

Environmental Protection Agency

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publish in the FEDERAL REGISTER a notice permitting the use of the alternative means for purposes of compliance with that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section shall be published only after public notice and an opportunity for a hearing.

(c) Any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information demonstrating that the alternative achieves equivalent emission reductions.

§§ 63.778–63.779 [Reserved]

APPENDIX TO SUBPART HH OF PART 63—TABLES

TABLE 1 TO SUBPART HH OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS FOR SUBPART HH

| CAS Number ^a | Chemical name |
|-------------------------|--|
| 75070 | Acetaldehyde |
| 71432 | Benzene (includes benzene in gasoline) |
| 75150 | Carbon disulfide |
| 463581 | Carbonyl sulfide |
| 100414 | Ethyl benzene |
| 107211 | Ethylene glycol |
| 50000 | Formaldehyde |
| 110543 | n-Hexane |
| 91203 | Naphthalene |
| 108883 | Toluene |
| 540841 | 2,2,4-Trimethylpentane |
| 1330207 | Xylenes (isomers and mixture) |
| 95476 | o-Xylene |
| 108383 | m-Xylene |
| 106423 | p-Xylene |

^aCAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.

TABLE 2 TO SUBPART HH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH

| General provisions reference | Applicable to subpart HH | Explanation |
|-----------------------------------|--------------------------|---|
| § 63.1(a)(1) | Yes. | |
| § 63.1(a)(2) | Yes. | |
| § 63.1(a)(3) | Yes. | |
| § 63.1(a)(4) | Yes. | |
| § 63.1(a)(5) | No | Section reserved. |
| § 63.1(a)(6) | Yes. | |
| § 63.1(a)(7) through (a)(9) | No | Section reserved. |
| § 63.1(a)(10) | Yes. | |
| § 63.1(a)(11) | Yes. | |
| § 63.1(a)(12) | Yes. | |
| § 63.1(b)(1) | No | Subpart HH specifies applicability. |
| § 63.1(b)(2) | No | Section reserved. |
| § 63.1(b)(3) | Yes. | |
| § 63.1(c)(1) | No | Subpart HH specifies applicability. |
| § 63.1(c)(2) | Yes | Subpart HH exempts area sources from the requirement to obtain a Title V permit unless otherwise required by law as specified in § 63.760(h). |
| § 63.1(c)(3) and (c)(4) | No | Section reserved. |
| § 63.1(c)(5) | Yes. | |
| § 63.1(d) | No | Section reserved. |
| § 63.1(e) | Yes. | |
| § 63.2 | Yes | Except definition of major source is unique for this source category and there are additional definitions in subpart HH. |
| § 63.3(a) through (c) | Yes. | |
| § 63.4(a)(1) through (a)(2) | Yes. | |
| § 63.4(a)(3) through (a)(5) | No | Section reserved. |
| § 63.4(b) | Yes. | |
| § 63.4(c) | Yes. | |
| § 63.5(a)(1) | Yes. | |
| § 63.5(a)(2) | Yes. | |
| § 63.5(b)(1) | Yes. | |
| § 63.5(b)(2) | No | Section reserved. |
| § 63.5(b)(3) | Yes. | |
| § 63.5(b)(4) | Yes. | |
| § 63.5(b)(5) | No | Section Reserved. |
| § 63.5(b)(6) | Yes. | |
| § 63.5(c) | No | Section reserved. |
| § 63.5(d)(1) | Yes. | |
| § 63.5(d)(2) | Yes. | |

