

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION II
PERMITS**

RULE 218. TITLE V: FEDERAL OPERATING PERMITS

(Adopted November 17, 1993; Revised September 21, 1994, February 21, 1996, March 26, 1997, April 18, 2001, November 17, 2010, and August 21, 2024.)

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PART 1 GENERAL

1.1 Purpose

The purpose of this Rule is to provide for the issuance of Federal Operating Permits (FOPs) which contain all federally enforceable requirements for stationary sources as required under the provisions of Title V of the Federal Clean Air Act (CAA) and amendments (the Act). Such FOPs are in addition to, and not a substitute for, any Monterey Bay Air Resources District (MBARD) permits required under the provisions of MBARD Rule 200, Permits Required. It is explicitly acknowledged that the adoption/implementation of this Rule is not intended, nor is it likely, to result in any significant emission reductions.

1.2 Applicability

The provisions of this Rule shall apply to:

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- 1.2.1 Any facility that is a major source; or
 - 1.2.2 Any acid rain source, as defined by Title IV of the Act; or
 - 1.2.3 Any solid waste incinerator that must comply with Section 129(e) of the Act; or
 - 1.2.4 Any other stationary source or category of sources deemed to require a Federal Operating Permit (FOP) by the United States Environmental Protection Agency (USEPA); or
 - 1.2.5 Any emissions unit, including an area source, subject to a standard or other requirement promulgated pursuant to Section 111 (NSPS) or 112 (HAPs) of the CAA published after July 21, 1992 except as provided for in 40 CFR 70.3(b)(2).
 - 1.2.5.1 For stationary sources, which are subject to Rule 218 solely as a result of Section 1.2.5, only the emissions units within the stationary source that are subject to the Section 111 or 112 standard or requirement shall be subject to the Part 70 permitting requirement.
 - 1.2.6 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.
- 1.3 Exemptions
- The following sources are exempt from the provisions of this Rule unless otherwise required to obtain a permit under Sections 1.2.2, 1.2.3, 1.2.4 and 1.2.5 herein, or, for Sections 1.3.2.2 and 1.3.2.3 herein, unless the Administrator specifies a "lesser quantity cutoff" which defines "major source" for a particular HAP and/or for a particular source category:
- 1.3.1 all stationary sources and source categories that would be required to obtain a permit solely because they are subject to the following standards:
 - 1.3.1.1 40 Code of Federal Regulations (CFR) Part 60, subpart AAA - Standards of Performance for New Residential Wood Heaters; or
 - 1.3.1.2 40 CFR Part 61, subpart M - National Emissions Standard for Hazardous Air Pollutants (NESHAP) for Asbestos, Section 61.145, Standard for Demolition and Renovation; or

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1.3.2 all stationary sources that have federally enforceable conditions on their MBARD permit(s) that limit their potential to emit to less than the following amounts:

1.3.2.1 100 tons per year of any regulated air pollutant; and

1.3.2.2 10 tons per year of any one HAP; and

1.3.2.3 25 tons per year of any combination of HAPs; and

1.3.3 all stationary sources in compliance with MBARD Rule 436 (Title V: General Prohibitory Rule).

1.4 Effective Dates

This Rule as revised is effective on August 21, 2024.

1.5 References

The requirements of this Rule arise from the provisions of the Federal Clean Air Act and its amendments (42 U.S.C Section 7401 *et seq.*); and USEPA regulations setting forth the requirements for an Operating Permit Program (Final Rule, 40 CFR Part 70).

PART 2 DEFINITIONS

2.1 Administrative Permit Amendments

An amendment to a permit which:

2.1.1 corrects a typographical error; or

2.1.2 identifies a minor administrative change at the stationary source; or

2.1.3 makes a change to the certificate of representation from the stationary source; or

2.1.4 requires more frequent monitoring or reporting requirements for the stationary source; or

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2.1.5 transfers ownership or operational control of a stationary source, provided that the APCO receives a written agreement which specifies a date for the transfer of permit responsibility, coverage, and liability from the current to prospective permittee.

