

PART 70 REGULATIONS  
February 17, 1998 DRAFT

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**APPENDIX B -**

**FEDERAL RULES ELIGIBLE FOR NOTICE-ONLY PROCEDURES . . . B-1**

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Draft 2-17-98

**Part 70 - STATE OPERATING PERMIT PROGRAMS**

This document is prepared using the redline/strikeout method of showing changes intended to be promulgated using as the baseline the current version of part 70 as revised on June 20, 1996 (61 FR 31443). Material ~~struck through~~ would be deleted. Material **shaded** (WordPerfect redline font) would be added.

§70.1 Program overview.

(a) The regulations in this part provide for the establishment of comprehensive State ~~air quality~~ **operating permitting systems** **programs** consistent with the requirements of title V of the Clean Air Act (Act) (42 U.S.C. 7401, et seq.). These regulations define the minimum elements required by the Act for State operating permit programs and the corresponding standards and procedures by which the Administrator will approve, oversee, and withdraw approval of State operating permit programs.

(b) **State operating permit programs shall provide that a**All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements. While title V does not impose substantive new requirements, it does require that fees be imposed on sources and that certain procedural measures be adopted especially with respect to compliance.

(c) Nothing in this part shall prevent a State, or interstate permitting authority, from establishing additional or more stringent requirements not inconsistent with the Act. The **U.S. Environmental Protection Agency (EPA)** will approve State program submittals to the extent that they are not inconsistent with the Act and these regulations. No permit, however, can be less stringent than necessary to meet all applicable requirements. In the case of Federal intervention in the permit process, the Administrator reserves the right to implement the State operating permit program, in whole or in part, or the Federal program contained in regulations promulgated under title V of the Act.

(d) The requirements of part 70, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or modified in regulations promulgated under title IV of the Act (acid rain program).

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(e) Issuance of State permits under this part may be coordinated with issuance of permits under the Resource Conservation and Recovery Act and under the Clean Water Act, whether issued by the State, ~~the U.S. Environmental Protection Agency (EPA)~~, or the U.S. Army Corps of Engineers.

§70.2 Definitions.

The following definitions apply to part 70. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable requirements of the Act.

Act means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

Advance approval means terms or conditions in a part 70 permit setting forth, in advance, requirements applicable to new or modified units, so that such changes may be made as an alternative operating scenario rather than a revision to the part 70 permit. [NOTE: EPA is considering regulatory language excluding major NSR.]

Affected source shall have the meaning given to it in the regulations promulgated under title IV of the Act.

Affected States are all States:

(1) Whose air quality may be affected and that are contiguous to the State in which a part 70 permit, permit modification **revision** or permit renewal is being proposed; or

(2) That are within 50 miles of the permitted source.

Affected unit shall have the meaning given to it in the regulations promulgated under title IV of the Act.

Alternative operating scenarios means terms or conditions in a part 70 permit, including those resulting from advance approvals, which assure that different modes of operation comply with the applicable requirements relevant to each mode of operation.

Applicable requirement means all of the following as they apply to emissions units in a part 70 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates):

(1) Any standard or other requirement provided for in the

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applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter;

(2) Any requirement enforceable by the Administrator and by citizens under the Act that limits emissions for purposes of creating offset credits or for complying with or avoiding applicability of applicable requirements;

~~(2)~~ (3) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;

~~(3)~~ (4) Any standard or other requirement under section 111 of the Act, including section 111(d);

~~(4)~~ (5) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

~~(5)~~ (6) Any standard or other requirement of the acid rain program under title IV of the Act or the regulations promulgated thereunder;

~~(6)~~ (7) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

~~(7)~~ (8) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

~~(8)~~ (9) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

~~(9)~~ (10) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

~~(10)~~ (11) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

~~(11)~~ (12) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone sections 608 or 609 of under title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a title V permit, and any standard or other requirement under any other section(s) of title VI of the Act that the Administrator determines should be contained in a part 70 permit; and

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~~(12)~~ (13) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

Designated representative shall have the meaning given to it in section 402(26) of the Act and the regulations promulgated thereunder.

Draft permit or draft permit revision means the version of a ~~the~~ permit or permit revision for which the permitting authority offers public participation as provided under §70.7(h) or ~~affected State review under §70.8~~ of this part.

Eligible Indian Tribe means an Indian Tribe that EPA has determined to meet the requirements of section 301(d)(2) of the Act and 40 CFR part 49.

Emissions allowable under the permit means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

Emissions unit means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. This term is not meant to alter or affect the definition of the term "unit" for purposes of title IV of the Act.

Enforceable by the appropriate air pollution control agency means [Reserved].

The EPA or the Administrator means the Administrator of the EPA or his or her designee.

Final permit means the version of a part 70 permit issued by the permitting authority that has completed all review procedures required by §§70.7 and 70.8 of this part.

Fugitive emissions are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

General permit means a part 70 permit that meets the requirements of §70.6(d) of this part.

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Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaskan native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Major new source review (major NSR) means a title I program contained in an EPA-approved or promulgated implementation plan for the preconstruction review of changes which are subject to review as new major stationary sources or major modifications under EPA regulations implementing parts C or D of title I of the Act.

Major source means any stationary source or group of stationary sources as described in paragraphs (1), (2), or (3) of this definition. ~~(or, For purposes of paragraphs (2) and (3), a major stationary source includes any group of stationary sources that are located on one or more contiguous or adjacent properties, and that are under common control of the same person (or persons under common control), and that belong~~ belonging to a single major industrial grouping. ~~and that are described in paragraphs (1), (2), or (3) of this definition. For the purposes of defining "major source," and that are described in paragraphs (1), (2), or (3) of this definition a~~ A stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987 ~~except that research and development activities shall be treated as belonging to a separate industrial grouping. In addition, for purposes of paragraphs (2) and (3) of this definition, any stationary source (or group of stationary sources) that conveys, stores, or otherwise assists in the production of a principal product at another stationary source (or group of stationary sources), may be considered a support facility. A support facility shall be considered to be part of the same source as the stationary source (or group of stationary sources) which it supports regardless of the 2-digit SIC code for the support facility.~~

(1) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant (HAP) (including any fugitive emissions



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of such pollutant) which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants (including any fugitive emissions of such pollutants), or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence:

(A) Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; ~~or~~ and

(B) Research and development activities may be considered separately and need not be aggregated with collocated stationary sources for purposes of determining major source status; however, the support facilities of a stand-alone research and development activity must be aggregated with the research and development activity for purposes of determining major source status.

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants ~~or any group of stationary sources~~, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant (including any ~~major source of~~ fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act ~~or for the purposes of paragraph (3) of this definition~~, unless the source belongs to one of the following categories of stationary source:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;

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(viii) Municipal incinerators (or combinations thereof) capable of charging more than 250 50 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plant;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) ~~All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category~~ Any other stationary source category regulated under section 111 or 112 of the Act and for which the Administrator has made an affirmative determination under section

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302(j) of the Act;

(3) A major stationary source as defined in part D of title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas (1) that are classified as "serious," and (2) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM-10) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM-10.

Minor new source review (minor NSR) means a title I program approved by EPA into a State's implementation plan under EPA regulations implementing section 110(a)(2) of title I of the Act for the preconstruction review of changes which are subject to review as new or modified sources and which do not qualify as new major stationary sources or major modifications under EPA regulations implementing parts C or D of title I of the Act.

Part 70 permit or permit (unless the context suggests otherwise) means any permit or group of permits covering a part 70 source that is issued, renewed, amended, or revised pursuant to this part.

Part 70 program, or State program, permit program, or program, unless otherwise specified, means a program approved by the Administrator under this part.

Part 70 source means any source subject to the permitting

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requirements of this part, as provided in §§70.3(a) and 70.3(b) of this part.

~~Permit modification means a revision to a part 70 permit that meets the requirements of §70.7(e) of this part.~~

Permit program costs means all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in §70.9(b) of this part (whether such costs are incurred by the permitting authority or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

~~Permit revision means any permit modification or administrative permit amendment.~~ either of the following:

(1) Revision to any term(s) or condition(s) of a part 70 permit, as required by § 70.7(d)(1) of this part; or

(2) Amendments to any term(s) or condition(s) of a part 70 permit initiated by the permittee or permitting authority, where eligible for incorporation as an administrative amendment under § 70.7(e)(1) of this part.

