

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 63 and 71

[FRL-5106-2]

RIN 2060-AF10

Federal Operating Permit Programs

Permits for Early Reductions Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking establishes an interim Federal permitting program solely for sources participating in the Early Reductions Program under section 112(i)(5) of the Clean Air Act (Act), as amended. It is designed to provide a temporary permitting mechanism until such time as permanent permitting programs become effective pursuant to title V of the Act. Under this interim program, EPA will be able to permit early reductions sources in a timely manner, thus ensuring that emission reductions achieved are maintained and providing assurance to participating sources that they have qualified for the benefits of the Early Reductions Program.

Also promulgated in this rulemaking are two amendments to the Early Reductions Rule. The first

appends to enforceable commitments made under the Early Reductions Program information on emission reduction measures employed to achieve early reductions and the second clarifies deadlines for submitting post-reduction emission information to EPA.

EFFECTIVE DATE: [Insert date of publication in the FEDERAL REGISTER].

ADDRESSES: Background Information Document. The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35) , Research Triangle Park, North Carolina 27711, telephone number 919-541-2777. Please refer to "Federal Operating Permit Programs: Permits for Early Reductions Sources - Background Information for Promulgated Rule" (EPA-453/R-94-061b). The BID contains (1) a summary of changes made to the rule since proposal and (2) a summary of all public comments made on the proposed standards and EPA's response to those comments.

Docket. Docket number A-93-08, containing supporting information used in developing the promulgated rule is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, Room M1500, U.S. Environmental

Protection Agency, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. David Beck, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number 919-541-5421.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Introduction

II. Summary of Significant Comments and Changes Since
Proposal

III. Administrative Requirements

I. Introduction

The Clean Air Act Amendments of 1990 rewrote existing section 112, which directs the EPA to establish national emission standards for hazardous air pollutants (HAP). A new provision, section 112(i)(5), offers to sources that achieve substantial early reductions of HAP emissions an extension in the compliance date for applicable standards to be promulgated under section 112(d). To help implement this "Early Reductions Program," EPA is acting in this notice to promulgate an interim, limited scope permit program, pursuant to title

V of the Act. This interim program will allow EPA to process applications under the Early Reductions Program in a timely manner, until such time as comprehensive title V permitting mechanisms become available. A detailed rationale for this rulemaking accompanied the proposal notice, which was published in the FEDERAL REGISTER on December 29, 1993 (57 FR 68804).

II. Summary of Significant Comments and Changes Since Proposal

The comment period for the proposed early reductions permits rule ended on March 3, 1994, and EPA received five comment letters. Copies of the comments reside in the docket for this rulemaking and are available for public inspection (see "Docket" in the ADDRESSES section of this preamble for further information). A summary of public comments and EPA's responses to the comments are contained in the background information document mentioned in the ADDRESSES section of this preamble.

Consideration of these comments and other deliberations within the Agency led to a few changes from the proposed permits rule, although none of the changes altered the rule significantly. A brief summary of the

more notable changes appear in the list below (an expanded explanation of these changes is contained in the background information document).

1. A definition of "post-reduction year" has been added, as well as clarifying language pertaining to deadlines for filing post-reduction emission information. These changes make clearer the requirements for demonstrating that qualifying reductions have been achieved, and provide more flexibility to sources that wish to make reduction demonstrations before the statutory deadline.

2. The proposed requirement to submit an application in a computerized format, in addition to the typed application, has been deleted. The EPA has not yet settled on a computer format for such submittals.

3. The proposed rule contained a provision requiring permittees to report any deviations from permit terms or conditions within ten days of occurrence. This requirement has been revised to require "prompt" reporting of deviations, where "prompt" will be defined in each early reductions permit and will be based on the type and degree of the deviation. This is consistent with similar language in the part 70 for State title V

permit programs.

4. The procedures for making administrative amendments to existing early reductions permits have been revised. The revisions are consistent with recently proposed revisions to the administrative amendments procedures specified in the part 70 rule for State title V programs. The revised procedures clarify the permittee's actions in initiating an administrative amendment and set the effective date of an amendment at 60 days after receipt by the Administrator of the amendment application (assuming the Administrator does not reject the amendment prior to that time).

