

Environmental Protection Agency

§ 49.131

2000), D2622-03, and D6228-98¹ (Re-approved 2003) (incorporated by reference, see § 49.123(e)).

(f) *Are there additional requirements that must be met?* (1) A person subject to this section must:

(i) For fuel oils and liquid fuels, obtain, record, and keep records of the percent sulfur by weight from the vendor for each purchase of fuel. If the vendor is unable to provide this information, then obtain a representative grab sample for each purchase and test the sample using the reference method.

(ii) For gaseous fuels, either obtain, record, and keep records of the sulfur content from the vendor, or continuously monitor the sulfur content of the fuel gas line using a method that meets the requirements of Performance Specification 5, 7, 9, or 15 (as applicable for the sulfur compounds in the gaseous fuel) of appendix B and appendix F of 40 CFR part 60. If only purchased natural gas is used, then keep records showing that the gaseous fuel meets the definition of natural gas in 40 CFR 72.2.

(iii) For coal and solid fuels, either obtain, record, and keep records of the percent sulfur by weight from the vendor for each purchase of coal or solid fuel, or obtain a representative grab sample for each day of operation and test the sample using the reference method. If only wood is used, then keep records showing that only wood was used. The owner or operator of a coal- or solid fuel-fired source may apply to the Regional Administrator for a waiver of this provision or for approval of an alternative fuel sampling program.

(2) Records of fuel purchases and fuel sulfur content must be kept for a period of five years from date of purchase and must be made available to the Regional Administrator upon request.

(3) The owner or occupant of a single-family residence, and the owner or manager of a residential building with four or fewer dwelling units, is not subject to the requirement to obtain and record the percent sulfur content from the vendor if the fuel used in an oil, coal, or gas furnace is purchased from a licensed fuel distributor.

(g) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Act, air pollutant,

ambient air, coal, distillate fuel oil, emission, fuel, fuel oil, gaseous fuel, marine vessel, mobile sources, motor vehicle, nonroad engine, nonroad vehicle, owner or operator, reference method, refuse, Regional Administrator, residual fuel oil, solid fuel, source, standard conditions, stationary source, used oil, and wood.

§ 49.131 General rule for open burning.

(a) *What is the purpose of this section?*

This section limits the types of materials that can be openly burned within the Indian reservation to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of particulate matter. It is EPA's goal to eliminate open burning disposal practices where alternative methods are feasible and practicable, to encourage the development of alternative disposal methods, to emphasize resource recovery, and to encourage utilization of the highest and best practicable burning methods to minimize emissions where other disposal practices are not feasible.

(b) *Who is affected by this section?* This section applies to any person who conducts open burning and to the owner of the property upon which open burning is conducted.

(c) *What is exempted from this section?* The following open fires are exempted from this section:

(1) Outdoor fires set for cultural or traditional purposes;

(2) Fires set for cultural or traditional purposes within structures such as sweat houses or lodges;

(3) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section, fires set for recreational purposes provided that no prohibited materials are burned;

(4) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section and with prior permission from the Regional Administrator, open outdoor fires used by qualified personnel to train firefighters in the methods of fire suppression and fire fighting techniques, provided that training fires are not allowed to smolder after the training session has terminated. Prior to igniting any structure, the fire protection service must ensure that the

structure does not contain any asbestos or asbestos-containing materials; batteries; stored chemicals such as pesticides, herbicides, fertilizers, paints, glues, sealers, tars, solvents, household cleaners, or photographic reagents; stored linoleum, plastics, rubber, tires, or insulated wire; or hazardous wastes. Before requesting permission from the Regional Administrator, the fire protection service must notify any appropriate Tribal air pollution authority and obtain any permissions or approvals required by the Tribe, and by any other governments with applicable laws and ordinances;

(5) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section and with prior permission from the Regional Administrator, one open outdoor fire each year to dispose of fireworks and associated packaging materials. Before requesting permission from the Regional Administrator, the owner or operator must notify any appropriate Tribal air pollution authority and obtain any permissions or approvals required by the Tribe, and by any other governments with applicable laws and ordinances;

(6) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section, open burning for the disposal of diseased animals or other material by order of a public health official.