Permitting authority means either of the following:

(1) The Administrator, in the case of EPA-implemented programs; or

(2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under this part.

Potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the ~~Administrator~~ appropriate air pollution control agency. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in title IV of the Act or the regulations promulgated thereunder.

Proposed permit or proposed permit revision means the version of a permit or permit revision that the permitting authority proposes to issue and forwards to the Administrator for

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review in compliance with §70.8 of this part.

Regulated air pollutant means the following:

- (1) Nitrogen oxides or any volatile organic compounds;
- (2) Any pollutant for which a national ambient air quality standard has been promulgated;
- (3) Any pollutant that is subject to any standard promulgated under section 111 of the Act;
- (4) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or
- (5) **Except as provided in paragraph (6) of this definition,** any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act, including sections 112(g), **and (j), and (r)** of the Act, including the following:
  - (i) Any pollutant subject to requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and
  - (ii) Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the section 112(g)(2) requirement.
- (6) **Notwithstanding paragraph (5) of this definition, a pollutant shall not be classified as a regulated air pollutant solely because it is subject to standards or requirements promulgated pursuant to section 112(r) of the Act.**

Regulated pollutant (for presumptive fee calculation), which is used only for purposes of §70.9(b)(2) of this part, means any "regulated air pollutant" except the following:

- (1) Carbon monoxide; **or**
- (2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by title VI of the Act; ~~or~~
- ~~(3) Any pollutant that is a regulated air pollutant solely~~

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~~because it is subject to a standard or regulation under section 112(r) of the Act.~~

Renewal means the process by which a permit is reissued at the end of its term.

Research and development activities means activities: (1) operated under the close supervision of technically trained personnel; (2) conducted for the primary purpose of theoretical research or research and development into new or improved processes and products; (3) that do not manufacture more than de minimis amounts of commercial products; and (4) that do not contribute to the manufacture of commercial products by collocated sources in more than a de minimis manner.

Responsible official means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) the delegation of authority to such representative is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(4) For affected sources:

(i) The designated representative ~~in so far as~~ **for all** actions, standards, requirements, or prohibitions under title IV of the Act or the regulations promulgated thereunder ~~are~~

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concerned; and ;or

(ii) The designated representative or a person meeting the provisions of (1), (2), or (3) of this definition for any other purposes under part 70.

~~Section 502(b)(10) changes are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.~~

State means any non-Federal permitting authority, including any local agency, interstate association, or statewide program. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Where such meaning is clear from the context, "State" shall have its conventional meaning. For purposes of the acid rain program, the term "State" shall be limited to authorities within the 48 contiguous States and the District of Columbia as provided in section 402(14) of the Act. Unless otherwise indicated, references to "State" and "Governor" shall include, as appropriate, "Tribal," "Indian tribes," and "Indian governing bodies."

Stationary source means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act.

Title I modification or modification under any provision of title I of the Act means any modification under parts C and D of title I or sections 111(a)(4), 112(a)(5), or 112(g) of the Act; under regulations promulgated by EPA thereunder or in § 61.07 of part 61 of this chapter; or under State regulations approved by EPA to meet such requirements.

Whole program means a part 70 permit program, or any combination of partial programs, that meet all the requirements of these regulations and cover all the part 70 sources in the entire State. For the purposes of this definition, the term "State" does not include local permitting authorities, but refers only to the entire State, Commonwealth, or Territory.

§70.3 Applicability.

(a) Part 70 sources. A State program with whole or partial

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approval under this part must provide for permitting of at least the following sources:

(1) Any major source, ~~except that a source is not required to obtain a permit if it would be classified as a major source solely because it has the potential to emit major amounts of a pollutant listed pursuant to section 112(r)(3) of the Act and is not otherwise required to obtain a permit under this part;~~

(2) Any source, including an area source (i.e., a nonmajor source), subject to a standard, limitation, or other requirement under section 111 of the Act;

(3) Any source, including an area source (i.e., a nonmajor source), subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of this Act;

(4) Any source required to have a permit under parts C or D of title I of the Act,

~~(4)~~ (5) Any affected source; and

~~(5)~~ (6) Any source in a source category designated by the Administrator pursuant to this section.

(b) Source category exemptions.

(1) All sources listed in paragraph (a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act, may be exempted by the State from the obligation to obtain a part 70 permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for non-major sources and the appropriateness of any permanent exemptions in addition to those provided for in paragraph (b)(4) of this section.

(2) In the case of nonmajor sources subject to a standard or other requirement under either section 111 or section 112 of the Act after [date of promulgation], the Administrator will determine whether to exempt any or all such applicable sources from the requirement to obtain a part 70 permit at the time that the new standard is promulgated.

(3) Any source listed in paragraph (a) of this section exempt from the requirement to obtain a permit under this section may opt to apply for a permit under a part 70 program.



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(4) Unless otherwise required by the State to obtain a part 70 permit, the following source categories are exempted from the obligation to obtain a part 70 permit:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation.

(c) Emissions units and part 70 sources.

(1) For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(2) For any nonmajor source subject to the part 70 program under paragraphs (a) or (b) of this section, the permitting authority shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the part 70 program.

(d) Fugitive emissions. Fugitive emissions from a part 70 source shall be included in the permit application and the part 70 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

§70.4 State and Tribal program submittals and transition.

Eligible Indian Tribes may administer programs meeting the requirements of this section.

(a) Date for submittal. Not later than November 15, 1993, the Governor of each State (including Indian Tribes) shall submit to the Administrator for approval a proposed part 70 program, under State law or under an interstate compact, meeting the requirements of this part. ~~If part 70 is subsequently revised such that the Administrator determines that it is necessary to require a change to an approved State program, the required revisions to the program shall be submitted within 12 months of the final changes to part 70 or within such other period as authorized by the Administrator.~~ Indian Tribes are not required to submit part 70 programs to EPA for approval, but may elect to

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do so.

(b) Elements of the initial program submission. Any State that seeks to administer a program under this part shall submit to the Administrator a letter of submittal from the Governor or his or her designee requesting EPA approval of the program and at least three copies of a program submission. The submission shall contain the following:

(1) A complete program description describing how the State intends to carry out its responsibilities under this part.

(2) The regulations that comprise the permitting program, reasonably available evidence of their procedurally correct adoption, (including any notice of public comment and any significant comments received on the proposed part 70 program as requested by the Administrator), and copies of all applicable State or local statutes and regulations including those governing State administrative procedures that either authorize the part 70 program or restrict its implementation. The State shall include with the regulations any criteria used to determine insignificant activities or emission levels for purposes of determining complete applications consistent with §70.5(c) of this part.

(3) A legal opinion from the Attorney General for the State, the Tribal attorney, or the attorney for those State, local, or interstate air pollution control agencies that have independent legal counsel, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out all aspects of the program. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions that demonstrate adequate authority. State statutes and regulations cited by the State Attorney General, Tribal attorney, or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel," the attorney signing the statement required by this section shall have full authority to independently represent the State agency in court on all matters pertaining to the State program. The legal opinion shall also include a demonstration of adequate legal authority to carry out the requirements of this part, including authority to carry out each of the following:

(i) Issue permits and assure compliance with each applicable requirement and requirement of this part by all part 70 sources.

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(ii) Incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into part 70 permits consistent with §70.6 of this part.

(iii) Issue permits for a fixed term of 5 years in the case of permits with acid rain provisions and issue all other permits for a period not to exceed 5 years, except for permits issued for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act.

(iv) Issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and review such permits at least every 5 years. No permit for a solid waste incineration unit may be issued by an agency, instrumentality or person that is also responsible, in whole or in part, for the design and construction or operation of the unit.

(v) Incorporate into permits all applicable requirements and requirements of this part.

(vi) Terminate, modify, or revoke and reissue permits for cause.

(vii) Enforce permits, permit fee requirements, and the requirement to obtain a permit, as specified in §70.11 of this part.

