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# Protection of Environment

# 40

PARTS 64 TO 71

**Revised as of July 1, 1999**

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF JULY 1, 1999

*With Ancillaries*

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*Cite this Code:* CFR

*To cite the regulations in this volume use title, part and section number. Thus,* 40 CFR 64.1 *refers to title 40, part 64, section 1.*

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Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

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RAYMOND A. MOSLEY,
*Director,*
*Office of the Federal Register.*

*July 1, 1999.*

## THIS TITLE

Title 40—PROTECTION OF ENVIRONMENT is composed of twenty–four 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), parts 53–59, part 60, parts 61–62, part 63 (63.1–63.1199), part 63 (63.1200–End), parts 64–71, parts 72–80, parts 81–85, part 86, parts 87–135, 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, and part 790 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 1999.

Chapter I—Environmental Protection Agency appears in all twenty–four volumes. A Pesticide Tolerance Commodity/Chemical Index appears in parts 150–189. A Toxic Substances Chemical—CAS Number Index appears in parts 700–789 and part 790 to End. Redesignation Tables appear in the volumes containing parts 50–51, parts 150–189, and parts 700–789. Regulations issued by the Council on Environmental Quality appear in the volume containing part 790 to End. The OMB control numbers for title 40 appear in §9.1 of this chapter.

For this volume, Lisa N. Morris was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

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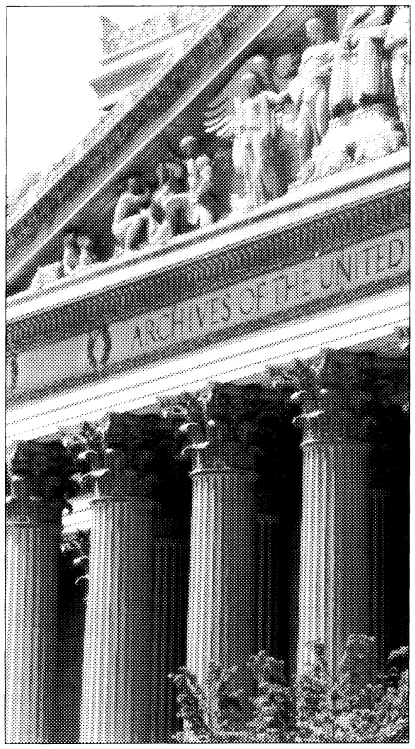

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# Title 40—Protection of Environment

(This book contains parts 64–71)


*Part*

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# CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS (Continued)


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EDITORIAL NOTE: Subchapter C—Air Programs is contained in volumes 40 CFR parts 50–51, part 52 (52.01–52.1018), part 52 (52.1019–End), parts 53–59, part 60, parts 61–62, part 63 (63.1–63.1199), part 63 (63.1200–End), parts 64–71, parts 72–80, parts 81–85, part 86, and parts 87–135.

# SUBCHAPTER C—AIR PROGRAMS (Continued)

## PART 64—COMPLIANCE ASSURANCE MONITORING

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64.7 Operation of approved monitoring.
64.8 Quality improvement plan (QIP) requirements.
64.9 Reporting and recordkeeping requirements.
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 [RESERVED]

## PART 66—ASSESSMENT AND COLLECTION OF NONCOMPLIANCE PENALTIES BY EPA

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APPENDIX A TO PART 66—TECHNICAL SUPPORT DOCUMENT [NOTE]
APPENDIX B TO PART 66—INSTRUCTION MANUAL [NOTE]
APPENDIX C TO PART 66—COMPUTER PROGRAM [NOTE]

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, 401 M Street, SW., 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

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Sec.

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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, 401 M Street, 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, 401 M Street, SW., 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, 401 M Street, SW., 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, 401 M Street, SW., Washington, DC 20460.

[54 FR 25259, June 20, 1989]

# PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

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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).

### § 68.2 Stayed provisions.

(a) Notwithstanding any other provision of this part, the effectiveness of the following provisions is stayed from March 2, 1994 to December 22, 1997.

(1) In Sec. 68.3, the definition of ''stationary source,'' to the extent that such definition includes naturally occurring hydrocarbon reservoirs or transportation subject to oversight or regulation under a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. 60105;

(2) Section 68.115(b)(2) of this part, to the extent that such provision requires an owner or operator to treat as a regulated flammable substance:

(i) Gasoline, when in distribution or related storage for use as fuel for internal combustion engines;

(ii) Naturally occurring hydrocarbon mixtures prior to entry into a petroleum refining process unit or a natural gas processing plant. Naturally occurring hydrocarbon mixtures include any of the following: condensate, crude oil, field gas, and produced water, each as defined in paragraph (b) of this section;

(iii) Other mixtures that contain a regulated flammable substance and that do not have a National Fire Protection Association flammability hazard rating of 4, the definition of which is in the NFPA 704, Standard System for the Identification of the Fire Hazards of Materials, National Fire Protection Association, Quincy, MA, 1990, available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269–9101; and

(3) Section 68.130(a).

