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40 CFR 61 - NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Subpart A - General Provisions

§ 61.01 Lists of pollutants and applicability of part 61.

a) The following list presents the substances that, pursuant to section 112 of the Act, have been designated as hazardous air pollutants. TheFederal Registercitations and dates refer to the publication in which the listing decision was originally published.

Asbestos (36 FR 5931; Mar. 31, 1971)
Benzene (42 FR 29332; June 8, 1977)
Beryllium (36 FR 5931; Mar. 31, 1971)
Coke Oven Emissions (49 FR 36560; Sept. 18, 1984)
Inorganic Arsenic (45 FR 37886; June 5, 1980)
Mercury (36 FR 5931; Mar. 31, 1971)
Radionuclides (44 FR 76738; Dec. 27, 1979)
Vinyl Chloride (40 FR 59532; Dec. 24, 1975)

(b) The following list presents other substances for which aFederal Registernotice has been published that included consideration of the serious health effects, including cancer, from ambient air exposure to the substance.

Acrylonitrile (50 FR 24319; June 10, 1985)
1,3-Butadiene (50 FR 41466; Oct. 10, 1985)
Cadmium (50 FR 42000; Oct. 16, 1985)
Carbon Tetrachloride (50 FR 32621; Aug. 13, 1985)
Chlorinated Benzenes (50 FR 32628; Aug. 13, 1985)
Chlorofluorocarbon—113 (50 FR 24313; June 10, 1985)
Chloroform (50 FR 39626; Sept. 27, 1985)
Chloroprene (50 FR 39632; Sept. 27, 1985)
Chromium (50 FR 24317; June 10, 1985)
Copper (52 FR 5496; Feb. 23, 1987)
Epichlorohydrin (50 FR 24575; June 11, 1985)
Ethylene Dichloride (50 FR 41994; Oct. 16, 1985)
Ethylene Oxide (50 FR 40286; Oct. 2, 1985)
Hexachlorocyclopentadiene (50 FR 40154; Oct. 1, 1985)
Manganese (50 FR 32627; Aug. 13, 1985)
Methyl Chloroform (50 FR 24314; June 10, 1985)
Methylene Chloride (50 FR 42037; Oct. 17, 1985)
Nickel (51 FR 34135; Sept. 25, 1986)
Perchloroethylene (50 FR 52800; Dec. 26, 1985)
Phenol (51 FR 22854; June 23, 1986)
Polycyclic Organic Matter (49 FR 31680; Aug. 8, 1984)
Toluene (49 FR 22195; May 25, 1984)
Trichloroethylene (50 FR 52422; Dec. 23, 1985)

Vinylidene Chloride (50 FR 32632; Aug. 13, 1985)
Zinc and Zinc Oxide (52 FR 32597, Aug. 28, 1987)

(c) This part applies to the owner or operator of any stationary source for which a standard is prescribed under this part.

(d) In addition to complying with the provisions of this part, the owner or operator of a stationary source subject to a standard in this part may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Clean Air Act (Act) as amended November 15, 1990 (42 U.S.C. 7661). For more information about obtaining an operating permit see part 70 of this chapter.

§ 61.02 Definitions.

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

Act means the Clean Air Act (42 U.S.C. 7401 *et seq.*).
Administrator means the Administrator of the Environmental Protection Agency or his authorized representative.
Alternative method means any method of sampling and analyzing for an air pollutant which is not a reference method but which has been demonstrated to the Administrator's satisfaction to produce results adequate for the Administrator's determination of compliance.
Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).
Capital expenditure means an expenditure for a physical or operational change to a stationary source which exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in the latest edition of Internal Revenue Service (IRS) Publication 534 and the stationary source's basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to a stationary source must not be reduced by any "excluded additions" as defined for stationary sources constructed after December 31, 1981, in IRS Publication 534, as would be done for tax purposes. In addition, "annual asset guideline repair allowance" may be used even though it is excluded for tax purposes in IRS Publication 534.
Commenced means, with respect to the definition of "new source" in section 111(a)(2) of the Act, that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.
Compliance schedule means the date or dates by which a source or category of sources is required to comply with the standards of this part and with any steps toward such compliance which are set forth in a waiver of compliance under §61.11.
Construction means fabrication, erection, or installation of an affected facility.

