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TABLE 1 TO SUBPART X OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART X

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### Subpart Z [Reserved]

- 63.569–63.599 [Reserved]

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

SOURCE: 57 FR 61992, Dec. 29, 1992, unless otherwise noted.

### Subpart A—General Provisions

SOURCE: 59 FR 12430, Mar. 16, 1994, unless otherwise noted.

#### § 63.1 Applicability.

(a) *General.* (1) Terms used throughout this part are defined in § 63.2 or in the Clean Air Act (Act) as amended in

1990, except that individual subparts of this part may include specific definitions in addition to or that supersede definitions in § 63.2.

(2) This part contains national emission standards for hazardous air pollutants (NESHAP) established pursuant to section 112 of the Act as amended November 15, 1990. These standards regulate specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants listed in this part pursuant to section 112(b) of the Act. This section explains the applicability of such standards to sources affected by them. The standards in this part are independent of NESHAP contained in 40 CFR part 61. The NESHAP in part 61 promulgated by signature of the Administrator before November 15, 1990 (i.e., the date of enactment of the Clean Air Act Amendments of 1990) remain in effect until they are amended, if appropriate, and added to this part.

(3) No emission standard or other requirement established under this part shall be interpreted, construed, or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established by the Administrator pursuant to other authority of the Act (section 111, part C or D or any other authority of this Act), or a standard issued under State authority. The Administrator may specify in a specific standard under this part that facilities subject to other provisions under the Act need only comply with the provisions of that standard.

(4)(i) Each relevant standard in this part 63 must identify explicitly whether each provision in this subpart A is or is not included in such relevant standard.

(ii) If a relevant part 63 standard incorporates the requirements of 40 CFR part 60, part 61 or other part 63 standards, the relevant part 63 standard must identify explicitly the applicability of each corresponding part 60, part 61, or other part 63 subpart A (General) provision.

(iii) The General Provisions in this subpart A do not apply to regulations developed pursuant to section 112(r) of the amended Act, unless otherwise specified in those regulations.

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(5) [Reserved]

(6) To obtain the most current list of categories of sources to be regulated under section 112 of the Act, or to obtain the most recent regulation promulgation schedule established pursuant to section 112(e) of the Act, contact the Office of the Director, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA (MD-13), Research Triangle Park, North Carolina 27711.

(7)–(9) [Reserved]

(10) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word “calendar” is absent, unless otherwise specified in an applicable requirement.

(11) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, test plan, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(12) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in § 63.9(i).

(b) *Initial applicability determination for this part.* (1) The provisions of this part apply to the owner or operator of any stationary source that—

(i) Emits or has the potential to emit any hazardous air pollutant listed in or pursuant to section 112(b) of the Act; and

(ii) Is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to this part.

(2) [Reserved]

(3) An owner or operator of a stationary source who is in the relevant source category and who determines that the source is not subject to a relevant standard or other requirement established under this part must keep a record as specified in § 63.10(b)(3).

(c) *Applicability of this part after a relevant standard has been set under this part.* (1) If a relevant standard has been established under this part, the owner or operator of an affected source must comply with the provisions of that standard and of this subpart as provided in paragraph (a)(4) of this section.

(2) Except as provided in § 63.10(b)(3), if a relevant standard has been established under this part, the owner or operator of an affected source may be required to obtain a title V permit from a permitting authority in the State in which the source is located. Emission standards promulgated in this part for area sources pursuant to section 112(c)(3) of the Act will specify whether—

(i) States will have the option to exclude area sources affected by that standard from the requirement to obtain a title V permit (i.e., the standard will exempt the category of area sources altogether from the permitting requirement);

(ii) States will have the option to defer permitting of area sources in that category until the Administrator takes rulemaking action to determine applicability of the permitting requirements; or

(iii) If a standard fails to specify what the permitting requirements will be for area sources affected by such a standard, then area sources that are subject to the standard will be subject

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to the requirement to obtain a title V permit without any deferral.

(3)-(4) [Reserved]

(5) If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard or other requirement, such source also shall be subject to the notification requirements of this subpart.

(6) A major source may become an area source at any time upon reducing its emissions of and potential to emit hazardous air pollutants, as defined in this subpart, to below the major source thresholds established in § 63.2, subject to the provisions in paragraphs (c)(6)(i) and (ii) of this section.