2.2 Affected Source

A source that contains one or more affected units.

2.3 Affected States

States that are within 50 miles of a permitted source, or states contiguous to California whose air quality may be affected by a Part 70 permitting action, renewal, or modification.

2.4 Affected Unit

An emissions unit subject to a requirement or limitation of Title IV of the Federal Clean Air Act.

2.5 Air Pollution Control Officer (APCO)

The Air Pollution Control Officer for the Monterey Bay Air Resources District (MBARD).

2.6 Air Resources Board (ARB)

State of California Air Resources Board.

2.7 Alternative Operating Scenario (AOS)

A scenario authorized in a Part 70 permit that involves a change at the Part 70 source for a particular emissions unit, and that either results in the unit being subject to one or more applicable requirements which differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.

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2.8 Applicable Requirement

Any of the federally enforceable requirements listed in the definition of applicable requirements in 40 CFR 70.2.

2.9 Certificate of Representation

A certificate which lists the designated and alternative representative of a stationary source which is subject to the requirements of Title IV of the Act.

2.10 Designated Representative

A responsible person or official authorized by the owner or operator of a unit at an affected source to represent the owner or operator in manners pertaining to emission allowances, permitting, and compliance plans.

2.11 Draft Permit

The version of a permit for which the permitting authority offers public participation under 40 CFR 70.7(h) or affected State review under 40 CFR 70.8.

2.12 Emissions Allowable Under the Permit

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

2.13 Emissions Unit

Any part or activity of a stationary source that emits, or has the potential to emit any regulated air pollutant or any hazardous air pollutant (HAP).

2.14 Federal Clean Air Act (CAA) and Amendments (the Act)

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Federal Clean Air Act and amendments (42 U.S.C Section 7401 *et seq.*)

2.15 Federal Operating Permit (FOP)

A written permit issued pursuant to this Rule containing all the federally enforceable conditions, issued by the MBARD to a specific applicant for the operation or use of any article, machine, equipment and other contrivance which may cause the issuance of air pollutants.

2.16 Federally Enforceable Conditions

Those conditions on a permit which require compliance with a federally enforceable requirement.

2.17 Federally Enforceable Requirements

Any requirement set forth in, or required by, the Act or USEPA regulations. Federally enforceable requirements include:

2.17.1 Title I requirements of the Act, including:

- 2.17.1.1 New Source Review (NSR) requirements in the state implementation plan approved by the USEPA and the terms and conditions of the preconstruction permit issued to the source pursuant to MBARD Rule 207 (Review of New or Modified Sources); and
- 2.17.1.2 Prevention of Significant Deterioration (PSD) requirements and the terms and conditions of the PSD permit (40 CFR Part 52); and
- 2.17.1.3 New Source Performance Standards (NSPS) (40 CFR Part 60); and
- 2.17.1.4 National Ambient Air Quality Standards (NAAQS), increments, and visibility requirements under Part C of Title I of the Act as they apply to portable sources required to obtain a permit pursuant to Section 504(e) of the Act; and
- 2.17.1.5 National Emissions Standards for Hazardous Air Pollutants (NESHAP) (40 CFR Part 61); and

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- 2.17.1.6 Maximum Achievable Control Technology (MACT) or Generally Available Control Technology (GACT) Standards (40 CFR Part 63) and other federally promulgated standards pursuant to Section 112 of the Act; and
 - 2.17.1.7 Risk Management Plans (Section 112(r) of the Act); and
 - 2.17.1.8 Solid Waste Incineration requirements (Section 129 of the Act); and
 - 2.17.1.9 Consumer and Commercial Product requirements (Section 183 of the Act); and
 - 2.17.1.10 Tank Vessel requirements (Section 183 of the Act); and
 - 2.17.1.11 Any standard or other requirement provided for in the State Implementation Plan (SIP) approved or promulgated by USEPA; and
 - 2.17.1.12 Federal Implementation Plan (FIP) requirements; and
 - 2.17.1.13 Enhanced Monitoring and Compliance Certification requirements (Section 114(a)(3) of the Act); and
 - 2.17.2 Title III, Section 328 (Outer Continental Shelf) requirements of the Act (40 CFR Part 55); and
 - 2.17.3 Title IV (Acid Deposition Control) requirements of the Act (40 CFR Parts 72, 73, 75, 76, 77, 78); and
 - 2.17.4 Title VI (Stratospheric Ozone Protection) requirements of the Act (40 CFR Part 82); and
 - 2.17.5 Monitoring and Analysis requirements (Section 504(b) of the Act).
- 2.18 Final Permit
- The version of a Part 70 permit issued by MBARD that has completed all review procedures required by 40 CFR 70.7 or affected State review under 40 CFR 70.8.
- 2.19 Fugitive Emission
- Any emission that could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

