed, stored, or combusted during the preceding calendar year or such other time period established by the permitting authority pursuant to the preceding sentence.

(iv) The program shall provide that the $25 per ton per year used to calculate the presumptive minimum amount to be collected by the fee schedule, as described in paragraph (b)(2)(i) of this section, shall be increased each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such

year exceeds the Consumer Price Index for the calendar year 1989.

(A) The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

(B) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.

(3) The State program's fee schedule may include emissions fees, application fees, service-based fees or other types of fees, or any combination thereof, to meet the requirements of paragraph (b)(1) or (b)(2) of this section. Nothing in the provisions of this section shall require a permitting authority to calculate fees on any particular basis or in the same manner for all part 70 sources, all classes or categories of part 70 sources, or all regulated air pollutants, provided that the permitting authority collects a total amount of fees sufficient to meet the program support requirements of paragraph (b)(1) of this section.

(4) Notwithstanding any other provision of this section, during the years 1995 through 1999 inclusive, no fee for purposes of title V shall be required to be paid with respect to emissions from any affected unit under section 404 of the Act.

(5) The State shall provide a detailed accounting that its fee schedule meets the requirements of paragraph (b)(1) of this section if:

(i) The State sets a fee schedule that would result in the collection and retention of an amount less than that presumed to be adequate under paragraph (b)(2) of this section; or

(ii) The Administrator determines, based on comments rebutting the presumption in paragraph (b)(2) of this section or on his own initiative, that there are serious questions regarding whether the fee schedule is sufficient to cover the permit program costs.

(c) *Fee demonstration.* The permitting authority shall provide a demonstration that the fee schedule selected will result in the collection and retention of fees in an amount sufficient to meet the requirements of this section.

(d) *Use of Required Fee Revenue.* The Administrator will not approve a demonstration as meeting the requirements of this section, unless it contains an initial accounting (and periodic updates as required by the Administrator) of how required fee revenues are used solely to cover the costs of meeting the various functions of the permitting program.

§ 70.10 Federal oversight and sanctions.

(a) *Failure to submit an approvable program.* (1) If a State fails to submit a fully-approvable whole part 70 program, or a required revision thereto, in conformance with the provisions of § 70.4, or if an interim approval expires and the Administrator has not approved a whole part 70 program:

(i) At any time the Administrator may apply any one of the sanctions specified in section 179(b) of the Act; and

(ii) Eighteen months after the date required for submittal or the date of disapproval by the Administrator, the Administrator will apply such sanctions in the same manner and with the same conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a) of the Act.

(2) If full approval of a whole part 70 program has not taken place within 2 years after the date required for such submission, the Administrator will promulgate, administer, and enforce a whole program or a partial program as appropriate for such State.

(b) *State failure to administer or enforce.* Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part and of any agreement between the State and the Administrator concerning operation of the program.

(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering or enforcing a part 70 program, or any portion thereof, the Administrator will notify the permitting authority of the determination and the reasons therefore. The Administrator will publish such notice in the FEDERAL REGISTER.

(2) If, 90 days after issuing the notice under paragraph (c)(1) of this section, the permitting authority fails to take significant action to assure adequate administration and enforcement of the program, the Administrator may take one or more of the following actions:

(i) Withdraw approval of the program or portion thereof using procedures consistent with § 70.4(e) of this part;

(ii) Apply any of the sanctions specified in section 179(b) of the Act;

(iii) Promulgate, administer, or enforce a Federal program under title V of the Act.

(3) Whenever the Administrator has made the finding and issued the notice under paragraph (c)(1) of this section, the Administrator will apply the sanctions under section 179(b) of the Act 18 months after that notice. These sanctions will be applied in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a) of the Act.

(4) Whenever the Administrator has made the finding and issued the notice under paragraph (c)(1) of this section, the Administrator will, unless the State has corrected such deficiency within 18 months after the date of such finding, promulgate, administer, and enforce, a whole or partial program 2 years after the date of such finding.

(5) Nothing in this section shall limit the Administrator's authority to take any enforcement action against a source for violations of the Act or of a permit issued under rules adopted pursuant to this section in a State that has been delegated responsibility by EPA to implement a Federal program promulgated under title V of the Act.

(6) Where a whole State program consists of an aggregate of partial programs, and one or more partial programs fails to be fully approved or implemented, the Administrator may apply sanctions only in those areas for which the State failed to submit or implement an approvable program.

(c) *Criteria for withdrawal of State programs.* (1) The Administrator may, in accordance with the procedures of paragraph (c) of this section, withdraw program approval in whole or in part whenever the approved program no longer complies with the requirements of this part, and the permitting authority fails to take corrective action. Such circumstances, in whole or in part, include any of the following:

(i) Where the permitting authority's legal authority no longer meets the requirements of this part, including the following:

(A) The permitting authority fails to promulgate or enact new authorities when necessary; or

(B) The State legislature or a court strikes down or limits State authorities to administer or enforce the State program.

(ii) Where the operation of the State program fails to comply with the requirements of this part, including the following:

(A) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits;

(B) Repeated issuance of permits that do not conform to the requirements of this part;

(C) Failure to comply with the public participation requirements of § 70.7(h) of this part;

(D) Failure to collect, retain, or allocate fee revenue consistent with § 70.9 of this part; or

(E) Failure in a timely way to act on any applications for permits including renewals and revisions.

(iii) Where the State fails to enforce the part 70 program consistent with the requirements of this part, including the following:

(A) Failure to act on violations of permits or other program requirements;

(B) Failure to seek adequate enforcement penalties and fines and collect all assessed penalties and fines; or

(C) Failure to inspect and monitor activities subject to regulation.

(d) *Federal collection of fees.* If the Administrator determines that the fee provisions of a part 70 program do not meet the requirements of § 70.9 of this part, or if the Administrator makes a determination under paragraph (c)(1) of this section that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in

addition to taking any other action authorized under title V of the Act, collect reasonable fees to cover the Administrator's costs of administering the provisions of the permitting program promulgated by the Administrator, without regard to the requirements of § 70.9 of this part.

§ 70.11 Requirements for enforcement authority.

All programs to be approved under this part must contain the following provisions:

(a) *Enforcement authority*. Any agency administering a program shall have the following enforcement authority to address violations of program requirements by part 70 sources:

(1) To restrain or enjoin immediately and effectively any person by order or by suit in court from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment.

(2) To seek injunctive relief in court to enjoin any violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit.

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, according to the following:

(i) Civil penalties shall be recoverable for the violation of any applicable requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, entry or monitoring activities or, any regulation or orders issued by the permitting authority. These penalties shall be recoverable in a maximum amount of not less than $10,000 per day per violation. State law shall not include mental state as an element of proof for civil violations.

(ii) Criminal fines shall be recoverable against any person who knowingly violates any applicable requirement; any permit condition; or any fee or filing requirement. These fines shall be recoverable in a maximum amount of not less than $10,000 per day per violation.

(iii) Criminal fines shall be recoverable against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method. These fines shall be recoverable in a maximum amount of not less than $10,000 per day per violation.

(b) *Burden of proof*. The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section shall be no greater than the burden of proof or degree of knowledge or intent required under the Act.

(c) *Appropriateness of penalties and fines*. A civil penalty or criminal fine assessed, sought, or agreed upon by the permitting authority under paragraph (a)(3) of this section shall be appropriate to the violation.

§ 70.12 Enforceable commitments for further actions addressing greenhouse gases (GHGs).

(a) *Definitions*. (1) *Greenhouse Gases (GHGs)* means the air pollutant as 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.

(2) All other terms used in this section shall have the meaning given in § 70.2.

(b) *Further action to regulate GHGs under the title V program*.

(1) *Near term action on GHGs*. The Administrator shall solicit comment, under section 307(b) of the Act, on promulgating lower GHGs thresholds for applicability under § 70.2. Such action shall be finalized by July 1, 2012 and become effective July 1, 2013.

(2) *Further study and action on GHGs*.

(i) No later than April 30, 2015 the Administrator shall complete a study projecting the administrative burdens that remain with respect to stationary sources for which GHGs do not constitute a pollutant subject to regulation. Such study shall account, among other things, for permitting authorities ability to secure resources, hire and train staff; experiences associated with GHG permitting for new types of

sources and technologies; and, the success of streamlining measures developed by EPA (and adopted by the states) for reducing the permitting burden associated with such stationary sources.

(ii) Based on the results of the study described in paragraph (b)(2)(i) of this section, the Administrator shall propose a rule addressing the permitting obligations of such stationary sources under §70.2. The Administrator shall take final action on such a rule no later than April 30, 2016.

(iii) Before completing the rule described in paragraph (b)(2)(ii) of this section, the Administrator shall take no action to make the pollutant GHGs subject to regulation at stationary sources that emit or have the potential to emit less than 50,000 tpy CO_2e (as determined using the methodology described in §70.2.)

[75 FR 31607, June 3, 2010]

EFFECTIVE DATE NOTE: At 75 FR 31607, June 3, 2010, §70.12 was added, effective August 2, 2010.

APPENDIX A TO PART 70—APPROVAL STATUS OF STATE AND LOCAL OPERATING PERMITS PROGRAMS

This appendix provides information on the approval status of State and Local operating Permit Programs. An approved State part 70 program applies to all part 70 sources, as defined in that approved program, within such State, except for any source of air pollution over which a federally recognized Indian Tribe has jurisdiction.

Alabama

(a) Alabama Department of Environmental Management:

(1) Submitted on December 15, 1993, and supplemented on March 3, 1994; March 18, 1994; June 5, 1995; July 14, 1995; and August 28, 1995; interim approval effective on December 15, 1995; interim approval expires on December 1, 2001.

(2) Revisions submitted on July 19, 1996; April 9, 1997; August 4, 1999; January 10, 2000; and May 11, 2001. The rule revisions contained in the July 19, 1996; January 10, 2000; and May 11, 2001 submittals adequately addressed the conditions of the interim approval which expires on December 1, 2001. The State is hereby granted final full approval effective on November 28, 2001.

(b) City of Huntsville Division of Natural Resources:

(1) Submitted on November 15, 1993, and supplemented on July 20, 1995; interim approval effective on December 15, 1995; interim approval expires on December 1, 2001.

(2) Revisions submitted on March 21, 1997; July 21, 1999; December 4, 2000; February 22, 2001; April 9, 2001; and September 18, 2001. The rule revisions contained in the March 21, 1997; April 9, 2001; and September 18, 2001 submittals adequately addressed the conditions of the interim approval which expires on December 1, 2001. The City is hereby granted final full approval effective on November 28, 2001.

(c) Jefferson County Department of Health:

(1) Submitted on December 14, 1993, and supplemented on July 14, 1995; interim approval effective on December 15, 1995; interim approval expires on December 1, 2001.

(2) Revisions submitted on February 5, 1998; September 20, 1999; August 8, 2000; March 30, 2001; May 18, 2001; and September 11, 2001. The rule revisions contained in the August 8, 2000; May 18, 2001; and September 11, 2001 submittals adequately addressed the conditions of the interim approval which expires on December 1, 2001. The County is hereby granted final full approval effective on November 28, 2001.

Alaska

(a) Alaska Department of Environmental Conservation: submitted on May 31, 1995, as supplemented by submittals on August 16, 1995, February 6, 1996, February 27, 1996, July 5, 1996, August 2, 1996, and October 17, 1996; interim approval effective on December 5, 1996; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on November 30, 2001.

(b) (Reserved)

Arizona

(a) *Arizona Department of Environmental Quality:*

(1) Submitted on November 15, 1993 and amended on March 14, 1994; May 17, 1994; March 20, 1995; May 4, 1995; July 22, 1996; and August 12, 1996; interim approval effective on November 29, 1996; interim approval expires December 1, 2001.

(2) Revisions submitted on August 11, 1998, May 9, 2001 and September 7, 2001. Full approval is effective on November 30, 2001.

(b) *Maricopa County Environmental Services Department:*

(1) Submitted on November 15, 1993 and amended on December 15, 1993; January 13, 1994; March 9, 1994; and March 21, 1995; July 22, 1996; and August 12, 1996; interim approval effective on November 29, 1996; interim approval expires December 1, 2001.

(2) Revisions submitted on September 7, 2001. Full approval is effective on November 30, 2001.

(c) *Pima County Department of Environmental Quality:*

(1) Submitted on November 15, 1993 and amended on December 15, 1993; January 27, 1994; April 6, 1994; April 8, 1994; August 14, 1995; July 22, 1996; August 12, 1996; interim approval effective on November 29, 1996; interim approval expires December 1, 2001.

(2) Revisions submitted on January 14, 1997; February 26, 1997; July 17, 1997; July 25, 1997; November 7, 1997; approval effective October 23, 1998; interim approval expires December 1, 2001.

(3) Revisions submitted on May 30, 1998 and November 9, 2001. Full approval is effective on November 30, 2001.

(d) *Pinal County Air Quality Control District:*

(1) submitted on November 15, 1993 and amended on August 16, 1994; August 15, 1995; July 22, 1996; and August 12, 1996; interim approval effective on November 29, 1996; interim approval expires December 1, 2001.

(2) revisions submitted on August 15, 1995; interim approval effective on December 30, 1996; interim approval expires December 1, 2001.

(3) revisions submitted on September 18, 2001. Full approval is effective on November 30, 2001.

Arkansas

(a) The ADPCE submitted its Operating Permits program on November 9, 1993, for approval. Interim approval is effective on October 10, 1995. Interim approval will expire December 1, 2001.

(b) The Arkansas Department of Environmental Quality submitted program revisions on August 4, 2000. The rule revisions adequately addressed the conditions of the interim approval effective on October 10, 1995, and which would expire on December 1, 2001. The State is hereby granted final full approval effective on December 10, 2001.

(c) The Arkansas Department of Environmental Quality; submitted its operating permits program revisions on October 24, 2002: the Arkansas Operating Permit Program Regulation 26, effective November 8, 2004.

California

The following district programs were submitted by the California Air Resources Board on behalf of:

(a) Amador County Air Pollution Control District (APCD):

(1) Complete submittal received on September 30, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on April 10, 2001. Amador County Air Pollution Control District was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(b) *Bay Area Air Quality Management District (AQMD):*

(1) Submitted on November 16, 1993, amended on October 27, 1994, and effective as an interim program on July 24, 1995. Revisions to interim program submitted on March 23, 1995, and effective on August 22, 1995, unless adverse or critical comments are received by July 24, 1995. Approval of interim program, including March 23, 1995, revisions, expires December 1, 2001.

(2) Revisions were submitted on May 30, 2001. Bay Area Air Quality Management District was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(c) *Butte County APCD:*

(1) Complete submittal received on December 16, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 17, 2001. Butte County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(d) *Calaveras County APCD:*

(1) Complete submittal received on October 31, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on July 27, 2001. Calaveras County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revisions submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(e) *Colusa County APCD:*

(1) Complete submittal received on February 24, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on August 22, 2001 and October 10, 2001. Colusa County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(f) *El Dorado County APCD:*

(1) Complete submittal received on November 16, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on August 16, 2001. El Dorado County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(g) *Feather River AQMD:*

(1) Complete submittal received on December 27, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 22, 2001. Feather River AQMD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(h) *Glenn County APCD:*

(1) Complete submittal received on December 27, 1993; interim approval effective on August 14, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on September 13, 2001. Glenn County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(i) *Great Basin Unified APCD:*

(1) Complete submittal received on January 12, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 18, 2001. Great Basin Unified APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(j) *Imperial County APCD:*

(1) Complete submittal received on March 24, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on August 2, 2001. Imperial County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(k) *Kern County APCD:*

(1) Complete submittal received on November 16, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 24, 2001. Kern County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(l) *Lake County AQMD:*

(1) Complete submittal received on March 15, 1994; interim approval effective on August 14, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on June 1, 2001. Lake County AQMD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(m) *Lassen County APCD:*

(1) Complete submittal received on January 12, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on August 2, 2001. Lassen County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(n) *Mariposa County APCD:*

(1) Submitted on March 8, 1995; approval effective on February 5, 1996 unless adverse or critical comments are received by January 8, 1996. Interim approval expires on December 1, 2001.

(2) Revisions were submitted on September 20, 2001. Mariposa County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(o) *Mendocino County APCD:*

(1) Complete submittal received on December 27, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on April 13, 2001. Mendocino County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(p) *Modoc County APCD:*

(1) Complete submittal received on December 27, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on September 12, 2001. Modoc County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(q) *Mojave Desert AQMD:*

(1) Complete submittal received on March 10, 1995; interim approval effective on March 6, 1996; interim approval expires December 1, 2001.

(2) Revisions were submitted on June 4, 2001 and July 11, 2001. Mojave Desert AQMD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(r) *Monterey Bay Unified Air Pollution Control District:*

(1) Submitted on December 6, 1993, supplemented on February 2, 1994 and April 7, 1994, and revised by the submittal made on October 13, 1994; interim approval effective on November 6, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 9, 2001. Monterey Bay Unified Air Pollution Control District was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(s) *North Coast Unified AQMD:*

(1) Complete submittal received on February 24, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 24, 2001. North Coast Unified AQMD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(t) *Northern Sierra AQMD:*

(1) Complete submittal received on June 6, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 24, 2001. Northern Sierra AQMD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(u) *Northern Sonoma County APCD:*

(1) Complete submittal received on January 12, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 21, 2001. Northern Sonoma APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(v) *Placer County APCD:*

(1) Complete submittal received on December 27, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 4, 2001. Placer County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(w) *The Sacramento Metropolitan Air Quality Management District:*

(1) Complete submittal received on August 1, 1994; interim approval effective on September 5, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on June 1, 2001. The Sacramento Metropolitan Air Quality Management District was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(x) *San Diego County Air Pollution Control District:*

(1) Submitted on April 22, 1994 and amended on April 4, 1995 and October 10, 1995; approval effective on February 5, 1996, unless adverse or critical comments are received by January 8, 1996. Interim approval expires on December 1, 2001.

(2) Revisions were submitted on June 4, 2001. The San Diego County Air Pollution Control District was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(5) Revisions were submitted on August 19, 2003, effective February 27, 2004.

(y) *San Joaquin Valley Unified APCD:*

(1) Complete submittal received on July 5 and August 18, 1995; interim approval effective on May 24, 1996; interim approval expires May 25, 1998. Interim approval expires on December 1, 2001.

(2) Revisions were submitted on June 29, 2001. San Joaquin Valley Unified APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(z) *San Luis Obispo County APCD:*

(1) Complete submittal received on November 16, 1995; interim approval effective on December 1, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 18, 2001. San Luis Obispo County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(aa) *Santa Barbara County APCD:*

(1) Submitted on November 15, 1993, as amended March 2, 1994, August 8, 1994, December 8, 1994, June 15, 1995, and September 18, 1997; interim approval effective on December 1, 1995; interim approval expires on December 1, 2001.

(2) Revisions were submitted on April 5, 2001. Santa Barbara County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(bb) *Shasta County AQMD:*

(1) Complete submittal received on November 16, 1993; interim approval effective on August 14, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 18, 2001. Shasta County AQMD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(cc) *Siskiyou County APCD:*

(1) Complete submittal received on December 6, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on September 28, 2001. Siskiyou County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(dd) *South Coast Air Quality Management District:*

(1) Submitted on December 27, 1993 and amended on March 6, 1995, April 11, 1995, September 26, 1995, April 24, 1996, May 6, 1996, May 23, 1996, June 5, 1996 and July 29, 1996; approval effective on March 31, 1997. Interim approval expires on December 1, 2001.

(2) Revisions were submitted on August 2, 2001 and October 2, 2001. South Coast AQMD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(ee) *Tehama County APCD:*

(1) Complete submittal received on December 6, 1993; interim approval effective on August 14, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on June 4, 2001. Tehama County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(ff) *Tuolumne County APCD:*

(1) Complete submittal received on November 16, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on July 18, 2001. Tuolumne County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(gg) *Ventura County APCD:*

(1) Submitted on November 16, 1993, as amended December 6, 1993; interim approval effective on December 1, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 21, 2001. Ventura County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(hh) *Yolo-Solano AQMD:*

(1) Complete submittal received on October 14, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 9, 2001. Yolo-Solano AQMD is hereby granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(4) Revision submitted on November 7, 2003 containing approved program for major stationary agricultural sources, effective on January 1, 2004.

(ii) Antelope Valley APCD:

(1) Complete submittal received on January 26, 1999; interim approval effective January 18, 2001; interim approval expires January 21, 2003.

