

must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(f) *Requirements for part 71 sources.* The owner or operator of a part 71 source must submit an annual registration report that includes the information required by paragraphs (e)(3) and (e)(4) of this section. This annual registration report must be submitted with the annual emission report and fee calculation worksheet required by part 71 (or by the source's part 71 permit if a different date is specified in the permit). The owner or operator may submit a single combined report provided that the combined report clearly identifies which emissions are the basis for the annual registration report, the part 71 annual emission report, and the part 71 fee calculation worksheet. The first annual registration report for a part 71 source shall be submitted for calendar year 2006, or for the calendar year that the source became subject to part 71, whichever is later.

(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, actual emissions, agricultural activities, air pollutant, air pollution source, ambient air, British thermal unit (Btu), emission, emission factor, emission unit, forestry or silvicultural activities, forestry or silvicultural burning, fuel, major source, marine vessel, mobile source, motor vehicle, new air pollution source, nonroad engine, nonroad vehicle, open burning, owner or operator, part 71 source, particulate matter, permit to construct, PM10, PM2.5, potential to emit, rated capacity, Regional Administrator, source, stack, stationary source, and uncombined water.

**§ 49.139 Rule for non-Title V operating permits.**

(a) *What is the purpose of this section?* This section establishes a permitting program to provide for the establishment of Federally-enforceable requirements for air pollution sources within the Indian reservation.

(b) *Who is affected by this section?* (1) This section applies to:

(i) The owner or operator of any air pollution source who wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit;

(ii) Any air pollution source for which the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure compliance with the implementation plan; or

(iii) Any air pollution source for which the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment.

(2) To the extent allowed by 40 CFR part 71, or a Tribal operating permit program approved pursuant to 40 CFR part 70, a Title V operating permit may be used in lieu of an operating permit under this section to establish the limitations or requirements in paragraph (b)(1) of this section.

(c) *What are the procedures for obtaining an owner-requested operating permit?*

(1) The owner or operator of an air pollution source who wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit must submit an application to the Regional Administrator requesting such limitation. The application must be submitted on forms provided by the Regional Administrator and contain the information specified in paragraph (d) of this section.

(2) Within 60 days after receipt of an application, the Regional Administrator will determine if it contains the information specified in paragraph (d) of this section and if so, will deem it complete for the purpose of preparing a draft permit to operate. If the Regional Administrator determines that the application is incomplete, it will be returned to the owner or operator along with a description of the necessary information that must be submitted for the application to be deemed complete.

(3) The Regional Administrator will prepare a draft permit to operate and a draft technical support document that describes the proposed limitation and its effect on the actual emissions and/

or potential to emit of the air pollution source.

(4) The Regional Administrator will provide a copy of the draft permit to operate and draft technical support document to the owner or operator of the air pollution source and will provide an opportunity for the owner or operator to meet with EPA and discuss the proposed limitations.

(5) The Regional Administrator will provide an opportunity for public comment on the draft permit to operate as follows:

(i) A copy of the draft permit to operate, the draft technical support document, the permit application, and all other supporting materials will be made available for public inspection in at least one location in the area affected by the air pollution source.

(ii) A notice will be made by prominent advertisement in a newspaper of general circulation in the area affected by the air pollution source of the availability of the draft permit to operate and supporting materials and of the opportunity to comment. Where possible, notices will also be made in the Tribal newspaper.

(iii) Copies of the notice will be provided to the owner or operator of the air pollution source, the Tribal governing body, and the Tribal, State, and local air pollution authorities having jurisdiction in areas outside of the Indian reservation potentially impacted by the air pollution source.

(iv) A 30-day period for submittal of public comments will be provided starting upon the date of publication of the notice. If requested, the Regional Administrator may hold a public hearing and/or extend the public comment period for up to an additional 30 days.

(6) After the close of the public comment period, the Regional Administrator will review all comments received and prepare a final permit to operate and final technical support document. The final technical support document will include a response to all comments received during the public comment period.

(7) The final permit to operate and final technical support document will be sent to the owner or operator of the air pollution source and will be made available at all of the locations where

the draft permit was made available. In addition, the final permit to operate and final technical support document will be sent to all persons who provided comments on the draft permit to operate.

(8) The final permit to operate will be a final agency action for purposes of administrative appeal and judicial review.

(d) *What must the owner or operator of an air pollution source include in an application for a Federally-enforceable limitation?*

(1) The owner or operator of an air pollution source that wishes to obtain a Federally-enforceable limitation must submit to the Regional Administrator an application, on forms provided by the Regional Administrator, for a permit to operate that includes the following information:

(i) Name of the air pollution source and the nature of the business.

(ii) Street address, telephone number, and facsimile number of the air pollution source.

(iii) Name, mailing address, and telephone number of the owner or operator.

(iv) Name, mailing address, telephone number, and facsimile number of the local individual responsible for compliance with this section.

(v) Name and mailing address of the individual authorized to receive requests for data and information.