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2.20 General Permit

A Part 70 permit that meets the requirements of 40 CFR 70.6(d).

2.21 Hazardous Air Pollutant (HAP)

Any air pollutant listed by the USEPA in the Federal Register pursuant to Section 112(b) of the Act.

2.22 Insignificant Activity

An emissions unit with actual emissions less than:

2.22.1 2 tons per year of any criteria pollutant; and

2.22.2 the lesser of 1,000 pounds per year, the section 112(g) de minimis levels, or other Title I significant modification levels for Hazardous Air Pollutants and other toxics as identified in 40 CFR 52.21(b)(23)(i).

2.23 Major Source

Any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping. 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; and is one of the following:

2.23.1 a stationary source or any group of stationary sources as defined above, that directly emits, or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation (including any 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 unless the source belongs to one of the stationary source categories listed in 40 CFR 70.2 "Definitions - Major Source (2)(i-xxvii); or

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- 2.23.2 a stationary source or group of stationary sources that directly emits or has the potential to emit, in the aggregate 10 tons per year or more of any one hazardous air pollutant (HAP) (including any fugitive emissions of such pollutant) which has been listed pursuant to Section 112(b) of the Act; or
- 2.23.3 a stationary source or group of stationary sources that directly emits or has the potential to emit, in the aggregate 25 tons per year or more of any combination of HAPs (including any fugitive emissions of such pollutant) which has been listed pursuant to Section 112(b) of the Act; or
- 2.23.4 a stationary source or group of stationary sources that directly emits or has the potential to emit, in the aggregate, some lesser quantity of a HAP (including any fugitive emissions of such pollutants) which have been listed pursuant to Section 112(b) of the Act the USEPA may establish by rule; or

2.24 MBARD

Monterey Bay Air Resources District

2.25 Minor Administrative Change

A change in the name, address, or phone number of any person identified in a permit.

2.26 Minor Permit Modification

A minor permit modification must be all of the following:

- 2.26.1 a modification that would not violate any federally enforceable requirement of the Act; or
- 2.26.2 a modification that would not involve significant monitoring, reporting, or record keeping changes; or
- 2.26.3 a modification that would not establish or change a case-by-case determination, such as for an emission limit or standard or a source specific determination for temporary sources of ambient impacts, or a visibility or air quality increment analysis; or

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2.26.4 a modification that would not establish or change any permit condition used to avoid a federally enforceable requirement to which the source would otherwise be subject; or

2.26.5 a modification that is not a Title I modification.

2.27 National Ambient Air Quality Standards (NAAQS)

Air quality standards set by the Administrator of the USEPA to protect public health and welfare and, in general, consisting of primary and secondary standards. Primary standards are to protect the public health, while secondary standards are intended to protect the public welfare, e.g., plants, crops, and materials.

2.28 Nitrogen Oxides (NO_x)

The sum of the molecular forms of nitrogen oxide and nitrogen dioxide. When measured or calculated, the total of the two molecular forms is collectively expressed as nitrogen dioxide.

2.29 Part 70 Program or State Program

A program approved by the Administrator under 40 CFR Part 70.

2.30 Part 70 Source

Any source subject to the permitting requirements of this Rule approved by the Administrator under 40 CFR 70.3(a) or 70.3(b).