(viii) Make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report pursuant to section 503(e) of the Act, except for information entitled to confidential treatment pursuant to section 114(c) of the Act. The contents of a part 70 permit shall not be entitled to protection under section 1145(c) of the Act.

(ix) Not issue a permit if the Administrator timely objects to its issuance pursuant to §70.8(c) of this part or, if the permit has not already been issued, to §70.8(d) of this part.

(x) Provide an opportunity for judicial review in State or Tribal court of the final permit action by the applicant, any person who participated in the applicable public participation process provided pursuant to §70.7(h) of this part, and any other person who could obtain judicial review of such actions under State or Tribal laws.

(xi) Provide that, solely for the purposes of obtaining judicial review in State or Tribal court for failure to take

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final action, final permit action shall include the failure of the permitting authority to take final action on an application for a permit, permit renewal, or permit revision within the time specified in the State program. ~~If the State program allows sources to make changes subject to post hoc review [as set forth in §§70.7(e)(2) and (3) of this part], the permitting authority's failure to take final action within 90 days of receipt of an application requesting minor permit modification procedures (or 180 days for modifications subject to group processing requirements) must be subject to judicial review in State or Tribal court.~~

(xii) Provide that the opportunity for judicial review described in paragraph (b)(3)(x) of this section shall be the exclusive means for obtaining judicial review of the terms and conditions of permits, and require that such petitions for judicial review must be filed no later than ~~90~~ 125 days after the final permit action, or such shorter time as the State shall designate. Notwithstanding the preceding requirement, petitions for judicial review of final permit actions can be filed after the deadline designated by the State, only if they are based solely on grounds arising after the deadline for judicial review. Such petitions shall be filed no later than ~~90~~ 125 days after the new grounds for review arise or such shorter time as the State shall designate. If the final permit action being challenged is the permitting authority's failure to take final action, a petition for judicial review may be filed any time before the permitting authority denies the permit or issues the final permit.

(xiii) Ensure that the authority of the State/local permitting Agency is not used to modify the acid rain program requirements.

(4) Relevant ~~permitting~~ program documentation not contained in the State regulations, including the following:

(i) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program; and

(ii) Relevant guidance issued by the State to assist in the implementation of its permitting program, including criteria for monitoring source compliance (e.g., inspection strategies).

(5) A complete description of the State's compliance tracking and enforcement program or reference to any agreement the State has with EPA that provides this information.

(6) A showing of adequate authority and procedures to

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determine within 60 days of receipt whether applications (including renewal applications) are complete, to request such other information as needed to process the application, and to take final action on complete applications within 18 months of the date of their submittal, except for initial permit applications, for which the permitting authority may take up to 3 years, or up to 5 years for Tribal programs, from the effective date of the program to take final action on the application, as provided for in the transition plan.

(7) A demonstration, consistent with §70.9 of this part, that the permit fees required by the State program are sufficient to cover permit program costs.

(8) A statement that adequate personnel and funding have been made available to develop, administer, and enforce the program. This statement shall include the following:

(i) A description in narrative form of the scope, structure, coverage, and processes of the State program.

(ii) A description of the organization and structure of the agency or agencies that will have responsibility for administering the program, including the information specified in this paragraph. If more than one agency is responsible for administration of a program, the responsibilities of each agency must be delineated, their procedures for coordination must be set forth, and an agency shall be designated as a "lead agency" to facilitate communications between EPA and the other agencies having program responsibility.

(iii) A description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(iv) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

(v) An estimate of the permit program costs for the first 4 years after approval, and a description of how the State plans to cover those costs.

(9) A commitment from the State to submit, at least annually to the Administrator, information regarding the State's enforcement activities including, but not limited to, the number of criminal and civil, judicial and administrative enforcement actions either commenced or concluded; the penalties, fines, and

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sentences obtained in those actions; and the number of administrative orders issued.

(10) A requirement under State law that, if a timely and complete application for a permit renewal is submitted, consistent with §70.5(a)(2) of this part, but the State has failed to issue or deny the renewal permit before the end of the term of the previous permit, then:

(i) The permit shall not expire until the renewal permit has been issued or denied and any permit shield that may be granted pursuant to §70.6(f) of this part may extend beyond the original permit term until renewal; or

(ii) All the terms and conditions of the permit including any permit shield that may be granted pursuant to §70.6(f) of this part shall remain in effect until the renewal permit has been issued or denied.

(11) A transition plan providing a schedule for submittal and final action on initial permit applications for all part 70 sources. This plan shall provide that:

(i) Submittal of permit applications by all part 70 sources (including any sources subject to a partial or interim program) shall occur within 1 year after the effective date of the permit program;

(ii) Final action shall be taken on at least one-third of such applications annually over a period not to exceed 3 years after such effective date, **except for Tribal programs for which the transition period will be for a period agreed upon jointly by the Tribe and the appropriate EPA Regional Office not to exceed 5 years;**

(iii) Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Act shall be acted on within ~~9~~ **12** months of receipt of the complete application; and

(iv) Submittal of permit applications and the permitting of affected sources shall occur in accordance with the deadlines in title IV of the Act and the regulations promulgated thereunder.

(12) Provisions, **including provisions** consistent with paragraphs (b)(12)(i) ~~through~~ **and** (iii) of this section to allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the

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emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions): *Provided that* the facility provides the Administrator and the permitting authority with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different time frame for emergencies. **Such changes shall not contravene or otherwise violate terms of the permit or any applicable requirement. The permit shield described in § 70.6(f) of this part shall not extend to any change made under this paragraph (b)(12), except as provided under paragraph (b)(12)(i)(B) of this section.** The source, permitting authority, and EPA shall attach each such notice to their copy of the relevant permit. The following provisions implement this requirement of an approvable part 70 permit program:

~~(i) The program shall allow permitted sources to make section 502(b)(10) changes without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions).~~

~~— (A) For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.~~

~~— (B) The permit shield described in §70.6(f) of this part shall not apply to any change made pursuant to this paragraph (12)(i).~~

(ii) **Trading under the implementation plan.** The program may provide for permitted sources to trade increases and decreases in emissions in the permitted facility, where the applicable implementation plan provides for such emissions trades without requiring a permit revision and based on the 7-day notice prescribed in this paragraph (b)(12)(ii). This provision is available in those cases where the permit does not already provide for such emissions trading **provided the permit identifies which permit terms may be replaced with the emissions trading provisions in the implementation plan.**

(A) Under this paragraph (b)(12)(ii), the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such

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change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and that provide for the emissions trade.

(B) The permit shield described in §70.6(f) of this part shall not extend to any change made under this paragraph (b)(12)(ii). Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.

(iii) (i) Trading under permitted emissions caps. The program shall require the permitting authority to include in a permit an emissions cap, pursuant to a request submitted by the applicant, consistent with any specific emissions limits or restrictions otherwise required in the permit by any applicable requirements, and permit terms and conditions for emissions trading solely for the purposes of complying with that cap, provided that the permitting authority finds that the request contains adequate terms and conditions, including all terms required under §§ 70.6(a) and (c) of this part, to determine compliance with the cap and with any emissions trading provisions. The permit shall also contain terms and conditions to assure compliance with all applicable requirements. ~~, if a permit applicant requests it, to issue permits that contain terms and conditions, including all terms required under §§70.6(a) and (c) of this part to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements.~~ The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions cap is enforceable and trades pursuant to it are quantifiable and enforceable. Any permit terms and conditions establishing such a cap or allowing such trading may be established only in procedures for permit issuance, renewal, or permit revision pursuant to § 70.7(g). The permitting authority shall not be required to include in the cap or emissions trading provisions any emissions units where the permitting authority determines that the for which emissions are not quantifiable or where it determines that there for which there are no replicable procedures or practical means to enforce the cap. emissions trades. ~~The permit shall also require compliance with all applicable requirements.~~



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(A) Under this paragraph (b)(12)(iii) of this section, the written notification required by paragraph (b)(12) of this section above shall state when the change will occur and shall describe how increases and decreases the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(B) The permit shield described in §70.6(f) of this part may extend to terms and conditions that allow such increases and decreases in emissions.