(2) Revisions were submitted on October 22, 2001 and June 17, 2002. Due to unresolved deficiency of state-exempt major stationary agricultural sources, interim approval expired for all major stationary sources, effective January 21, 2003.

(3) Revision submitted on November 7, 2003 containing program for major stationary agricultural sources, effective on January 1, 2004.

Colorado

(a) Colorado Department Health-Air Pollution Control Division: submitted on November 5, 1993; effective on February 23, 1995; interim approval expires December 1, 2001.

(b) The Colorado Department of Public Health and Environment—Air Pollution Control Division submitted an operating permits program on November 5, 1993; interim approval effective on February 23, 1995; revised June 24, 1997; full approval effective on October 16, 2000.

Connecticut

(a) Department of Environmental Protection: submitted on September 28, 1995; interim approval effective on April 23, 1997; revised program submitted on January 11, 2002; full approval effective May 31, 2002.

(b) [Reserved]

Delaware

(a) Department of Natural Resources and Environmental Control: submitted on November 15, 1993 and amended on November 22, 1993, February 9, 1994, May 15, 1995 and September 5, 1995; interim approval effective on January 3, 1996; interim approval expires December 1, 2001.

(b) The Delaware Department of Natural Resources and Environmental Control submitted program amendments on November 14, 2000 and November 20, 2000. The rule amendments contained in the November 14,

2000 and November 20, 2000 submittals adequately addressed the conditions of the interim approval effective on January 3, 1996. The State is hereby granted final full approval effective on November 19, 2001.

(c) The Delaware Department of Natural Resources and Environmental Control submitted program amendment on May 18, 2004. This rule amendment contained in the May 18, 2004 submittal is necessary to make the current definition as stringent as the corresponding provision of 40 CFR part 70, which went into effect on November 27, 2001. The State is hereby granted approval effective on February 5, 2007.

District of Columbia

(a) Environmental Regulation Administration: submitted on January 13, 1994 and March 11, 1994; interim approval effective on September 6, 1995; interim approval expires December 1, 2001.

(b) The District of Columbia Department of Health submitted operating permit program amendments on May 21, 2001, August 30, 2001, and September 26, 2001. The rule amendments contained in the May 21, 2001, August 30, 2001, and September 26, 2001 submittals adequately addressed the conditions of the interim approval effective on September 6, 1995. The District of Columbia is hereby granted final full approval effective on November 30, 2001.

(c) The District of Columbia Department of Health submitted program amendments on April 4, 2003. The rule amendments contained in the April 4, 2003 submittal adequately addressed the deficiency identified in the Notice of Deficiency effective on December 13, 2001. The District of Columbia hereby maintains final full approval effective on June 2, 2003.

Florida

(a) Florida Department of Environmental Protection: submitted on November 16, 1993, and supplemented on July 8, 1994, November 28, 1994, December 21, 1994, December 22, 1994, and January 11, 1995; interim approval effective on October 25, 1995; interim approval expires December 1, 2001.

(b) The Florida Department of Environmental Protection submitted program revisions on April 29, 1996, February 11, 1998, June 11, 1998, April 9, 1999 (two submittals), July 1, 1999, and October 1, 1999. The rule revisions contained in the April 29, 1996, February 11, 1998, June 11, 1998, April 9, 1999, July 1, 1999, and October 1, 1999 submittals adequately addressed the conditions of the interim approval effective on October 25, 1995, and which would expire on December 1, 2001. The State's operating permits program is hereby granted final full approval effective on October 31, 2001.

Georgia

(a) The Georgia Department of Natural Resources submitted on November 12, 1993, and supplemented on June 24, 1994; November 14, 1994; and June 5, 1995; interim approval effective on December 22, 1995; interim approval expires December 1, 2001.

(b) The Georgia Department of Natural Resources submitted program revisions on March 10, 1997, February 11, 1998, September 30, 1999, November 15, 1999, and January 11, 2000. The rule revisions contained in the February 11, 1998 submittal adequately addressed the conditions of the interim approval effective on December 22, 1995, and which would expire on June 1, 2000. The State is hereby granted final full approval effective on August 7, 2000.

Hawaii

(a) Department of Health; submitted on December 20, 1993; effective on December 1, 1994; interim approval expires December 1, 2001.

(b) Revisions were submitted on September 21, 2001. The rule amendments contained in the September 21, 2001 submittal adequately addressed the conditions of the interim approval effective on December 1, 1994. The Department of Health, State of Hawaii, is hereby granted final full approval effective on November 30, 2001.

(c) Department of Health: Program revisions submitted on November 14, 2003; submittal corrects the deficiency outlined in an April 1, 2002 Notice of Deficiency. These revisions are hereby granted full approval effective June 19, 2007.

Idaho

(a) Idaho Division of Environmental Quality: submitted on January 20, 1995, and supplemented on July 14, 1995, September 15, 1995, and January 12, 1996; interim approval effective on January 6, 1997; revisions submitted on July 9, 1998, May 25, 1999, and March 15, 2001; full approval effective on November 5, 2001.

(b) Reserved.

Illinois

(a) The Illinois Environmental Protection Agency: submitted on November 15, 1993; interim approval effective on March 7, 1995; interim approval expires December 1, 2001.

(b) The Illinois Environmental Protection Agency: program revisions submitted on May 31, 2001; submittal adequately addressed the conditions of the interim approval which expires on December 1, 2001. Illinois is hereby granted final full approval effective November 30, 2001.

Indiana

(a) The Indiana Department of Environmental Management: submitted on August 10, 1994; interim approval effective on December 14, 1995; interim approval expires December 1, 2001.

(b) The Indiana Department of Environmental Management: Program revisions submitted on May 22, 1996; submittal adequately addressed the conditions of the interim approval which expires on December 1, 2001. Indiana is hereby granted final full approval effective November 30, 2001.

(c) The Indiana Department of Environmental Management: program revisions submitted on February 7, 2002. These revisions are hereby granted final approval effective June 17, 2002.

Iowa

(a) The Iowa Department of Natural Resources submitted on November 15, 1993, and supplemented by correspondence dated March 15, 1994; August 8, 1994; October 5, 1994; December 6, 1994; December 15, 1994; February 6, 1995; March 1, 1995; March 23, 1995; and May 26, 1995. Interim approval effective on October 2, 1995; interim approval expires October 1, 1998.

(b) The Iowa Department of Natural Resources submitted a revised workload analysis dated April 3, 1997. This fulfills the final condition of the interim approval effective on October 2, 1995, and which would expire on October 1, 1997. The state is hereby granted final full approval effective September 12, 1997.

(c) The Iowa Department of Natural Resources submitted for program approval rules 567–22.100 through 567–22.116 and 567–22.300 on August 7, 2000, rules 567–22.201, 567–22.203, and 567–22.300 (except 22.300(7)(''c'')) on January 29, 2001, and 567–22.100 and 567–22.106 on July 18, 2001. These revisions to the Iowa program are approved effective May 3, 2002.

(d) The Iowa Department of Natural Resources (IDNR) submitted amendments to Iowa Rule, 567 Iowa Administrative Code (IAC) 22.108(3), as a revision to the Iowa Title V operating permits program on August 31, 2001, effective August 15, 2001. The amendments incorporate existing periodic monitoring guidance and adopt by reference compliance assurance monitoring requirements. The IDNR submitted a supplement regarding these amendments on November 7, 2001, clarifying IDNR's authority to establish periodic monitoring on a case-by-case basis. This revision to the Iowa program is effective April 15, 2002.

(e) The Iowa Department of Natural Resources submitted for program approval rules ''567–22.100,'' ''567–22.101,'' ''567–22.201,'' and ''567–22.300'' on April 25, 2002. The state effective date of these rules is April 24, 2002. These revisions to the Iowa program are approved effective May 6, 2003.

(f) The Iowa Department of Natural Resources submitted for program approval rules 567–22.100, 567–22.103 on July 17, 2002, and rules 567–22.105, 567–22.113, on March 11, 2002. These revisions to the Iowa program are approved effective November 17, 2003.

(g) The Iowa Department of Natural Resources submitted for program approval rule 567–22.100(455B) on April 20, 2004. The state effective date is January 15, 2003. We are approving this program revision effective September 27, 2004.

(h) The Iowa Department of Natural Resources submitted for program approval rules 567–22.100, 567–22.101(2), 567–22.102, 567–22.105(1), 567–22.108(17)''a''(2), 567–22.209 and 567–22.300(12) on July 18, 2005. The state effective date was July 13, 2005. These revisions to the Iowa program are approved effective February 21, 2006.

(i) The Iowa Department of Natural Resources submitted for program approval rules 567–22.105(2), 567–22.106(6), 567–22.201(2), 567–22.300(3) on April 19, 2007. The state effective date was April 4, 2007. These revisions to the Iowa program are approved effective December 17, 2007.

(j) The Iowa Department of Natural Resources submitted for program approval rule 567–22.100(455B) on April 8, 2008. The state effective date was March 19, 2008. These revisions to the Iowa program are approved effective October 24, 2008.

(k) The Iowa Department of Natural Resources submitted for program approval rules 567–22.100, 567–22.105(1)''a'', except subparagraph (9); new subrules 567–22.105(5) and 567–22.106(8); 567–22.110, and 567–22.116 on November 18, 2008. The state effective dates were October 15, 2008. These revisions to the Iowa program are approved effective March 1, 2010.

(l) The Iowa Department of Natural Resources submitted for program approval a revision to rule 567–22.106(1) on February 20, 2009. The State effective date was February 4, 2009. This revision to the Iowa program is approved effective April 30, 2010.

Kansas

(a) The Kansas Department of Health and Environment program submitted on December 12, 1994; April 7 and 17, 1995; November 14, 1995; and December 13, 1995. Full approval effective on February 29, 1996.

(b) The Kansas Department of Health and the Environment approved revisions to the Kansas Administrative Record (K.A.R.), 28–19–202 and 28–19–517, which became effective on March 23, 2001, and February 28, 1998, respectively. These revisions were submitted on June 25, 2001. We are approving these program revisions effective October 6, 2003.

(c) The Kansas Department of Health and Environment approved this revision to the

Kansas Administrative Regulations, 28–19–202, as a revision to the Kansas Title V Operating Permits Program, which became effective on January 30, 2004. This revision was submitted on April 22, 2004. We are approving this program revision effective September 27, 2004.

(d) The Kansas Department of Health and Environment submitted for program approval rule K.A.R. 28–19–517 on January 27, 2006. The state effective date was September 23, 2005. This revision to the Kansas program is approved effective April 8, 2008.

Kentucky

(a)(1) Kentucky Natural Resources and Environmental Protection Cabinet: Submitted on December 27, 1993, and supplemented on November 15, 1994, April 14, 1995, May 3, 1995, and May 22, 1995; interim approval expires on December 1, 2001.

(2) Revision submitted on February 13, 2001. Rule revisions contained in the February 13, 2001 submittal adequately addressed the conditions of the interim approval which expires on December 1, 2001. The Commonwealth is hereby granted final full approval effective on November 30, 2001.

(b)(1) Air Pollution Control District of Jefferson County: submitted on January 31, 1994, and supplemented on March 9, 1994, June 15, 1994, July 15, 1994, July 14, 1995, August 9, 1995, August 10, 1995, and February 16, 1996; full approval effective on April 22, 1996.

(2) Revisions submitted on February 20, 1998, January 11, 1999, September 30, 1999, March 17, 2000, March 21, 2001, and October 23, 2001; full approval of revisions effective on April 22, 2002.

Louisiana

(a) The Louisiana Department of Environmental Quality, Air Quality Division submitted an Operating Permits program on November 15, 1993, which was revised November 10, 1994, and became effective on October 12, 1995.

(b) [Reserved]

Maine

(a) Department of Environmental Protection: submitted on October 23, 1995; source-category limited interim approval effective on March 24, 1997; full approval effective December 17, 2001.

(b) [Reserved]

Maryland

(a) Maryland Department of the Environment: submitted on May 9, 1995; interim approval effective on August 2, 1996; interim approval expires December 1, 2001.

(b) The Maryland Department of Environmental Quality submitted operating permit program amendments on July 15, 2002. The program amendments contained in the July 15, 2002 submittal adequately addressed the conditions of the interim approval effective on August 2, 1996. The State is hereby granted final full approval effective on February 14, 2003.

(c) The Maryland Department of the Environment submitted an operating permit program amendment on February 13, 2007. The program amendment contained in the February 13, 2007 submittal will update Maryland's existing incorporation by reference citations to the Federal Acid Rain Program. The state is hereby granted approval effective on June 25, 2007.

Massachusetts

(a) Department of Environmental Protection: submitted on April 28, 1995; interim approval effective on May 15, 1996; interim approval expires December 1, 2001.

(b) The Massachusetts Department of Environmental Services submitted program revisions on November, 19, 1996 and May 11, 2001. EPA is hereby granting Massachusetts full approval effective on November 27, 2001.

Michigan

(a)(1) Department of Environmental Quality: received on May 16, 1995, July 20, 1995, October 6, 1995, November 7, 1995, and January 8, 1996; interim approval effective on February 10, 1997; interim approval expires December 1, 2001.

(2) Interim approval revised to provide for a 4 year initial permit issuance schedule under source category limited (SCL) interim approval, pursuant to the Department of Environmental Quality's request received on April 18, 1997. SCL interim approval effective on July 18, 1997.

(3) Department of Environmental Quality: interim approval corrections submitted on June 1, 2001 and September 20, 2001; submittals adequately address the conditions of the interim approval which expires on December 1, 2001. Based on these corrections, Michigan is hereby granted final full approval effective on November 30, 2001.

(4) Department of Environmental Quality: Program revisions submitted on May 7, 2003, May 21, 2003, and August 18, 2003, including Michigan Administrative Rule 336.1216; submittals satisfactorily address EPA's Notice of Program Deficiency, published on December 11, 2001 (66 FR 64038). Final full approval of these revisions is effective December 10, 2003.

(b) (Reserved)

Minnesota

(a) The Minnesota Pollution Control Agency: submitted on November 15, 1993; interim approval effective on July 16, 1995; interim approval expires December 1, 2001.

(b) The Minnesota Pollution Control Agency: Program revisions submitted on June 9,

2000, July 21, 2000, June 12, 2001; Rule revisions contained in the submittals adequately addressed the conditions of the interim approval which expires on December 1, 2001. Minnesota is hereby granted final full approval effective November 30, 2001.

(c) [Reserved]

Mississippi

(a) Department of Environmental Quality: submitted on November 15, 1993; full approval effective on January 27, 1995.

(b) [Reserved]

Missouri

(a) The Missouri Department of Natural Resources program submitted on January 13, 1995; August 14, 1995; September 19, 1995; and October 16, 1995. Interim approval effective on May 13, 1996. Interim approval expires on September 13, 1998.

(b) The Missouri Department of Natural Resources program submitted on January 13, 1995; August 14, 1995; September 19, 1995; October 16, 1995; and August 6, 1996.

Full approval effective June 13, 1997.

(c) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information,'' on February 1, 1996, approval effective September 25, 1997.

(d) The Missouri Department of Natural Resources submitted on May 28, 1998, revisions to Missouri Rules 10 CSR 10–6.020, ''Definitions and Common Reference Tables,'' and 10 CSR 10–6.065, ''Operating Permits.'' Effective date was April 30, 1998.

(e) The Missouri Department of Natural Resources submitted on July 8, 1999, revisions to Missouri rules 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information,'' effective on December 30, 1998.

(f) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10–6.020, ''Definitions and Common Reference Tables,'' on September 30, 1999, approval effective May 30, 1999.

(g) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10–6.110, Submission of Emission Data, Emission Fees, and Process Information on May 22, 2000, approval effective December 26, 2000.

(h) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10–6.065, ''Operating Permits,'' on June 8, 2000, approval effective May 22, 2001.

(i) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10–6.020, ''Definitions and Common Reference Tables,'' on July 31, 2000, approval effective May 22, 2001.

(j) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information'' on November 27, 2000, approval effective October 5, 2001.

(k) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information'' on December 27, 2001, approval effective April 22, 2002.

(l) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10–6.065, ''Operating Permits'' on May 30, 2002, approval effective October 28, 2002.

(m) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information'' on September 9, 2002, approval effective January 21, 2003.

(n) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10–6.065, ''Operating Permits,'' on May 6, 2003, approval effective November 17, 2003.

(o) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information'' on December 16, 2003, approval of section (3)(D) effective February 15, 2005.

(p) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information'' on December 8, 2004, approval of section (3)(D) effective July 1, 2005.

(q) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information'' on January 5, 2006, approval of section (3)(D) effective July 11, 2006.

(r) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.020, ''Definitions and Common Reference Tables,'' on June 30, 2004, approval effective August 10, 2006.

(s) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.020, ''Definitions and Common Reference Tables,'' on March 13, 2006, approval effective January 4, 2007.

(t) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.065, ''Operating Permits'' on January 3, 2006. We are approving this rule except for Section (4) which relates to the State Basic Operating Permits. This approval is effective April 23, 2007.

(u) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information'' on December 11, 2006; approval of sections (3)(D)1., (3)(D)2.E., and (3)(D)2.F. effective May 8, 2007.

(v) The Missouri Department of Natural Resources submitted revisions to Missouri

rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information'' on December 21, 2007; approval of section (3)(D) effective November 14, 2008.

(w) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.020, ''Definitions and Common Reference Tables,'' on September 5, 2008, approval effective May 14, 2009.

Montana

(a) Montana Department of Health and Environmental Sciences—Air Quality Division: submitted on March 29, 1994; effective on June 12, 1995; interim approval expires December 1, 2001.

(b) The Montana Department of Environmental Quality submitted an operating permits program on March 29, 1994; effective on June 12, 1995; revised January 15, 1998, and March 17, 2000; full approval effective on January 22, 2001.

Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

(a) The Nebraska Department of Environmental Quality submitted on November 15, 1993, supplemented by correspondence dated November 2, 1994, and August 29, 1995, and amended Title V rules submitted June 14, 1995.

(b) Omaha Public Works Department submitted on November 15, 1993, supplemented by correspondence dated April 18, 1994; April 19, 1994; May 13, 1994; August 12, 1994; and April 13, 1995. A delegation contract between the state and the city of Omaha became effective on June 6, 1995.

(c) Lincoln-Lancaster County Health Department submitted on November 12, 1993, supplemented by correspondence dated June 23, 1994. Full approval effective on November 17, 1995.

(d) The Nebraska Department of Environmental Quality submitted the following program revisions on August 20, 1999; NDEQ Title 129, Chapters 1, 2, 5, 6, 7, 8, 10, 29, and 41; City of Omaha Ordinance No. 34492, amended section 41–2, and LLCHD Articles 2–1, 2–2, 2–5, 2–6, 2–7, 2–8, and 2–15, effective February 22, 2000.

(e) The Nebraska Department of Environmental Quality submitted the following program revisions on June 29, 2001; NDEQ Title 129, Chapters 1 and 41, effective December 15, 1998; and NDEQ Title 129, Chapters 1, 7, 8, and 31, effective on August 22, 2000.

(f) The Nebraska Department of Environmental Quality submitted the following program revisions on May 10, 2002, NDEQ Title 129, Chapters 1, 5, 6, and 29; and on November 5, 2002, NDEQ Title 129, Chapters 1, 2, 5, 6, and 31, approval effective September 8, 2003.

(g) The Nebraska Department of Environmental Quality approved revisions to NDEQ Title 129, chapters 1, 5, 6, and appendix III (which codifies its prior Federally approved Insignificant Activities List) on September 5, 2002, which became effective on November 20, 2002. These revisions were submitted on May 1, 2003. We are approving these program revisions effective November 4, 2003.

(h) The Nebraska Department of Environmental Quality approved a revision to NDEQ Title 129, appendix III, on November 19, 2003, which became effective November 24, 2003. This revision was submitted on June 4, 2004. We are approving this program revision effective May 31, 2005.

(i) The Nebraska Department of Environmental Quality approved a revision to NDEQ Title 129, Appendix III on May 2, 2005, which became effective May 7, 2005. This revision was submitted on October 20, 2005. We are approving this program revision effective September 8, 2006.

Nevada

The following district program was submitted by the Nevada Division of Environmental Protection on behalf of:

(a) Nevada Division of Environmental Protection:

(1) Submitted on February 8, 1995; interim approval effective on January 11, 1996; interim approval expires December 1, 2001.

(2) Revisions submitted on May 30, 2001. Full approval is effective on November 30, 2001.