(b) From March 2, 1994 to December 22, 1997, the following definitions shall apply to the stayed provisions described in paragraph (a) of this section:

*Condensate* means hydrocarbon liquid separated from natural gas that condenses because of changes in temperature, pressure, or both, and remains liquid at standard conditions.

*Crude oil* means any naturally occurring, unrefined petroleum liquid.

*Field gas* means gas extracted from a production well before the gas enters a natural gas processing plant.

*Natural gas processing plant* means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of natural gas liquids to natural gas products, or both. A separator, dehydration unit, heater treater, sweetening unit, compressor, or similar equipment shall not be considered a ''processing site'' unless such equipment is physically located within a natural gas processing plant (gas plant) site.

*Petroleum refining process unit* means a process unit used in an establishment primarily engaged in petroleum refining as defined in the Standard Industrial Classification code for petroleum refining (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.

*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.

(c) Notwithstanding any other provision of this part, the effectiveness of part 68 is stayed from June 21, 1999 to December 21, 1999 with respect to regulated flammable hydrocarbon substances when the substance is intended for use as a fuel and does not exceed 67,000 pounds in a process that is not manufacturing the fuel, does not contain greater than a threshold quantity of another regulated substance, and is not collocated or interconnected to another covered process.

[59 FR 4493, Jan. 31, 1994, as amended at 61 FR 31731, June 20, 1996; 64 FR 29170, May 28, 1999]

### § 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.

*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]

### § 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/m² 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.

(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]

## 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 Office of Federal Register at 800 North Capitol St., NW, Suite 700, Washington, DC. 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 Office of Federal Register at 800 North Capitol St., NW., Suite 700, Washington, DC. 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]

### §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.

### § 68.130 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 |
| 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 |

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 |
|---|---|---|---|
| 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 |
| 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 |

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 |
|---|---|---|---|
| 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 |
| 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 |

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 |
|---|---|---|---|
| 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 |
| 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 |

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 |
|---|---|---|---|
| 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 |
| 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 |

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 |
|---|---|---|---|
| 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 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 |
| 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 |

TABLE 3 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—63 Substances]

| Chemical name | CAS No. | Threshold quantity (lbs) | Basis for listing |
|---|---|---|---|
| 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 |

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 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 |

TABLE 4 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[CAS Number Order—63 Substances]

| CAS No. | Chemical name | CAS No. | Threshold quantity (lbs) | Basis for listing |
|---|---|---|---|---|
| 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 |

**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]

## 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 a method and format to a central point as specified by EPA prior to June 21, 1999.

(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) Subsequent submissions of RMPs shall be in accordance with § 68.190.

(d) 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.

(e) 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]

### § 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 worst-case release scenario(s) and the alternative release scenario(s), including administrative controls and mitigation measures to limit the distances for each reported scenario;

(d) The general accidental release prevention program and chemical-specific prevention steps;

(e) The five-year accident history;

(f) The emergency response program; and

(g) Planned changes to improve safety.

### §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;

(6) The name, title, telephone number, and 24-hour telephone number 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) Source or Parent Company E-Mail Address (Optional);

(15) Source Homepage address (Optional)

(16) Phone number at the source for public inquiries (Optional);

(17) Local Emergency Planning Committee (Optional);

(18) OSHA Voluntary Protection Program status (Optional);

[61 FR 31726, June 20, 1996, as amended at 64 FR 980, Jan. 6, 1999]

### §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 a method and format to a central point specified by EPA prior to June 21, 1999.

(b) The owner or operator of a stationary source shall revise and update the RMP submitted under § 68.150 as follows:

(1) Within five years of its initial submission or most recent update required by paragraphs (b)(2) through (b)(7) of this section, whichever is later.

(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 revised registration to EPA within six months indicating that the stationary source is no longer covered.

## 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 end-point (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 |

APPENDIX A TO PART 68—TABLE OF TOXIC ENDPOINTS—Continued

[As defined in §68.22 of this part]

| CAS No. | Chemical name | Toxic endpoint (mg/L) |
|---|---|---|
| 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 |
| 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

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AUTHORITY: 42 U.S.C. 7545(1) and (g), 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 onsite 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.