(13) Provisions for adequate, streamlined, and reasonable procedures for expeditious review of permit revisions or modifications. The program may meet this requirement by using procedures that meet the requirements of §70.7(e) of this part or that are substantially equivalent to those provided therein in §70.7(e) of this part.

~~(14) If a State allows changes that are not addressed or prohibited by the permit, other than those described in paragraph (b)(15) of this section, to be made without a permit revision, provisions meeting the requirements of (i) through (iii) of this paragraph. Although a State may, as a matter of State law, prohibit sources from making such changes without a permit revision, any such prohibition shall not be enforceable by the Administrator or by citizens under the Act unless the prohibition is required by an applicable requirement. Any State procedures implementing such a State law prohibition must include the requirements of (i) through (iii) of this paragraph.~~

~~— (i) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.~~

~~— (ii) Sources must provide contemporaneous written notice to the permitting authority and EPA of each such change, except for changes that qualify as insignificant under the provisions adopted pursuant to §70.5(c) of this part. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.~~

~~— (iii) The change shall not qualify for the shield under §70.6(f) of this part.~~

~~— (iv) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from~~

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~~those changes.~~

~~—— (15) Provisions prohibiting sources from making, without a permit revision, changes that are not addressed or prohibited by the part 70 permit, if such changes are subject to any requirements under title IV of the Act or are modifications under any provision of title I of the Act.~~

(16) (14) Provisions requiring the permitting authority to implement the requirements of §§70.6 and 70.7 of this part.

(c) Partial programs.

(1) The EPA may approve a partial program that applies to all part 70 sources within a limited geographic area (e.g., a local agency program covering all sources within the agency's jurisdiction). To be approvable, any partial program must, at a minimum, ensure compliance with all of the following applicable requirements, as they apply to the sources covered by the partial program:

(i) All requirements of title V of the Act and of part 70;

(ii) All applicable requirements of title IV of the Act and regulations promulgated thereunder which apply to affected sources; and

(iii) All applicable requirements of title I of the Act, including those established under sections 111 and 112 of the Act.

(2) Any partial permitting program, such as that of a local air pollution control agency, providing for the issuance of permits by a permitting authority other than the State, shall be consistent with all the elements required in paragraphs (b)(1) through (16) of this section.

(3) Approval of any partial program does not relieve the State (**excluding Indian Tribes**) from its obligation to submit a whole program or from application of any sanctions for failure to submit a fully-approvable whole program.

(4) Any partial program may obtain interim approval under paragraph (d) of this section if it substantially meets the requirements of this paragraph (c).

(d) Interim approval.

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(1) If a program (including a partial permit program **but not including Tribal programs**) submitted under this part substantially meets the requirements of this part, but is not fully approvable, the Administrator may by rule grant the program interim approval.

(2) Interim approval shall expire on a date set by the Administrator (but not later than 2 years after such approval), and may not be renewed. Sources shall become subject to the program according to the schedule approved in the State program. Permits granted under an interim approval shall **be fully effective and** expire at the end of their fixed term, unless renewed under a part 70 program.

(3) The EPA may grant interim approval to any program if it meets each of the following minimum requirements and otherwise substantially meets the requirements of this part:

(i) Adequate fees. The program must provide for collecting permit fees adequate for it to meet the requirements of §70.9 of this part.

(ii) Applicable requirements.

(A) The program must provide for adequate authority to issue permits that assure compliance with the requirements of paragraph (c)(1) of this section for those major sources covered by the program.

(B) Notwithstanding paragraph (d)(3)(ii)(A) of this section, where a State or local permitting authority lacks adequate authority to issue or revise permits that assure compliance with applicable requirements established exclusively through an EPA-approved minor NSR program, EPA may grant interim approval to the program upon a showing by the permitting authority of compelling reasons which support the interim approval.

(C) Any part 70 permit issued during an interim approval granted under paragraph (d)(3)(ii)(B) of this section that does not incorporate minor NSR requirements shall:

(1) Note this fact in the permit;

(2) Indicate how citizens may obtain access to excluded minor NSR permits;

(3) Provide a cross reference, such as a listing of the permit number, for each minor NSR permit containing an excluded

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minor NSR term; and

(4) State that the minor NSR requirements which are excluded are not eligible for the permit shield under § 70.6(f).

(D) A program receiving interim approval for the reason specified in (d)(3)(ii)(B) of this section must, upon or before granting of full approval, institute proceedings to reopen part 70 permits to incorporate excluded minor NSR permits as terms of the part 70 permits, as required by § 70.7(f)(1)(iv). Such reopening need not follow full permit issuance procedures nor the notice requirement of § 70.7(f)(3), but may instead follow the permit revision procedure in effect under the State's approved part 70 program for incorporation of minor NSR permits.

(iii) Fixed term. The program must provide for fixed permit terms, consistent with paragraph (b)(3)(iii) and (iv) of this section.

(iv) Public participation. The program must provide for adequate public notice of and an opportunity for public ~~participation comment and a hearing on draft permits, reopenings for cause, and revisions, except for modifications qualifying for minor permit modification procedures under~~ as required by §70.7(e) of this part.

(v) EPA and affected State review. The program must allow EPA an opportunity to review each proposed permit, including permit revisions, and to object to its issuance consistent with §70.8(c) of this part. The program must provide for affected State review consistent with §70.8(b) of this part.

(vi) Permit issuance. The program must provide that the proposed permit will not be issued if EPA objects to its issuance.

(vii) Enforcement. The program must contain authority to enforce permits, including the authority to assess penalties against sources that do not comply with their permits or with the requirement to obtain a permit.

(viii) Operational flexibility. The program must allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit, consistent with paragraph (b)(12).

(ix) Streamlined procedures. The program must provide for

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streamlined procedures for issuing and revising permits and determining expeditiously after receipt of a permit application or application for a permit revision whether such application is complete.

(x) Permit application. The program submittal must include copies of the permit application and reporting form(s) that the State will use in implementing the interim program.

(xi) Alternative scenarios. The program submittal must include provisions to insure that alternate scenarios requested by the source are included in the part 70 permit pursuant to §70.6(a)(9) of this part.

(e) EPA review of permit program submittals. Within 1 year after receiving a program submittal, the Administrator shall approve or disapprove the program, in whole or in part, by publishing a notice in the FEDERAL REGISTER. Prior to such notice, the Administrator shall provide an opportunity for public comment on such approval or disapproval. Any EPA action disapproving a program, in whole or in part, shall include a statement of the revisions or modifications necessary to obtain full approval. The Administrator shall approve State programs that conform to the requirements of this part.

(1) Within 60 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete enough to warrant review by EPA for either full, partial, or interim approval, **except that no Tribal program will be considered for interim approval**. If EPA finds that a State's submission is complete, the 1-year review period (i.e., the period of time allotted for formal EPA review of a proposed State program) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the 1-year review period shall not begin until all the necessary information is received by EPA.

(2) If the State's submission is materially changed during the 1-year review period, the Administrator may extend the review period for no more than 1 year following receipt of the revised submission.

(3) In any notice granting interim or partial approval, the Administrator shall specify the changes or additions that must be made before the program can receive full approval and the conditions for implementation of the program until that time. **In determining if program changes or additions submitted as a result of interim approval are adequate for the program to be granted full approval, EPA will review the submitted changes or additions**

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on the basis of the criteria in part 70 as in effect at the time interim approval was granted. If part 70 has been revised since interim approval was granted, the State may, at its option, base some or all of the changes or additions submitted as a result of interim approval on the latest revised version of part 70, and the Administrator will consider such program revisions as appropriate corrections for purposes of granting full approval.

(f) State response to EPA review of program.

(1) Disapproval. The State (**excluding Indian Tribes**) shall submit to EPA program revisions or modifications required by the Administrator's action disapproving the program, or any part thereof, within 180 days of receiving notification of the disapproval.

(2) Interim approval. The State (**excluding Indian Tribes**) shall submit to EPA changes to the program addressing the deficiencies specified in the interim approval no later than 6 months prior to the expiration of the interim approval.

(g) Effective date. The effective date of a part 70 program, including any partial or interim program approved under this part, shall be the effective date of approval by the Administrator.