(b) Washoe County District Health Department:

(1) Submitted on November 18, 1993; interim approval effective on March 6, 1995; interim approval expires December 1, 2001.

(2) Revisions submitted on May 8, 2001. Full approval is effective on November 30, 2001.

(c) Clark County Department of Air Quality Management:

(1) Submitted on January 12, 1994 and amended on July 18 and September 21, 1994; interim approval effective on August 14, 1995; interim approval expires on December 1, 2001.

(2) Revisions submitted on June 1, 2001. Full approval is effective on November 30, 2001.

(3) Revisions were submitted on February 23, 2004, effective October 1, 2004.

New Hampshire

(a) Department of Environmental Services: submitted on October 26, 1995; interim approval effective on December 1, 2001.

(b) The New Hampshire Department of Environmental Services submitted program revisions on May 14, 2001. EPA is hereby granting New Hampshire full approval effective on November 23, 2001.

New Jersey

(a) The New Jersey Department of Environmental Protection submitted an operating permit program on November 15, 1993, revised on August 10, 1995, with supplements on August 28, 1995, November 15, 1995, December 4, 1995, and December 6, 1995; interim approval effective on June 17, 1996; interim approval expires December 1, 2001.

(b) The New Jersey State Department of Environmental Protection submitted an operating permits program revision request on June 11, 1998; interim program revision approval effective on July 6, 1999.

(c) The New Jersey Department of Environmental Protection submitted program revisions on September 17, 1999 and May 31, 2001. The rule revisions contained in the September 17, 1999 and May 31, 2001 submittals adequately addressed the conditions of the interim approval effective on June 17, 1996, and which would expire on December 1, 2001. The State is hereby granted final full approval effective on November 30, 2001.

(d) The New Jersey Department of Environmental Protection submitted program revisions on October 4, 2006; approval effective August 27, 2007.

New Mexico

(a) Environment Department; submitted on November 15, 1993; effective date on December 19, 1994; interim approval expires on October 19, 1997.

(b) City of Albuquerque Environmental Health Department, Air Pollution Control Division: submitted on April 4, 1994; effective on March 13, 1995; interim approval expires June 10, 1997.

(c) The New Mexico Environment Department, Air Pollution Control Bureau submitted an operating permits program on November 15, 1993, which was revised July 31, 1996, and became effective on December 26, 1996.

(d) The City of Albuquerque, Environmental Health Department, submitted an operating permits program on April 4, 1994, which was revised July 31, 1996, and became effective on December 26, 1996.

(e) The Environmental Department; submitted the following program revisions on November 5, 2002: NMAC 20.2.70, effective November 8, 2004.

(f) Albuquerque/Bernalillo County Air Quality Control Board; submitted the following program revisions on May 2, 2003: NMAC 20.11.42.7, effective November 8, 2004.

New York

(a) The New York State Department of Environmental Conservation submitted an operating permits program on November 12, 1993, supplemented on June 17, 1996 and June 27, 1996; interim program approval effective on December 9, 1996; interim program approval expires December 1, 2001.

(b) [Reserved]

(c) The New York State Department of Environmental Conservation submitted program revisions on June 8, 1998 and October 5, 2001. The rule revisions contained in the June 8, 1998 and October 5, 2001 submittals adequately addressed the conditions of the interim approval effective on December 9, 1996, and which would expire on December 1, 2001. The October 5, 2001 submission consists of rules adopted pursuant to New York's emergency rulemaking procedures. The State is hereby granted final full approval effective on November 30, 2001.

(d) The New York State Department of Environmental Conservation submitted program revisions on June 8, 1998 and January 2, 2002. The rule revisions contained in the June 8, 1998 and January 2, 2002 submittals adequately addressed the conditions of the interim approval effective on December 9, 1996. The State is hereby granted final full approval effective on January 31, 2002.

North Carolina

(a)(1) Department of Environment and Natural Resources: submitted on November 12, 1993, and supplemented on December 17, 1993, May 31, 1994, and August 3, 1994, March 23, 1995, and August 9, 1995; interim approval effective on December 15, 1995; interim approval expires June 1, 2000.

(2) North Carolina Department of Environment and Natural Resources submitted program revisions on March 23, 1995, August 16, 1996, March 19, 1997, July 29, 1998, November 15, 1999, January 21, 2000, June 14, 2000, and August 28, 2000. The rule revisions contained in the March 23, 1995, March 19, 1997, January 21, 2000, and August 28, 2000 submittals adequately addressed the conditions of the interim approval which would expire on December 1, 2001. The State is hereby granted final full approval effective on October 1, 2001.

(b)(1) Forsyth County Environmental Affairs Department: submitted on November 12, 1993, and supplemented on May 31, 1994 and November 28, 1994; interim approval effective on December 15, 1995; interim approval expires June 1, 2000.

(2) Forsyth County submitted program revisions on September 25, 1995, January 16, 1997, August 1, 1997, April 22, 1998, October 2, 1998, February 18, 1999, September 29, 1999, October 26, 1999, and February 24, 2000. The rule revisions contained in the September 25, 1995, August 1, 1997, and October 26, 1999 submittals adequately addressed the conditions of the interim approval which would expire on June 1, 2000. The County is hereby granted final full approval effective on August 21, 2000.

(3) [Reserved]

(c)(1) Mecklenburg County Department of Environmental Protection: submitted on November 12, 1993, and supplemented on June 5, 1995; interim approval effective on December 15, 1995; interim approval expires June 1, 2000.

(2) Mecklenburg County Department of Environmental Protection submitted program revisions on October 11, 1999, November 2, 1999, December 8, 1999, December 28, 1999, and July 26, 2000. The rule revisions contained in the October 11, 1999, December 8, 1999, December 28, 1999, and July 26, 2000 submittals adequately addressed the conditions of the interim approval which would expire on December 1, 2001. Mecklenburg County is hereby granted final full approval effective on October 1, 2001.

(d)(1) Western North Carolina Regional Air Pollution Control Agency: submitted on November 12, 1993, and supplemented on January 12, 1994, September 16, 1994, October 11, 1994, and May 17, 1995; interim approval effective on December 15, 1995; interim approval expires June 1, 2000.

(2) Western North Carolina Regional Air Quality Agency submitted program revisions on January 23, 1997, September 29, 1999, November 10, 1999, January 5, 2000, and August 17, 2000. The rule revisions contained in the January 23, 1997, January 5, 2000, and August 17, 2000 submittals adequately addressed the conditions of the interim approval which would expire on December 1, 2001. Western North Carolina is hereby granted final full approval effective on October 1, 2001.

North Dakota

(a) North Dakota State Department of Health and Consolidated Laboratories—Environmental Health Section: submitted on May 11, 1994; effective on August 7, 1995; interim approval expires June 1, 2000.

(b) The North Dakota Department of Health, Environmental Health Section, submitted an operating permits program on May 11, 1994; interim approval effective on August 7, 1995; revised January 1, 1996, September 1, 1997, September 1, 1998, and August 1, 1999; full approval effective on August 16, 1999.

(c) The North Dakota Department of Health, Environmental Health Section submitted the following program revisions on May 1, 2003: NDAC 33–15–14–06.1(o)(2)(aa), effective November 17, 2003.

Ohio

(a) Ohio Environmental Protection Agency (OEPA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 16, 2003; revision approved December 22, 2003.

(b) [Reserved]

(c) The Ohio Environmental Protection Agency submitted an operating permits program amendment on March 23, 2007. The program amendment contained in the March 23, 2007 submittal will update Ohio's existing Acid Rain program. The state is hereby granted approval effective on March 25, 2008.

Oklahoma

(a) The Oklahoma Department of Environmental Quality submitted its operating permits program on January 12, 1994, for approval. Source category—limited interim approval is effective on March 6, 1996. Interim approval will expire December 1, 2001.

(b) The Oklahoma Department of Environmental Quality submitted program revisions on July 27, 1998. The rule revisions adequately addressed the conditions of the interim approval effective on March 6, 1996, and which will expire on December 1, 2001. The State is hereby granted final full approval effective on November 30, 2001.

Oregon

(a) Oregon Department of Environmental Quality: submitted on November 15, 1993, as amended on November 15, 1994 and June 30 1995; full approval effective on November 27, 1995; revisions submitted on March 15, 2000; approval of revisions effective on August 9, 2002.

(b) Lane Regional Air Pollution Authority: submitted on November 15, 1993, as amended on November 15, 1994, and June 30, 1995; full approval effective on November 27, 1995.

Pennsylvania

(a) Pennsylvania Department of Environmental Resources [now known as the Pennsylvania Department of Environmental Protection]: submitted on May 18, 1995; full approval effective on August 29, 1996.

(b) The Pennsylvania Department of Environmental Protection submitted a request on behalf of the Allegheny County Health Department pertaining to operating permit programs in the Commonwealth of Pennsylvania. The submission, dated November 9, 1998 and amended March 1, 2001, includes a request for approval of a partial operating program pursuant to 40 CFR part 70 for Allegheny County. The Allegheny County Health Department's partial operating permit program is hereby granted full approval effective on December 17, 2001.

Puerto Rico

(a) The Puerto Rico Environmental Quality Board submitted an operating permits program on November 15, 1993 with supplements on March 22, 1994 and April 11, 1994 and revised on September 29, 1995; full approval effective on March 27, 1996.

(b) [Reserved]

Rhode Island

(a) Department of Environmental Management: submitted on June 20, 1995; interim approval effective on July 5, 1996; interim approval expires December 1, 2001.

(b) The Rhode Island Department of Environmental Management submitted program revisions on October 1, 1996, January 21, 1999 and October 26, 2000. EPA is hereby granting Rhode Island full approval effective on November 30, 2001.

South Carolina

(a) Department of Health and Environmental Control: submitted on November 12, 1993; full approval effective on July 26, 1995.

(b) [Reserved]

South Dakota

(a) South Dakota Department of Environment and Natural Resources Division of Environmental Regulation: submitted on November 12, 1993; effective on April 21, 1995; interim approval expires April 22, 1997.

(b) [Reserved]

EDITORIAL NOTE: At 61 FR 2722, Jan. 29, 1996, appendix A to part 70 was amended by adding an entry for South Dakota. An entry already exists for South Dakota in the 1995 edition of this volume.

South Dakota

(a) South Dakota Department of Environment and Natural Resources—Division of Environmental Regulations: submitted on November 12, 1993; effective on February 28, 1996.

(b) [Reserved]

Tennessee

(a)(1) Tennessee Department of Environment and Conservation: submitted on November 10, 1994, and supplemented on December 5, 1994, August 8, 1995, January 17, 1996, January 30, 1996, February 13, 1996, April 9, 1996, June 4, 1996, June 12, 1996, July 3, 1996, and July 15, 1996; interim approval effective on August 28, 1996; interim approval expires on December 1, 2001.

(2) Revisions submitted on July 15, 1997, June 16, 1998, February 5, 1999, February 24, 1999, March 5, 1999, June 16, 1999, July 2, 1999, November 30, 1999, December 30, 1999, August 21, 2000, and October 16, 2001. The rule revisions contained in the February 5, 1999, February 24, 1999, March 5, 1999, June 16, 1999, and December 30, 1999, submittals adequately addressed the conditions of the interim approval effective on August 28, 1996, and which would expire on December 1, 2001. The State's operating permit program is hereby granted final full approval effective on November 30, 2001.

(b)(1) Chattanooga-Hamilton County Air Pollution Control Bureau: submitted on November 22, 1993, and supplemented on January 23, 1995, February 24, 1995, October 13, 1995, and March 14, 1996; full approval effective on April 25, 1996.

(2) [Reserved]

(c)(1) Knox County Department of Air Quality Management: submitted on November 12, 1993, and supplemented on August 24, 1994, January 6, 1995, January 19, 1995, February 6, 1995, May 23, 1995, September 18, 1995, September 25, 1995, and March 6, 1996; full approval effective on May 30, 1996.

(2) [Reserved]

(d)(1) Memphis-Shelby County Health Department: submitted on June 26, 1995, and supplemented on August 22, 1995, August 23, 1995, August 24, 1995, January 29, 1996, February 7, 1996, February 14, 1996, March 5, 1996, and April 10, 1996; interim approval effective on August 28, 1996; interim approval expires December 1, 2001.

(2) Revisions submitted on October 11, 1999 and May 2, 2000. The rule revisions contained in the May 2, 2000, submittal adequately addressed the conditions of the interim approval effective on August 28, 1996, and which would expire on December 1, 2001. The County's operating permit program is hereby granted final full approval effective on November 30, 2001.

(e)(1) Metropolitan Health Department of Nashville-Davidson County: submitted on November 13, 1993, and supplemented on April 19, 1994, September 27, 1994, December 28, 1994, and December 28, 1995; full approval effective on March 15, 1996.

(2) Revisions submitted on December 10, 1996, August 27, 1999, and December 6, 1999.

Revised approval effective on August 7, 2000.

Texas

(a) The TNRCC submitted its Operating Permits program on September 17, 1993, and supplemental submittals on October 28, 1993, and November 12, 1993, for approval. Source category-limited interim approval is effective on July 25, 1996. Interim approval will expire December 1, 2001. The scope of the approval of the Texas part 70 program excludes all sources of air pollution over which an Indian Tribe has jurisdiction.

(b) The Texas Natural Resource Conservation Commission submitted program revisions on June 12, 1998, and June 1, 2001, and supplementary information on August 22, 2001; August 23, 2001; September 20, 2001; and November 5, 2001. The rule revisions adequately addressed the conditions of the IA effective on July 25, 1996, and which will expire on December 1, 2001. The State is hereby granted final full approval effective on November 30, 2001.

(c) The Texas Commission on Environmental Quality: program revisions submitted on December 9, 2002, and supplementary information submitted on December 10, 2003,

effective on April 29, 2005. The rule amendments contained in the submissions adequately addressed the deficiencies identified in the notice of deficiency published on January 7, 2002.

Utah

(a) Utah Department of Environmental Quality—Division of Air Quality: submitted on April 14, 1994; effective on July 10, 1995.

(b) [Reserved]

Vermont

(a) Department of Environmental Conservation: submitted on April 28, 1995; interim approval effective on November 1, 1996; revised program submitted on November 15, 2001; full approval effective November 30, 2001.

(b) [Reserved]

Virgin Islands

(a) The Virgin Islands Department of Natural Resources submitted an operating permits program on November 18, 1993 with supplements through August 25, 2000; full approval effective on January 16, 2001.

(b) (Reserved)

Virginia

(a) The Commonwealth of Virginia's Title V operating permit and fee program regulations submitted on September 10, 1996, the acid rain operating permit regulations submitted on September 12, 1996, and the nonregulatory operating permit program provisions submitted on November 12, 1993, January 14, 1994, January 9, 1995, May 17, 1995, February 6, 1997, and February 27, 1997; interim approval effective on March 12, 1998; interim approval expires on December 1, 2001.

(b) The Virginia Department of Environmental Quality submitted operating permit program amendments on November 20, 2000. The rule revisions contained in the November 20, 2000 submittal adequately addressed the conditions of the interim approval effective on March 12, 1998. The Commonwealth is hereby granted final full approval effective on November 30, 2001.

Washington

(a) Department of Ecology (Ecology): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(b) Energy Facility Site Evaluation Council (EFSEC): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(c) Benton Clean Air Authority (BCAA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(d) Northwest Air Pollution Authority (NWAPA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(e) Olympic Regional Clean Air Authority (ORCAA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(f) Puget Sound Clean Air Agency (PSCAA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(g) Spokane County Air Pollution Control Authority (SCAPCA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(h) Southwest Clean Air Agency (SWCAA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(i) Yakima Regional Clean Air Authority (YRCAA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

West Virginia

(a) Department of Commerce, Labor and Environmental Resources: submitted on November 12, 1993, and supplemented by the Division of Environmental Protection on August 26 and September 29, 1994; interim approval effective on December 15, 1995; interim approval expires December 1, 2001.

(b) The West Virginia Department of Environmental Protection submitted nonsubstantial program revisions to its program on February 11, 1997. The revisions involved additions to West Virginia's ''insignificant activity'' list. The revisions were approved on October 6, 1997 by letter from W. Michael McCabe, Regional Administrator, EPA Region III.

(c) The West Virginia Department of Environmental Protection submitted program amendments on June 1, 2001. The rule revisions contained in the June 1, 2001 submittal adequately addressed the conditions of the interim approval effective on December 15, 1995. The State is hereby granted final full approval effective on November 19, 2001.

(d) The West Virginia Department of Environmental Protection submitted program revisions on June 1, 2001. The rule revisions contained in the June 1, 2001 submittal revise West Virginia's existing approved program. The State is hereby granted revised approval effective on November 23, 2001.

(e) The West Virginia Department of Natural Resources and Environmental Control submitted program amendment on September 10, 2003. This rule amendment contained in the September 10, 2003 submittal is necessary to make the current definitions of a ''major source'' and ''volatile organic compound'' consistent with the corresponding provisions of 40 CFR part 70, which went into effect on November 27, 2001. The State is hereby granted approval effective on April 27, 2007.

Wisconsin

(a)(1) Department of Natural Resources: Submitted on January 27, 1994; interim approval effective on April 5, 1995; interim approval expires December 1, 2001.

(2) Department of Natural Resources: Interim approval corrections submitted on March 28, 2001, September 5, 2001, and September 17, 2001; submittals adequately address the conditions of the interim approval which expires on December 1, 2001. Based on these corrections, Wisconsin is hereby granted final full approval effective on November 30, 2001.

(b) [Reserved]

Wyoming

(a) Department of Environmental Quality: submitted on November 19, 1993; effective on February 21, 1995; interim approval expires June 1, 2000.

(b) The Wyoming Department of Environmental Quality submitted an operating permits program on November 19, 1993; interim approval effective on February 21, 1995; revised August 19, 1997; full approval effective on April 23, 1999.

[59 FR 55820, Nov. 9, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting appendix A to part 70, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

PART 71—FEDERAL OPERATING PERMIT PROGRAMS

Subpart A—Operating Permits

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71.1 Program overview.
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71.4 Program implementation.
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Subpart B—Permits for Early Reductions Sources

71.21 Program overview.
71.22 Definitions.
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71.25 Permit content.
71.26 Permit issuance, reopenings, and revisions.
71.27 Public participation and appeal.

AUTHORITY: 42 U.S.C. 7401, *et seq.*

SOURCE: 59 FR 59924, Nov. 21, 1994, unless otherwise noted.

Subpart A—Operating Permits

SOURCE: 61 FR 34228, July 1, 1996, unless otherwise noted.

§71.1 Program overview.

(a) This part sets forth the comprehensive Federal air quality operating permits permitting program consistent with the requirements of title V of the Act (42 U.S.C. 7401 *et seq.*) and defines the requirements and the corresponding standards and procedures by which the Administrator will issue operating permits. This permitting program is designed to promote timely and efficient implementation of goals and requirements of the Act.

(b) All sources subject to the operating permit requirements of title V and this part shall have a permit to operate that assures compliance by the source with all applicable requirements.

(c) The requirements of this part, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or as modified by title IV of the Act and 40 CFR parts 72 through 78.

(d) Issuance of permits under this part may be coordinated with issuance of permits under the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*) and under the Clean Water Act (33 U.S.C. 1251 *et seq.*), whether issued by the State, the U.S. Environmental Protection Agency (EPA), or the U.S. Army Corps of Engineers.

(e) Nothing in this part shall prevent a State from administering an operating permits program and establishing more stringent requirements not inconsistent with the Act.

§71.2 Definitions.

The following definitions apply to part 71. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable requirements of the Act.

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

Affected source shall have the meaning given to it in 40 CFR 72.2.

Affected States are:

(1) All States and areas within Indian country subject to a part 70 or part 71 program whose air quality may be affected and that are contiguous to the State or the area within Indian country in which the permit, permit modification, or permit renewal is being proposed; or that are within 50 miles of the permitted source. A Tribe shall be treated in the same manner as a State under this paragraph (1) only if EPA has determined that the Tribe is an eligible Tribe.

(2) The State or area within Indian country subject to a part 70 or part 71 program in which a part 71 permit, permit modification, or permit renewal is being proposed. A Tribe shall be treated in the same manner as a State under this paragraph (2) only if EPA has determined that the Tribe is an eligible Tribe.

(3) Those areas within the jurisdiction of the air pollution control agency for the area in which a part 71 permit, permit modification, or permit renewal is being proposed.

Affected unit shall have the meaning given to it in 40 CFR 72.2.