(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.

[61 FR 58289, Nov. 13, 1996; 61 FR 66077, Dec. 16, 1996]

## 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.

(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]

## 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.

(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]

## 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.

[62 FR 61205, Nov. 14, 1997]

## Subpart E—Alaska

### § 69.51 Exemptions.

(a) Persons in the state of Alaska, including but not limited to, refiners, importers, distributors, resellers, carriers, retailers or wholesale purchaser-consumers may manufacture, introduce into commerce, sell, offer for sale, supply, dispense, offer for supply, or transport diesel fuel, which fails to meet the sulfur concentration or dye requirements of 40 CFR 80.29, in the state of Alaska if the fuel is used only in the state of Alaska.

(b) Persons outside the state of Alaska, including but not limited to, refiners, importers, distributors, resellers, carriers, retailers or wholesale purchaser-consumers may manufacture, introduce into commerce, sell, offer for sale, supply, offer for supply, or transport diesel fuel, which fails to meet the sulfur concentration or dye requirements of § 80.29, outside the state of Alaska if the fuel is:

(1) Used only in the state of Alaska; and

(2) Accompanied by supporting documentation that clearly substantiates the fuel is for use only in the state of Alaska and does not comply with the Federal sulfur standard applicable to motor vehicle diesel fuel.

(c) Beginning January 1, 2004, the exemptions provided in paragraphs (a) and (b) of this section are applicable only to fuel used in those areas of Alaska that are not served by the Federal Aid Highway System.

[63 FR 49465, Sept. 16, 1998, as amended at 64 FR 34133, June 25, 1999]

# PART 70—STATE OPERATING PERMIT PROGRAMS

Sec.

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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.

### § 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.

*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 governing solid waste incineration, under section 129 of the Act;

(8) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(9) Any standard or other requirement for tank vessels under section 183(f) of the Act;

(10) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(11) 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

(12) 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.

*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;

(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) All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category;

(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.

### § 70.3 Applicability.

(a) *Part 70 sources.* A State program with whole or partial approval under this part must provide for permitting of at least 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) Any source listed in paragraph (a) of this section exempt from the requirement to obtain a permit under this section may opt to apply for a permit under a part 70 program.

(4) Unless otherwise required by the State to obtain a part 70 permit, 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.

### § 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 unless a longer period of time up to 10 months is provided on an individual basis by the Administrator through rulemaking), and may not be renewed. Notwithstanding the previous sentence, the Administrator may, through rulemaking, provide for a longer period of time on an individual basis, but only once per State, as necessary to allow for a State to submit one set of program changes addressing both interim approval deficiencies and program changes necessary to comport with the next revision to §70.7 that is made after [date of publication]. Any longer period of time provided by the Administrator shall not exceed 2 years after publication in the FEDERAL REGISTER of that revision. Sources shall become subject to the program according to the schedule approved in the State program. Permits granted under an interim approval shall be fully effective and 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) *Alternative scenarios.* The program submittal must include provisions to insure that alternate scenarios requested by the source are included in the part 70 permit pursuant to § 70.6(a)(9) of this part.

(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]

### § 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 Code) including any associated with alternate scenario 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.

(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 alternative operating scenarios identified by the source pursuant to §70.6(a)(9) of this part or to define permit terms and conditions implementing §70.4 (b) (12) or §70.6 (a) (10) of this part.

(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.

(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.

(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.

### § 70.6 Permit content.

(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(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 operating scenarios 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 scenario 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 operating scenario; and

(iii) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this part.

(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, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, 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]

### § 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.

## 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: 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 June 1, 2000.

(b) City of Huntsville Department of Natural Resources and Environmental Management: submitted on November 15, 1993, and supplemented on July 20, 1995; interim approval effective on December 15, 1995; interim approval expires June 1, 2000.

(c) Jefferson County Department of Health: submitted on December 14, 1993, and supplemented on July 14, 1995; interim approval effective on December 15, 1995; interim approval expires June 1, 2000.

### *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; interim approval expires June 1, 2000.

(b) (Reserved)

### *Arizona*

(a) *Arizona Department of Environmental Quality:* 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 June 1, 2000.

(b) *Maricopa County Environmental Services Department:* 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 June 1, 2000.

(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 June 1, 2000.

(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 June 1, 2000.

(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 June 1, 2000.

(2) revisions submitted on August 15, 1995; interim approval effective on December 30, 1996; interim approval expires June 1, 2000.