(h) Individual permit transition. Upon approval of a State program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program, except that the Administrator will continue to issue phase I acid rain permits **and, to the extent provided in regulations promulgated pursuant to title IV of the Act, will issue phase II acid rain permits.** After program approval, EPA shall retain jurisdiction over any permit (including any general permit) that it has issued unless arrangements have been made with the State to assume responsibility for these permits. Where EPA retains jurisdiction, it will continue to process permit appeals and ~~modification~~ **revision** requests, to conduct inspections, and to receive and review monitoring reports. If any permit appeal or ~~modification~~ **revision** request is not finally resolved when the federally-issued permit expires, EPA may, with the consent of the State, retain jurisdiction until the matter is resolved. Upon request by a State, the Administrator may delegate authority to implement all or part of a permit issued by EPA, if a part 70 program has been approved for the State. The delegation may include authorization for the State to collect appropriate fees, consistent with §70.9 of this part.

(i) Program revisions. Either EPA or a State with an

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approved program may initiate a program revision. Program revision may be necessary when the relevant Federal or State statutes or regulations, including part 70, are revised, modified, or supplemented. Until such time as the State revises its program, within the timeframes of paragraph (i)(1) of this section, and EPA approves the revisions into the program, the version of the relevant Federal or State statutes or regulations prior to being revised, modified, or supplemented shall govern the program. The State shall keep EPA apprised of any proposed modifications to its basic statutory or regulatory authority or procedures. ~~(1)~~ If the Administrator determines pursuant to §70.10 of this part that a State is not adequately administering the requirements of this part, or that the State's permit program is inadequate in any other way, the State shall revise the program or its means of implementation to correct the inadequacy. ~~The program shall be revised within 180 days, or such other period as the Administrator may specify, following notification by the Administrator, or within 2 years if the State demonstrates that additional legal authority is necessary to make the program revision.~~

(1) If the program or the means of implementing it must be revised, fully adopted program revisions shall be submitted to the Administrator in accordance with the following timeframes, which will commence upon promulgation of revised requirements under title V of the Act or upon a finding by the Administrator of inadequate program administration:

(i) Within 180 days if no new statutory authority or regulatory revisions are necessary;

(ii) Within 12 months if no new statutory authority is needed but regulatory revisions are necessary;

(iii) Within 2 years if new statutory authority is needed;  
or

(iv) Notwithstanding paragraphs (i)(1)(i)-(iii) of this section, any other time period that the Administrator determines is appropriate to allow for program revision.

(2) Revision of a State program shall be accomplished as follows:

(i) The State shall submit a modified program description, Attorney General's or Tribal attorney's statement, or such other documents as EPA determines to be necessary.

(ii) After EPA receives a proposed program revision, it

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will publish in the FEDERAL REGISTER a public notice summarizing the proposed change and provide a public comment period of at least 30 days.

(iii) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Act.

(iv) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the FEDERAL REGISTER. Notice of approval of nonsubstantial program revisions may be given by a letter from the Administrator to the Governor or a designee.

(v) The Governor of any State with an approved part 70 program shall notify EPA whenever the Governor proposes to transfer all or part of the program to any other agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until the revision has been approved by the Administrator under this paragraph.

(3) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, ~~he~~ **the Administrator** may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as ~~he~~ **the Administrator** determines are necessary.

**(j) Savings provision. Any initial operating permits program developed and submitted to the Administrator for approval prior to [6 months from the date of publication] must meet the applicable criteria contained in part 70 as in effect on July 21, 1992 to receive EPA approval. Notwithstanding the preceding sentence, the Administrator may review portions or the entirety of such program submittals upon request of the permitting authority, and will review the entirety of all later submittals, on the basis of the criteria in part 70 as in effect at the time of the submittal.**

~~(j)~~ **(k) Sharing of information.**

(1) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction and in a form specified by the Administrator, including computer-readable files to the extent practicable. If the information has been submitted to the State under a claim of confidentiality, the State may require the source to submit this information to the Administrator directly. Where the State



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submits information to the Administrator under a claim of confidentiality, the State shall submit that claim to EPA when providing information to EPA under this section. Any information obtained from a State or part 70 source accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter.

(2) The EPA will furnish to States with approved programs the information in its files that the State needs to implement its approved program. Any such information submitted to EPA under a claim of confidentiality will be subject to the regulations in part 2 of this chapter.

~~(k)~~ (1) Administration and enforcement. Any State (excluding Indian Tribes) that fails to adopt a complete, approvable part 70 program, or that EPA determines is not adequately administering or enforcing such a program, shall be subject to certain Federal sanctions as set forth in §70.10 of this part.

§70.5 Permit applications.

(a) Duty to apply. For each part 70 source, the owner or operator shall submit a timely and complete permit application in accordance with this section.

(1) Timely application.

(i) A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.

~~(ii) Part 70 sources required to meet the requirements under section 112(g) of the Act, or to have a permit under the preconstruction review program approved into the applicable implementation plan under part C or D of title I of the Act, shall file a complete application to obtain the part 70 permit or permit revision within 12 months after commencing operation or on or before such earlier date as the permitting authority may establish. Where an existing part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.~~

~~(iii)~~ (ii) For purposes of permit renewal, a timely application is one that is submitted at least 6 months prior to the date of permit expiration, or such other longer time as may be approved by the Administrator that ensures that the term of

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the permit will not expire before the permit is renewed. In no event shall this time be greater than 18 months.

(iv) (iii) Applications for initial phase II acid rain permits shall be submitted to the permitting authority by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides **or by such other deadlines established under title IV of the Act and the regulations promulgated thereunder.**

(2) Complete application. The program shall provide criteria and procedures for determining in a timely fashion when applications are complete. To be ~~deemed~~ **found** complete, an application must provide all information required pursuant to paragraph (c) of this section **sufficient to allow the permitting authority to begin processing the application**, except that applications for permit revision need supply such information only if it is related to the proposed change. Information required under paragraph (c) of this section must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. The program shall require that a responsible official certify the submitted information consistent with paragraph (d) of this section. Unless the permitting authority determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, ~~except as otherwise provided in §70.7(a)(4) of this part.~~ If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in §70.7(b) of this part, shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.

(3) Confidential information. In the case where a source has submitted information to the State under a claim of confidentiality, the permitting authority may also require the source to submit a copy of such information directly to the Administrator.

(b) Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional

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information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) Standard application form and required information. The State program under this part shall provide for a standard application form or forms. Information as described below for each emissions unit at a part 70 source shall be included in the application. The Administrator may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, **including any applicable requirement that applies to an insignificant activity**, or to evaluate the fee amount required under the schedule approved pursuant to §70.9 of this part. **No emissions from any activity or emissions unit, including insignificant activities or insignificant emissions, may be exempted when determining whether a source is major.** The permitting authority may use discretion in developing application forms that best meet program needs and administrative efficiency. The forms and attachments chosen, however, shall include the elements specified below:

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(i) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under this paragraph (c). The permitting authority shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to §70.9(b) of this part.

(ii) Identification and description of all points of

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emissions described in paragraph (c)(3)(i) of this section in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(iii) Emissions rates in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

(iv) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(v) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the part 70 source.

(vii) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

(viii) Calculations on which the information in items (i) through (vii) above is based.

(4) The following air pollution control requirements:

(i) Citation and description of all applicable requirements, and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this part or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source pursuant to §70.6(a)(9) of this part or to define permit terms and conditions implementing §70.4(b)(12) or §70.6(a)(10) of this part.

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(8) Identification of those emissions units eligible for emissions trading under § 70.6(a)(10).

~~(8)~~ (9) A compliance plan for all part 70 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements.

(ii) A description as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(C) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(iii) A compliance schedule as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable

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requirements on which it is based.

(iv) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.

(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

~~(9)~~ (10) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with paragraph (d) of this section and section 114(a)(3) of the Act;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the permitting authority; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

~~(10)~~ (11) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the Act.

(d) Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. ~~This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.~~ The responsible official shall certify, by his or her signature, the following statement: "I certify under penalty of law that this document and all attachments were prepared under

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my direction or supervision and in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of those individuals who manage the system, or those individuals directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment for knowing violations."

§70.6 Permit content.