Alternative operating scenario (AOS) means a scenario authorized in a part 71 permit that involves a change at the part 71 source for a particular emissions unit, and that either results in the unit being subject to one or more applicable requirements which differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.

Applicable requirement means all of the following as they apply to emissions units in a part 71 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future compliance dates):

(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter;

(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;

(3) Any standard or other requirement under section 111 of the Act, including section 111(d);

(4) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(5) Any standard or other requirement of the acid rain program under title IV of the Act or 40 CFR parts 72 through 78;

(6) Any requirements established pursuant to section 114(a)(3) or 504(b) of the Act;

(7) Any standard or other requirement under section 126(a)(1) and (c) of the Act;

(8) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(9) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(10) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(11) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(12) Any standard or other requirement of the regulations promulgated at 40 CFR part 82 to protect stratospheric ozone under title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a title V permit; and

(13) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

Approved replicable methodology (ARM) means part 71 permit terms that:

(1) Specify a protocol which is consistent with and implements an applicable requirement, or requirement of this part, such that the protocol is based on sound scientific and/or mathematical principles and provides reproducible results using the same inputs; and

(2) Require the results of that protocol to be recorded and used for assuring compliance with such applicable requirement, any other applicable requirement implicated by implementation of the ARM, or requirement of this part, including where an ARM is used for determining applicability of a specific requirement to a particular change.

Delegate agency means the State air pollution control agency, local agency, other State agency, Tribal agency, or other agency authorized by the Administrator pursuant to § 71.10 to carry out all or part of a permit program under part 71.

Designated representative shall have the meaning given to it in section 402(26) of the Act and 40 CFR 72.2.

Draft permit means the version of a permit for which the permitting authority offers public participation under § 71.7 or § 71.11 and affected State review under § 71.8.

Eligible Indian Tribe or *eligible Tribe* means a Tribe that has been determined by EPA to meet the criteria for being treated in the same manner as a State, pursuant to the regulations implementing section 301(d)(2) of the Act.

Emissions allowable under the permit means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

Emissions unit means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. This term is not meant to alter or affect the definition of the term ''unit'' for purposes of title IV of the Act.

EPA or the *Administrator* means the Administrator of the U.S. Environmental Protection Agency (EPA) or his or her designee.

Federal Indian reservation, Indian reservation or *reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Final permit means the version of a part 71 permit issued by the permitting authority that has completed all review procedures required by §§71.7, 71.8, and 71.11.

Fugitive emissions are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

General permit means a part 71 permit that meets the requirements of §71.6(d).

Indian country means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian Tribe or *Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaskan native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Major source means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)), belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining ''major source,'' a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(1) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, ''major source'' shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants or any group of stationary sources 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 (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:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(3) A major stationary source as defined in part D of title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as ''marginal'' or ''moderate,'' 50 tpy or more in areas classified as ''serious''; 25 tpy or more in areas classified as ''severe,'' and 10 tpy or more in areas classified as ''extreme''; except that the references in this paragraph (3)(i) to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f) (1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas:

(A) That are classified as ''serious,'' and

(B) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM–10) nonattainment areas classified as ''serious,'' sources with the potential to emit 70 tpy or more of PM–10.

Part 70 permit means any permit or group of permits covering a part 70 source that has been issued, renewed, amended or revised pursuant to 40 CFR part 70.

Part 70 program or *State program* means a program approved by the Administrator under 40 CFR part 70.

Part 70 source means any source subject to the permitting requirements of 40 CFR part 70, as provided in §§ 70.3(a) and 70.3(b).

Part 71 permit, or *permit* (unless the context suggests otherwise) means any permit or group of permits covering a part 71 source that has been issued, renewed, amended or revised pursuant to this part.

Part 71 program means a Federal operating permits program under this part.

Part 71 source means any source subject to the permitting requirements of this part, as provided in §§ 71.3(a) and 71.3(b).

Permit modification m eans a revision to a part 71 permit that meets the requirements of § 71.7(e).

Permit program costs means all reasonable (direct and indirect) costs required to administer an operating permits program, as set forth in § 71.9(b).

Permit revision means any permit modification or administrative permit amendment.

Permitting authority means one of the following:

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

(2) A delegate agency authorized by the Administrator to carry out a Federal permit program under this part; or

(3) The State air pollution control agency, local agency, other State agency, Indian Tribe, or other agency authorized by the Administrator to carry out a permit program under 40 CFR part 70.

Proposed permit means the version of a permit that the delegate agency proposes to issue and forwards to the Administrator for review in compliance with §71.10(d).

Regulated air pollutant means the following:

(1) Nitrogen oxides or any volatile organic compounds;

(2) Any pollutant for which a national ambient air quality standard has been promulgated;

(3) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(4) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(5) Any pollutant subject to a standard promulgated under section 112 of the Act or other requirements established under section 112 of the Act, including sections 112 (g), (j), and (r) of the Act, including the following:

(i) Any pollutant subject to requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and

(ii) Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to section 112(g)(2) requirements.

Regulated pollutant (for fee calculation), which is used only for purposes of §71.9(c), means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Act.

Renewal means the process by which a permit is reissued at the end of its term.

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;

(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); or

(4) For affected sources:

(i) The designated representative insofar as actions, standards, requirements, or prohibitions under title IV of the Act or 40 CFR parts 72 through 78 are concerned; and

(ii) The designated representative for any other purposes under part 71.

Section 502(b)(10) changes are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

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.

* * * * *

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 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:

(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 CO_2 equivalent emissions.

(2) The *term tpy CO_2 equivalent emissions (CO_2e)* 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 CO_2e.

§ 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

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.

(b) *Part 71 programs for Indian country*. The Administrator will administer and enforce an operating permits program in Indian country, as defined in § 71.2, when an operating permits program which meets the requirements of part 70 of this chapter has not been explicitly granted full or interim approval by the Administrator for Indian country.

(1) [Reserved]

(2) The effective date of a part 71 program in Indian country shall be March 22, 1999.

(3) Notwithstanding paragraph (i)(2) of this section, within 2 years of the effective date of the part 71 program in Indian country, the Administrator shall take final action on permit applications from part 71 sources that are submitted within the first full year after the effective date of the part 71 program.

(c) *Part 71 programs imposed due to inadequate implementation*. (1) The Administrator will administer and enforce an operating permits program for a permitting authority if the Administrator has notified the permitting authority, in accordance with § 70.10(b)(1) of this chapter, of the Administrator's determination that a permitting authority is not adequately administering or enforcing its approved operating permits program, or any portion thereof, and the permitting authority fails to do either of the following:

(i) Correct the deficiencies within 18 months after the Administrator issues the notice; or

(ii) Take significant action to assure adequate administration and enforcement of the program within 90 days of the Administrator's notice.

(2) The effective date of a part 71 program promulgated in accordance with this paragraph (c) shall be:

(i) Two years after the Administrator's notice if the permitting authority has not corrected the deficiency within 18 months after the date of the Administrator's notice; or

(ii) Such earlier time as the Administrator determines appropriate if the permitting authority fails, within 90 days of the Administrator's notice, to take significant action to assure adequate administration and enforcement of the program.

(d) *Part 71 programs for OCS sources*. (1) Using the procedures of this part, the Administrator will issue permits to any source which is an outer continental shelf (OCS) source, as defined under § 55.2 of this chapter, is subject to the requirements of part 55 of this chapter and section 328(a) of the Act, is subject to the requirement to obtain a permit under title V of the Act, and is either:

(i) Located beyond 25 miles of States' seaward boundaries; or

(ii) Located within 25 miles of States' seaward boundaries and a part 71 program is being administered and enforced by the Administrator for the corresponding onshore area, as defined in § 55.2 of this chapter, for that source.

(2) The requirements of § 71.4(d)(1)(i) shall apply on July 31, 1996.

(3) The requirements of § 71.4(d)(1)(ii) apply upon the effective date of a part 71 program for the corresponding onshore area.

(e) *Part 71 program for permits issued to satisfy an EPA objection*. Using the procedures of this part and 40 CFR 70.8 (c) or (d), or 40 CFR 70.7(g)(4) or (5) (i) and (ii), as appropriate, the Administrator will deny, terminate, revise, revoke or reissue a permit which has been proposed or issued by a permitting authority or will issue a part 71 permit when:

(1) A permitting authority with an approved part 70 operating permits program fails to respond to a timely objection to the issuance of a permit made by the Administrator pursuant to section 505(b) of the Act and § 70.8(c) and (d) of this chapter.

(2) The Administrator, under § 70.7(g) of this chapter, finds that cause exists to reopen a permit and the permitting authority fails to either:

(i) Submit to the Administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate; or

(ii) Resolve any objection EPA makes to the permit which the permitting authority proposes to issue in response to EPA's finding of cause to reopen, and to terminate, revise, or revoke and reissue the permit in accordance with that objection.

(3) The requirements of this paragraph (e) shall apply on July 31, 1996.

(f) *Use of selected provisions of this part.* The Administrator may utilize any or all of the provisions of this part to administer the permitting process for individual sources or take action on individual permits, or may adopt, through rulemaking, portions of a State or Tribal permit program in combination with provisions of this part to administer a Federal program for the State or in Indian country in substitution of or addition to the Federal program otherwise required by this part.

(g) *Public notice of part 71 programs.* In taking action to administer and enforce an operating permits program under this part, the Administrator will publish a notice in the FEDERAL REGISTER informing the public of such action and the effective date of any part 71 program as set forth in §71.4 (a), (b), (c), or (d)(1)(ii). The publication of this part in the FEDERAL REGISTER on July 1, 1996 serves as the notice for the part 71 permit programs described in §71.4(d)(1) (i) and (e). The EPA will also publish a notice in the FEDERAL REGISTER of any delegation of a portion of the part 71 program to a State, eligible Tribe, or local agency pursuant to the provisions of §71.10. In addition to notices published in the FEDERAL REGISTER under this paragraph (g), the Administrator will, to the extent practicable, publish notice in a newspaper of general circulation within the area subject to the part 71 program effectiveness or delegation, and will send a letter to the Tribal governing body for an Indian Tribe or the Governor (or his or her designee) of the affected area to provide notice of such effectiveness or delegation.

(h) *Effect of limited deficiency in the State or Tribal program.* The Administrator may administer and enforce a part 71 program in a State or within Indian country even if only limited deficiencies exist either in the initial program submittal for a State or eligible Tribe under part 70 of this chapter or in an existing State or Tribal program that has been approved under part 70 of this chapter.

(i) *Transition plan for initial permits issuance.* If a full or partial part 71 program becomes effective in a State or within Indian country prior to the issuance of part 70 permits to all part 70 sources under an existing program that has been approved under part 70 of this chapter, the Administrator shall take final action on initial permit applications for all part 71 sources in accordance with the following transition plan.

(1) All part 71 sources that have not received part 70 permits shall submit permit applications under this part within 1 year after the effective date of the part 71 program.

(2) Final action shall be taken on at least one-third of such applications annually over a period not to exceed 3 years after such effective date.

(3) Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Act shall be acted on within 12 months of receipt of the complete application.

(4) Submittal of permit applications and the permitting of affected sources shall occur in accordance with the deadlines in title IV of the Act and 40 CFR parts 72 through 78.

(j) *Delegation of part 71 program.* The Administrator may promulgate a part 71 program in a State or Indian country and delegate part of the responsibility for administering the part 71 program to the State or eligible Tribe in accordance with the provisions of §71.10; however, delegation of a part of a part 71 program will not constitute any type of approval of a State or Tribal operating permits program under part 70 of this chapter. Where only selected portions of a part 71 program are administered by the Administrator and the State or eligible Tribe is delegated the remaining portions of the program, the Delegation Agreement referred to in §71.10 will define the respective roles of the State or eligible Tribe and the Administrator in administering and enforcing the part 71 operating permits program.

(k) *EPA administration and enforcement of part 70 permits.* When the Administrator administers and enforces a part 71 program after a determination and notice under §70.10(b)(1) of this chapter that a State or Tribe is not adequately administering and enforcing an operating permits program approved under part 70 of this chapter, the Administrator will administer and

enforce permits issued under the part 70 program until part 71 permits are issued using the procedures of part 71. Until such time as part 70 permits are replaced by part 71 permits, the Administrator will revise, reopen, revise, terminate, or revoke and reissue part 70 permits using the procedures of part 71 and will assess and collect fees in accordance with the provisions of § 71.9.

(l) *Transition to approved part 70 program.* The Administrator will suspend the issuance of part 71 permits promptly upon publication of notice of approval of a State or Tribal operating permits program that meets the requirements of part 70 of this chapter. The Administrator may retain jurisdiction over the part 71 permits for which the administrative or judicial review process is not complete and will address this issue in the notice of State program approval. After approval of a State or Tribal program and the suspension of issuance of part 71 permits by the Administrator:

(1) The Administrator, or the permitting authority acting as the Administrator's delegated agent, will continue to administer and enforce part 71 permits until they are replaced by permits issued under the approved part 70 program. Until such time as part 71 permits are replaced by part 70 permits, the Administrator will revise, reopen, revise, terminate, or revoke and reissue part 71 permits using the procedures of the part 71 program. However, if the Administrator has delegated authority to administer part 71 permits to a delegate agency, the delegate agency will revise, reopen, terminate, or revoke and reissue part 71 permits using the procedures of the approved part 70 program. If a part 71 permit expires prior to the issuance of a part 70 permit, all terms and conditions of the part 71 permit, including any permit shield that may be granted pursuant to § 71.6(f), shall remain in effect until the part 70 permit is issued or denied, provided that a timely and complete application for a permit renewal was submitted to the permitting authority in accordance with the requirements of the approved part 70 program.

(2) A State or local agency or Indian Tribe with an approved part 70 operating permits program may issue part 70 permits for all sources with part 71 permits in accordance with a permit issuance schedule approved as part of the approved part 70 program or may issue part 70 permits to such sources at the expiration of the part 71 permits.

(m) *Exemption for certain territories.* Upon petition by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Marianas Islands, the Administrator may exempt any source or class of sources in such territory from the requirement to have a part 71 permit under this chapter. Such an exemption does not exempt such source or class of sources from any requirement of section 112 of the Act, including the requirements of section 112 (g) or (j).

(1) Such exemption may be granted if the Administrator finds that compliance with part 71 is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant. Any such petition shall be considered in accordance with section 307(d) of the Act, and any exemption granted under this paragraph (m) shall be considered final action by the Administrator for the purposes of section 307(b) of the Act.

(2) The Administrator shall promptly notify the Committees on Energy and Commerce and on Interior and Insular Affairs of the House of Representatives and the Committees on Environment and Public Works and on Energy and Natural Resources of the Senate upon receipt of any petition under this paragraph (m) and of the approval or rejection of such petition and the basis for such action.

(n) *Retention of records.* The records for each draft, proposed, and final permit application, renewal, or modification shall be kept by the Administrator for a period of 5 years.

[61 FR 34228, July 1, 1996, as amended at 64 FR 8262, Feb. 19, 1999; 67 FR 38330, June 3, 2002]

§ 71.5 Permit applications.

(a) *Duty to apply.* For each part 71 source, the owner or operator shall submit a timely and complete permit application in accordance with this section.

(1) *Timely application.* (i) A timely application for a source which does not have an existing operating permit issued by a State under the State's approved part 70 program and is applying for a part 71 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish. Sources required to submit applications earlier than 12 months after the source becomes subject to the permit program will be notified of the earlier submittal date at least 6 months in advance of the date.

(ii) Part 71 sources required to meet the requirements under section 112(g) of the Act, or to have a permit under the preconstruction review program approved into the applicable implementation plan under part C or D of title I of the Act, shall file a complete application to obtain the part 71 permit or permit revision within 12 months after commencing operation or on or before such earlier date as the permitting authority may establish. Sources required to submit applications earlier than 12 months after the source becomes subject to the permit program will be notified of the earlier submittal date at least 6 months in advance of the date. Where an existing part 70 or 71 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(iii) For purposes of permit renewal, a timely application is one that is submitted at least 6 months but not more that 18 months prior to expiration of the part 70 or 71 permit.

(iv) Applications for initial phase II acid rain permits shall be submitted to the permitting authority by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(2) *Complete application.* To be deemed complete, an application must provide all information required pursuant to paragraph (c) of this section, except that applications for permit revision need supply such information only if it is related to the proposed change. To be found complete, an initial or renewal application must remit payment of fees owed under the fee schedule established pursuant to §71.9(b). Information required under paragraph (c) of this section must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official must certify the submitted information consistent with paragraph (d) of this section. Unless the permitting authority determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in §71.7(a)(4). If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in §71.7(b), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.

(3) *Confidential information.* An applicant may assert a business confidentiality claim for information requested by the permitting authority using procedures found at part 2, subpart B of this chapter.

(b) *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 information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) *Standard application form and required information.* The permitting authority shall provide sources a standard application form or forms. The permitting authority may use discretion in developing application forms that

best meet program needs and administrative efficiency. The forms and attachments chosen, however, shall include the elements specified below. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule established pursuant to § 71.9.

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by SIC Code) including those associated with any proposed AOS identified by the source.

(3) The following emissions-related information:

(i) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under this paragraph (c). The permitting authority shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule established pursuant to § 71.9(b).

(ii) Identification and description of all points of emissions described in paragraph (c)(3)(i) of this section in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(iii) Emissions rates in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. For emissions units subject to an annual emissions cap, tpy can be reported as part of the aggregate emissions associated with the cap, except where more specific information is needed, including where necessary to determine and/or assure compliance with an applicable requirement.

(iv) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(v) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the part 71 source.

(vii) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

(viii) Calculations on which the information in paragraphs (c)(3) (i) through (vii) of this section is based.

(4) The following air pollution control requirements:

(i) Citation and description of all applicable requirements; and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this part or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the permitting authority to define proposed AOSs identified by the source pursuant to § 71.6(a)(9) or to define permit terms and conditions implementing any AOS under § 71.6(a)(9) or implementing § 71.6(a)(10) or § 71.6(a)(13). The permit application shall include documentation demonstrating that the source has obtained all authorization(s) required under the applicable requirements relevant to any proposed AOSs, or a certification that the source has submitted all relevant materials to the appropriate permitting authority for obtaining such authorization(s).

(8) A compliance plan for all part 71 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements.

(ii) A description as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(C) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(D) For applicable requirements associated with a proposed AOS, a statement that the source will meet such requirements upon implementation of the AOS. If a proposed AOS would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) A compliance schedule as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(D) For applicable requirements associated with a proposed AOS, a statement that the source will meet such requirements upon implementation of the AOS. If a proposed AOS would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term will satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iv) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.

(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under parts 72 through 78 of this chapter with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with paragraph (d) of this section and section 114(a)(3) of the Act;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the permitting authority; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and

compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under parts 72 through 78 of this chapter.

(11) *Insignificant activities and emissions levels.* The following types of insignificant activities and emissions levels need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to calculate the fee amount required under the schedule established pursuant to § 71.9 of this part.

(i) *Insignificant activities:*

(A) Mobile sources;

(B) Air-conditioning units used for human comfort that are not subject to applicable requirements under title VI of the Act and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;

(C) Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;

(D) Heating units used for human comfort that do not provide heat for any manufacturing or other industrial process;

(E) Noncommercial food preparation;

(F) Consumer use of office equipment and products;

(G) Janitorial services and consumer use of janitorial products; and

(H) Internal combustion engines used for landscaping purposes.

(ii) *Insignificant emissions levels.* Emissions meeting the criteria in paragraph (c)(11)(ii)(A) or (c)(11)(ii)(B) of this section need not be included in the application, but must be listed with sufficient detail to identify the emission unit and indicate that the exemption applies. Similar emission units, including similar capacities or sizes, may be listed under a single description, provided the number of emission units is included in the description. No additional information is required at time of application, but the permitting authority may request additional information during application processing.

(A) *Emission criteria for regulated air pollutants, excluding hazardous air pollutants (HAP).* Potential to emit of regulated air pollutants, excluding HAP, for any single emissions unit shall not exceed 2 tpy.

(B) *Emission criteria for HAP.* Potential to emit of any HAP from any single emissions unit shall not exceed 1,000 lb per year or the de minimis level established under section 112(g) of the Act, whichever is less.

(d) Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

[61 FR 34228, July 1, 1996, as amended at 74 FR 51439, Oct. 6, 2009]

§ 71.6 Permit content.

(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements:

(1) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. Such requirements and limitations may include ARMs identified by the source in its part 71 permit application as approved by the permitting authority, provided that no ARM shall contravene any terms needed to comply with any otherwise applicable requirement or requirement of this part or circumvent any applicable requirement that would apply as a result of implementing the ARM.