Effective date is the date of promulgation in theFederal Registerof an applicable standard or other regulation under this part.
Existing source means any stationary source which is not a new source.
Force majeure means, for purposes of §61.13, an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.
Issuance of a part 70 permit will occur, if the State is the permitting authority, in accordance with the requirements of part 70 of this chapter and the applicable, approved State permit program. When the EPA is the permitting authority, issuance of a title V permit occurs immediately after the EPA takes final action on the final permit.
Monitoring system means any system, required under the monitoring sections in applicable subparts, used to sample and condition (if applicable), to analyze, and to provide a record of emissions or process parameters.
New source means any stationary source, the construction or modification of which is commenced after the publication in theFederal Registerof proposed national emission standards for hazardous air pollutants which will be applicable to such source.
Owner or operator means any person who owns, leases, operates, controls, or supervises a stationary source.
Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.
Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in this chapter.
Permitting authority means:
(1) 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 part 70 of this chapter; or
(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661).
Reference method means any method of sampling and analyzing for an air pollutant, as described in appendix B to this part.
Run means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.
Standard means a national emission standard including a design, equipment, work practice or operational standard for a hazardous air pollutant proposed or promulgated under this part.
Startup means the setting in operation of a stationary source for any purpose.
State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement:
(1) The provisions of this part; and/or
(2) The permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant which has been designated as hazardous by the Administrator.
Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established to implement title V of the Act (42 U.S.C. 7661). A title V permit issued by a State permitting authority is called a part 70 permit in this part.

§ 61.03 Units and abbreviations.

Used in this part are abbreviations and symbols of units of measure. These are defined as follows:

a) System International (SI) units of measure:
A=ampere
g=gram
Hz=hertz
J=joule
K=degree Kelvin
kg=kilogram
m=meter
m^2 =square meter
m^3 =cubic meter
mg=milligram=10^{-3}gram
mm=millimeter=10^{-3}meter
Mg=megagram=10^6 gram
mol=mole
N=newton
ng=nanogram=10^{-9}gram
nm=nanometer=10^{-9}meter
Pa=pascal
s=second
V=volt
W=watt
Ω=ohm
µg=microgram=10^{-6}gram
(b) Other units of measure:
°C=degree Celsius (centigrade)
cfm=cubic feet per minute
cc=cubic centimeter
Ci=curie
d=day
°F=degree Fahrenheit
ft^2 =square feet
ft^3 =cubic feet
gal=gallon
in=inch
in Hg=inches of mercury
in H_2O=inches of water

l=liter
lb=pound
lpm=liter per minute
min=minute
ml=milliliter=10^{-3}liter
mrem=millirem=10^{-3}rem
oz=ounces
pCi=picocurie=10^{-12}curie
psig=pounds per square inch gage
°R=degree Rankine
µl=microliter=10^{-6}liter
v/v=volume per volume
yd^2 =square yards
yr=year
(c) Chemical nomenclature:
Be=beryllium
Hg=mercury
H_2O=water
(d) Miscellaneous:
act=actual
avg=average
I.D.=inside diameter
M=molar
N=normal
O.D.=outside diameter
%=percent
std=standard

§ 61.05 Prohibited activities.

a) After the effective date of any standard, no owner or operator shall construct or modify any stationary source subject to that standard without first obtaining written approval from the Administrator in accordance with this subpart, except under an exemption granted by the President under section 112(c)(2) of the Act. Sources, the construction or modification of which commenced after the publication date of the standards proposed to be applicable to the sources, are subject to this prohibition.

(b) After the effective date of any standard, no owner or operator shall operate a new stationary source subject to that standard in violation of the standard, except under an exemption granted by the President under section 112(c)(2) of the Act.

(c) Ninety days after the effective date of any standard, no owner or operator shall operate any existing source subject to that standard in violation of the standard, except under a waiver granted by the Administrator under this part or under an exemption granted by the President under section 112(c)(2) of the Act.

(d) No owner or operator subject to the provisions of this part shall fail to report, revise reports, or report source test results as required under this part.

§ 61.06 Determination of construction or modification.