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

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance including, for MACT standards whose compliance date has not occurred, provisions as defined in § 70.7(e)(1)(iii)(A)-(E) of this part.

(i) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(ii) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

(iii) If an applicable implementation plan allows a determination of an alternative emission limit at a part 70 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant ~~modification~~ **revision** process, and the State elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(iv) With respect to applicable requirements under section 112(r)(7) of the Act, the inclusion of permit conditions in accordance with regulations promulgated under section 112(r) shall satisfy the requirements of paragraph (a)(1) of this

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section.

(2) Permit duration. The permitting authority shall issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources. Notwithstanding this requirement, the permitting authority shall issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years.

(3) Monitoring and related recordkeeping and reporting requirements.

(i) Each permit shall contain the following requirements with respect to monitoring:

(A) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 504(b) or 114(a)(3) of the Act;

(B) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (a)(3)(iii) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(i)(B); and

(C) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(ii) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, ~~where applicable,~~ the following:

(A) Records of required monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements;



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- (2) The date(s) analyses were performed;
- (3) The company or entity that performed the analyses;
- (4) The analytical techniques or methods used;
- (5) The results of such analyses; and
- (6) The operating conditions as existing at the time of sampling or measurement;

(B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(iii) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

(A) Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with §70.5(d) of this part.

(B) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions ~~as defined in the permit~~, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define "prompt" in **its part 70 program regulations for each situation which is not already defined in the underlying applicable requirement, and do so in** relation to the degree and type of deviation likely to occur and the applicable requirements. **Upset conditions shall be defined in the permit.**

(4) **For affected sources, a** permit condition prohibiting ~~emissions exceeding any affected unit from emitting SO<sub>2</sub> in excess of~~ any allowances that the ~~source~~ **affected unit** lawfully holds under title IV of the Act or the regulations promulgated thereunder.

(i) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not

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require a permit revision under any other applicable requirement.

(ii) No limit shall be placed on the number of allowances held by the ~~source unit~~. The ~~source unit~~ may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(iii) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(i) The permittee must comply with all conditions of the part 70 permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or ~~modification~~ **revision**; or for denial of a permit renewal application.

(ii) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iii) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit ~~modification~~ **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 permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the permitting authority copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality.

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(7) A provision to ensure that a part 70 source pays fees to the permitting authority consistent with the fee schedule approved pursuant to §70.9 of this part.

(8) Emissions trading. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes **approved in an implementation plan or other applicable requirement authorizing such changes to be** ~~for changes that are~~ provided for in the permit **and where the permit provides for such changes**.

(9) Terms and conditions for reasonably anticipated **alternative** operating scenarios, **including terms and conditions resulting from advance approvals**, identified by the source in its application as approved by the permitting authority. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions under each such operating scenario; and

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

(10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of ~~each~~ **any** emissions trade. Such terms and conditions:

(i) Shall include all terms required under §§70.6(a) and (c) of this part to determine compliance;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions that allow such increases and decreases in emissions; and

(iii) Must meet all applicable requirements and requirements of this part.

(b) Federally-enforceable requirements.

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(1) All terms and conditions in a part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.

(2) Notwithstanding paragraph (b)(1) of this section, the permitting authority shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of §§70.6, 70.7, or 70.8 of this part, other than those contained in paragraph (b) of this section.

(c) Compliance requirements. All part 70 permits shall contain the following elements with respect to compliance:

(1) Consistent with paragraph (a)(3) of this section, ~~compliance certification~~, testing, monitoring, **recordkeeping**, reporting, and ~~recordkeeping~~ **compliance certification** requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required **to be submitted** by a part 70 permit shall contain a certification by a responsible official that meets the requirements of §70.5(d) of this part.

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority or an authorized representative to perform the following:

(i) Enter upon the permittee's premises where a part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(3) A schedule of compliance consistent with §70.5(c)~~(8)~~**(9)** of this part.

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(4) Progress reports consistent with an applicable schedule of compliance and §70.5(c)~~(8)~~(9) of this part to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the permitting authority. Such progress reports shall contain the following:

(i) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(i) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the permitting authority) of submissions of compliance certifications;

(ii) In accordance with §70.6(a)(3) of this part, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(iii) A requirement that the compliance certification include 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 source, currently and over the reporting period consistent with paragraph (a)(3) of this section; and

(E) Such other facts as the permitting authority may require to determine the compliance status of the source;

(iv) A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority; and

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(v) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act.

(6) Such other provisions as the permitting authority may require.

(d) General permits.

(1) The permitting authority may, after notice and opportunity for public participation provided under §70.7~~(h)~~(k) of this part, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other part 70 permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the permitting authority shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of paragraph (f) of this section, the source shall be subject to enforcement action for operation without a part 70 permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under title IV of the Act.

(2) Part 70 sources that would qualify for a general permit must apply to the permitting authority for coverage under the terms of the general permit or must apply for a part 70 permit consistent with §70.5 of this part. The permitting authority may, in the general permit, provide for applications which deviate from the requirements of §70.5 of this part, provided that such applications meet the requirements of title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under §70.7~~(h)~~(k) of this part, the permitting authority may grant a source's request for authorization to operate under a general permit, ~~but~~ **and** such a grant shall ~~not~~ be a final permit action for purposes of judicial review.

(3) **The permitting authority shall provide timely notice to the public of any authorization given to a source to operate under the terms of a general permit. Such notice may be made on a monthly, summarized basis covering all sources receiving authorization since the time of the last notice.**

(e) Temporary sources. The permitting authority may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least

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one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the permitting authority at least 10 days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions of this section.

(f) Permit shield.

(1) Except as provided in this part, the permitting authority may expressly include in a part 70 permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(i) Such applicable requirements are included and are specifically identified in the permit; or

(ii) The permitting authority, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any part 70 permit shall alter or affect the following:

(i) The provisions of sections 112(r)(9) and 303 of the Act (emergency orders), including the authority of the Administrator under ~~that~~ those sections;

(ii) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) The applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

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(iv) The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

(g) Emergency provision.

(1) Definition. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) ~~Effect of an emergency.~~ An emergency constitutes **A State may provide for** an affirmative defense **to available in** an action brought for noncompliance with ~~such~~ technology-based emission limitations **other than federally-promulgated requirements.** **Such an affirmative defense may be available only** if the conditions of paragraph (g)(3) of this section are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(ii) The permitted facility was at the time being properly operated;

(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(iv) The permittee submitted notice of the emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph (a)(3)(iv)(B) of this section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.



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(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

§70.9 Fee determination and certification.

(a) Fee Requirement. The State program shall require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs.

(b) Fee schedule adequacy.

(1) The State program shall establish a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs. These costs include, but are not limited to, the costs of the following activities as they relate to the operating permit program for stationary sources:

(i) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(ii) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

(iii) General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;

(iv) Implementing and enforcing the terms of any part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(v) Emissions and ambient monitoring;

(vi) Modeling, analyses, or demonstrations;

(vii) Preparing inventories and tracking emissions; and

(viii) Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program contained in section 507 of the Act in determining and meeting their

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obligations under this part.

(2)(i) The Administrator will presume that the fee schedule meets the requirements of paragraph (b)(1) of this section if it would result in the collection and retention of an amount not less than \$25 per year (as adjusted pursuant to the criteria set forth in paragraph (b)(2)(iv) of this section) times the total tons of the actual emissions of each regulated pollutant (for presumptive fee calculation) emitted from part 70 sources.

(ii) The State may exclude from such calculation:

(A) The actual emissions of sources for which no fee is required under paragraph (b)(4) of this section;

(B) The amount of a part 70 source's actual emissions of each regulated pollutant (for presumptive fee calculation) that the source emits in excess of four thousand (4,000) tpy;

(C) A part 70 source's actual emissions of any regulated pollutant (for presumptive fee calculation), the emissions of which are already included in the minimum fees calculation; or

(D) The insignificant quantities of actual emissions not required in a permit application pursuant to §70.5(c) of this part.