### *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 June 1, 2000.

(b) [Reserved]

### *California*

The following district programs were submitted by the California Air Resources Board on behalf of:

(a) *Amador County Air Pollution Control District* (APCD) (complete submittal received on September 30, 1994); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(b) *Bay Area Air Quality Management District:* 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 June 1, 2000.

(c) *Butte County APCD* (complete submittal received on December 16, 1993); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(d) *Calaveras County APCD* (complete submittal received on October 31, 1994); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(e) *Colusa County APCD* (complete submittal received on February 24, 1994); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(f) *El Dorado County APCD* (complete submittal received on November 16, 1993); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(g) *Feather River Air Quality Management District* (AQMD) (complete submittal received on December 27, 1993); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(h) *Glenn County APCD* (complete submittal received on December 27, 1993); interim approval effective on August 14, 1995; interim approval expires June 1, 2000.

(i) *Great Basin Unified APCD* (complete submittal received on January 12, 1994); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(j) *Imperial County APCD* (complete submittal received on March 24, 1994); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(k) *Kern County APCD* (complete submittal received on November 16, 1993); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(l) *Lake County AQMD* (complete submittal received on March 15, 1994); interim approval effective on August 14, 1995; interim approval expires June 1, 2000.

(m) *Lassen County APCD* (complete submittal received on January 12, 1994); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(n) *Mariposa Air Pollution Control District:* 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 June 1, 2000.

(o) *Mendocino County APCD* (complete submittal received on December 27, 1993); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(p) *Modoc County APCD* (complete submittal received on December 27, 1993); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(q) *Mojave Desert AQMD* (complete submittal received on March 10, 1995); interim approval effective on March 6, 1996; interim approval expires June 1, 2000.

(r) *Monterey Bay Unified Air Pollution Control District:* 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 June 1, 2000.

(s) *North Coast Unified AQMD* (complete submittal received on February 24, 1994); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(t) *Northern Sierra AQMD* (complete submittal received on June 6, 1994); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(u) *Northern Sonoma County APCD* (complete submittal received on January 12, 1994); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(v) *Placer County APCD* (complete submittal received on December 27, 1993); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(w) *The Sacramento Metropolitan Air Quality Management District:* (complete submittal received on August 1, 1994); interim approval effective on September 5, 1995; interim approval expires June 1, 2000.

(x) *San Diego Air Pollution Control District:* 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 June 1, 2000.

(y) *San Joaquin Valley Unified APCD* (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 June 1, 2000.

(z) *San Luis Obispo County APCD* (complete submittal received on November 16, 1995); interim approval effective on December 1, 1995; interim approval expires June 1, 2000.

(aa) Santa Barbara County Air Pollution Control District (APCD) 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 June 1, 2000.

(bb) *Shasta County AQMD* (complete submittal received on November 16, 1993); interim approval effective on August 14, 1995; interim approval expires June 1, 2000.

(cc) *Siskiyou County APCD* (complete submittal received on December 6, 1993); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(dd) *South Coast Air Quality Management District:* 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 June 1, 2000.

(ee) *Tehama County APCD* (complete submittal received on December 6, 1993); interim approval effective on August 14, 1995; interim approval expires June 1, 2000.

(ff) *Tuolumne County APCD* (complete submittal received on November 16, 1993); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

(gg) *Ventura County Air Pollution Control District* (APCD) submitted on November 16, 1993, as amended December 6, 1993; interim approval effective on December 1, 1995; interim approval expires June 1, 2000.

(hh) *Yolo-Solano AQMD* (complete submittal received on October 14, 1994); interim approval effective on June 2, 1995; interim approval expires June 1, 2000.

*Colorado*

(a) Colorado Department Health–Air Pollution Control Division: submitted on November 5, 1993; effective on February 23, 1995; interim approval expires June 1, 2000.

(b) [Reserved]

*Connecticut*

(a) *Department of Environmental Protection:* submitted on September 28, 1995; interim approval effective on April 23, 1997; interim approval expires June 1, 2000.

(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 June 1, 2000.

(b) [Reserved]

*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 June 1, 2000.

(b) [Reserved]

*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 June 1, 2000.

(b) [Reserved]

*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 June 1, 2000.

(b) [Reserved]

*Hawaii*

(a) Department of Health; submitted on December 20, 1993; effective on December 1, 1994; interim approval expires June 1, 2000.

(b) [Reserved]

*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; interim approval expires June 1, 2000.

(b) Reserved.