Also changed under the administrative amendments provisions of the rule is the list of actions qualifying as administrative amendments [§71.26(c)(1)]. A new provision [§71.26(c)(1)(v)] allows certain additional permit revisions to be treated as administrative amendments provided that the Administrator determines, on a case-by-case basis, that a proposed revision is similar to those qualifying actions already specifically listed. The new provision is based upon a similar provision in the part 70 rule and is a response to certain commenters requests for additional flexibility to make relatively

insignificant changes at an early reductions source without having to wait for a lengthy EPA approval process. Under the new provision, EPA would be able to process through administrative amendment procedures certain changes not listed in paragraphs §71.26(c)(1)(i) through (iv) but which are ministerial in nature and therefore do not require the exercise of judgement on the part of EPA, or review by the public or affected States.

5. Another proposed provision deleted in the final rule was the requirement that specialty permit applications contain a statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act. This provision was included in the proposal because a similar provision appears in the part 70 rule. However, upon further reflection, EPA has realized that the provision is not relevant to early reductions permit applications. This specialty permit program focuses narrowly on implementing the Early Reductions Program for a defined early reductions source and associated HAP emissions, and within that context the only monitoring and compliance certification requirements applicable to the early reductions source will be those delineated in

the specialty permit issued later to the participating company. Each specialty permit will implement the Act directive to provide for enhanced monitoring on major sources by specifying monitoring requirements tailored to the early reductions source and consistent with the characteristics of the Early Reductions Program. Compliance certification requirements also will be imposed to comply with title V of the Act. However, it is inappropriate to ask a source to discuss, in the permit application, its compliance status for these requirements because they do not yet exist.

In the proposed rule preamble, EPA requested comment on whether the final early reductions permits rule should contain procedures for minor permit revisions. Such procedures would be used to process changes that could not be processed as administrative amendments but which encompass relatively minor changes to the source or its operation and, therefore, would not warrant the longer (12 month) review and issuance process allotted to significant source changes. Two commenters requested that EPA include minor permit revision procedures in the final rule to provide sources the ability to make certain changes in the early reductions source quickly, which

they consider to be key to remaining competitive within their respective industries. The EPA has carefully considered the commenters' requests for a more expedited permit revision procedure, and has decided not to include such a procedure at this time. There are two primary reasons for this decision. First, the part 70 permit revision procedures are currently the subject of litigation in the D.C. Circuit Court of Appeals. In part as a response to this litigation, EPA has proposed revisions to these part 70 procedures. The current uncertainty over EPA's legal discretion to provide for expeditious permit revision procedures cautions against providing for any such procedures here in this final rule. Second, as stated in the preamble to the proposal of this rule, EPA believes the nature of these specialty permits, containing limitations that are uniquely tailored to the facility, should reduce the need for permit revisions. Another factor that de-emphasizes the need for a more expedited revision procedure is the fact that a specialty permit will, relatively soon after permit issuance, be transferred to the jurisdiction of the State, following which it will be subject to the revision procedures of the State program.

The EPA may in the future decide to revise this rule to provide more expedited procedures for minor permit revisions. However, EPA currently intends await the outcome of the revisions to part 70 before taking any such action.

As noted earlier, this notice also contains amendments to the Early Reductions Rule. One of the amendments, proposed along with the early reductions permits proposal, is promulgated without change and appends to enforceable commitments made under the Early Reductions Program the information on emission reduction measures employed to achieve early reductions. Such information is required as part of a participant's post-reduction emission demonstration. The other amendments mirror the changes described in item 1 of the above list pertaining to the post-reduction emissions demonstration. These amendments make the Early Reductions Rule consistent with the permits rule promulgated in this notice.

III. Administrative Requirements

A. Docket

The docket for this regulatory action is A-93-08. The docket is an organized and complete file of all the

information submitted to, or otherwise considered by, EPA in the development of this rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and

(2) To serve as the record in case of judicial review. The docket is available for public inspection at the EPA's Air Docket, which is listed under the ADDRESSES section of this document.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, 10/04/93), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

It has been determined that this action is not a "significant regulatory action" within the meaning of Executive Order 12866 and is therefore not subject to OMB review.

C. Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the specialty permits rule and the amendments to the Early Reductions Rule will not have a significant economic impact on a substantial number of small business entities. The EPA estimates that this rule will have no direct economic impact on any business entities for two reasons. First, the Early Reductions Program is a voluntary program, an alternate means of complying with otherwise applicable standards forthcoming

under section 112(d) of the Act. Generally, companies would participate in the program if they thought their compliance costs would be less than those associated with meeting otherwise applicable standards. Costs could be less because the 90 (95) percent reduction threshold to qualify for an extension likely will be lower than the reduction required by applicable section 112(d) standards. Moreover, the Early Reductions Rule provides owners or operators considerable flexibility to average qualifying reductions among participating emissions units.

Second, the specialty permits program rulemaking simply adapts for earlier use the intended mechanism for eventually delineating and enforcing all Act requirements at ~~individuals~~ ^{facilities}, namely the title V permit. Sources not electing to participate in the Early Reductions Program would have to obtain title V permits anyway when comprehensive title V. Therefore, this rulemaking does not add any additional requirements to participants. The impacts from the requirements of title V were considered in the promulgated part 70 rule for State comprehensive programs (57 FR 32250). Moreover, the proposed change to the

Early Reductions Rule would have no economic effect on any large or small business entities.

D. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has been assigned the OMB control no. 2060-0276. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1650.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM-223Y), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or by calling (202) 260-2740.

This collection of information is estimated to have a public reporting burden averaging 554 hours per respondent for one-time burden items and 43 hours per respondent annually for recurring burden items. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief,

Information

Policy Branch (2136); U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the

Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Air pollution control,
Hazardous substances, Hazardous air pollutants, Operating
Permits, Reporting and recordkeeping requirements.

40 CFR Part 71

Administrative practice and procedure, Air pollution
control, Reporting and recordkeeping requirements.

Dated: November 8, 1994.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 9_[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 et seq., 6901-6992k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

2. Section 9.1 is amended by adding a new heading and a new entry under the new heading to read as follows:

9.1 OMB approvals under the Paperwork Reduction Act.

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40 CFR citation OMB control no.

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Federal Operating Permit Programs

71.24 - 71.26

2060-0276

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PART 63 - [AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart D - [Amended]

2. Section 63.71 is amended by adding the definition of "post-reduction year" in alphabetical order to read as follows:

§63.71 Definitions.

* * * * *

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, unless a source has established with the permitting authority 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.

* * * * *

3. In §63.75, paragraph (g) is added to read as follows:

§63.75 Enforceable commitments.

* * * * *

(g) The control measure information required under §63.74(d)(1) as part of post-reduction emission documentation and submitted in a permit application according to the provisions of §63.77 shall become part of an existing enforceable commitment upon receipt of the permit application by the permitting authority. An owner or operator shall notify the permitting authority of any change made to the source during calendar year 1994 which affects such control measure information and shall mail the notice within 5 days (postmark date) of making the change. The notice shall be considered an amendment to the source's enforceable commitment.

4. Section 63.77 is amended by revising paragraph (e) to read as follows:

§63.77 Application procedures.

* * * * *

(e) If the post-reduction year does not end at least one month before the permit application deadline under paragraph (c) of this section, the source may file the

post-reduction emissions information required under §63.74(d)(2), (d)(3), and (d)(5) later as a supplement to the original permit application. In such cases, this supplemental information shall be submitted to the permitting authority no later than one month after the end of the post-reduction year.

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5. Part 71 is added to read as follows:

PART 71 - FEDERAL OPERATING PERMIT PROGRAMS

Subpart A - [Reserved]

Subpart B - Permits for Early Reductions Sources

Sec.

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.

PART 71 - FEDERAL OPERATING PERMIT PROGRAMS

Subpart A - [Reserved]

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(1).

§71.22 Definitions.

All terms used in this subpart not defined below 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 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 part 63 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.

The EPA or the 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) 120 days after promulgation of this subpart.

(2) Permit applications for early reductions sources subject to enforceable commitments established pursuant to §63.75 of part 63 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 part 63, 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 part 63 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 part 63 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 the 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.

(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 permit.

(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 herein 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 administrative review.

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 (1) 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 (1)(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.)

(4) To any unit of local government having jurisdiction over the area where the early reductions source is located and to each State agency having any authority 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;

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.

(1) 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 (1)(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 (1)(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)(i) 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:

(A) When the Board issues notice to the parties that review has been denied;

(B) When the Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(C) 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.

Billing Code 6560-50-P