(i) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(ii) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of 40 CFR parts 72 through 78, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

(iii) If an applicable implementation plan allows a determination of an alternative emission limit at a part 71 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the permitting authority elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) *Permit duration*. The permitting authority shall issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources. Notwithstanding this requirement, the permitting authority shall issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years.

(3) *Monitoring and related recordkeeping and reporting requirements*. (i) Each permit shall contain the following requirements with respect to monitoring:

(A) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including part 64 of this chapter and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(B) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (a)(3)(iii) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(i)(B); and

(C) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(ii) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(A) Records of required monitoring information that include the following:

(*1*) The date, place as defined in the permit, and time of sampling or measurements;

(*2*) The date(s) analyses were performed;

(*3*) The company or entity that performed the analyses;

(*4*) The analytical techniques or methods used;

(*5*) The results of such analyses; and

(*6*) The operating conditions as existing at the time of sampling or measurement;

(B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(iii) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

(A) Submittal of reports of any required monitoring at least every 6 months. All instances of deviations

from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with § 71.5(d).

(B) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Where the underlying applicable requirement contains a definition of prompt or otherwise specifies a time frame for reporting deviations, that definition or time frame shall govern. Where the underlying applicable requirement fails to address the time frame for reporting deviations, reports of deviations shall be submitted to the permitting authority based on the following schedule:

(*1*) For emissions of a hazardous air pollutant or a toxic air pollutant (as identified in an applicable regulation) that continue for more than an hour in excess of permit requirements, the report must be made with 24 hours of the occurrence.

(*2*) For emissions of any regulated air pollutant, excluding those listed in paragraph (a)(3)(iii)(B)(*1*) of this section, that continue for more than two hours in excess of permit requirements, the report must be made within 48 hours.

(*3*) For all other deviations from permit requirements, the report shall be contained in the report submitted in accordance with the timeframe given in paragraph (a)(3)(iii)(A).

(*4*) A permit may contain a more stringent reporting requirement than required by paragraphs (a)(3)(iii)(B)(*1*), (*2*), or (*3*).

If any of the above conditions are met, the source must notify the permitting authority by telephone or facsimile based on the timetable listed in paragraphs (a)(3)(iii)(B) (*1*) through (*4*) of this section. A written notice, certified consistent with § 71.5(d), must be submitted within 10 working days of the occurrence. All deviations reported under paragraph (a)(3)(iii)(A) of this section must also be identified in the 6 month report required under paragraph (a)(3)(iii)(A) of this section.

(C) For purposes of paragraph (a)(3)(iii)(B) of this section, deviation means any situation in which an emissions unit fails to meet a permit term or condition. A deviation is not always a violation. A deviation can be determined by observation or through review of data obtained from any testing, monitoring, or recordkeeping established in accordance with paragraphs (a)(3)(i) and (a)(3)(ii) of this section. For a situation lasting more than 24 hours which constitutes a deviation, each 24 hour period is considered a separate deviation. Included in the meaning of deviation are any of the following:

(*1*) A situation where emissions exceed an emission limitation or standard;

(*2*) A situation where process or emissions control device parameter values indicate that an emission limitation or standard has not been met;

(*3*) A situation in which observations or data collected demonstrates noncompliance with an emission limitation or standard or any work practice or operating condition required by the permit;

(*4*) A situation in which an exceedance or an excursion, as defined in part 64 of this chapter, occurs.

(4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under 40 CFR parts 72 through 78.

(i) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(ii) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(iii) Any such allowance shall be accounted for according to the procedures established in regulations 40 CFR parts 72 through 78.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(i) The permittee must comply with all conditions of the part 71 permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(ii) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iii) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(iv) The permit does not convey any property rights of any sort, or any exclusive privilege.

(v) The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the permitting authority copies of records required to be kept by the permit or, in the case of a program delegated pursuant to §71.10, for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality.

(7) A provision to ensure that a part 71 source pays fees to the Administrator consistent with the fee schedule approved pursuant to §71.9.

(8) *Emissions trading*. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Terms and conditions for reasonably anticipated AOSs identified by the source in its application as approved by the permitting authority. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the AOS under which it is operating;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions under each such AOS; and

(iii) Must ensure that the terms and conditions of each AOS meet all applicable requirements and the requirements of this part. The permitting authority shall not approve a proposed AOS into the part 71 permit until the source has obtained all authorizations required under any applicable requirement relevant to that AOS.

(10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(i) Shall include all terms required under paragraphs (a) and (c) of this section to determine compliance;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions that allow such increases and decreases in emissions; and

(iii) Must meet all applicable requirements and requirements of this part.

(11) *Permit expiration*. A provision to ensure that a part 71 permit expires upon the earlier occurrence of the following events:

(i) twelve years elapses from the date of issuance to a solid waste incineration unit combusting municipal waste subject to standards under section 112(e) of the Act; or

(ii) five years elapses from the date of issuance; or

(iii) the source is issued a part 70 permit.

(12) *Off Permit Changes*. A provision allowing changes that are not addressed or prohibited by the permit, other than those subject to the requirements of 40 CFR parts 72 through 78 or those that are modifications under any

provision of title I of the Act to be made without a permit revision, provided that the following requirements are met:

(i) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition;

(ii) Sources must provide contemporaneous written notice to the permitting authority (and EPA, in the case of a program delegated pursuant to § 71.10) of each such change, except for changes that qualify as insignificant under § 71.5(c)(11). Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change;

(iii) The change shall not qualify for the shield under § 71.6(f);

(iv) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(13) *Operational flexibility*. Provisions consistent with paragraphs (a)(3)(i) through (iii) of this section to allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions): Provided, that the facility provides the Administrator (in the case of a program delegated pursuant to § 71.10) and the permitting authority with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days.

(i) The permit shall allow the permitted source to make section 502(b)(10) changes without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions).

(A) For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(B) The permit shield described in § 71.6(f) shall not apply to any change made pursuant to this paragraph (a)(13)(i).

(ii) The permit may provide for the permitted source to trade increases and decreases in emissions in the permitted facility, where the applicable implementation plan provides for such emissions trades without requiring a permit revision and based on the 7-day notice prescribed in this paragraph (a)(13)(ii) of this section. This provision is available in those cases where the permit does not already provide for such emissions trading.

(A) Under this paragraph (a)(13)(ii), the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and that provide for the emissions trade.

(B) The permit shield described in § 71.6(f) shall not extend to any change made under this paragraph (a)(13)(ii). Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.

(iii) The permit shall require the permitting authority, if a permit applicant requests it, to issue permits that contain terms and conditions, including all terms required under § 71.6 (a)

and (c) to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The permitting authority shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

(A) Under this paragraph (a)(13)(iii), the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(B) The permit shield described in §71.6(f) may extend to terms and conditions that allow such increases and decreases in emissions.

(b) *Federally-enforceable requirements.* All terms and conditions in a part 71 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.

(c) *Compliance requirements.* All part 71 permits shall contain the following elements with respect to compliance:

(1) Consistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a part 71 permit shall contain a certification by a responsible official that meets the requirements of §71.5(d).

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority or an authorized representative to perform the following:

(i) Enter upon the permittee's premises where a part 71 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(3) A schedule of compliance consistent with §71.5(c)(8).

(4) Progress reports consistent with an applicable schedule of compliance and §71.5(c)(8) to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the permitting authority. Such progress reports shall contain the following:

(i) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(i) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the permitting authority) of submissions of compliance certifications;

(ii) In accordance with §71.6(a)(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(iii) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may

cross-reference the permit or previous reports, as applicable):

(A) The identification of each term or condition of the permit that is the basis of the certification;

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section;

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification; and

(D) Such other facts as the permitting authority may require to determine the compliance status of the source.

(iv) A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority.

(6) Such other provisions as the permitting authority may require.

(d) *General permits*. (1) The permitting authority may, after notice and opportunity for public participation provided under § 71.11, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other part 71 permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the permitting authority shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of paragraph (f) of this section, the source shall be subject to enforcement action for operation without a part 71 permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in 40 CFR parts 72 through 78.

(2) Part 71 sources that would qualify for a general permit must apply to the permitting authority for coverage under the terms of the general permit or must apply for a part 71 permit consistent with § 71.5. The permitting authority may, in the general permit, provide for applications which deviate from the requirements of § 71.5, provided that such applications meet the requirements of title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under § 71.11, the permitting authority may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

(e) *Temporary sources*. The permitting authority may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the permitting authority at least 10 days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions of this section.

(f) *Permit shield*. (1) Except as provided in this part, the permitting authority may expressly include in a part 71 permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(i) Such applicable requirements are included and are specifically identified in the permit; or

(ii) The permitting authority, in acting on the permit application or revision, determines in writing that other requirements specifically identified are

not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A part 71 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any part 71 permit shall alter or affect the following:

(i) The provisions of section 303 of the Act (emergency orders), including the authority of the Administrator under that section;

(ii) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) The applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

(iv) The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

(g) *Emergency provision*—(1) *Definition*. An ''emergency'' means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) *Effect of an emergency*. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (g)(3) of this section are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(ii) The permitted facility was at the time being properly operated;

(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(iv) The permittee submitted notice of the emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph (a)(3)(iii)(B) of this section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

[61 FR 34228, July 1, 1996, as amended at 62 FR 54947, Oct. 22, 1997; 66 FR 12876, Mar. 1, 2001; 66 FR 55885, Nov. 5, 2001; 68 FR 38523, June 27, 2003; 74 FR 51440, Oct. 6, 2009]

§71.7 Permit issuance, renewal, reopenings, and revisions.

(a) *Action on application*. (1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(i) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under §71.6(d);

(ii) Except for modifications qualifying for minor permit modification procedures under paragraphs (e) (1) and (2) of this section, the permitting authority has complied with the requirements for public participation under this section or §71.11, as applicable;

(iii) The permitting authority has complied with the requirements for notifying and responding to affected States under §71.8(a);

(iv) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this part; and

(v) In the case of a program delegated pursuant to §71.10, the Administrator

has received a copy of the proposed permit and any notices required under § 71.10(d) and has not objected to issuance of the permit under § 71.10(g) within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under § 71.4(i) or under 40 CFR part 72 or title V of the Act for the permitting of affected sources under the acid rain program, the permitting authority shall take final action on each permit application (including a request for permit modification or renewal) within 18 months after receiving a complete application.

(3) The permitting authority shall ensure that priority is given to taking action on applications for construction or modification under title I, parts C and D of the Act.

(4) The permitting authority shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. For modifications processed through minor permit modification procedures, such as those in paragraphs (e) (1) and (2) of this section, the permitting authority need not make a completeness determination.

(5) The permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to any person who requests it, and to EPA, in the case of a program delegated pursuant to § 71.10.

(6) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under title I of the Act.

(b) *Requirement for a permit.* Except as provided in the following sentence, § 71.6(a)(13), and paragraphs (e)(1)(v) and e(2)(v) of this section, no part 71 source may operate after the time that it is required to submit a timely and complete application under this part, except in compliance with a permit issued under this part. If a part 71 source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a part 71 permit is not a violation of this part until the permitting authority takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph (a)(4) of this section, and as required by § 71.5(c), the applicant fails to submit by the deadline specified in writing by the permitting authority any additional information identified as being needed to process the application.

(c) *Permit renewal and expiration.* (1) (i) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State review, and EPA review (in the case of a program delegated pursuant to § 71.10) that apply to initial permit issuance.

(ii) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with paragraph (b) of this section and § 71.5(a)(1)(iii).

(2) In the case of a program delegated pursuant to § 71.10, if the permitting authority fails to act in a timely way on permit renewal, EPA may invoke its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.

(3) If a timely and complete application for a permit renewal is submitted, consistent with § 71.5(a)(2), but the permitting authority has failed to issue or deny the renewal permit before the end of the term of the previous part 70 or 71 permit, then the permit shall not expire until the renewal permit has been issued or denied and any permit shield that may be granted pursuant to § 71.6(f) may extend beyond the original permit term until renewal; or all the terms and conditions of the permit including any permit shield that may be granted pursuant to § 71.6(f) shall remain in effect until the renewal permit has been issued or denied.

(d) *Administrative permit amendments.* (1) An ''administrative permit amendment'' is a permit revision that:

(i) Corrects typographical errors;

(ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(iii) Requires more frequent monitoring or reporting by the permittee;

(iv) Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority;

(v) Incorporates into the part 71 permit the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to the requirements of §§71.7 and 71.8 (and §71.10 in the case of a delegated program) that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in §71.6; or

(vi) Incorporates any other type of change which the Administrator has determined to be similar to those in paragraphs (d)(1)(i) through (iv) of this section.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by 40 CFR part 72.

(3) *Administrative permit amendment procedures*. An administrative permit amendment may be made by the permitting authority consistent with the following:

(i) The permitting authority shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(ii) The permitting authority shall submit a copy of the revised permit to the Administrator in the case of a program delegated pursuant to §71.10.

(iii) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The permitting authority may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in §71.6(f) for administrative permit amendments made pursuant to paragraph (d)(1)(v) of this section which meet the relevant requirements of §§71.6, 71.7, and 71.8 for significant permit modifications.

(e) *Permit modifications*. A permit modification is any revision to a part 71 permit that cannot be accomplished under the provisions for administrative permit amendments under paragraph (d) of this section. A permit modification for purposes of the acid rain portion of the permit shall be governed by 40 CFR part 72.

(1) *Minor permit modification procedures*. (i) Criteria. (A) Minor permit modification procedures may be used only for those permit modifications that:

(*1*) Do not violate any applicable requirement;

(*2*) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(*3*) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(*4*) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(*i*) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I; and

(*ii*) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act;

(*5*) Are not modifications under any provision of title I of the Act; and

(*6*) Are not required to be processed as a significant modification.

(B) Notwithstanding paragraphs (e)(1)(i)(A) and (e)(2)(i) of this section, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA.

(ii) *Application*. An application requesting the use of minor permit modification procedures shall meet the requirements of § 71.5(c) and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) The source's suggested draft permit;

(C) Certification by a responsible official, consistent with § 71.5(d), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(D) Completed forms for the permitting authority to use to notify affected States (and the Administrator in the case of a program delegated pursuant to § 71.10) as required under §§ 71.8 and 71.10(d).

(iii) *EPA and affected State notification*. Within 5 working days of receipt of a complete permit modification application, the permitting authority shall meet its obligation under § 71.8(a) to notify affected States (and its obligation under § 71.10(d) to notify the Administrator in the case of a program delegated pursuant to § 71.10) of the requested permit modification. In the case of a program delegated pursuant to § 71.10, the permitting authority promptly shall send any notice required under § 71.8(b) to the Administrator.

(iv) *Timetable for issuance*. In the case of a program delegated pursuant to § 71.10, the permitting authority may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification, whichever is first, although the permitting authority can approve the permit modification prior to that time. Within 90 days of the permitting authority's receipt of an application under minor permit modification procedures (or 15 days after the end of the Administrator's 45-day review period under § 71.10(g) in the case of a program delegated pursuant to § 71.10, whichever is later), the permitting authority shall:

(A) Issue the permit modification as proposed;

(B) Deny the permit modification application;

(C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(D) Revise the draft permit modification (and, in the case of a program delegated pursuant to § 71.10, transmit to the Administrator the new proposed permit modification as required by § 71.10(d)).

(v) *Source's ability to make change*. The source may make the change proposed in its minor permit modification application immediately after it files such application. After the source makes the change allowed by the preceding sentence, and until the permitting authority takes any of the actions specified in paragraphs (e)(1)(iv) (A) through (C) of this section, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(vi) *Permit shield*. The permit shield under § 71.6(f) may not extend to minor permit modifications.

(2) *Group processing of minor permit modifications*. Consistent with this paragraph, the permitting authority may modify the procedure outlined in

paragraph (e)(1) of this section to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(i) *Criteria*. Group processing of modifications may be used only for those permit modifications:

(A) That meet the criteria for minor permit modification procedures under paragraph (e)(1)(i)(A) of this section; and

(B) That collectively are below the threshold level of 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in §71.2, or 5 tpy, whichever is least.

(ii) *Application*. An application requesting the use of group processing procedures shall meet the requirements of §71.5(c) and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft permit.

(C) Certification by a responsible official, consistent with §71.5(d), that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(D) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under paragraph (e)(2)(i)(B) of this section.

(E) Certification, consistent with §71.5(d), that, in the case of a program delegated pursuant to §71.10, the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(F) Completed forms for the permitting authority to use to notify affected States as required under §71.8 (and the Administrator as required under §71.10(d) in the case of a program delegated pursuant to §71.10).

(iii) *EPA and affected State notification*. On a quarterly basis or within 5 business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under paragraph (e)(2)(i)(B) of this section, whichever is earlier, the permitting authority promptly shall meet its obligation under §71.8(a) to notify affected States (and its obligation under §71.10(d) to notify EPA in the case of a program delegated pursuant to §71.10) of the requested permit modification. The permitting authority shall send any notice required under §71.8(b) to the Administrator in the case of a program delegated pursuant to §71.10.

(iv) *Timetable for issuance*. The provisions of paragraph (e)(1)(iv) of this section shall apply to modifications eligible for group processing, except that the permitting authority shall take one of the actions specified in paragraphs (e)(1)(iv) (A) through (D) of this section within 180 days of receipt of the application (or, in the case of a program delegated pursuant to §71.10, 15 days after the end of the Administrator's 45-day review period under §71.10(g), whichever is later).

(v) *Source's ability to make change*. The provisions of paragraph (e)(1)(v) of this section shall apply to modifications eligible for group processing.

(vi) *Permit shield*. The provisions of paragraph (e)(1)(vi) of this section shall also apply to modifications eligible for group processing.

(3) *Significant modification procedures*—(i) *Criteria*. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this part that would render existing permit compliance terms and conditions irrelevant.

(ii) Significant permit modifications shall meet all requirements of this part, including those for applications, public participation, review by affected States, and review by EPA (in the case of a program delegated pursuant to

§ 71.10), as they apply to permit issuance and permit renewal. The permitting authority shall design and implement this review process to complete review on the majority of significant permit modifications within 9 months after receipt of a complete application.

(f) *Reopening for cause.* (1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(i) Additional applicable requirements under the Act become applicable to a major part 71 source with a remaining permit term of 3 or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to paragraph (c)(3) of this section.

(ii) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(iii) The permitting authority (or EPA, in the case of a program delegated pursuant to § 71.10) determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(iv) The permitting authority (or EPA, in the case of a program delegated pursuant to § 71.10) determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists, and shall be made as expeditiously as practicable.

(3) Reopenings under paragraph (f)(1) of this section shall not be initiated before a notice of such intent is provided to the part 71 source by the permitting authority at least 30 days in advance of the date that the permit is to be reopened, except that the permitting authority may provide a shorter time period in the case of an emergency.

(g) *Reopenings for cause by EPA for delegated programs.* (1) In the case of a program delegated pursuant to § 71.10, if the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to paragraph (f) of this section, the Administrator will notify the permitting authority and the permittee of such finding in writing.

(2) The permitting authority shall, within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend this 90-day period for an additional 90 days if he or she finds that a new or revised permit application is necessary or that the permitting authority must require the permittee to submit additional information.

(3) The Administrator will review the proposed determination from the permitting authority within 90 days of receipt.

(4) The permitting authority shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with the Administrator's objection.

(5) If the permitting authority fails to submit a proposed determination pursuant to paragraph (g)(2) of this section or fails to resolve any objection pursuant to paragraph (g)(4) of this section, the Administrator will terminate, modify, or revoke and reissue the permit after taking the following actions:

(i) Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in paragraphs (g) (1) through (4) of this section.

(ii) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

§71.8 Affected State review.

(a) *Notice of draft permits.* When a part 71 operating permits program becomes effective in a State or within Indian country, the permitting authority shall provide notice of each draft permit to any affected State, as defined in §71.2 on or before the time that the permitting authority provides this notice to the public pursuant to §71.7 or §71.11(d) except to the extent §71.7(e)(1) or (2) requires the timing of the notice to be different.

(b) *Notice of refusal to accept recommendations.* Prior to issuance of the final permit, the permitting authority shall notify any affected State in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the permitting authority's reasons for not accepting any such recommendation. The permitting authority is not required to accept recommendations that are not based on applicable requirements or the requirements of this part. In the case of a program delegated pursuant to §71.10, the permitting authority shall include such notice as part of the submittal of the proposed permit to the Administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under §71.7(e)(1) or (2)).