*Illinois*

(a) The Illinois Environmental Protection Agency: submitted on November 15, 1993; interim approval effective on March 7, 1995; interim approval expires June 1, 2000.

(b) [Reserved]

*Indiana*

(a) The Indiana Department of Environmental Management: submitted on August 10, 1994; interim approval effective on December 14, 1995; interim approval expires June 1, 2000.

(b) [Reserved]

*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.

*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) [Reserved]

*Kentucky*

(a) 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 effective on December 14, 1995; interim approval expires on June 1, 2000.

(b) Air Pollution Control District of Jefferson County, Kentucky: submitted on February 1, 1994, and supplemented on November 15, 1994, May 3, 1995, July 14, 1995 and February 16, 1996; full approval effective on April 22, 1996.

*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; source category-limited interim approval expires June 1, 2000.

(b) [Reserved]

*Maryland*

(a) Maryland Department of the Environment: submitted on May 9, 1995; interim approval effective on August 2, 1996; interim approval expires June 1, 2000.

(b) Reserved

*Massachusetts*

(a) Department of Environmental Protection: submitted on April 28, 1995; interim approval effective on May 15, 1996; interim approval expires June 1, 2000.

(b) [Reserved]

*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 June 1, 2000.

(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.

(b) (Reserved)

*Minnesota*

(a) Minnesota Pollution Control Agency; submitted on November 15, 1993; effective July 17, 1995; interim approval expires June 1, 2000.

(b) [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.

*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 June 1, 2000.

(b) [Reserved]

*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.

*Nevada*

The following district program was submitted by the Nevada Division of Environmental Protection on behalf of:

(a) *Nevada Division of Environmental Protection:* submitted on February 8, 1995; interim approval effective on January 11, 1996; interim approval expires June 1, 2000.

(b) Washoe County District Health Department: submitted on November 18, 1993; interim approval effective on March 6, 1995; interim approval expires June 1, 2000.

(c) *Clark County Air Quality Management District:* submitted on January 12, 1994 and amended on July 18 and September 21, 1994;

interim approval effective on August 14, 1995; interim approval expires June 1, 2000.

*New Hampshire*

(a) Department of Environmental Services: submitted on October 26, 1995; interim approval effective on June 1, 2000.

(b) [Reserved]

*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 June 1, 2000.

(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.

*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.

*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 June 1, 2000.

(b) [Reserved]

*North Carolina*

(a) Department of Environment, Health and Natural Resources, Western North Carolina Regional Air Pollution Control Agency, Forsyth County Department of Environmental Affairs and the Mecklenburg County Department of Environmental Protection: submitted on November 12, 1993, and supplemented on December 17, 1993; February 28, 1994; May 31, 1994; and August 9, 1995; interim approval effective on December 15, 1995; interim approval expires June 1, 2000.

(b) [Reserved]

*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.

*Ohio*

(a) The Ohio Environmental Protection Agency submitted on July 22, 1994; September 12, 1994; November 21, 1994; December 9, 1994; and January 5, 1995; full approval effective on October 1, 1995.

(b) [Reserved]

*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 June 1, 2000.

(b) [Reserved]

*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.

(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) (Reserved)

*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 June 1, 2000.
(b) [Reserved]

*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) 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 June 1, 2000.
(b) Chattanooga-Hamilton County Air Pollution Control Bureau, Hamilton County, State of Tennessee: 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.
(c) The Knox County Department of Air Pollution Control; submitted on November 12, 1993, and supplemented on August 24, 1994; January 6 and 19, 1995; February 6, 1995; May 23, 1995; September 18 and 25, 1995; and March 6, 1996; full approval effective on May 30, 1996, in the FEDERAL REGISTER.
(d) The Metropolitan Health Department, Metropolitan Govenment 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.
(e) 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 June 1, 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 June 1, 2000. 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) [Reserved]

*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; interim approval expires June 1, 2000.
(b) (Reserved)

*Virgin Islands*

(a) The Virgin Islands Department of Natural Resources submitted an operating permits program on November 18, 1993 with supplements through June 9, 1995; interim approval effective on August 30, 1996. Interim approval will expire June 1, 2000.
(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 June 1, 2000.
(b) [Reserved]

*Washington*

(a) Department of Ecology (Ecology): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires June 1, 2000.
(b) Energy Facility Site Evaluation Council (EFSEC): submitted on November 1, 1993;

effective on December 9, 1994; interim approval expires June 1, 2000.