An owner or operator may submit to the Administrator a written application for a determination of whether actions intended to be taken by the owner or operator constitute construction or modification, or commencement thereof, of a source subject to a standard. The Administrator will notify the owner or operator of his determination within 30 days after receiving sufficient information to evaluate the application.

§ 61.07 Application for approval of construction or modification.

(a) The owner or operator shall submit to the Administrator an application for approval of the construction of any new source or modification of any existing source. The application shall be submitted before the construction or modification is planned to commence, or within 30 days after the effective date if the construction or modification had commenced before the effective date and initial startup has not occurred. A separate application shall be submitted for each stationary source.

(b) Each application for approval of construction shall include-

(1) The name and address of the applicant;

(2) The location or proposed location of the source; and

(3) Technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including a description of any equipment to be used for control of emissions. Such technical information shall
include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations.

(c) Each application for approval of modification shall include, in addition to the information required in paragraph (b) of this section-

(1) The precise nature of the proposed changes;

(2) The productive capacity of the source before and after the changes are completed; and

(3) Calculations of estimates of emissions before and after the changes are completed, in sufficient detail to permit assessment of the validity of the calculations.

§ 61.08 Approval of construction or modification.

(a) The Administrator will notify the owner or operator of approval or intention to deny approval of construction or modification within 60 days after receipt of sufficient information to evaluate an application under 40 CFR 61.07.

(b) If the Administrator determines that a stationary source for which an application under 40 CFR 61.07 was submitted will not cause emissions in violation of a standard if properly operated, the Administrator will approve the construction or modification.

(c) Before denying any application for approval of construction or modification, the Administrator will notify the applicant of the Administrator's intention to issue the denial together with-

(1) Notice of the information and findings on which the intended denial is based; and

(2) Notice of opportunity for the applicant to present, within such time limit as the Administrator shall specify, additional information or arguments to the Administrator before final action on the application.

(d) A final determination to deny any application for approval will be in writing and will specify the grounds on which the denial is based. The final determination will be made within 60 days of presentation of additional information or arguments, or 60 days after the final date specified for presentation if no presentation is made.

(e) Neither the submission of an application for approval nor the Administrator's approval of construction or modification shall-

(1) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or of any other applicable Federal, State, or local requirement; or

(2) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

§ 61.09 Notification of startup.

(a) The owner or operator of each stationary source which has an initial startup after the effective date of a standard shall furnish the Administrator with written notification as follows:

(1) A notification of the anticipated date of initial startup of the source not more than 60 days nor less than 30 days before that date.

(2) A notification of the actual date of initial startup of the source within 15 days after that date.

(b) If any State or local agency requires a notice which contains all the information required in the notification in 40 CFR 61.09(a), sending the Administrator a copy of that notification will satisfy 40 CFR 61.09(a).

§ 61.10 Source reporting and waiver request.

(a) The owner or operator of each existing source or each new source which had an initial startup before the effective date shall provide the following information in writing to the Administrator within 90 days after the effective date:

(1) Name and address of the owner or operator.

(2) The location of the source.

(3) The type of hazardous pollutants emitted by the stationary source.

(4) A brief description of the nature, size, design, and method of operation of the stationary source including the operating design capacity of the source. Identify each point of emission for each hazardous pollutant.

(5) The average weight per month of the hazardous materials being processed by the source, over the last 12 months preceding the date of the report.

(6) A description of the existing control equipment for each emission point including-

(i) Each control device for each hazardous pollutant; and

(ii) Estimated control efficiency (percent) for each control device.

(7) A statement by the owner or operator of the source as to whether the source can comply with the standards within 90 days after the effective date.

(b) The owner or operator of an existing source unable to comply with an applicable standard may request a waiver of compliance with that standard for a period not exceeding 2 years after the effective date. Any request shall be in writing and shall include the following information:

(1) A description of the controls to be installed to comply with the standard.

(2) A compliance schedule, including the date each step toward compliance will be reached. The list shall include as a minimum the following dates:

(i) Date by which contracts for emission control systems or process changes for emission control will be awarded, or date by which orders will be issued for the purchase of component parts to accomplish emission control or process changes;

(ii) Date of initiation of onsite construction or installation of emission control equipment or process change;

(iii) Date by which onsite construction or installation of emission control equipment or process change is to be completed; and

(iv) Date by which final compliance is to be achieved.