(vi) For each air pollutant and for all emission units and air pollutant-generating activities to be covered by a limitation:

(A) The proposed limitation and a description of its effect on actual emissions or the potential to emit. Proposed limitations may include, but are not limited to, emission limitations, production limits, operational restrictions, fuel or raw material specifications, and/or requirements for installation and operation of emission controls. Proposed limitations must have a reasonably short averaging period, taking into consideration the operation of the air pollution source and the methods to be used for demonstrating compliance.

(B) Proposed testing, monitoring, recordkeeping, and reporting requirements to be used to demonstrate and

assure compliance with the proposed limitation.

(C) A description of the production processes and a related flow chart.

(D) Identification of emission units and air pollutant-generating activities.

(E) Type and quantity of fuels and/or raw materials used.

(F) Description and estimated efficiency of air pollution control equipment under present or anticipated operating conditions.

(G) Estimates of the current actual emissions and current potential to emit, including all calculations for the estimates.

(H) Estimates of the allowable emissions and/or potential to emit that would result from compliance with the proposed limitation, including all calculations for the estimates.

(vii) Any other information specifically requested by the Regional Administrator.

(2) Estimates of actual emissions must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the Regional Administrator. Any emission estimates submitted to the Regional Administrator must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(i) Source-specific emission tests;

(ii) Mass balance calculations;

(iii) Published, verifiable emission factors that are applicable to the source;

(iv) Other engineering calculations; or

(v) Other procedures to estimate emissions specifically approved by the Regional Administrator.

(3) All applications for a permit to operate must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(e) *What are the procedures that the Regional Administrator will follow to require an operating permit?* (1) Whenever the Regional Administrator determines that additional Federally-enforceable

requirements are necessary to ensure compliance with the implementation plan or to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment, the owner or operator of the air pollution source will be so notified in writing.

(2) The Regional Administrator may require that the owner or operator provide any information that the Regional Administrator determines is necessary to establish such requirements in a permit to operate under this section.

(3) The Regional Administrator will prepare a draft permit to operate and a draft technical support document that describes the reasons and need for the proposed requirements.

(4) The Regional Administrator will provide a copy of the draft permit to operate and draft technical support document to the owner or operator of the air pollution source and will provide an opportunity for the owner or operator to meet with EPA and discuss the proposed requirements.

(5) The Regional Administrator will provide an opportunity for public comment on the draft permit to operate as follows:

(i) A copy of the draft permit to operate, the draft technical support document, and all other supporting materials will be made available for public inspection in at least one location in the area affected by the air pollution source.

(ii) A notice will be made by prominent advertisement in a newspaper of general circulation in the area affected by the air pollution source of the availability of the draft permit to operate and supporting materials and of the opportunity to comment. Where possible, notices will also be made in the Tribal newspaper.

(iii) Copies of the notice will be provided to the owner or operator of the air pollution source, the Tribal governing body, and the Tribal, State, and local air pollution authorities having jurisdiction in areas outside of the Indian reservation potentially impacted by the air pollution source.

(iv) A 30-day period for submittal of public comments will be provided starting upon the date of publication of

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the notice. If requested, the Regional Administrator may hold a public hearing and/or extend the public comment period for up to an additional 30 days.

(6) After the close of the public comment period, the Regional Administrator will review all comments received and prepare a final permit to operate and final technical support document, unless the Regional Administrator determines that additional requirements are not necessary to ensure compliance with the implementation plan or to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment. The final technical support document will include a response to all comments received during the public comment period.

(7) The final permit to operate and final technical support document will be sent to the owner or operator of the air pollution source and will be made available at all of the locations where the draft permit was made available. In addition, the final permit to operate and final technical support document will be sent to all persons who provided comments on the draft permit to operate.

(8) The final permit to operate will be a final agency action for purposes of administrative appeal and judicial review.

(f) *Definitions of terms used in this section.* The following terms that are used in this section are defined in §49.123 General provisions: Act, actual emissions, air pollutant, air pollution source, allowable emissions, ambient air, emission, emission factor, Federally enforceable, implementation plan, owner or operator, potential to emit, and Regional Administrator.

§§ 49.140–49.200 [Reserved]

**Subpart D—Implementation Plans for Tribes—Region I**

§§ 49.201–49.470 [Reserved]

**Subpart E—Implementation Plans for Tribes—Region II**

§§ 49.471–49.680 [Reserved]

**Subpart F—Implementation Plans for Tribes—Region III**

§§ 49.681–49.710 [Reserved]

**Subpart G—Implementation Plans for Tribes—Region IV**

§§ 49.711–49.920 [Reserved]

**Subpart H—Implementation Plans for Tribes—Region V**

§§ 49.921–49.1970 [Reserved]

**Subpart I—Implementation Plans for Tribes—Region VI**

§§ 49.1971–49.3920 [Reserved]

**Subpart J—Implementation Plans for Tribes—Region VII**

§§ 49.3921–49.4160 [Reserved]

**Subpart K—Implementation Plans for Tribes—Region VIII**

§§ 49.4161–49.5510 [Reserved]

**Subpart L—Implementation Plans for Tribes—Region IX**

§§ 49.5511–49.9860 [Reserved]

**Subpart M—Implementation Plans for Tribes—Region X**

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