(c) Benton County Clean Air Authority (BCCAA): submitted on November 1, 1993 and amended on September 29, 1994 and April 12, 1995; effective on December 9, 1994; interim approval expires June 1, 2000.

(d) Northwest Air Pollution Authority (NWAPA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires June 1, 2000.

(e) Olympic Air Pollution Control Authority (OAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires June 1, 2000.

(f) Puget Sound Air Pollution Control Agency (PSAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires June 1, 2000.

(g) Southwest Air Pollution Control Authority (SWAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires June 1, 2000.

(h) Spokane County Air Pollution Control Authority (SCAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires June 1, 2000.

(i) Yakima County Clean Air Authority (YCCAA): submitted on November 1, 1993 and amended on September 29, 1994; effective on December 9, 1994; interim approval expires June 1, 2000.

*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 June 1, 2000.

(b) [Reserved]

*Wisconsin*

(a) Department of Natural Resources: submitted on January 27, 1994; interim approval effective on April 5, 1995; interim approval expires June 1, 2000.

(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 in the Finding Aids section of this volume.

EFFECTIVE DATE NOTES: 1. At 64 FR 23777, May 4, 1999, appendix A to part 70 was amended by adding paragraph (b) in the entry for New Jersey, effective July 6, 1999.

2. At 64 FR 32436, June 17, 1999, appendix A to part 70 was amended by adding paragraph (b) in the entry for North Dakota, effective Aug. 16, 1999.

# PART 71—FEDERAL OPERATING PERMIT PROGRAMS

## Subpart A—Operating Permits

Sec.
71.1 Program overview.
71.2 Definitions.
71.3 Sources subject to permitting requirements.
71.4 Program implementation.
71.5 Permit applications.
71.6 Permit content.
71.7 Permit issuance, renewal, reopenings, and revisions.
71.8 Affected State review.
71.9 Permit fees.
71.10 Delegation of part 71 program.
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## Subpart B—Permits for Early Reductions Sources

71.21 Program overview.
71.22 Definitions.
71.23 Applicability.
71.24 Permit applications.
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.

*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 governing solid waste incineration, under section 129 of the Act;

(8) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(9) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(10) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(11) 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

(12) 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.

*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;

(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]

### § 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) Any source listed in paragraph (a) of this section exempt from the requirement to obtain a permit under this section may opt to apply for a permit under a part 71 program.

(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]

### §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. For purposes of administering the part 71 program, EPA will treat areas for which EPA believes the Indian country status is in question as 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]

### § 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 Standard Industrial Classification Code) including any associated with each alternate scenario 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.

(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 alternative operating scenarios identified by the source pursuant to § 71.6(a)(9) or to define permit terms and conditions implementing § 71.6(a)(10) or § 71.6(a)(13).

(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.

(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.

(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.

### § 71.6 Permit content.

(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(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 operating scenarios 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 scenario 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 operating scenario; and

(iii) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this part.

(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, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, 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]

### § 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:

$C = [B + T + N]$ divided by 12,300,000

Where $B$ represents the base cost (contractor costs), where $T$ represents travel costs, and where $N$ represents non-personnel 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.

(p) The permitting authority may reduce any fee required under paragraph (c) of this section for sources that are located in areas for which EPA believes the Indian country status is in question and that have paid permit fees to a State or local permitting authority that has asserted CAA regulatory authority over such areas under color of an EPA-approved part 70 program. Upon application by the source, the part 71 fee may be reduced up to an amount that equals the difference between the fee required under paragraph (c) and the fee paid to a State or local permitting authority. The fee reduction will cease if the area in which the source is located is later determined to be Indian country.

[61 FR 34228, July 1, 1996, as amended at 64 FR 8263, Feb. 19, 1999]

### § 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.

(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.

### § 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.

## 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, 401 M Street, SW., 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

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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# Material Approved for Incorporation by Reference

**(Revised as of July 1, 1999)**

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. This list contains only those incorporations by reference effective as of the revision date of this volume. Incorporations by reference found within a regulation are effective upon the effective date of that regulation. For more information on incorporation by reference, see the preliminary pages of this volume.

**40 CFR (PARTS 64 TO 71):**
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| | 40 CFR |
|---|---|
| **National Fire Protection Association** | |
| 11 Tracy Drive, Avon, MA 02322; Telephone: (800) 344–3555 | |
| NFPA 30 Flammable and Combustible Liquids Code, 1996 Edition | 68.115(2)(i) |
| NFPA 704 Standard System for the Identification of the Hazards of Materials for Emergency Response, 1996 Edition. | 68.115(2)(i) |

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