(3) A description of interim emission control steps which will be taken during the waiver period.

(c) Any change in the information provided under 40 CFR 61.10(a) or 40 CFR 61.07(b) shall be provided to the Administrator within 30 days after the change. However, if any change will result from modification of the source, 40 CFR 61.07(c) and 40 CFR 61.08 apply.

(d) A possible format for reporting under this section is included as appendix A of this part. Advice on reporting the status of compliance may be obtained from the Administrator.

§ 61.11 Waiver of compliance.

(a) Based on the information provided in any request under 40 CFR 61.10, or other information, the Administrator may grant a waiver of compliance with a standard for a period not exceeding 2 years after the effective date of the standard.

(b) The waiver will be in writing and will-

(1) Identify the stationary source covered;

(2) Specify the termination date of the waiver;

(3) Specify dates by which steps toward compliance are to be taken; and

(4) Specify any additional conditions which the Administrator determines necessary to assure installation of the necessary controls within the waiver period and to assure protection of the health of persons during the waiver period.

(c) The Administrator may terminate the waiver at an earlier date than specified if any specification under 40 CFR 61.11(b)(3) and 40 CFR 61.11(b)(4) are not met.

(d) Before denying any request for a waiver, the Administrator will notify the owner or operator making the request of the Administrator's intention to issue the denial, together with-

(1) Notice of the information and findings on which the intended denial is based; and

(2) Notice of opportunity for the owner or operator to present, within the time limit the Administrator specifies, additional information or arguments to the Administrator before final action on the request.

(e) A final determination to deny any request for a waiver will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 60 days after presentation of additional information or argument; or within 60 days after the final date specified for the presentation if no presentation is made.

(f) The granting of a waiver under this section shall not abrogate the Administrator's authority under section 114 of the Act.

§ 61.12 Compliance with standards and maintenance requirements.

(a) Compliance with numerical emission limits shall be determined by emission tests established in 40 CFR 61.13 unless otherwise specified in an individual subpart.

(b) Compliance with design, equipment, work practice or operational standards shall be determined as specified in an individual subpart.

(c) The owner or operator of each stationary source shall maintain and operate the source, including associated equipment for air pollution control, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the source.

(d) (1) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in emissions of a pollutant from a source at least equivalent to the reduction in emissions of that pollutant from that source achieved under any design, equipment, work practice or operational standard, the Administrator will publish in the Federal Register a notice permitting the use of the alternative means for purposes of

compliance with the standard. The notice will restrict the permission to the source(s) or category(ies) of sources on which the alternative means will achieve equivalent emission reductions. The notice may condition permission on requirements related to the operation and maintenance of the alternative means.

(2) Any notice under 40 CFR 61.12(d)(1) shall be published only after notice and an opportunity for a hearing.

(3) Any person seeking permission under this subsection shall, unless otherwise specified in the applicable subpart, submit a proposed test plan or the results of testing and monitoring, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring.

(e) For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this part, nothing in this part shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

§ 61.13 Emission tests and waiver of emission tests.

a) Except as provided in paragraphs (a)(3), (a)(4), (a)(5), and (a)(6) of this section, if required to do emission testing by an applicable subpart and unless a waiver of emission testing is obtained under this section, the owner or operator shall test emissions from the source:

(1) Within 90 days after the effective date, for an existing source or a new source which has an initial startup date before the effective date.

(2) Within 90 days after initial startup, for a new source which has an initial startup date after the effective date.

(3) If a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends to assert a claim of force majeure, the owner or operator shall notify the Administrator, in writing as soon as practicable following the date the owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline specified in paragraphs (a)(1) or (a)(2) of this section or beyond a deadline established pursuant to the requirements under paragraph (b) of this section, but the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall occur as soon as practicable.

(4) The owner or operator shall provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.

(5) The decision as to whether or not to grant an extension to the performance test deadline is solely within the discretion of the Administrator. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.

(6) Until an extension of the performance test deadline has been approved by the Administrator under paragraphs (a)(3), (a)(4), and (a)(5) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.

(b) The Administrator may require an owner or operator to test emissions from the source at any other time when the action is authorized by section 114 of the Act.

(c) The owner or operator shall notify the Administrator of the emission test at least 30 days before the emission test to allow the Administrator the opportunity to have an observer present during the test.