TABLE 2 TO SUBPART HH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

| General provisions reference | Applicable to subpart HH | Explanation |
|------------------------------|--------------------------|---|
| § 63.5(d)(3) | Yes. | |
| § 63.5(d)(4) | Yes. | |
| § 63.5(e) | Yes. | |
| § 63.5(f)(1) | Yes. | |
| § 63.5(f)(2) | Yes. | |
| § 63.6(a) | Yes. | |
| § 63.6(b)(1) | Yes. | |
| § 63.6(b)(2) | Yes. | |
| § 63.6(b)(3) | Yes. | |
| § 63.6(b)(4) | Yes. | |
| § 63.6(b)(5) | Yes. | |
| § 63.6(b)(6) | No | Section reserved. |
| § 63.6(b)(7) | Yes. | |
| § 63.6(c)(1) | Yes. | |
| § 63.6(c)(2) | Yes. | |
| § 63.6(c)(3) through (c)(4) | No | Section reserved. |
| § 63.6(c)(5) | Yes. | |
| § 63.6(d) | No | Section reserved. |
| § 63.6(e)(1)(i) | No | See § 63.764(j) for general duty requirement. |
| § 63.6(e)(1)(ii) | No. | |
| § 63.6(e)(1)(iii) | Yes. | |
| § 63.6(e)(2) | No | Section reserved. |
| § 63.6(e)(3) | No. | |
| § 63.6(f)(1) | No. | |
| § 63.6(f)(2) | Yes. | |
| § 63.6(f)(3) | Yes. | |
| § 63.6(g) | Yes. | |
| § 63.6(h)(1) | No. | |
| § 63.6(h)(2) through (h)(9) | Yes. | |
| § 63.6(i)(1) through (i)(14) | Yes. | |
| § 63.6(j)(15) | No | Section reserved. |
| § 63.6(i)(16) | Yes. | |
| § 63.6(j) | Yes. | |
| § 63.7(a)(1) | Yes. | |
| § 63.7(a)(2) | Yes | But the performance test results must be submitted within 180 days after the compliance date. |
| § 63.7(a)(3) | Yes. | |
| § 63.7(a)(4) | Yes. | |
| § 63.7(c) | Yes. | |
| § 63.7(d) | Yes. | |
| § 63.7(e)(1) | No. | |
| § 63.7(e)(2) | Yes. | |
| § 63.7(e)(3) | Yes. | |
| § 63.7(e)(4) | Yes. | |
| § 63.7(f) | Yes. | |
| § 63.7(g) | Yes. | |
| § 63.7(h) | Yes. | |
| § 63.8(a)(1) | Yes. | |
| § 63.8(a)(2) | Yes. | |
| § 63.8(a)(3) | No | Section reserved. |
| § 63.8(a)(4) | Yes. | |
| § 63.8(b)(1) | Yes. | |
| § 63.8(b)(2) | Yes. | |
| § 63.8(b)(3) | Yes. | |
| § 63.8(c)(1) | No. | |
| § 63.8(c)(1)(i) | No. | |
| § 63.8(c)(1)(ii) | Yes. | |
| § 63.8(c)(1)(iii) | No. | |
| § 63.8(c)(2) | Yes. | |
| § 63.8(c)(3) | Yes. | |
| § 63.8(c)(4) | Yes. | |
| § 63.8(c)(4)(i) | No | Subpart HH does not require continuous opacity monitors. |
| § 63.8(c)(4)(ii) | Yes. | |
| § 63.8(c)(5) through (c)(8) | Yes. | |
| § 63.8(d)(1) | Yes. | |
| § 63.8(d)(2) | Yes. | |
| § 63.8(d)(3) | Yes | Except for last sentence, which refers to an SSM plan. SSM plans are not required. |
| § 63.8(e) | Yes | Subpart HH does not specifically require continuous emissions monitor performance evaluation, however, the Administrator can request that one be conducted. |

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TABLE 2 TO SUBPART HH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