(iii) "Actual emissions" means the actual rate of emissions in tons per year of any regulated pollutant (for presumptive fee calculation) emitted from a part 70 source over the preceding calendar year or any other period determined by the permitting authority to be representative of normal source operation and consistent with the fee schedule approved pursuant to this section. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and in-place control equipment, types of materials processed, stored, or combusted during the preceding calendar year or such other time period established by the permitting authority pursuant to the preceding sentence.

(iv) The program shall provide that the \$25 per ton per year used to calculate the presumptive minimum amount to be collected by the fee schedule, as described in paragraph (b)(2)(i) of this section, shall be increased each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989.

(A) The Consumer Price Index for any calendar year is the

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average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

(B) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.

(3) The State program's fee schedule may include emissions fees, application fees, service-based fees or other types of fees, or any combination thereof, to meet the requirements of paragraph (b)(1) or (b)(2) of this section. Nothing in the provisions of this section shall require a permitting authority to calculate fees on any particular basis or in the same manner for all part 70 sources, all classes or categories of part 70 sources, or all regulated air pollutants, provided that the permitting authority collects a total amount of fees sufficient to meet the program support requirements of paragraph (b)(1) of this section.

(4) Notwithstanding any other provision of this section, during the years 1995 through 1999 inclusive, no fee for purposes of title V shall be required to be paid with respect to emissions from any affected unit under section 404 of the Act.

(5) The State shall provide a detailed accounting that its fee schedule meets the requirements of paragraph (b)(1) of this section if:

(i) The State sets a fee schedule that would result in the collection and retention of an amount less than that presumed to be adequate under paragraph (b)(2) of this section; or

(ii) The Administrator determines, based on comments rebutting the presumption in paragraph (b)(2) of this section or on his own initiative, that there are serious questions regarding whether the fee schedule is sufficient to cover the permit program costs.

(c) Fee demonstration. The permitting authority shall provide a demonstration (and periodic updates as required by the Administrator) that the fee schedule selected will result in the collection and retention of fees in an amount sufficient to meet the requirements of this section.

(d) Use of Required Fee Revenue. The Administrator will not approve a demonstration as meeting the requirements of this section, unless it contains an initial accounting (and periodic updates as required by the Administrator) of how required fee

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revenues are used solely to cover the costs of meeting the various functions of the permitting program.

§70.10 Federal oversight and sanctions.

(a) Failure to submit an approvable program.

(1) If a State fails to submit a ~~fully approvable whole complete~~ part 70 program ~~in a timely manner~~, or a required revision thereto ~~(including revisions to correct deficiencies of a program that the Administrator had granted interim approval)~~, in conformance with the provisions of §70.4 of this part, or if ~~an interim approval expires and the Administrator has not approved a whole part 70 program~~ ~~the Administrator disapproves a submitted program~~:

(i) ~~At any time~~ ~~t~~The Administrator may, ~~prior to the expiration of the 18-month period referred to in paragraph (a)(1)(ii) of this section~~, apply any one of the sanctions specified in section 179(b) of the Act; and

(ii) Eighteen months after the date required for submittal or ~~18 months after~~ the date of disapproval ~~by the Administrator, whichever is applicable~~ the Administrator will apply ~~such~~ sanctions ~~under section 179(b) of the Act~~ in the same manner and ~~subject to the same deadlines and other~~ ~~with the same~~ conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a) of the Act.

(2) ~~The sanctions under section 179(b)(2) of the Act shall not apply pursuant to paragraph (1) of this section in any area unless the area has been designated a nonattainment area under part D of title I of the Act.~~

~~(2) (3) If full approval of a whole part 70 program has not taken place within 2 years after the date required for such submission, t~~The Administrator will promulgate, administer, and enforce a whole program or a partial program as appropriate for such State. ~~when~~:

(i) Full approval of a whole part 70 program has not been granted by November 15, 1995, except for programs granted interim approval; or

(ii) For programs granted interim approval, that approval has expired after November 15, 1995 and EPA has not granted full approval of a whole part 70 program.

(4) The requirements of paragraphs (a)(1) and (a)(3) of

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this section shall not apply to Indian Tribes and Tribal programs.

(b) State failure to administer or enforce. Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part and of any agreement between the State and the Administrator concerning operation of the program.

(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering or enforcing a part 70 program, or any portion thereof, the Administrator will notify the permitting authority of the determination and the reasons therefore. The Administrator will publish such notice in the FEDERAL REGISTER.

(2) If, 90 days after issuing the notice under paragraph ~~(c)~~(b)(1) of this section, the permitting authority fails to take significant action to assure adequate administration and enforcement of the program, the Administrator may take one or more of the following actions:

(i) Withdraw approval of the program or portion thereof using procedures consistent with §70.4(e) of this part;

(ii) Apply any of the sanctions specified in section 179(b) of the Act;

(iii) Promulgate, administer, or enforce a Federal program under title V of the Act.

(3) Whenever the Administrator has made the finding and issued the notice under paragraph ~~(c)~~(b)(1) of this section, the Administrator will apply the sanctions under section 179(b) of the Act 18 months after that notice. These sanctions will be applied in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a) of the Act.

(4) Whenever the Administrator has made the finding and issued the notice under paragraph ~~(c)~~(b)(1) of this section, the Administrator will, unless the State has corrected such deficiency within 18 months after the date of such finding, promulgate, administer, and enforce, a whole or partial program 2 years after the date of such finding.

(5) Nothing in this section shall limit the Administrator's authority to take any enforcement action against a source for

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violations of the Act or of a permit issued under rules adopted pursuant to this section in a State that has been delegated responsibility by EPA to implement a Federal program promulgated under title V of the Act.

(6) Where a whole State program consists of an aggregate of partial programs, and one or more partial programs fails to be fully approved or implemented, the Administrator may apply sanctions only in those areas for which the State (**excluding Indian Tribes**) failed to submit or implement an approvable program.

(c) Criteria for withdrawal of State programs.

(1) The Administrator may, ~~in accordance with the procedures of paragraph (c) of this section,~~ withdraw program approval in whole or in part whenever the approved program no longer complies with the requirements of this part, and the permitting authority fails to take corrective action. Such circumstances, in whole or in part, include any of the following:

(i) Where the permitting authority's legal authority no longer meets the requirements of this part, including the following:

(A) The permitting authority fails to promulgate or enact new authorities when necessary; or

(B) The State legislature or a court strikes down or limits State authorities to administer or enforce the State program.

(ii) Where the operation of the State program fails to comply with the requirements of this part, including the following:

(A) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits;

(B) Repeated issuance of permits that do not conform to the requirements of this part;

(C) Failure to comply with the public participation requirements of §70.7~~(h)~~ of this part;

(D) Failure to collect, retain, or allocate fee revenue consistent with §70.9 of this part; or

(E) Failure in a timely way to act on any applications for permits including renewals and revisions.

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(iii) Where the State fails to enforce the part 70 program consistent with the requirements of this part, including the following:

(A) Failure to act on violations of permits or other program requirements;

(B) Failure to seek adequate enforcement penalties and fines and collect all assessed penalties and fines; or

(C) Failure to inspect and monitor activities subject to regulation.

(d) Federal collection of fees. If the Administrator determines that the fee provisions of a part 70 program do not meet the requirements of §70.9 of this part, or if the Administrator makes a determination under paragraph (c)(1) of this section that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under title V of the Act, collect reasonable fees to cover the Administrator's costs of administering the provisions of the permitting program promulgated by the Administrator, without regard to the requirements of §70.9 of this part.

§70.11 Requirements for enforcement authority.

Except for Tribal programs, with respect to criminal enforcement matters only, under which the Tribe shall enter into a formal Memorandum of Agreement with EPA to provide for the timely referral of criminal enforcement matters to the appropriate EPA Regional Administrator, all programs to be approved under this part must contain the following provisions:

(a) Enforcement authority. Any agency administering a program shall have the following enforcement authority to address violations of program requirements by part 70 sources:

(1) To restrain or enjoin immediately and effectively any person by order or by suit in court from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment.

(2) To seek injunctive relief in court to enjoin any violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit.

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(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, according to the following:

(i) Civil penalties shall be recoverable for the violation of any applicable requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, entry or monitoring activities or, any regulation or orders issued by the permitting authority. These penalties shall be recoverable in a maximum amount of not less than \$10,000 per day per violation. State law shall not include mental state as an element of proof for civil violations for which penalties up to \$10,000 per day per violation are recoverable.