2.31 Permit

In this Rule, permit means a Federal Operating Permit (FOP) unless otherwise noted.

2.32 Permit Program Costs

All reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in 40 CFR 70.9(b) (whether such costs are incurred by the

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permitting authority or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

2.33 Permit Revision

Any permit modification or administrative permit amendment.

2.34 Permitting Authority

Means either of the following:

2.34.1 The administrator, in the case of USEPA-implemented program; or

2.34.2 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 40 CFR Part 70.

2.35 Potential To Emit

The maximum capacity of the source to emit an air pollutant based on its physical and operational design. Any federally enforceable condition on a MBARD permit to operate which limits the capacity of a source to emit an air pollutant shall be treated as part of its design. The federally enforceable condition(s) may include limits on emissions, requirements for air pollution control equipment, restrictions on hours of operation, or on the type or amount of material combusted, stored, or processed that are established pursuant to SIP, NSPS, NESHAP requirements or in a federally enforceable preconstruction review program.

2.36 Proposed Permit

The version of a permit that the permitting authority proposes to issue and forwards to the Administrator for review in compliance with 40 CFR 70.8.

2.37 Regulated Air Pollutant

A “regulated air pollutant” is any pollutant: 1) which is emitted into or otherwise enters the ambient air, and 2) for which the USEPA has adopted an emission limit, standard, or other requirement. Regulated air pollutants include:

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- 2.37.1 Oxides of nitrogen and volatile organic compounds;
- 2.37.2 Any pollutant for which a national ambient air quality standard has been promulgated pursuant to Section 109 of the CAA;
- 2.37.3 Any pollutant subject to a new source performance standard promulgated pursuant to Section 111 of the CAA;
- 2.37.4 Any ozone depleting substance specified as a Class I (chlorofluorocarbons) or Class II (hydrofluorocarbons) substance pursuant to Title VI of the CAA; and
- 2.37.5 Any pollutant subject to a standard or requirement promulgated pursuant to Section 112 of the CAA, including:
 - 2.37.5.1 Any pollutant listed pursuant to section 112(r) of the CAA (Prevention of Accidental Releases) shall be considered a “regulated air pollutant” upon promulgation of the list.
 - 2.37.5.2 Any hazardous air pollutant subject to a standard or requirement promulgated by USEPA pursuant to Section 112(d) or adopted by MBARD pursuant to Section 112(j) of the CAA shall be considered a “regulated air pollutant” for all sources or categories of sources: 1) upon promulgation of the standard or requirement, or 2) 18 months after the standard or requirement was scheduled to be promulgated pursuant to section 112(e)(3) of the CAA whichever is earlier.
 - 2.37.5.3 Any hazardous air pollutant subject to a MBARD case-by-case emissions limitation determination for a new or modified source, prior to USEPA promulgation of an emissions limitation shall be considered a “regulated air pollutant” when the determination is made pursuant to section 112(g)(2) of the CAA. In case-by-case emissions limitation determinations made pursuant to Section 112(g) of the CAA, the hazardous air pollutant shall be considered a “regulated air pollutant” only for the individual source for which the emissions limitation was made.

2.38 Renewal

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

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2.39 Responsible Official

An individual with the authority to certify that a source complies with the requirements of this Rule. Responsible official means one of the following:

2.39.1 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:

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

2.39.1.2 the delegation of authority to such representatives is approved in advance by the APCO.

2.39.2 for a partnership or sole proprietorship, a general partner or the proprietor, respectively;

2.39.3 for a municipality, state, federal, or other public agency, either a principal executive officer or a ranking elected official.

2.39.4 for affected sources:

2.39.4.1 the designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

2.39.4.2 the designated representative for any other purposes under Part 70.

2.40 Section 502(b)(10) Changes

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.