(i) A major source reclassifying to area source status is subject to the applicability of standards, compliance dates and notification requirements specified in (c)(6)(i)(A) of this section. An area source that previously was a major source and becomes a major source again is subject to the applicability of standards, compliance dates, and notification requirements specified in (c)(6)(i)(B) of this section:

(A) A major source reclassifying to area source status under this part remains subject to any applicable major source requirements established under this part until the reclassification becomes effective. After the reclassification becomes effective, the source is subject to any applicable area source requirements established under this part immediately, provided the compliance date for the area source requirements has passed. The owner or operator of a major source that becomes an area source subject to newly applicable area source requirements under this part must comply with the initial notification requirements pursuant to § 63.9(b). The owner or operator of a major source that becomes an area source must also provide to the Administrator any change in the information already provided under § 63.9(b) per § 63.9(j).

(B) An area source that previously was a major source under this part and

that becomes a major source again is subject to the applicable major source requirements established under this part immediately upon becoming a major source again, provided the compliance date for the major source requirements has passed, notwithstanding any provision within the applicable subparts. The owner or operator of an area source that becomes a major source again must comply with the initial notification pursuant to § 63.9(b). The owner or operator must also provide to the Administrator any change in the information already provided under § 63.9(b) per § 63.9(j).

(ii) Becoming an area source does not absolve a source subject to an enforcement action or investigation for major source violations or infractions from the consequences of any actions occurring when the source was major. Becoming a major source does not absolve a source subject to an enforcement action or investigation for area source violations or infractions from the consequences of any actions occurring when the source was an area source.

(d) [Reserved]

(e) If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is applicable to a source subject to an emission limitation by permit established under section 112(j) of the Act, and the requirements under the section 112(j) emission limitation are substantially as effective as the promulgated emission standard, the owner or operator may request the permitting authority to revise the source's title V permit to reflect that the emission limitation in the permit satisfies the requirements of the promulgated emission standard. The process by which the permitting authority determines whether the section 112(j) emission limitation is substantially as effective as the promulgated emission standard must include, consistent with part 70 or 71 of this chapter, the opportunity for full public, EPA, and affected State review (including the opportunity for EPA's objection) prior to the permit revision

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being finalized. A negative determination by the permitting authority constitutes final action for purposes of review and appeal under the applicable title V operating permit program.

[59 FR 12430, Mar. 16, 1994, as amended at 67 FR 16595, Apr. 5, 2002; 85 FR 73885, Nov. 19, 2020]

### § 63.2 Definitions.

The terms used in this part are defined in the Act or in this section as follows:

*Act* means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Pub. L. 101–549, 104 Stat. 2399).

*Actual emissions* is defined in subpart D of this part for the purpose of granting a compliance extension for an early reduction of hazardous air pollutants.

*Administrator* means the Administrator of the United States Environmental Protection Agency or his or her authorized representative (e.g., a State that has been delegated the authority to implement the provisions of this part).

*Affected source*, for the purposes of this part, means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 of the Act. Each relevant standard will define the “affected source,” as defined in this paragraph unless a different definition is warranted based on a published justification as to why this definition would result in significant administrative, practical, or implementation problems and why the different definition would resolve those problems. The term “affected source,” as used in this part, is separate and distinct from any other use of that term in EPA regulations such as those implementing title IV of the Act. Affected source may be defined differently for part 63 than affected facility and stationary source in parts 60 and 61, respectively. This definition of “affected source,” and the procedures for adopting an alternative definition of “affected source,” shall apply to each section 112(d) standard for which the ini-

tial proposed rule is signed by the Administrator after June 30, 2002.

*Alternative emission limitation* means conditions established pursuant to sections 112(i)(5) or 112(i)(6) of the Act by the Administrator or by a State with an approved permit program.

*Alternative emission standard* means an alternative means of emission limitation that, after notice and opportunity for public comment, has been demonstrated by an owner or operator to the Administrator’s satisfaction to achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such pollutant achieved under a relevant design, equipment, work practice, or operational emission standard, or combination thereof, established under this part pursuant to section 112(h) of the Act.

*Alternative test method* means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Administrator’s satisfaction, using Method 301 in appendix A of this part, to produce results adequate for the Administrator’s determination that it may be used in place of a test method specified in this part.

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

*Area source* means any stationary source of hazardous air pollutants that is not a major source as defined in this part.

*Commenced* means, with respect to construction or reconstruction of an affected source, that an owner or operator has undertaken a continuous program of construction or reconstruction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

*Compliance date* means the date by which an affected source is required to be in compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established by the Administrator (or a State