(c) *Waiver of notice requirements.* The Administrator may waive the requirements of paragraph (a) of this section for any category of sources (including any class, type, or size within such category) other than major sources by regulation for a category of sources nationwide.

(d) *Notice provided to Indian Tribes.* The permitting authority shall provide notice of each draft permit to any federally recognized Indian Tribe:

(1) Whose air quality may be affected by the permitting action and is in an area contiguous to the jurisdiction in which the part 71 permit is proposed; or

(2) Is within 50 miles of the permitted source.

[61 FR 34228, July 1, 1996, as amended at 64 FR 8263, Feb. 19, 1999]

§71.9 Permit fees.

(a) *Fee requirement.* The owners or operators of part 71 sources shall pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs, in accordance with the procedures described in this section.

(b) *Permit program costs.* These costs include, but are not limited to, the costs of the following activities as they relate to a part 71 program:

(1) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

(2) Processing permit reopenings;

(3) General administrative costs of the permit program, including transition planning, interagency coordination, contract management, training, informational services and outreach activities, assessing and collecting fees, the tracking of permit applications, compliance certifications, and related data entry;

(4) Implementing and enforcing the terms of any part 71 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(5) Emissions and ambient monitoring, modeling, analyses, demonstrations, preparation of inventories, and tracking emissions, provided these activities are needed in order to issue and implement part 71 permits; and

(6) Providing direct and indirect support to small business stationary sources in determining applicable requirements and in receiving permits under this part (to the extent that these services are not provided by a State Small Business Stationary Source Technical and Environmental Compliance Assistance Program).

(c) *Establishment of fee schedule.* (1) For part 71 programs that are administered by EPA, each part 71 source shall pay an annual fee in the amount of $32 per ton (as adjusted pursuant to the criteria set forth in paragraph (n)(1) of this section) times the total tons of the actual emissions of each regulated pollutant (for fee calculation) emitted

from the source, including fugitive emissions.

(2) For part 71 programs that are fully delegated pursuant to § 71.10:

(i) Where the EPA has not suspended its part 71 fee collection pursuant to paragraph (c)(2)(ii) of this section, the annual fee for each part 71 source shall be $24 per ton (as adjusted pursuant to the criteria set forth in paragraph (n)(1) of this section) times the total tons of the actual emissions of each regulated pollutant (for fee calculation) emitted from the source, including fugitive emissions.

(ii) Where the delegate State collects fees from part 71 sources under State law which are sufficient to fund the delegated part 71 program, the EPA may suspend its collection of part 71 fees. The specific terms and conditions regarding the suspension of fee collection will be addressed in the applicable delegation agreement pursuant to § 71.10.

(3) For part 71 programs that are administered by EPA with contractor assistance, the per ton fee shall vary depending on the extent of contractor involvement and the cost to EPA of contractor assistance. The EPA shall establish a per ton fee that is based on the contractor costs for the specific part 71 program that is being administered, using the following formula:

$$\text{Cost per ton}=(E\times 32)+[(1-E)\times \$C]$$

Where E represents EPA's proportion of total effort (expressed as a percentage of total effort) needed to administer the part 71 program, $1-E$ represents the contractor's effort, and C represents the contractor assistance cost on a per ton basis. C shall be computed by using the following formula:

$$C=[B+T+N] \text{ divided by } 12{,}300{,}000$$

Where B represents the base cost (contractor costs), where T represents travel costs, and where N represents nonpersonnel data management and tracking costs.

(4) For programs that are delegated in part, the fee shall be computed using the following formula:

$$\text{Cost per ton}=(E\times 32)+(D\times 24)+[(1-E-D)\times \$C]$$

Where E and D represent, respectively, the EPA and delegate agency proportions of total effort (expressed as a percentage of total effort) needed to administer the part 71 program, $1-E-D$ represents the contractor's effort, and C represents the contractor assistance cost on a per ton basis. C shall be computed using the formula for contractor assistance cost found in paragraph (c)(3) of this section and shall be zero if contractor assistance is not utilized.

(5) The following emissions shall be excluded from the calculation of fees under paragraph (c)(1) through (c)(4) of this section:

(i) The amount of a part 71 source's actual emissions of each regulated pollutant (for fee calculation) that the source emits in excess of four thousand (4,000) tpy;

(ii) A part 71 source's actual emissions of any regulated pollutant (for fee calculation) already included in the fee calculation; and

(iii) The insignificant quantities of actual emissions not required to be listed or calculated in a permit application pursuant to § 71.5(c)(11).

(6) ''Actual emissions'' means the actual rate of emissions in tpy of any regulated pollutant (for fee calculation) emitted from a part 71 source over the preceding calendar year. Actual emissions shall be calculated using each emissions unit's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year.

(7) Notwithstanding the provisions of paragraph (c) (1) through (4) of this section, if the Administrator determines that the fee structures provided in paragraphs (c)(1) through (4) of this section do not reflect the costs of administering a part 71 program, then the Administrator shall by rule set a fee which adequately reflects permit program costs for that program.

(d) *Prohibition on fees with respect to emissions from affected units.* Notwithstanding any other provision of this section, during the years 1995 through 1999 inclusive, no fee for purposes of title V shall be required to be paid with respect to emissions from any affected unit under section 404 of the Act.

(e) *Submission of initial fee calculation work sheets and fees.* (1) Each part 71 source shall complete and submit an initial fee calculation work sheet as provided in paragraphs (e)(2), (f), and (g) of this section and shall complete

and submit fee calculation work sheets thereafter as provided in paragraph (h) of this section. Calculations of actual or estimated emissions and calculation of the fees owed by a source shall be computed by the source on fee calculation work sheets provided by EPA. Fee payment of the full amount must accompany each initial fee calculation work sheet.

(2) The fee calculation work sheet shall require the source to submit a report of its actual emissions for the preceding calendar year and to compute fees owed based on those emissions. For sources that have been issued part 70 or part 71 permits, actual emissions shall be computed using compliance methods required by the most recent permit. If actual emissions cannot be determined using the compliance methods in the permit, the actual emissions should be determined using federally recognized procedures. If a source commenced operation during the preceding calendar year, the source shall estimate its actual emissions for the current calendar year. In such a case, fees for the source shall be based on the total emissions estimated.

(3) The initial fee calculation worksheet shall be certified by a responsible official consistent with §71.5(d).

(f) *Deadlines for submission.* (1) When EPA withdraws approval of a part 70 program and implements a part 71 program, part 71 sources shall submit initial fee calculation work sheets and fees in accordance with the following schedule:

(i) Sources having SIC codes between 0100 and 2499 inclusive shall complete and submit fee calculation work sheets and fees within 6 months of the effective date of the part 71 program;

(ii) Sources having SIC codes between 2500 and 2999 inclusive shall complete and submit fee calculation work sheets and fees within 7 months of the effective date of the part 71 program;

(iii) Sources having SIC codes between 3000 and 3999 inclusive shall complete and submit fee calculation work sheets and fees within 8 months of the effective date of the part 71 program;

(iv) Sources having SIC codes higher than 3999 shall complete and submit fee calculation work sheets and fees within 9 months of the effective date of the part 71 program.

(2) Sources that are required under either paragraph (f)(1) or (g) of this section to submit fee calculation work sheets and fees between January 1 and March 31 may estimate their emissions for the preceding calendar year in lieu of submitting actual emissions data. If the source's initial fee calculation work sheet was based on estimated emissions for the source's preceding calendar year, then the source shall reconcile the fees owed when it submits its annual emissions report, as provided in paragraph (h)(3) of this section.

(3) When EPA implements a part 71 program that does not replace an approved part 70 program, part 71 sources shall submit initial fee calculation work sheets and initial fees when submitting their permit applications in accordance with the requirements of §71.5(a)(1).

(4) Notwithstanding the above, sources that become subject to the part 71 program after the program's effective date shall submit an initial fee calculation work sheet and initial fees when submitting their permit applications in accordance with the requirements of §71.5(a)(1).

(g) *Fees for sources that are issued part 71 permits following an EPA objection pursuant to §71.4(e).* Fees for such sources shall be determined as provided in paragraph (c)(1) of this section. However, initial fee calculation work sheets for such sources and full payment of the initial fee shall be due three months after the date on which the source's part 71 permit is issued.

(h) *Annual emissions reports*—(1) *Deadlines for submission.* Each part 71 source shall submit an annual report of its actual emissions for the preceding calendar year, a fee calculation work sheet (based on the report), and full payment of the annual fee each year on the anniversary date of its initial fee calculation work sheet, except that sources that were required to submit initial fee calculation work sheets between January 1 and March 31 inclusive shall submit subsequent annual emissions reports and fee calculation work sheets by April 1.

(2) Annual emissions reports and fee calculation worksheets shall be certified by a responsible official consistent with § 71.5(d).

(3) For sources that have been issued part 70 or part 71 permits, actual emissions shall be computed using methods required by the most current permit for determining compliance.

(4) If the source's initial fee calculation work sheet was based on estimated emissions for the source's current or preceding calendar year, then the source shall reconcile the fees owed when it submits its annual emissions report. The source shall compare the estimated emissions from the initial work sheet and the actual emissions from the report and shall enter such information on the fee calculation work sheet that accompanies the annual report. The source shall recompute the initial fee accordingly and shall remit any underpayment with the report and work sheet. The EPA shall credit any overpayment to the source's account.

(i) *Recordkeeping requirements.* Part 71 sources shall retain, in accordance with the provisions of § 71.6(a)(3)(ii), all work sheets and other materials used to determine fee payments. Records shall be retained for 5 years following the year in which the emissions data is submitted.

(j) *Fee assessment errors.* (1) If EPA determines than a source has completed the fee calculation work sheet incorrectly, the permitting authority shall bill the applicant for the corrected fee or credit overpayments to the source's account.

(2) Each source notified by the permitting authority of additional amounts due shall remit full payment within 30 days of receipt of an invoice from the permitting authority.

(3) An owner or operator of a part 71 source who thinks that the assessed fee is in error shall provide a written explanation of the alleged error to the permitting authority along with the assessed fee. The permitting authority shall, within 90 days of receipt of the correspondence, review the data to determine whether the assessed fee was in error. If an error was made, the overpayment shall be credited to the account of the part 71 source.

(k) *Remittance procedure.* (1) Each remittance under this section shall be in United States currency and shall be paid by money order, bank draft, certified check, corporate check, or electronic funds transfer payable to the order of the U.S. Environmental Protection Agency.

(2) Each remittance shall be sent to the Environmental Protection Agency to the address designated on the fee calculation work sheet or the invoice.

(l) *Penalty and interest assessment.* (1) The permitting authority shall assess interest on payments which are received later than the date due. The interest rate shall be the sum of the Federal short-term rate determined by the Secretary of the Treasury in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986, plus 3 percentage points.

(2) The permitting authority shall assess a penalty charge of 50 percent of the fee amount if the fee is not paid within 30 days of the payment due date.

(3) If a source underpays the fee owed, except as provided in paragraph (l)(4) of this section, the permitting authority shall assess a penalty charge of 50 percent on the amount by which the fee was underpaid. Interest shall also be assessed, computed under paragraph (l)(1) of this section, on the amount by which the fee was underpaid.

(4) If a source bases its initial fee calculation on estimated emissions from the source's current or preceding calendar year, as provided under paragraph (h)(4) of this section, and underpays its fee based on an underestimation of these emissions, the permitting authority shall assess a penalty charge of 50 percent on certain of these underpayments, according to the following provisions:

(i) The penalty charge shall be assessed whenever a source's underpayment exceeds the underpayment penalty cutoff established in paragraph (l)(4)(iii) of this section. The penalty amount shall be 50 percent of the portion of the underpayment which is in excess of the underpayment penalty cutoff.

(ii) Where a source is subject to a penalty for underpayment pursuant to

paragraph (l)(4)(i) of this section, interest as computed under paragraph (l)(1) of this section shall be assessed on that portion of the underpayment which is in excess of the underpayment penalty cutoff established in paragraph (l)(4)(iii) of this section.

(iii) The underpayment penalty cutoff for a source shall be the sum of the following:

(A) 50 percent of the portion of the initial fee amount which was calculated from estimated emissions of HAP listed pursuant to 112(b) of the Act, and

(B) 20 percent of the portion of initial fee amount which was calculated from estimated emissions of the remainder of the regulated air pollutants (for fee calculation).

(m) *Failure to remit fees.* The permitting authority shall not issue a final permit or permit revision until all fees, interest and penalties assessed against a source under this section are paid. The initial application of a source shall not be found complete unless the source has paid all fees owed.

(n) *Adjustments of fee schedules.* (1) The fee schedules provided in paragraphs (c) (1) through (4) of this section shall remain in effect until December 31, 1996. Thereafter, the fee schedules shall be changed annually by the percentage, if any, of any annual increase in the Consumer Price Index.

(2) Part 71 permit program costs and fees will be reviewed by the Administrator at least every 2 years, and changes will be made to the fee schedule as necessary to reflect permit program costs.

(3) When changes to a fee schedule are made based on periodic reviews by the Administrator, the changes will be published in the FEDERAL REGISTER.

(o) *Use of revenue.* All fees, penalties, and interest collected under this part shall be deposited in a special fund in the U.S. Treasury, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the activities required by this part.

[61 FR 34228, July 1, 1996, as amended at 64 FR 8263, Feb. 19, 1999; 67 FR 38330, June 3, 2002]

§71.10 Delegation of part 71 program.

(a) *Delegation of part 71 program.* The Administrator may delegate, in whole or in part, with or without signature authority, the authority to administer a part 71 operating permits program to a State, eligible Tribe, local, or other non-State agency in accordance with the provisions of this section. In order to be delegated authority to administer a part 71 program, the delegate agency must submit a legal opinion from the Attorney General from the State, or the attorney for the State, local, interstate, or eligible Tribal agency that has independent legal counsel, stating that the laws of the State, locality, interstate compact or Indian Tribe provide adequate authority to carry out all aspects of the delegated program. A Delegation of Authority Agreement (Agreement) shall set forth the terms and conditions of the delegation, shall specify the provisions that the delegate agency shall be authorized to implement, and shall be entered into by the Administrator and the delegate agency. The Agreement shall become effective upon the date that both the Administrator and the delegate agency have signed the Agreement. Once delegation becomes effective, the delegate agency will be responsible, to the extent specified in the Agreement, for administering the part 71 program for the area subject to the Agreement. Delegate agencies that choose to receive electronic documents as part of their delegated program must satisfy the requirements of 40 CFR part 3—(Electronic reporting).

(b) *Publication of Notice of Delegation of Authority Agreement.* The Administrator shall publish a notice in the FEDERAL REGISTER informing the public of any delegation of a portion of the part 71 program to a State, eligible Tribe, or local agency.

(c) *Revision or revocation of Delegation of Authority Agreement.* An Agreement may be modified, amended, or revoked, in part or in whole, by the Administrator after consultation with the delegate agency.

(d) *Transmission of information to the Administrator.* (1) When a part 71 program has been delegated in accordance with the provisions of this section, the delegate agency shall provide to the

Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final part 71 permit. The applicant may be required by the delegate agency to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the delegate agency may submit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(2) The Administrator may waive the requirements of paragraph (d)(1) of this section for any category of sources (including any class, type, or size within such category) other than major sources by regulation for a category of sources nationwide.

(e) *Retention of records.* The records for each draft, proposed, and final permit, and application for permit renewal or modification shall be kept for a period of 5 years by the delegate agency. The delegate agency shall also submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the delegate agency is implementing, administering, and enforcing the delegated part 71 program in compliance with the requirements of the Act and of this part.

(f) *Prohibition of default issuance.* (1) For the purposes of Federal law and title V of the Act, when a part 71 program has been delegated in accordance with the provisions of this section, no part 71 permit (including a permit renewal or modification) will be issued until affected States have had an opportunity to review the draft permit as required pursuant to § 71.8(a) and EPA has had an opportunity to review the proposed permit.

(2) To receive delegation of signature authority, the legal opinion submitted by the delegate agency pursuant to paragraph (a) of this section shall certify that no applicable provision of State, local or Tribal law requires that a part 71 permit or renewal be issued after a certain time if the delegate agency has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit), unless EPA has waived such review for EPA and affected States.

(g) *EPA objection.* (1) The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part. No permit for which an application must be transmitted to the Administrator under paragraph (d)(1) of this section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information. When a part 71 program has been delegated in accordance with the provisions of this section, failure of the delegate agency to do any of the following shall constitute grounds for an objection by the Administrator:

(i) Comply with paragraph (d) of this section;

(ii) Submit any information necessary to review adequately the proposed permit;

(iii) Process the permit under the procedures required by §§ 71.7 and 71.11; or

(iv) Comply with the requirements of § 71.8(a).

(2) Any EPA objection under paragraph (g)(1) of this section shall include a statement of the Administrator's reason(s) for objection and a description of the terms and conditions that the permit must include to respond to the objection. The Administrator will provide the permit applicant a copy of the objection.

(3) If the delegate agency fails, within 90 days after the date of an objection under paragraph (g)(1) of this section, to revise and submit to the Administrator the proposed permit in response to the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this part.

(h) *Public petitions.* In the case of a delegated program, any interested person may petition the Administrator to

reopen a permit for cause as provided in §71.11(n).

(i) *Appeal of permits.* When a part 71 program has been delegated with signature authority in accordance with the provisions of this section, any person or affected State that submitted recommendations or comments on the draft permit, or that participated in the public hearing process may petition the Environmental Appeals Board in accordance with §71.11(l)(1).

(j) *Nondelegable conditions.* (1) The Administrator's authority to object to the issuance of a part 71 permit cannot be delegated to an agency not within EPA.

(2) The Administrator's authority to act upon petitions submitted pursuant to paragraph (h) of this section cannot be delegated to an agency not within EPA.

[61 FR 34228, July 1, 1996, as amended at 70 FR 59887, Oct. 13, 2005]

§71.11 Administrative record, public participation, and administrative review.

The provisions of this section shall apply to all permit proceedings. Notwithstanding the preceding sentence, paragraphs (a) through (h) and paragraph (j) of this section shall not apply to permit revisions qualifying as minor permit modifications or administrative amendments, except that public notice of the granting of appeals of such actions under paragraph (l)(3) of this section shall be provided pursuant to paragraph (d)(1)(i)(E) of this section, and except that affected States shall be provided notice of minor permit modifications under §71.8 as pursuant to paragraph (d)(3)(i)(B) of this section.

(a) *Draft permits.* (1) The permitting authority shall promptly provide notice to the applicant of whether the application is complete pursuant to §71.7(a)(3).

(2) Once an application for an initial permit, permit revision, or permit renewal is complete, the permitting authority shall decide whether to prepare a draft permit or to deny the application.

(3) If the permitting authority initially decides to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit and follows the same procedures as any draft permit prepared under this section. If the permitting authority's final decision is that the initial decision to deny the permit application was incorrect, it shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (a)(4) of this section.

(4) If the permitting authority decides to prepare a draft permit, it shall prepare a draft permit that contains the permit conditions required under §71.6.

(5) All draft permits prepared under this section shall be publicly noticed and made available for public comment.

(b) *Statement of basis.* The permitting authority shall prepare a statement of basis for every draft permit subject to this section. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the initial decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

(c) *Administrative record for draft permits.* (1) The provisions of a draft permit shall be based on the administrative record defined in this section.

(2) For preparing a draft permit, the administrative record shall consist of:

(i) The application and any supporting data furnished by the applicant;

(ii) The draft permit or notice of intent to deny the application or to terminate the permit;

(iii) The statement of basis;

(iv) All documents cited in the statement of basis; and

(v) Other documents contained in the supporting file for the draft permit.

(3) Material readily available at the permitting authority or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this section need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis.

(d) *Public notice of permit actions and public comment period*—(1) *Scope.* (i) The

permitting authority shall give public notice that the following actions have occurred:

(A) A permit application has been initially denied under paragraph (a) of this section;

(B) A draft permit has been prepared under paragraph (a) of this section;

(C) A hearing has been scheduled under paragraph (f) of this section; and

(D) A public comment period has been reopened under paragraph (h) of this section;

(E) An appeal has been granted under paragraph (l)(3) of this section.

(ii) No public notice is required when a request for permit revision, revocation and reissuance, or termination has been denied under paragraph (a)(2) of this section. Written notice of that denial shall be given to the requester and to the permittee.