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2.41 Significant Permit Modification

Any modification to a federally enforceable condition on a permit to operate which is not a minor permit modification or an administrative permit amendment and which:

- 2.41.1 involves any significant change as specified in the USEPA's Title I regulations in 40 CFR Parts 51, 52, 60, 61 and 63; or
- 2.41.2 significantly changes monitoring conditions; or
- 2.41.3 provides for the relaxation of any reporting or record keeping conditions; or
- 2.41.4 involves a case-by-case determination of any emission standard or other requirement; or
- 2.41.5 involves a source specific determination for ambient impacts, visibility analysis, or air quality increment analysis on portable sources; or
- 2.41.6 incorporates any newly federally enforceable requirement promulgated by the USEPA under the authority of the Act after issuance of the permit provided that three or more years remain on the permit term; or
- 2.41.7 involves a permit term or condition which allows a source to avoid a federally enforceable requirement, including:
 - 2.41.7.1 a federally enforceable emission cap pursuant to Title I of the Act; or
 - 2.41.7.2 an alternative HAP emission limit pursuant to Section 112(i)(5) of the Act.

2.42 State

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 content, "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.

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2.43 State Implementation Plan (SIP)

The plan which is required by the Act to be submitted by each state, and approved by the USEPA, to achieve and maintain national ambient air quality standards (NAAQS).

2.44 Stationary Source

Any building, structure, facility, or installation which emits or may emit any regulated air pollutant directly or as a fugitive emission.

2.45 Subject to Regulation

For any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in 40 CFR Chapter 1, Subchapter C - Air Programs of the CAA, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

2.45.1 Greenhouse gases (GHGs), defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tons per year (tpy) CO₂ equivalent emissions.

2.45.2 The term tpy CO₂ equivalent emissions (CO₂e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 CFR Part 98 – Global Warming Potentials, and summing the resultant value for each to compute a tpy CO₂e. For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry, and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

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2.46 Sulfur Oxides (SO_x)

The sum of the molecular forms of sulfur oxide and sulfur dioxide.

2.47 Tank Vessels

As defined in 46 U.S.C.A. 2101, a tank vessel is any vessel which: transfers, carries, or is constructed or adapted to carry, oil, other organic liquid, or hazardous material in bulk, or as a cargo residue, in a port or place subject to the jurisdiction of the United States.

2.48 Title I

Title I (Air Pollution Prevention and Control) of the Act.

2.49 Title I Modification

Any modification which is subject to any provision of Title I of the Act.

2.50 Title III

Title III (Hazardous Air Pollutants) of the Act.

2.51 Title IV

Title IV (Acid Deposition Control) of the Act.

2.52 Title V

Title V (Federal Operating Permits Program) of the Act.

2.53 Title VI

Title VI (Stratospheric Ozone Protection) of the Act.

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2.54 United States Environmental Protection Agency (USEPA)

The Administrator or appropriate delegate of the United States Environmental Protection Agency.

2.55 Whole Program

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 purposes of this definition, the term “State” does not include local permitting authorities, but refers only to the entire State, Commonwealth or Territory.

PART 3 PERMIT ISSUANCE REQUIREMENTS

3.1 Permit Applications

3.1.1 Applications for initial permits must be submitted no later than 12 months after a source becomes subject to the MBARD-administered Federal Operating Permit Program.

3.1.1.1 An existing source is subject upon approval of the MBARD-administered Federal Operating Permit Program by the USEPA.

3.1.1.2 A new source is subject on the date of commencement of operation.

3.1.2 For permit renewal, applications must be submitted at least 6 months but no greater than 18 months prior to permit expiration.

3.1.3 Applications for phase II Acid Rain Permits must be submitted by January 1, 1996 for SO_x and January 1, 1998 for NO_x.

3.1.4 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 a federal operating permit or permit revision within 12 months after commencing operation or on or before such earlier date as MBARD may establish. Where an existing federal operating permit would prohibit such

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construction or change in operation, the source must obtain a permit revision before commencing operation.

- 3.1.5 The applicant must submit supplemental information and corrections upon becoming aware that it has submitted incorrect information or failed to submit relevant facts.

The applicant must submit additional information as necessary to address any requirements that become applicable after submitting a complete application but prior to the release of the draft permit.