| General provisions reference | Applicable to subpart HH | Explanation |
|---|--------------------------|--|
| § 63.8(f)(1) through (f)(5) | Yes. | |
| § 63.8(f)(6) | Yes. | |
| § 63.8(g) | No | Subpart HH specifies continuous monitoring system data reduction requirements. |
| § 63.9(a) | Yes. | |
| § 63.9(b)(1) | Yes. | |
| § 63.9(b)(2) | Yes | Existing sources are given 1 year (rather than 120 days) to submit this notification. Major and area sources that meet § 63.764(e) do not have to submit initial notifications. |
| § 63.9(b)(3) | No | Section reserved. |
| § 63.9(b)(4) | Yes. | |
| § 63.9(b)(5) | Yes. | |
| § 63.9(c) | Yes. | |
| § 63.9(d) | Yes. | |
| § 63.9(e) | Yes. | |
| § 63.9(f) | Yes. | |
| § 63.9(g) | Yes. | |
| § 63.9(h)(1) through (h)(3) | Yes | Area sources located outside UA plus offset and UC boundaries are not required to submit notifications of compliance status. |
| § 63.9(h)(4) | No | Section reserved. |
| § 63.9(h)(5) through (h)(6) | Yes. | |
| § 63.9(i) | Yes. | |
| § 63.9(j) | Yes. | |
| § 63.10(a) | Yes. | |
| § 63.10(b)(1) | Yes | § 63.774(b)(1) requires sources to maintain the most recent 12 months of data on-site and allows offsite storage for the remaining 4 years of data. |
| § 63.10(b)(2) | Yes. | |
| § 63.10(b)(2)(i) | No. | |
| § 63.10(b)(2)(ii) | No | See § 63.774(g) for recordkeeping of (1) occurrence and duration and (2) actions taken during malfunctions. |
| § 63.10(b)(2)(iii) | Yes. | |
| § 63.10(b)(2)(iv) through (b)(2)(v) | No. | |
| § 63.10(b)(2)(vi) through (b)(2)(xiv) | Yes. | |
| § 63.10(b)(3) | Yes | § 63.774(b)(1) requires sources to maintain the most recent 12 months of data on-site and allows offsite storage for the remaining 4 years of data. |
| § 63.10(c)(1) | Yes. | |
| § 63.10(c)(2) through (c)(4) | No | Sections reserved. |
| § 63.10(c)(5) through (c)(8) | Yes. | |
| § 63.10(c)(9) | No | Section reserved. |
| § 63.10(c)(10) through (11) | No | See § 63.774(g) for recordkeeping of malfunctions. |
| § 63.10(c)(12) through (14) | Yes. | |
| § 63.10(c)(15) | No. | |
| § 63.10(d)(1) | Yes. | |
| § 63.10(d)(2) | Yes | Area sources located outside UA plus offset and UC boundaries do not have to submit performance test reports. |
| § 63.10(d)(3) | Yes. | |
| § 63.10(d)(4) | Yes. | |
| § 63.10(d)(5) | No | See § 63.775(b)(6) or (c)(6) for reporting of malfunctions. |
| § 63.10(e)(1) | Yes | Area sources located outside UA plus offset and UC boundaries are not required to submit reports. |
| § 63.10(e)(2) | Yes | Area sources located outside UA plus offset and UC boundaries are not required to submit reports. |
| § 63.10(e)(3)(i) | Yes | Subpart HH requires major sources to submit Periodic Reports semi-annually. Area sources are required to submit Periodic Reports annually. Area sources located outside UA plus offset and UC boundaries are not required to submit reports. |
| § 63.10(e)(3)(i)(A) | Yes. | |
| § 63.10(e)(3)(i)(B) | Yes. | |
| § 63.10(e)(3)(i)(C) | No. | |
| § 63.10(e)(3)(i)(D) | Yes | Section reserved. |
| § 63.10(e)(3)(ii) through (viii) | Yes. | |
| § 63.10(e)(4) | Yes. | |
| § 63.10(f) | Yes. | |
| § 63.11(a) and (b) | Yes. | |
| § 63.11(c), (d), and (e) | Yes. | |
| § 63.12(a) through (c) | Yes. | |
| § 63.13(a) through (c) | Yes. | |

TABLE 2 TO SUBPART HH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

| General provisions reference | Applicable to subpart HH | Explanation |
|------------------------------|--------------------------|-------------|
| § 63.14(a) through (q) | Yes. | |
| § 63.15(a) and (b) | Yes. | |
| § 63.16 | Yes. | |

[64 FR 32628, June 17, 1999, as amended at 66 FR 34554, June 29, 2001; 71 FR 20457, Apr. 20, 2006; 72 FR 40, Jan. 3, 2007; 73 FR 78214, Dec. 22, 2008; 77 FR 49581, Aug. 16, 2012]

Subpart II—National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)

SOURCE: 60 FR 64336, Dec. 15, 1995, unless otherwise noted.

§ 63.780 Relationship of subpart II to subpart A of this part.

Table 1 of this subpart specifies the provisions of subpart A of this part that apply to owners and operators of sources subject to the provisions of this subpart.

§ 63.781 Applicability.

(a) The provisions of this subpart apply to shipbuilding and ship repair operations at any facility that is a major source.

(b) The provisions of this subpart do not apply to coatings used in volumes of less than 200 liters (52.8 gallons) per year, provided the total volume of coating exempt under this paragraph does not exceed 1,000 liters per year (264 gallons per year) at any facility. Coatings exempt under this paragraph shall be clearly labeled as “low-usage exempt,” and the volume of each such coating applied shall be maintained in the facility’s records.

(c) The provisions of this subpart do not apply to coatings applied with hand-held, nonrefillable, aerosol containers or to unsaturated polyester resin (i.e., fiberglass lay-up) coatings. Coatings applied to suitably prepared fiberglass surfaces for protective or decorative purposes are subject to this subpart.

(d) If you are authorized in accordance with 40 CFR 63.783(c) to use an add-on control system as an alternative means of limiting emissions

from coating operations, in response to an action to enforce the standards set forth in this subpart, you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by a malfunction, as defined in 40 CFR 63.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all the requirements in the affirmative defense. The affirmative defense shall not be available in response to claims for injunctive relief.

(1) To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (d)(2) of this section, and must prove by a preponderance of evidence that:

(i) The excess emissions:

(A) Were caused by a sudden, infrequent and unavoidable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner; and

(B) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(C) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(D) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(iii) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and