(d) If required to do emission testing, the owner or operator of each new source and, at the request of the Administrator, the owner or operator of each existing source shall provide emission testing facilities as follows:

(1) Sampling ports adequate for test methods applicable to each source.

(2) Safe sampling platform(s).

(3) Safe access to sampling platform(s).

(4) Utilities for sampling and testing equipment.

(5) Any other facilities that the Administrator needs to safely and properly test a source.

(e) Each emission test shall be conducted under such conditions as the Administrator shall specify based on design and operational characteristics of the source.

(f) Unless otherwise specified in an applicable subpart, samples shall be analyzed and emissions determined within 30 days after each emission test has been completed. The owner or operator shall report the determinations of the emission test to the Administrator by a registered letter sent before the close of business on the 31st day following the completion of the emission test.

(g) The owner or operator shall retain at the source and make available, upon request, for inspection by the Administrator, for a minimum of 2 years, records of emission test results and other data needed to determine emissions.

(h)(1) Emission tests shall be conducted as set forth in this section, the applicable subpart and appendix B unless the Administrator—

(i) Specifies or approves the use of a reference method with minor changes in methodology; or

(ii) Approves the use of an alternative method; or

(iii) Waives the requirement for emission testing because the owner or operator of a source has demonstrated by other means to the Administrator's satisfaction that the source is in compliance with the standard.

(2) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative method, he may require the use of a reference method. If the results of the reference and alternative methods do not agree, the results obtained by the reference method prevail.

(3) The owner or operator may request approval for the use of an alternative method at any time, except—

(i) For an existing source or a new source that had an initial startup before the effective date, any request for use of an alternative method during the initial emission test shall be submitted to the Administrator within 30 days after the effective date, or with the request for a waiver of compliance if one is submitted under §60.10(b); or

(ii) For a new source that has an initial startup after the effective date, any request for use of an alternative method during the initial emission test shall be submitted to the Administrator no later than with the notification of anticipated startup required under §60.09.

(i)(1) Emission tests may be waived upon written application to the Administrator if, in the Administrator's judgment, the source is meeting the standard, or the source is being operated under a waiver or compliance, or the owner or operator has requested a waiver of compliance and the Administrator is still considering that request.

(2) If application for waiver of the emission test is made, the application shall accompany the information required by §61.10 or the notification of startup required by §61.09, whichever is applicable. A possible format is contained in appendix A to this part.

(3) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later cancelling the waiver. The cancellation will be made only after notice is given to the owner or operator of the source.

§ 61.14 Monitoring requirements.

(a) Unless otherwise specified, this section applies to each monitoring system required under each subpart which requires monitoring.

(b) Each owner or operator shall maintain and operate each monitoring system as specified in the applicable subpart and in a manner consistent with good air pollution control practice for minimizing emissions. Any unavoidable breakdown or malfunction of the monitoring system should be repaired or adjusted as soon as practicable after its occurrence. The Administrator's determination of whether acceptable operating and maintenance procedures are being used will be based on information which may include, but not be limited to, review of operating and maintenance procedures,

manufacturer recommendations and specifications, and inspection of the monitoring system.

(c) When required by the applicable subpart, and at any other time the Administrator may require, the owner or operator of a source being monitored shall conduct a performance evaluation of the monitoring system and furnish the Administrator with a copy of a written report of the results within 60 days of the evaluation. Such a performance evaluation shall be conducted according to the applicable specifications and procedures described in the applicable subpart. The owner or operator of the source shall furnish the Administrator with written notification of the date of the performance evaluation at least 30 days before the evaluation is to begin.

(d) When the effluents from a single source, or from two or more sources subject to the same emission standards, are combined before being released to the atmosphere, the owner or operator shall install a monitoring system on each effluent or on the combined effluent. If two or more sources are not subject to the same emission standards, the owner or operator shall install a separate monitoring system on each effluent, unless otherwise specified. If the applicable standard is a mass emission standard and the effluent from one source is released to the atmosphere through more than one point, the owner or operator shall install a monitoring system at each emission point unless the installation of fewer systems is approved by the Administrator.

(e) The owner or operator of each monitoring system shall reduce the monitoring data as specified in each applicable subpart. Monitoring data recorded during periods of unavoidable monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments shall not be included in any data average.