- 3.1.6 The applicant must use MBARD's permit application forms and the application must include the following information:

- 3.1.6.1 Information identifying the source; and
- 3.1.6.2 Description of processes and products (by Standard Industrial Classification Code) including any associated with proposed alternative operating scenarios; and
- 3.1.6.3 A listing of all existing emissions units, including insignificant activities, at the stationary source and identification and description of all points of emissions from the emissions units in sufficient detail to establish the federally enforceable requirements; and
- 3.1.6.4 Citation and description of all federally enforceable requirements, information and calculations used to determine the applicability of such requirements and other information that may be necessary to implement and enforce such requirements; and
- 3.1.6.5 Description of or reference to any applicable test method for determining compliance with each federally enforceable requirement; and
- 3.1.6.6 Calculation of all emissions, including fugitive emissions and insignificant activities, in tons per year and in such terms as are necessary to establish compliance with all federally enforceable requirements; and
- 3.1.6.7 As these affect emissions from the source, the identification of fuels, fuel use, raw materials, production rates, operation schedules, limitations on source operation or workplace practices and the calculations on which these are based; and

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- 3.1.6.8 An explanation of any proposed exemptions from otherwise federally enforceable requirements; and
- 3.1.6.9 An identification and description of air pollution control equipment and compliance monitoring devices or activities; and
- 3.1.6.10 Other information required by a federally enforceable requirement; and
- 3.1.6.11 The information needed to define permit terms or conditions implementing a source's options for operational flexibility, including alternative operating scenarios, pursuant to Sections 4.2.7, 4.2.8 and 5.5; and
- 3.1.6.12 A compliance plan and compliance schedule with the following:
 - 3.1.6.12.1 A description of the compliance status of each emissions unit within the stationary source with respect to federally enforceable requirements including any applicable enhanced monitoring and compliance certification requirements of the Act, and
 - 3.1.6.12.2 A statement that the source will continue to comply with such federally enforceable requirements with which the source is complying, and
 - 3.1.6.12.3 A statement of the methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods, and
 - 3.1.6.12.4 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 federally enforceable requirement or by MBARD, and
 - 3.1.6.12.5 A statement that the source will comply, on a timely basis, with federally enforceable requirements that will become effective during the permit term, and
 - 3.1.6.12.6 A description of how the source will achieve compliance with requirements for which the source is not in compliance; and
- 3.1.6.13 For a source not in compliance with a federally enforceable requirement at the time of permit issuance or renewal, a schedule of compliance approved by the MBARD hearing board that identifies remedial measures including an enforceable sequence of actions, with specific increments of progress, a final

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compliance date, testing and monitoring methods, record keeping requirements, and a schedule for submission of certified progress reports to the USEPA and the APCO at least every 6 months. This schedule of compliance 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; and

- 3.1.6.14 Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official that meets the requirements of Section 5.4.1 herein; and
- 3.1.6.15 For a source with an acid rain unit, an application shall include the elements required by 40 CFR Part 72; and
- 3.1.6.16 For a source of HAPs required to prepare a risk management plan pursuant to Section 112(r) of the Act, the application shall include verification that such a plan has been submitted to the authorized implementing agency or a compliance schedule for the submittal of such a plan; and
- 3.1.6.17 For proposed portable sources, an application shall identify all locations of potential operations and how the source will comply with all federally enforceable requirements at each location.

3.2 Permit Term

The permit will be issued and valid for a period of five years upon payment of the fees prescribed in Section 5.3 of this Rule.

3.3 Completeness Determination

MBARD shall determine an application to be complete only if all items listed in Section 3.1.6 are submitted along with the applicable filing fee pursuant to MBARD Rule 308. MBARD shall make the completeness determination within the following time frames:

- 3.3.1 For an initial permit, permit renewal, or a significant permit modification, the application shall be deemed to be complete 60 days after receipt unless MBARD notifies the facility that the application is not complete.

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- 3.3.2 For a minor permit modification, the application shall be deemed to be complete 30 days after receipt unless MBARD notifies the facility that the application is not complete.