(iii) Public notices may describe more than one permit or permit action.

(2) *Timing*. (i) Public notice of the preparation of a draft permit, (including a notice of intent to deny a permit application), shall allow at least 30 days for public comment.

(ii) Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(iii) The permitting authority shall provide such notice and opportunity for participation to affected States on or before the time that the permitting authority provides this notice to the public.

(3) *Methods*. Public notice of activities described in paragraph (d)(1)(i) of this section shall be given by the following methods:

(i) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under paragraph (d) of this section may waive his or her rights to receive notice for any permit):

(A) The applicant;

(B) Affected States;

(C) Air pollution control agencies of affected States, Tribal and local air pollution control agencies which have jurisdiction over the area in which the source is located, the chief executives of the city and county where the source is located, any comprehensive regional land use planning agency and any State or Federal Land Manager whose lands may be affected by emissions from the source;

(D) The local emergency planning committee having jurisdiction over the area where the source is located, and State agencies having authority under State law with respect to the operation of such source;

(E) Persons on a mailing list developed by:

(*1*) Including those who request in writing to be on the list;

(*2*) Soliciting persons for ''area lists'' from participants in past permit proceedings in that area; and

(*3*) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and, where deemed appropriate by the permitting authority, in such publications as regional and State funded newsletters, environmental bulletins, or State law journals. The permitting authority may update the mailing list from time to time by requesting written indication of continued interest from those listed. The permitting authority may delete from the list the name of any person who fails to respond to such a request.

(ii) By publication of a notice in a daily or weekly newspaper of general circulation within the area affected by the source.

(iii) By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) *Contents*—(i) *All public notices*. All public notices issued under this subpart shall contain the following minimum information:

(A) The name and address of the permitting authority processing the permit;

(B) The name and address of the permittee or permit applicant and, if different, of the facility regulated by the permit, except in the case of draft general permits;

(C) The activity or activities involved in the permit action;

(D) The emissions change involved in any permit revision;

(E) The name, address, and telephone number of a person whom interested persons may contact for instructions on how to obtain additional information, such as a copy of the draft permit, the statement of basis, the application, relevant supporting materials, and other materials available to the permitting authority that are relevant to the permitting decision.

(F) A brief description of the comment procedures required by paragraph (e) of this section, a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

(G) The location of the administrative record, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant are available as part of the administrative record; and

(H) Any additional information considered necessary or proper.

(ii) *Public notices for hearings.* Public notice of a hearing may be combined with other notices required under paragraph (d)(1) of this section. Any public notice of a hearing under paragraph (f) of this section shall contain the following information:

(A) The information described in paragraph (d)(4)(i) of this section;

(B) Reference to the date of previous public notices relating to the permit;

(C) The date, time, and place of the hearing; and

(D) A brief description of the nature and purpose of the hearing, including the applicable rules and the comment procedures.

(5) All persons identified in paragraphs (d)(3)(i) (A), (B), (C), (D), and (E) of this section shall be mailed a copy of the public hearing notice described in paragraph (d)(4)(ii) of this section.

(e) *Public comments and requests for public hearings.* During the public comment period provided under paragraph (a) of this section, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised at the hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph (j) of this section. The permitting authority will keep a record of the commenters and of the issues raised during the public participation process, and such records shall be available to the public.

(f) *Public hearings.* (1) The permitting authority shall hold a hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit.

(2) The permitting authority may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(3) Public notice of the hearing shall be given as specified in paragraph (d) of this section.

(4) Whenever a public hearing is held, the permitting authority shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(5) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under paragraph (d) of this section shall be automatically extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(6) A tape recording or written transcript of the hearing shall be made available to the public.

(g) *Obligation to raise issues and provide information during the public comment period.* All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the permitting authority's initial decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably ascertainable arguments supporting their position by the close of the public comment period (including any public hearing). Any supporting materials that are submitted shall be included in full and may not be

incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. In the case of a program delegated pursuant to § 71.10, if requested by the Administrator, the permitting authority shall make supporting materials not already included in the administrative record available to EPA. The permitting authority may direct commenters to provide such materials directly to EPA. A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Additional time shall be granted to the extent that a commenter who requests additional time demonstrates the need for such time.

(h) *Reopening of the public comment period.* (1) The permitting authority may order the public comment period reopened if the procedures of paragraph (h) of this section could expedite the decision making process. When the public comment period is reopened under paragraph (h) of this section, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the permitting authority's initial decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date not less than 30 days after public notice under paragraph (h)(2) of this section, set by the permitting authority. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than 20 days after the date set for filing of the material, set by the permitting authority.

(2) Public notice of any comment period under this paragraph (h) shall identify the issues to which the requirements of paragraphs (h)(1) through (4) of this section shall apply.

(3) On its own motion or on the request of any person, the permitting authority may direct that the requirements of paragraph (h)(1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (h)(1) of this section will substantially expedite the decision making process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 30 days may be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they may be granted to the extent the permitting authority finds it necessary.

(5) If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the permitting authority may take one or more of the following actions:

(i) Prepare a new draft permit, appropriately modified;

(ii) Prepare a revised statement of basis, and reopen the comment period; or

(iii) Reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted.

(6) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused the reopening. The public notice shall define the scope of the reopening.

(7) Public notice of any of the above actions shall be issued under paragraph (d) of this section.

(i) *Issuance and effective date of permit.* (1) After the close of the public comment period on a draft permit, the permitting authority shall issue a final permit decision. The permitting authority shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, revise, revoke and reissue, renew, or terminate a permit.

(2) A final permit decision shall become effective 30 days after the service of notice of the decision, unless:

(i) A later effective date is specified in the decision;

(ii) Review is requested under paragraph (l) of this section (in which case the specific terms and conditions of the permit which are the subject of the request for review shall be stayed); or

(iii) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

(j) *Response to comments.* (1) At the time that any final permit decision is issued, the permitting authority shall issue a response to comments. This response shall:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(2) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in paragraph (k) of this section. If new points are raised or new material supplied during the public comment period, the permitting authority may document its response to those matters by adding new materials to the administrative record.

(3) The response to comments shall be available to the public.

(4) The permitting authority will notify in writing any affected State of any refusal to accept recommendations for the permit that the State submitted during the public or affected State review period.

(k) *Administrative record for final permits.* (1) The permitting authority shall base final permit decisions on the administrative record defined in paragraph (k)(2) of this section.

(2) The administrative record for any final permit shall consist of:

(i) All comments received during any public comment period, including any extension or reopening;

(ii) The tape or transcript of any hearing(s) held;

(iii) Any written material submitted at such a hearing;

(iv) The response to comments and any new materials placed in the record;

(v) Other documents contained in the supporting file for the permit;

(vi) The final permit;

(vii) The application and any supporting data furnished by the applicant;

(viii) The draft permit or notice of intent to deny the application or to terminate the permit;

(ix) The statement of basis for the draft permit;

(x) All documents cited in the statement of basis;

(xi) Other documents contained in the supporting file for the draft permit.

(3) The additional documents required under paragraph (k)(2) of this section should be added to the record as soon as possible after their receipt or publication by the permitting authority. The record shall be complete on the date the final permit is issued.

(4) Material readily available at the permitting authority, or published materials which are generally available and which are included in the administrative record under the standards of paragraph (j) of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or in the response to comments.

(l) *Appeal of permits.* (1) Within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision or other new grounds that were not reasonably foreseeable during the public comment period on the draft permit. The 30-day period within which a person may request review under this section begins with the service of notice of the permitting authority's action unless a later date is specified in that notice, except that the 30-day period

within which a person may request review of a minor permit modification or administrative amendment begins upon the effective date of such action to revise the permit. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues raised were raised during the public comment period (including any public hearing) to the extent required by these regulations unless the petitioner demonstrates that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period, and, when appropriate, a showing that the condition in question is based on:

(i) A finding of fact or conclusion of law which is clearly erroneous; or

(ii) An exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.

(2) The Board may also decide on its initiative to review any condition of any permit issued under this part. The Board must act under paragraph (l) of this section within 30 days of the service date of notice of the permitting authority's action.

(3) Within a reasonable time following the filing of the petition for review, the Board shall issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. Public notice of any grant of review by the Board under paragraph (l)(1) or (2) of this section shall be given as provided in paragraph (d) of this section. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent only to the permit applicant and to the person(s) requesting review.

(4) A petition to the Board under paragraph (l)(1) of this section is, under 42 U.S.C. 307(b), a prerequisite to seeking judicial review of the final agency action.

(5) For purposes of judicial review, final agency action occurs when a final permit is issued or denied by the permitting authority and agency review procedures are exhausted. A final permit decision shall be issued by the permitting authority:

(i) When the Board issues notice to the parties that review has been denied;

(ii) When the Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(6) Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Board. Motions for reconsideration directed to the Administrator, rather than to the Board, will not be considered, except in cases that the Board has referred to the Administrator and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless specifically so ordered by the Board.

(7) Notice of any final agency action regarding a Federal operating permit shall promptly be published in the FEDERAL REGISTER.

(m) *Computation of time.* (1) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(2) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event, except as otherwise provided.

(3) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(4) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

(n) *Public petitions to the Permitting Authority*. (1) Any interested person (including the permittee) may petition the permitting authority to reopen a permit for cause, and the permitting authority may commence a permit reopening on its own initiative. However, the permitting authority shall not revise, revoke and reissue, or terminate a permit except for the reasons specified in §71.7(f)(1) or §71.6(a)(6)(i). All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the permitting authority decides the request is not justified, it shall send the requester a brief written response giving a reason for the decision. Denials of requests for revision, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the permitting authority may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts. The Board may direct the permitting authority to begin revision, revocation and reissuance, or termination proceedings under paragraph (n)(3) of this section. The appeal shall be considered denied if the Board takes no action within 60 days after receiving it. This informal appeal is, under 42 U.S.C. 307, a prerequisite to seeking judicial review of EPA action in denying a request for revision, revocation and reissuance, or termination.

(3) If the permitting authority decides the request is justified and that cause exists to revise, revoke and reissue or terminate a permit, it shall initiate proceedings to reopen the permit pursuant to §71.7(f) or §71.7(g).

[61 FR 34228, July 1, 1996, as amended at 64 FR 8263, Feb. 19, 1999]

§71.12 Prohibited acts.

Violations of any applicable requirement; any permit term or condition; any fee or filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or order issued by the permitting authority pursuant to this part are violations of the Act and are subject to full Federal enforcement authorities available under the Act.

§71.13 Enforceable commitments for further actions addressing Greenhouse Gases (GHGs)

(a) *Definitions*.

(1) *Greenhouse Gases (GHGs)* means the air pollutant as 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.

(2) All other terms used in this section shall have the meaning given in §71.2.

(b) *Further action to regulate GHGs under the title V program*.

(1) *Near term action on GHGs*. The Administrator shall solicit comment, under section 307(b) of the Act, on promulgating lower GHGs thresholds for applicability under §71.2. Such action shall be finalized by July 1, 2012 and become effective July 1, 2013.

(2) *Further study and action on GHGs*.

(i) No later than April 30, 2015, the Administrator shall complete a study projecting the administrative burdens that remain with respect to stationary sources for which GHGs do not constitute a pollutant subject to regulation. Such study shall account, among other things, for permitting authorities ability to secure resources, hire and train staff; experiences associated with GHG permitting for new types of sources and technologies; and, the success of streamlining measures developed by EPA (and adopted by the states) for reducing the permitting burden associated with such stationary sources.

(ii) Based on the results of the study described in paragraph (b)(2)(i) of this section, the Administrator shall propose a rule addressing the permitting obligations of such stationary sources under §71.2. The Administrator shall take final action on such a rule no later than April 30, 2016.

(iii) Before completing the rule described in paragraph (b)(2)(ii) of this section, the Administrator shall take no action to make the pollutant GHGs subject to regulation at stationary sources that emit or have the potential to emit less than 50,000 tpy CO_2e, (as determined using the methodology described in §71.2.)

[75 FR 31608, June 3, 2010]

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(l).

§ 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

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,

''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

for Early Reductions) or of this subpart that become applicable to the early reductions source after the date it filed a complete application but prior to release of a draft permit.

(e) *Required information.* The following elements are required information for permit applications under this subpart:

(1) Identifying information, including company name, telephone number, and address (or plant name, telephone number, and address if different from the company name); owner's name, telephone number, and agent; and telephone number(s) and name(s) of plant site manager/contact;

(2) All information required in § 63.74 of this chapter, including that needed to describe the early reductions source, its base year and post-reduction emissions, and supporting basis for the emissions;

(3) A statement of the proposed alternative emission limitation for hazardous air pollutants from the early reductions source on an annual basis, reflecting the emission reductions required to qualify the early reductions source for a compliance extension under subpart D of part 63 of this chapter;

(4) Additional emission limiting requirements, such as work practice standards or limitations on operation, which are necessary to assure proper operation of installed control equipment and compliance with the annual alternative emission limitation for the early reductions source;

(5) Information necessary to define alternative operating scenarios for the early reductions source or permit terms and conditions for trading hazardous air pollutant increases and decreases under § 71.25(a)(10), including any associated permit terms and conditions needed to assure compliance with the alternative emission limitation under the alternative operating scenarios or pollutant trading; and

(6) Statements related to compliance meeting the following criteria:

(i) A statement of methods proposed to determine compliance by the early reductions source with the proposed alternative emission limitation, including a description of monitoring devices and activities, emission calculation procedures, recordkeeping, and reporting requirements and test methods; and

(ii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually.

(f) Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

§ 71.25 Permit content.

(a) *Standard permit requirements.* Each permit issued under this subpart shall include the following elements:

(1) *Alternative emission limitation.* An annual alternative emission limitation for hazardous air pollutants from the early reductions source reflecting the 90 percent reduction (95 percent for hazardous air pollutants which are particulate matter) which qualified the early reductions source for a compliance extension under subpart D of part 63 of this chapter.

(2) *Additional limitations.* Additional emission limiting requirements, such as limitations on operation, work practice standards, and any other emission limiting requirements for the early reductions source necessary to assure compliance with the alternative emission limitation.

(3) *Monitoring requirements.* Each permit shall contain the following monitoring requirements:

(i) All emissions monitoring and analysis procedures or test methods necessary to assure compliance with the emission limitations established under paragraphs (a)(1) and (a)(2) of this section. Such monitoring or testing shall be consistent with the demonstration made pursuant to § 63.74 of this chapter and any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act;

(ii) Periodic monitoring or testing sufficient to yield reliable data from

the relevant time period that are representative of the early reductions source's compliance with the permit. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the demonstration made pursuant to § 63.74 of this chapter. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(ii); and

(iii) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(4) *Recordkeeping requirements*. The permit shall contain recordkeeping requirements including the following, as applicable:

(i) Records of required monitoring information that include the following:

(A) The date, place as defined in the permit, and time of sampling or measurements;

(B) The date(s) analyses were performed;

(C) The company or entity that performed the analyses;

(D) The analytical techniques or methods used;

(E) The results of such analyses; and

(F) The operating conditions as existing at the time of sampling or measurement;

(ii) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(5) *Reporting requirements*. The permit shall require the following:

(i) Submittal of reports of all required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports; and

(ii) Prompt reporting of any deviations from permit requirements, including those attributable to upset conditions as defined in the permit. Such reports shall include the probable cause of such deviations and any corrective actions or preventive measures taken. The Administrator will define ''prompt'' in the permit for each situation and will do so in relation to the degree and type of deviation likely to occur.

(6) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(7) Provisions stating the following:

(i) The permittee must comply with all conditions of part 71 permit issued under this subpart. A violation of an alternative emission limitation, as well as any other requirement established in a permit issued under this subpart, is enforceable pursuant to the authority of section 113 of the Act, notwithstanding any demonstration of continuing 90 percent (95 percent in the case of hazardous air pollutants which are particulates) emission reduction over the entire early reductions source. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action or for permit termination, revocation and reissuance, or modification;

(ii) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit;

(iii) The permit may be revised, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition;

(iv) The permit does not convey any property rights of any sort, or any exclusive privilege; and

(v) The permittee shall furnish to the Administrator, within a reasonable time, any information that the Administrator may request in writing to determine whether cause exists for revising the permit, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Administrator copies of

records required to be kept by the permitee.

(8) Terms and conditions for reasonably anticipated operating scenarios identified by the early reductions source in its application as approved by the Administrator. Such terms and conditions:

(i) Shall require the early reductions source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating. Provided that an emitting unit is monitored in a way that provides contemporaneous identification that a change to a particular alternate scenario has occurred, no notice to the Administrator is required. Otherwise, when such a change is made, the permittee at the beginning of the following week shall place in regular mail to the Administrator notice that a change to a particular alternate operating scenario has occurred; and

(ii) Must ensure that the terms and conditions of each such alternative scenario meet the alternative emission limitation and the requirements of this subpart.

(9) Terms and conditions, if the permit applicant requests them, for the trading of hazardous air pollutant emissions increases and decreases among emissions units within the early reductions source without permit revision or case-by-case approval of each emissions trade, provided that:

(i) Such terms and conditions include all terms required under paragraphs (a) and (c) of this section to determine compliance;

(ii) The changes in hazardous air pollutant emissions do not exceed the emissions allowable under the permit;

(iii) The changes in hazardous air pollutant emissions are not modifications under any provision of title I of the Act;

(iv) The Administrator determines that the emissions are quantifiable and that replicable procedures or other practical means exist to enforce the emission trades; and

(v) The early reductions source owner or operator provides the Administrator written notification at least 7 days in advance of the proposed changes and includes in the notification a description of the change in emissions that will occur, when the change will occur, and how the increases and decreases in emissions will comply with the alternative emission limitation and other terms and conditions of the permit.

(b) *Federally enforceable requirements.* All terms and conditions in a permit issued under this subpart are enforceable by the Administrator and citizens under the Act.

(c) *Compliance requirements.* All permits issued under this subpart shall contain the following elements with respect to compliance:

(1) Consistent with paragraphs (a)(3), (a)(4), and (a)(5) of this section, testing, monitoring, recordkeeping, and reporting requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required to be submitted by a permit shall contain a certification by a responsible official that meets the requirements of §71.24(f).

(2) Inspection and entry provisions that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Administrator or an authorized representative to perform the following:

(i) Enter upon the permittee's premises where the early reductions source is located or emissions-related activity is conducted, or where required records are kept;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) Sample or monitor at reasonable times substances or parameters for the purpose of determining compliance with the permit.

(3) Requirements for compliance certification with terms and conditions contained in the permit, including the alternative emission limitation. Permits shall include each of the following:

(i) The frequency (not less than annually) of submissions of compliance certifications;

(ii) Consistent with paragraph (a)(3) of this section, a means for monitoring the compliance of the early reductions source with its alternative emission limitation;

(iii) A requirement that the compliance certification include the following:

(A) The identification of each term or condition of the permit that is the basis of the certification;

(B) The compliance status;

(C) Whether compliance was continuous or intermittent;

(D) The method(s) used for determining the compliance status of the early reductions source, currently and over the reporting period consistent with paragraph (a)(3) of this section; and

(E) Such other facts as the Administrator may require to determine the compliance status of the early reductions source;

(iv) A requirement that all compliance certifications be submitted to the Administrator or the Administrator's designated agent; and

(v) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act.

(4) Such other provisions as the Administrator may require.

(d) *Permit shield.* (1) The Administrator will expressly include in a permit issued pursuant to this subpart a provision stating that compliance with the conditions of the permit shall be deemed compliance with part 63, subpart D, of this chapter (the Early Reductions Rule), as of the date of permit issuance.

(2) A permit shield may be extended to all permit terms and conditions for alternate operating scenarios pursuant to paragraph (a)(9) of this section or that allow increases and decreases in hazardous air pollutant emissions pursuant to paragraph (a)(10) of this section.

(3) Nothing in this paragraph (d) or in any permit issued pursuant to this subpart shall alter or affect the following:

(i) The provisions of sections 112(r) and 303 of the Act (emergency orders);

(ii) The liability of an owner or operator of an early reductions source for any violation of applicable requirements prior to or at the time of permit issuance; or

(iii) The ability of the Administrator to obtain information from an early reductions source pursuant to section 114 of the Act.

(e) *Emergency provision*—(1) *Definition.* An ''emergency'' means any situation arising from sudden and reasonably unforeseeable events beyond the control of the early reductions source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the early reductions source to exceed an emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) *Effect of an emergency.* An emergency constitutes an affirmative defense to an action brought for noncompliance with such an emission limitation if the conditions of paragraph (e)(3) of this section are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(ii) The permitted facility was at the time being properly operated;

(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission limitation, or other requirements in the permit; and

(iv) The permittee submitted notice of the emergency to the Administrator within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph (a)(5)(ii) of this section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

§71.26 Permit issuance, reopenings, and revisions.