(d) *What are the requirements for open burning?* (1) A person must not openly burn, or allow the open burning of, the following materials:

- (i) Garbage;
- (ii) Dead animals or parts of dead animals;
- (iii) Junked motor vehicles or any materials resulting from a salvage operation;
- (iv) Tires or rubber materials or products;
- (v) Plastics, plastic products, or styrofoam;
- (vi) Asphalt or composition roofing, or any other asphaltic material or product;
- (vii) Tar, tarpaper, petroleum products, or paints;
- (viii) Paper, paper products, or cardboard other than what is necessary to start a fire or that is generated at single-family residences or residential buildings with four or fewer dwelling

units and is burned at the residential site;

- (ix) Lumber or timbers treated with preservatives;
- (x) Construction debris or demolition waste;
- (xi) Pesticides, herbicides, fertilizers, or other chemicals;
- (xii) Insulated wire;
- (xiii) Batteries;
- (xiv) Light bulbs;
- (xv) Materials containing mercury (e.g., thermometers);
- (xvi) Asbestos or asbestos-containing materials;
- (xvii) Pathogenic wastes;
- (xviii) Hazardous wastes; or
- (xix) Any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned.

(2) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the Regional Administrator declares a burn ban due to deteriorating air quality. A burn ban may be declared whenever the Regional Administrator determines that air quality levels have exceeded, or are expected to exceed, 75% of any national ambient air quality standard for particulate matter, and these levels are projected to continue or reoccur over at least the next 24 hours.

(3) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the Regional Administrator issues an air stagnation advisory or declares an air pollution alert, air pollution warning, or air pollution emergency pursuant to § 49.137 Rule for air pollution episodes.

(4) Nothing in this section exempts or excuses any person from complying with applicable laws and ordinances of local fire departments and other governmental jurisdictions.

(e) *Are there additional requirements that must be met?* (1) A person subject to this section must conduct open burning as follows:

- (i) All materials to be openly burned must be kept as dry as possible through the use of a cover or dry storage;
- (ii) Before igniting a burn, non-combustibles must be separated from

the materials to be openly burned to the greatest extent practicable;

(iii) Natural or artificially induced draft must be present, including the use of blowers or air curtain incinerators where practicable;

(iv) To the greatest extent practicable, materials to be openly burned must be separated from the grass or peat layer; and

(v) A fire must not be allowed to smolder.

(2) Except for exempted fires set for cultural or traditional purposes, a person must not initiate any open burning when:

(i) The Regional Administrator has declared a burn ban;

(ii) An air stagnation advisory has been issued or an air pollution alert, warning, or emergency has been declared by the Regional Administrator.

(3) Except for exempted fires set for cultural or traditional purposes, any person conducting open burning when such an advisory is issued or declaration is made must either immediately extinguish the fire, or immediately withhold additional material such that the fire burns down.

(f) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Air pollutant, ambient air, emission, open burning, particulate matter, PM10, PM2.5, Regional Administrator, stack, and uncombined water.

§ 49.132 Rule for general open burning permits.

(a) *What is the purpose of this section?* This section establishes a permitting program for open burning within the Indian reservation to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of particulate matter.

(b) *Who is affected by this section?* This section applies to any person who conducts open burning.

(c) *What is exempted from this section?* The following open fires are exempted from this section:

(1) Outdoor fires set for cultural or traditional purposes;

(2) Fires set for cultural or traditional purposes within structures such as sweat houses or lodges;

(3) Fires set for recreational purposes, provided that no prohibited materials are burned;

(4) Forestry and silvicultural burning; and

(5) Agricultural burning.

(d) *What are the requirements for open burning?* (1) A person must apply for and obtain a permit for the open burn, have the permit available on-site during the open burn, and conduct the open burning in accordance with the terms and conditions of the permit.

(2) The date after which a person must apply for and obtain a permit under this section is identified in the implementation plan in subpart M of this part for the specific reservation where this section applies.

(3) A person must comply with the § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule, as applicable.

(4) Nothing in this section exempts or excuses any person from complying with any applicable laws and ordinances of local fire departments or other governmental jurisdictions.

(e) *Are there additional requirements that must be met?* (1) A person subject to this section must submit an application to the Regional Administrator for each proposed open burn. An application must be submitted in writing at least one working day, and no earlier than five working days, prior to the requested date that the burn would be conducted, and must contain, at a minimum, the following information:

(i) Street address of the property upon that the proposed open burning will occur, or if there is no street address of the property, the legal description of the property.

(ii) Name, mailing address, and telephone number of the person who will be responsible for conducting the proposed open burning.

(iii) A plot plan showing the location of the proposed open burning in relation to the property lines and indicating the distances and directions of the nearest residential and commercial properties.

(iv) The type and quantity of materials proposed to be burned, including