(f) The owner or operator shall maintain records of monitoring data, monitoring system calibration checks, and the occurrence and duration of any period during which the monitoring system is malfunctioning or inoperative. These records shall be maintained at the source for a minimum of 2 years and made available, upon request, for inspection by the Administrator.

(g) (1) Monitoring shall be conducted as set forth in this section and the applicable subpart unless the Administrator-

(i) Specifies or approves the use of the specified monitoring requirements and procedures with minor changes in methodology;
or

(ii) Approves the use of alternatives to any monitoring requirements or procedures.

(2) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring method, the Administrator may require the monitoring Requirements and procedures specified in this part.

§ 61.15 Modification.

(a) Except as provided under 40 CFR 61.15(d), any physical or operational change to a stationary source which results in an increase in the rate of emission to the atmosphere of a hazardous pollutant to which a standard applies shall be considered a modification.

(b) Upon modification, an existing source shall become a new source for each hazardous pollutant for which the rate of emission to the atmosphere increases and to which a standard applies.

(c) Emission rate shall be expressed as kg/hr of any hazardous pollutant discharged into the atmosphere for which a standard is applicable. The Administrator shall use the following to determine the emission rate:

(1) Emission factors as specified in the background information document (BID) for the applicable standard, or in the latest issue of "Compilation of Air Pollutant Emission Factors,"EPA Publication No. AP-42, or other emission factors determined by the Administrator to be superior to AP-42 emission factors, in cases where use of emission factors demonstrates that the emission rate will clearly increase or clearly not increase as a result of the physical or operational change.

(2) Material balances, monitoring data, or manual emission tests in cases where use of emission factors, as referenced in 40 CFR 61.15(c)(1), does not demonstrate to the Administrator's satisfaction that the emission rate will clearly increase or clearly not increase as a result of the physical or operational change, or where an interested person demonstrates to the Administrator's satisfaction that there are reasonable grounds to dispute the result obtained by the Administrator using emission factors. When the emission rate is based on results from manual emission tests or monitoring data, the procedures specified in appendix C of 40 CFR part 60 shall be used to determine whether an increase in emission rate has occurred. Tests shall be conducted under such conditions as the Administrator shall specify to the owner or operator. At least three test runs must be conducted before and at least three after the physical or operational change. If the Administrator approves, the results of the emission tests required in 40 CFR 61.13(a) may be used for the test runs to be conducted before the physical or operational change. All operating parameters which may affect emissions must be held constant to the maximum degree feasible for all test runs.

(d) The following shall not, by themselves, be considered modifications under this part:

(1) Maintenance, repair, and replacement which the Administrator determines to be routine for a source category.

(2) An increase in production rate of a stationary source, if that increase can be accomplished without a capital expenditure on the stationary source.

(3) An increase in the hours of operation.

(4) Any conversion to coal that meets the requirements specified in section 111(a)(8) of the Act.

(5) The relocation or change in ownership of a stationary source. However, such activities must be reported in accordance with 40 CFR 61.10(c).

§ 61.16 Availability of information.

The availability to the public of information provided to, or otherwise obtained by, the Administrator under this part shall be governed by part 2 of this chapter.

§ 61.17 State authority.

(a) This part shall not be construed to preclude any State or political subdivision thereof from --

(1) Adopting and enforcing any emission limiting regulation applicable to a stationary source, provided that such emission limiting regulation is not less stringent than the standards prescribed under this part; or

(2) Requiring the owner or operator of a stationary source to obtain permits, licenses, or approvals prior to initiating construction, modification, or operation of the source.

§ 61.18 Incorporations by reference.

The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for inspection at the corresponding address noted below, and at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC and the Library (MD-35), or at U.S. EPA's Air Docket at 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM) International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428-2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

(1) ASTM D737-75, Standard Test Method for Air Permeability of Textile Fabrics, incorporation by reference (IBR) approved January 27, 1983 for § 61.23(a).

(2) ASTM D835-85, Standard Specification for Refined Benzene-485, IBR approved September 14, 1989 for § 61.270(a).

(3) ASTM D836-84, Standard Specification for Industrial Grade Benzene, IBR approved September 14, 1989 for § 61.270(a).