(a) *Action on application.* (1) A permit or permit revision may be issued only if all of the following conditions have been met:

(i) The Administrator has received a complete application for a permit or permit revision;

(ii) The requirements for public participation under §71.27 have been followed; and

(iii) The conditions of the proposed permit or permit revision meet all the requirements of §71.25 and provide for compliance with an alternative emission limitation reflecting the emissions reduction which qualified the early reductions source for a compliance extension under part 63, subpart D, of this chapter.

(2) The Administrator will take final action on each permit application (including a request for permit revision) within 12 months after receiving a complete application, except that final action may be delayed where an applicant fails to provide additional information in a timely manner as requested by the Administrator under §71.24(c).

(3) The Administrator will promptly provide notice to the applicant of whether the application is complete. Unless the Administrator requests additional information or otherwise notifies the applicant of incompleteness within 45 days of receipt of an application, the application shall be deemed complete. For revisions that qualify as administrative amendments and are processed through the procedures of paragraph (c) of this section, a completeness determination need not be made.

(4) If a source submits a timely and complete application for permit issuance, the source's failure to have a title V permit for purposes of any requirements under section 112 pertaining to the early reductions source is not a violation of this part until the Administrator takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph (a)(3) of this section, and as required by §71.24(d), the applicant fails to submit by the deadline specified in writing by the Administrator any additional information identified as being needed to process the application.

(b) *Permit renewal and expiration.* (1) Permits issued under this subpart shall not be renewed. Permit renewal for expiring permits issued under this subpart shall be accomplished according to the requirements of title V of the Act for comprehensive permits for the facility containing the early reductions source.

(2) Except as specified in paragraph (b)(3) of this section, permit expiration terminates the early reductions source's right to operate.

(3) If, consistent with the requirements of title V of the Act, a timely and complete application for a comprehensive title V permit for the facility containing the early reductions source has been submitted but the permitting authority has failed to issue or deny the comprehensive permit prior to expiration of a permit issued under this subpart, then the existing permit for the early reductions source shall not expire until the comprehensive title V permit for the facility has been issued or denied.

(c) *Administrative permit amendments.* (1) An ''administrative permit amendment'' is a permit revision that:

(i) Corrects typographical errors;

(ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(iii) Requires more frequent monitoring or reporting by the permittee;

(iv) Allows for a change in ownership or operational control of an early reductions source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority; or

(v) Incorporates any other type of change which the Administrator has determined to be ministerial in nature and, therefore, similar to those in paragraphs (c)(1)(i) through (c)(1)(iv) of this section.

(2) *Administrative permit amendment procedures.* Administrative permit amendments may be made to a permit issued under this subpart using the following procedures:

(i) The source shall submit to the Administrator an application containing a proposed addendum to the source's permit. The application shall demonstrate how the proposed change meets one of the criteria for administrative amendments set forth in paragraphs (c)(1)(i) through (c)(1)(iv) of this section, and include certification by the responsible official consistent with § 71.24(f) that the change is eligible for administrative amendment procedures. The addendum shall:

(A) Identify the terms of the part 71, subpart B permit the source proposes to change;

(B) Propose new permit terms consistent with the provisions of this subpart applicable to the change;

(C) Designate the addendum as having been processed under the procedures of this paragraph (c); and

(D) Specify that the addendum will be effective 60 days from the date of the Administrator's receipt, unless the Administrator disapproves the change within such period.

(ii) The Administrator will allow the source to implement the requested change immediately upon making all required submittals, including the proposed addendum.

(iii) The proposed addendum will become effective 60 days after the Administrator receives the submittal, provided the Administrator has not disapproved the request in writing before the end of the 60-day period. The Administrator shall record the change by attaching a copy of the addendum to the part 71, subpart B permit.

(iv) If the Administrator disapproves the change, he or she shall notify the source of the reasons for the disapproval in a timely manner. Upon receiving such notice, the source shall comply with the terms of the permit that it had proposed to change, and thereafter the proposed addendum shall not take effect.

(v) The process in this paragraph (c) may also be used for changes initiated by the Administrator that meet the criteria under paragraphs (c)(1) (i), (ii), and (iv) of this section. For such changes, the Administrator will notify the source of the proposed change and its effective date, and shall attach a copy of the change to the existing permit. On the effective date of the proposed change, the source shall comply with the provisions of the proposed change.

(vi) The permit shield under § 71.25(d) may not extend to administrative amendments processed under this paragraph (c)(2).

(d) *Permit revision procedures*—(1) *Criteria.* Permit revision procedures shall be used for applications requesting permit revisions that do not qualify as administrative amendments. Nothing in this paragraph (d) shall be construed to preclude the permittee from making changes consistent with this subpart that would render existing permit compliance terms and conditions irrelevant.

(2) Permit revisions shall meet all requirements of this subpart, including those for applications, public participation, and review by affected States, as they apply to permit issuance. The Administrator will complete review on permit revisions within 9 months after receipt of a complete application.

(e) *Reopening for cause.* (1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened. A permit shall be reopened and revised under any of the following circumstances:

(i) The Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emission limits or other terms or conditions of the permit.

(ii) The Administrator determines that the permit must be revised to assure compliance with the alternative emission limitation.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those

parts of the permit for which cause to reopen exists.

(3) Reopenings under paragraph (e)(1) of this section shall not be initiated before a notice of such intent is provided to the early reductions source by the Administrator. Such notice will be provided at least 30 days in advance of the date that the permit is to be reopened, except that the Administrator may provide a shorter time period in the case of an emergency.

(f) *EPA review under State programs for issuing specialty permits.* (1) If the Administrator approves a State program for the implementation of this subpart, the State program shall require that the Administrator receive a copy of each permit application (including any application for permit revision) each proposed permit, and each final permit issued pursuant to this subpart. The State program may require that the applicant provide a copy of any permit application directly to the Administrator.

(2) The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with requirements under this subpart or part 63 of this chapter. If the Administrator objects in writing within 45 days of receipt of a proposed permit and all necessary supporting documentation, the State shall not issue the permit.

(3) Any EPA objection to a proposed permit will include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The Administrator will provide the permit applicant a copy of the objection.

(4) Failure of the State to do any of the following also shall constitute grounds for an objection:

(i) Comply with paragraph (f)(1) of this section;

(ii) Submit any information necessary to review adequately the proposed permit; or

(iii) Process the permit under procedures approved to meet paragraph (f) of this section.

(5) If the State fails, within 90 days after the date of an objection under paragraph (f)(2) of this section, to revise and submit a proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of this subpart.

(6) *Public petitions to the Administrator.* Within 60 days after expiration of the Administrator's 45-day review period, any person may petition the Administrator in writing to make an objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for and consistent with § 71.27, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the permitting authority shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an objection. If the permitting authority has issued a permit prior to receipt of an EPA objection under this paragraph, the Administrator will revise, terminate, or revoke such permit, and shall do so consistent with the procedures in 40 CFR 70.7(g)(4) or (g)(5)(i) except in unusual circumstances, and the permitting authority may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

§ 71.27 Public participation and appeal.

All permit proceedings, including preparation of draft permits, initial permit issuance, permit revisions, and granted appeals, shall provide adequate procedures for public participation, including notice, opportunity for comment, a hearing if requested, and administrative appeal. Specific procedures shall include the following:

(a) *Revision, revocation and reissuance, or termination of permits.* (1) Permits may be revised, revoked and reissued, or terminated either at the request of

any interested person (including the permittee) or upon the Administrator's initiative. However, permits may only be revised, revoked and reissued, or terminated for the reasons specified in §§ 71.25(a)(7) and 71.26(e). All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the Administrator decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for revision, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Administrator may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts. The Board may direct the Administrator to begin revision, revocation and reissuance, or termination proceedings under paragraph (a)(3) of this section. The appeal shall be considered denied if the Board takes no action within 60 days after receiving it. This informal appeal is, under 42 U.S.C. 307, a prerequisite to seeking judicial review of EPA action in denying a request for revision, revocation and reissuance, or termination.

(3)(i) Except in the case of administrative amendment of a permit, if the Administrator tentatively decides to revise or revoke and reissue a permit under §§ 71.25(a)(7) and 71.26(e), he or she shall prepare a draft permit under paragraph (b) of this section incorporating the proposed changes. The Administrator may request additional information and, in the case of a revised permit, shall require the submission of an updated application. In the case of revoked and reissued permits, the Administrator shall require the submission of a new application.

(ii) In a permit revision under this subsection, only those conditions to be revised shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unrevised permit. When a permit is revoked and reissued under this subsection, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(4) If the Administrator tentatively decides to terminate a permit under §§ 71.25(a)(7) and 71.26(e), he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under paragraph (b) of this section. A notice of intent to terminate shall not be issued if the Administrator and the permittee agree to termination in the course of transferring permit responsibility to an approved State under § 71.21(e).

(5) Any request by the permittee for revision to an existing permit shall be treated as a permit application and shall be processed in accordance with all requirements of § 71.24.

(b) *Draft permits.* (1) Once an application is complete, the Administrator shall tentatively decide whether to prepare a draft permit or to deny the application.

(2) If the Administrator tentatively decides to deny the permit application, he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this subsection. If the Administrator's final decision is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (b)(4) of this section.

(3) If the Administrator decides to prepare a draft permit, he or she shall prepare a draft permit that contains the permit conditions under § 71.25.

(4) All draft permits prepared under this subsection shall be publicly noticed and made available for public comment. The Administrator shall give notice of opportunity for a public hearing, issue a final decision and respond to comments. For all early reductions permits, an appeal may be taken under paragraph (l) of this section.

(c) *Statement of basis.* The Administrator shall prepare a statement of basis for every draft permit. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them

or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

(d) *Public notice of permit actions and public comment period*—(1) *Scope*. (i) The Administrator shall give public notice that the following actions have occurred:

(A) A permit application has been tentatively denied under paragraph (b)(2) of this section;

(B) A draft permit has been prepared under paragraph (b)(3) of this section;

(C) A hearing has been scheduled under paragraph (f) of this section;

(D) An appeal has been granted under paragraph (l)(3) of this section.

(ii) No public notice is required in the case of administrative permit amendments, or when a request for permit revision, revocation and reissuance, or termination has been denied under paragraph (a)(2) of this section. Written notice of that denial shall be given to the requester and to the permittee.

(iii) Public notices may describe more than one permit or permit action.

(2) *Timing*. (i) Public notice of the preparation of a draft permit or permit revision (including a notice of intent to deny a permit or permit revision application) shall allow at least 30 days for public comment.

(ii) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit or permit revision and the two notices may be combined.)

(iii) The Administrator shall provide such notice and opportunity for participation to Affected States on or before the time that the Administrator provides this notice to the public.

(3) *Methods*. Public notice of activities described in paragraph (d)(1)(i) of this section shall be given by the following methods:

(i) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph (d) may waive his or her rights to receive notice for any permit):

(A) The applicant;

(B) Any other agency which the Administrator knows has issued or is required to issue any other permit under the Clean Air Act for the same facility or activity;

(C) Affected States and Indian Tribes;

(D) Affected State and local air pollution control agencies, the chief executives of the city and county where the early reductions source is located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the regulated activity;

(E) Persons on a mailing list developed by:

(*1*) Including those who request in writing to be on the list;

(*2*) Soliciting persons for ''area lists'' from participants in past permit proceedings in that area; and

(*3*) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals. (The Administrator may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Administrator may delete from the list the name of any person who fails to respond to such a request.);

(F) Any unit of local government with authority for regulating air pollution and having jurisdiction over the area where the early reductions source is located and to each State agency having any authority for regulating air pollution under State law with respect to the operation of such source.

(ii) By publication of a notice in a daily or weekly newspaper of general circulation within the area affected by the early reductions source.

(iii) By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) *Contents*—(i) *All public notices*. All public notices issued under this subpart shall contain the following minimum information:

(A) The name and address of the Administrator or the Administrator's designated agent processing the permit;

(B) The name and address of the permittee or permit applicant and, if different, of the facility regulated by the permit;

(C) The activity or activities involved in the permit action;

(D) The emissions change involved in any permit revision;

(E) The name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials, and all other materials available to the Administrator that are relevant to the permit decision;

(F) A brief description of the comment procedures required by paragraphs (e) and (f) of this section and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and

(G) Any additional information considered necessary or proper.

(ii) *Public notices for hearings.* In addition to the general public notice described in paragraph (d)(4)(i) of this section, the public notice of a hearing under paragraph (f) of this section shall contain the following information:

(A) Reference to the date of previous public notices relating to the permit;

(B) Date, time, and place of the hearing; and

(C) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(5) In addition to the general public notice described in paragraph (d)(4)(i) of this section, all persons identified in paragraphs (d)(3)(i)(A), (B), and (C) of this section shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any), and the draft permit (if any).

(e) *Public comments and requests for public hearings.* During the public comment period provided under paragraph (a) of this section, any interested person may submit written comments on the draft permit or permit revision and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised at the hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph (j) of this section. The Administrator will keep a record of the commenters and of the issues raised during the public participation process, and such records shall be available to the public.

(f) *Public hearings.* (1)(i) The Administrator shall hold a hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit or permit revision.

(ii) The Administrator may also hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(iii) Public notice of the hearing shall be given as specified in paragraph (d) of this section.

(2) Whenever a public hearing is held, the Administrator shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(3) Any person may submit oral or written statements and data concerning the draft permit or permit revision. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under paragraph (d) of this section shall be automatically extended to the close of any public hearing under this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.

(g) *Obligation to raise issues and provide information during the public comment period.* All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Administrator's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably

ascertainable issues and submit all reasonably ascertainable arguments supporting their position by the close of the public comment period (including any public hearing). Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting materials not already included in the administrative record available to EPA as directed by the Administrator. (A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this paragraph (g). Additional time shall be granted to the extent that a commenter who requests additional time demonstrates the need for such time.)

(h) *Reopening of the public comment period.* (1)(i) The Administrator may order the public comment period reopened if the procedures of this paragraph (h) could expedite the decisionmaking process. When the public comment period is reopened under this paragraph (h), all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Administrator's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date, not less than 60 days after public notice under paragraph (h)(1)(ii) of this section, set by the Administrator. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than 20 days after the date set for filing of the material, set by the Administrator.

(ii) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of paragraph (h)(1)(i) of this section shall apply.

(iii) On his or her own motion or on the request of any person, the Administrator may direct that the requirements of paragraph (h)(1)(i) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (h)(1)(i) of this section will substantially expedite the decisionmaking process. The notice of the draft permit shall state whenever this has been done.

(iv) A comment period of longer than 60 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this subsection. Commenters may request longer comment periods and they shall be granted to the extent they appear necessary.

(2) If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Administrator may take one or more of the following actions:

(i) Prepare a new draft permit, appropriately modified;

(ii) Prepare a revised statement of basis, a fact sheet or revised fact sheet, and reopen the comment period; or

(iii) Reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted.

(3) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice shall define the scope of the reopening.

(4) Public notice of any of the above actions shall be issued under paragraph (d) of this section.

(i) *Issuance and effective date of permit.* (1) After the close of the public comment period on a draft permit, the Administrator shall issue a final permit decision. The Administrator shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit. For the purposes of this paragraph (i), a final permit decision means a final decision to issue, deny, revise, revoke and reissue, or terminate a permit.

(2) A final permit decision shall become effective 30 days after the service of notice of the decision unless:

(i) A later effective date is specified in the decision; or

(ii) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

(j) *Response to comments.* (1) At the time that any final permit decision is issued, the Administrator shall issue a response to comments. This response shall:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(2) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in paragraph (k) of this section. If new points are raised or new material supplied during the public comment period, EPA may document its response to those matters by adding new materials to the administrative record.

(3) The response to comments shall be available to the public.

(4) The Administrator will notify in writing any Affected State of any refusal to accept recommendations for the permit that the State submitted during the public or Affected State review period.

(k) *Administrative record for final permit.* (1) The Administrator shall base final permit decisions on the administrative record defined in this paragraph (k).

(2) The administrative record for any final permit shall consist of:

(i) All comments received during the public comment period, including any extension or reopening;

(ii) The tape or transcript of any hearing(s) held;

(iii) Any written material submitted at such a hearing;

(iv) The response to comments required by paragraph (j) of this section and any new materials placed in the record under paragraph (j) of this section;

(v) Other documents contained in the supporting file for the permit;

(vi) The final permit;

(vii) The application and any supporting data furnished by the applicant;

(viii) The draft permit or notice of intent to deny the application or to terminate the permit;

(ix) The statement of basis for the draft permit;

(x) All documents cited in the statement of basis; and

(xi) Other documents contained in the supporting file for the draft permit.

(3) The additional documents required under paragraph (k)(2) of this section should be added to the record as soon as possible after their receipt or publication by EPA. The record shall be complete on the date the final permit is issued.

(4) This section applies to all final permits.

(5) Material readily available at the issuing Regional Office, or published materials which are generally available and which are included in the administrative record under the standards of paragraph (j) of this section (''response to comments''), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments.

(l) *Appeal of permits.* (1) Within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The 30-day period within which a person may request review under this subsection begins with the service of notice of the Administrator's action unless a later date is specified in that notice. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues raised were raised during the public comment period (including

any public hearing) to the extent required by these regulations unless the petitioner demonstrates that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period, and, when appropriate, a showing that the condition in question is based on:

(i) A finding of fact or conclusion of law which is clearly erroneous; or

(ii) An exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.

(2) The Board may also decide on its initiative to review any condition of any permit issued under this subpart. The Board must act under this paragraph within 30 days of the service date of notice of the Administrator's action.

(3) Within a reasonable time following the filing of the petition for review, the Board shall issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. Public notice of any grant of review by the Board under paragraph (l) (1) or (2) of this section shall be given as provided in paragraph (d) of this section. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent only to applicant and to the person(s) requesting review.

(4) A petition to the Board under paragraph (l)(1) of this section is, under 42 U.S.C. 307(b), a prerequisite to the seeking of judicial review of the final agency action.

(5) For purposes of judicial review, final agency action occurs when a final permit is issued or denied by EPA and agency review procedures are exhausted. A final permit decision shall be issued by the Administrator:

(i) When the Board issues notice to the parties that review has been denied;

(ii) When the Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(6) Neither the filing of a petition for review of any condition of the permit or permit decision nor the granting of an appeal by the Environmental Appeals Board shall stay the effect of any contested permit or permit condition.

(m) *Computation of time.* (1) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(2) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event, except as otherwise provided.

(3) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(4) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

FINDING AIDS

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Title 40 was established at 36 FR 12213, June 29, 1971. For the period before January 1, 2001, see the ''List of CFR Sections Affected, 1964–1972, 1964–1972, 1973–1985, and 1986–2000'' published in 10 separate volumes.

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69 Authority citation revised 5134
69.51 Revised 5134
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70.4 (d)(2) revised 27010
70.6 (c)(5)(iii)(C) revised 12876, 55884
70 Appendix amended 21, 15639, 16140, 38946, 40903, 42441, 45943, 48808, 49544, 49839, 49841, 50325, 50329, 50575, 51317, 51320, 51585, 52544, 52876, 54446, 54955, 55115, 57000, 59537, 62946, 62949, 62951, 62954, 62960, 62967, 62969, 62972, 63168, 63170, 63175, 63180, 63184, 63188, 63192, 63331, 63510
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71.6 (c)(5)(iii)(C) revised 12876, 55885

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71.6 (c)(1) suspended; eff. 9–17–02 through 11–18–02; interim 58536
71.9 (p) removed 38330

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68.155 (c) removed; (d) through (g) redesignated as (c) through (f) 18831
68.160 (b)(5) and (6) revised; (b)(14) through (18) redesignated as (b)(15) through (19); new (b)(14) and (20) added 18831
68.190 (a), (b)(1) and (c) revised 18832
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70.3 (a) introductory text and (b)(4) introductory text revised; (b)(3) removed 75346
70 Appendix A amended 16141, 16430, 22603, 22606, 75403
71.3 (b)(3) removed 75346
71.10 (a) amended 59887

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65.6 (b)(1) introductory text amended; (b)(2) and (c)(3) revised 20471
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65.156 (d)(3)(i) and (ii) revised 20472
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