(ii) Criminal fines shall be recoverable against any person who knowingly violates any applicable requirement; any permit condition; or any fee or filing requirement. These fines shall be recoverable in a maximum amount of not less than \$10,000 per day per violation.

(iii) Criminal fines shall be recoverable against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method. These fines shall be recoverable in a maximum amount of not less than \$10,000 per day per violation.

(b) Burden of proof. The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section shall be no greater than the burden of proof or degree of knowledge or intent required under the Act.

(c) Appropriateness of penalties and fines. A civil penalty or criminal fine assessed, sought, or agreed upon by the permitting authority under paragraph (a)(3) of this section shall be appropriate to the violation.



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**APPENDIX B -  
FEDERAL RULES ELIGIBLE FOR NOTICE-ONLY PROCEDURES**

Use this appendix to determine if a change you make at your facility that is subject to federally-promulgated NSPS or NESHAP requirements is eligible for the notice-only procedures of § 70.7 (e)(2). For nonfederal requirements, contact your State or local permit authority.

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Use this appendix only if all of the following 4 things apply:

- 1) you install a new unit or modify an existing unit,
- 2) you are allowed to install or modify the unit without prior approval by the State or local permit authority,
- 3) the change is not required to use significant or minor permit revision procedures, and
- 4) the new or modified unit is subject to federally-promulgated NSPS or NESHAP requirements.

Then, if the NSPS or NESHAP requirements are included in the following tables, you may use notice-only procedures.

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IMPORTANT: EPA has made no effort to determine if the facilities included below are subject to preconstruction review requirements. Check with your permitting authority to determine if a preconstruction permit is needed prior to construction.

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**NEW SOURCE PERFORMANCE STANDARDS (NSPS), 40 CFR Part 60**

<u>SUBPART</u>	<u>DESCRIPTION</u>	<u>UNITS AFFECTED</u>
K	Storage vessels for petroleum liquids constructed between 6/11/73 and 5/18/78	
Ka	Storage vessels for petroleum liquids constructed between 5/19/78 and 7/23/84	
R	Primary lead smelters	Blast furnace, reverberatory furnace, sintering machines, electric melt furnace, converter

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S	Primary aluminum reduction plants	Potroom groups, anode bake plants
V	Phosphate fertilizer industry; triple superphosphate plants	Reactors, granulators, dryers, coolers, screens, mills
XX	Bulk gasoline terminals	Loading racks
DDD	VOC emissions from polymer industry	
FFF	Flexible vinyl and urethane coating and printing	Printing lines
GGG	Equipment leaks of VOC in petroleum refineries	
HHH	Synthetic fiber production facilities	Fiber processing
III	SOCMI air oxidation unit processes, VOC emissions	Reactors and recovery systems
KKK	Equipment leaks of VOC from onshore natural gas processing	Compressors and other equipment
LLL	Onshore natural gas processing; SO <sub>2</sub> emissions	Sweetening units
NNN	VOC emissions from SOCMI distillation operations	Distillation units
OOO	Nonmetallic minerals processing plants	Crushers, grinders, screens, conveyors, other material handling operations
PPP	Wool fiberglass insulation manufacturing operations	Rotary spin wool fiberglass lines

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<u>SUBPART</u>	<u>DESCRIPTION</u>	<u>UNITS AFFECTED</u>
TTT	Surface coating of plastic parts for business machines	Spray booths
UUU	Calciners and dryers in mineral industries	

**NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP), 40 CFR PART 61**

F	Vinyl chloride	Ethylene dichloride plants, vinyl chloride plants, polyvinyl chloride plants
J	Equipment leaks of benzene	
K	Radionuclide emissions from elemental phosphorous plants	Calciners and nodulizing kilns
N	Inorganic arsenic from glass manufacturing plants	Copper converters with charge rate > 75 kg/hr, copper smelters
R	Radon emissions from phosphogypsum stacks	Phosphogypsum stacks
T	Radon from disposal of uranium mill tailings	Uranium mill tailings disposal sites
W	Radon from operating mill tailings	Facilities licensed to manage uranium byproduct materials

-only procedures if you state in the notice that you will use the monitoring methods specified in the NSPS to demonstrate compliance with the applicable standard. If you are subject to the following NSPS and intend to demonstrate compliance using methods other than those in the applicable NSPS, you are not eligible for notice-only procedures.

**NEW SOURCE PERFORMANCE STANDARDS (NSPS), 40 CFR PART 60**

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<u>SUBPART</u>	<u>DESCRIPTION</u>	<u>UNITS AFFECTED</u>
D	Fossil fuel steam generators	Fossil fuel steam generators
Da	Electric steam generating units	Electric steam generating units
Db	Industrial, commercial and institutional steam generating units	Steam generating units
Dc	Small industrial, commercial and institutional steam generating units	Steam generating units
E	Incinerators	Incinerators
G	Nitric acid plants	Nitric acid plants
H	Sulfuric acid plants	Sulfuric acid plants
J	Petroleum refineries	PCCU regenerators flue gas regenerators Claus sulfur recovery plant
Kb	VOL storage vessels constructed after 7/23/84	Vessels >151m <sup>3</sup> with TVP >5.2kPa or vessels 75m <sup>3</sup> to 151m <sup>3</sup> with TVP 27.6 to 76.6kPa
N	Basic oxygen process furnaces	
Na	Basic oxygen process furnaces steelmaking facilities	Top blow BOPF's, hot metal transfer and skimming
O	Sewage treatment plants	Incinerators, all Multiple hearth, fluidized bed or electric incinerators
P	Primary copper smelters	Dryer Roaster, furnace, converter

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<u>SUBPART</u>	<u>DESCRIPTION</u>	<u>UNITS AFFECTED</u>
Q	Primary zinc smelters	Sintering machines Roaster
T	Phosphate fertilizer industry; wet process phosphoric acid plants	Reactors, fillers, evaporators, hot wells
U	Phosphate fertilizer industry; superphosphoric acid plants	Evaporators, hot wells, acid sumps, cooling tanks
W	Phosphate fertilizer industry; superphosphoric acid plants	Mixers, curing belts, reactors, granulators, dryers, cookers, screens, mills
X	Phosphate fertilizer industry; granular triple superphosphate storage facilities	Curing piles, conveyors, elevators, screens, mills
Y	Coal preparation plants >200 tons/day	Dryers, pneumatic coal cleaning equipment, and coal processing, conveying and handling systems
AA	Steel plants: EAF's and oxygen decarburization vessels before August 17, 1983	EAFs, oxygen decarb vessels, dust handling systems
AAa	Steel plants: EAF's and oxygen decarburization vessels after August 17, 1983	EAFs, oxygen decarb vessels, dust handling systems

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<u>SUBPART</u>	<u>DESCRIPTION</u>	<u>UNITS AFFECTED</u>
BB	Kraft pulp mills	PM and KRS from recovery furnaces, smelt dissolving tanks, lime kilns  KRS from digesters, brown stock washers, evaporators, condensate strippers
CC	Glass manufacturing plants	Glass melting units
EE	Surface coating of metal furniture	Coating operations
GG	Stationary gas turbines	
HH	Lime manufacturing plants	Rotary lime kilns
KK	Lead acid battery plants	Any lead emitting operation
LL	Metallic mineral processing plants	Crushers, screens, conveyors, dryers, packaging operations, loading, storage, etc.
MM	Automobile and light duty truck surface coating operations	Coating operations
NN	Phosphate rock plants with production capacity > 4 ton/hr	Dryers, calciners, grinders
QQ	Graphic arts industry: publication rotogravure printing	Printing presses
RR	Pressure sensitive tape and label surface coating operations	Coating lines

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<u>SUBPART</u>	<u>DESCRIPTION</u>	<u>UNITS AFFECTED</u>
SS	Industrial surface coating: large appliances	Coating lines
TT	Metal coil surface coating	Coating operations
WW	Beverage can surface coating industry	Coating operations
BBB	Rubber tire manufacturing industry	Michelin-B operation, cementing, green tire spraying operations
JJJ	Petroleum dry cleaning	