(4) ASTM D1193-77, 91, Standard Specification for Reagent Water, IBR approved for appendix B: Method 101, Section 7.1.1; Method 101A, Section 7.1.1; and Method 104, Section 7.1; Method 108, Section 7.1.3; Method 108A, Section 7.1.1; Method 108B, Section 7.1.1; Method 108C, Section 7.1.1; and Method 111, Section 7.3.

(5) ASTM D2267-68, 78, 88, Standard Test Method for Aromatics in Light Naphthas and Aviation Gasoline by Gas Chromatography, IBR approved September 30, 1986, for § 61.67(h)(1).

(6) ASTM D2359-85a, 93, Standard Specification for Refined Benzene-535, IBR approved September 14, 1989 for § 61.270(a).

(7) ASTM D2382-76, 88, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), IBR approved June 6, 1984 for § 61.245(e)(3).

(8) ASTM D2504-67, 77, 88 (Reapproved 1993), Noncondensable Gases in C3 and Lighter Hydrocarbon Products by Gas Chromatography, IBR approved June 6, 1984 for § 61.245(e)(3).

(9) ASTM D2879-83, Standard Test Method for Vapor Pressure -- Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved December 14, 2000 for § 61.241.

(10) ASTM D2986-71, 78, 95a, Standard Method for Evaluation of Air, Assay Media by the Monodisperse DOP (Dioctyl Phthalate) Smoke Test, IBR approved for appendix B: Method 103, Section 6.1.3.

(11) ASTM D4420-94, Standard Test Method for Determination of Aromatics in Finished Gasoline by Gas Chromatography, IBR approved for § 61.67(h)(1).

(12) ASTM D4734-87, 96, Standard Specification for Refined Benzene-545, IBR approved September 14, 1989 for § 61.270(a).

(13) ASTM D4809-95, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), IBR approved for § 61.245(e)(3).

(14) ASTM E50-82, 86, 90 (Reapproved 1995), Standard Practices for Apparatus Reagents, and Safety Precautions for Chemical Analysis of Metals, IBR approved for appendix B: Method 108C, Section 6.1.4.

(b) The following material is available from the U.S. EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268.

(1) Method 601, Test Method for Purgeable Halocarbons, July 1982, IBR approved September 30, 1986, for § 61.67(g)(2).

(c) The following material is available for purchase from the American National Standards Institute, 25 West 43rd Street, 4th Floor, New York, New York 10036.

(1) ANSI N13.1-1969, "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities." IBR approved for 61.93(b)(2)(ii) and 61.107(b)(2)(ii).

(2) ANSI/HPS N13.1-1999 "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities," IBR approved [insert date 30 days after date of publication in Federal Register] for §§ 61.93(c); 61.107(d) and Method 114, paragraph 2.1 of Appendix B to 40 CFR part 61.

(d) The following material is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325, telephone (202) 512-1800 or outside of Washington, DC area: 1-866-512-1800.

(1) Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846, Third Edition, November 1986, as amended by Revision I, December 1987, Order Number 955-001-00000-1:

(i) Method 8020, Aromatic Volatile Organics, IBR approved March 7, 1990, for § 61.355(c)(2)(iv)(A).

(ii) Method 8021, Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series, IBR approved March 7, 1990, for § 61.355(c)(2)(iv)(B).

(iii) Method 8240, Gas Chromatography/Mass Spectrometry for Volatile Organics, IBR approved March 7, 1990, for § 61.355(c)(2)(iv)(C).

(iv) Method 8260, Gas Chromatography/Mass Spectrometry for Volatile Organics: Capillary Column Technique, IBR approved March 7, 1990, for § 61.355(c)(2)(iv)(D).

(e) The materials listed in this paragraph (e) are available for purchase from the American Petroleum Institute (API), 1220 L Street, NW., Washington, DC 20005.

(1) API Publication 2517, Evaporative Loss from External Floating-Roof Tanks, Third Edition. February 1989. IBR approved December 14, 2000 for § 61.241.

(2) [Reserved]

§ 61.19 Circumvention.

No owner or operator shall build, erect, install, or use any article machine, equipment, process, or method, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous dilutants to achieve compliance with a visible emissions standard, and the piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specified size.