3.4 Application Shield

Except as provided in the following sentence, no source may operate after the time that it is required to submit a timely and complete application pursuant to Rule 218, except in compliance with a permit issued pursuant to Rule 218. If a timely and complete application for permit issuance (including renewal) is submitted for a source subject to Rule 218, the failure of that source to operate with a permit issued under the requirements of Rule 218 shall not be a violation of the requirements of Rule 218 until MBARD takes final action on the permit application. The source may operate under the shield of the timely and complete application. The application shield is not applicable if there is a delay in final action on the application due to failure of the responsible official of the source to submit timely information required or requested by MBARD to process the application. No source shall be in violation of this Rule before the date on which the source is required to submit an application under Section 3.1 of this Rule. The application shield does not alter any requirement for preconstruction permits. Until final action is taken on an application for renewal of a FOP, the source shall continue to operate under the requirements of its existing FOP.

3.5 Initial Permit Issuance

- 3.5.1 MBARD must take final permitting action no later than 18 months after receipt of a complete application with the following exception:
- 3.5.1.1 An initial permit for an existing source commencing operation on or before the effective date of this Rule, shall be issued no later than 3 years after the effective date of this Rule.
- 3.5.2 The draft permit shall be forwarded to the USEPA for a 45-day review period. MBARD shall not issue a permit to which the USEPA objects.
- 3.5.2.1 If the USEPA objects to the issuance of the permit, MBARD has 90 days from the date of the objection to revise and resubmit the draft permit in response to the objection. If MBARD fails to do so, the USEPA shall issue or deny the permit.

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- 3.5.3 The APCO shall provide public notification as specified in 40 CFR 70.7(h)(2) of the intent to issue, significantly modify, or renew a permit. These procedures shall include the following:
- 3.5.3.1 Notice shall be given by one of the following methods:
 - 3.5.3.1.1 By publishing in at least one newspaper of general circulation within MBARD; or
 - 3.5.3.1.2 By posting the notice, for the duration of the public comment period, on MBARD's public web site. If the web site noticing is selected as the consistent noticing method, the draft permit shall also be posted, for the duration of the public comment period.
 - 3.5.3.2 Notice shall be given to persons on a mailing list developed by MBARD using generally accepted methods as specified in 40 CFR 70.7(h)(1) that enable interested parties to subscribe to the mailing list.
 - 3.5.3.3 Notice shall be provided by other means if necessary to assure adequate notice to the affected public; and,
 - 3.5.3.4 Notice shall be sent to any individual submitting a written request to the APCO for notification, inviting written public comment for a 30-day period following the date of publication.
 - 3.5.3.5 During this period the APCO may elect to hold a public meeting to receive oral comments from the public. The APCO will announce any such hearing 30 days prior to the date of the scheduled hearing and will consider all such comments before issuing the final permit. The APCO shall keep a record of the commenters and of the issues raised during the public participation process so that the Administrator of the USEPA may fulfill their obligation to determine whether a citizen petition may be granted.
 - 3.5.3.6 If the permit is revised due to comments received from the public, the revised permit will be forwarded to USEPA for an additional 45-day review period.
- 3.5.4 Any member of the public may petition the USEPA within 60 days after the expiration of the USEPA's 45-day review period to object to the issuance of the final permit. This petition shall be based only on objections that were raised with reasonable specificity during the public comment period provided for in Section 3.5.3 of this Rule, unless the petitioner demonstrates that it was impracticable to raise the issue during that time period. If the USEPA objects to the permit as a

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result of this petition, MBARD shall not issue the final permit until the USEPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to a USEPA objection.

- 3.5.5 Upon expiration of the 30-day public review period and approval of the draft permit by the USEPA, MBARD shall issue the final permit and send a copy to the USEPA.

3.6 Permit Renewal

The renewal process for the permit is subject to the same procedural requirements as the initial permit issuance as provided for in Section 3.5 herein. Permit expiration terminates the source's right to operate unless a timely and complete renewal application is submitted pursuant to Section 3.1.2 herein.

3.7 Permit Reopenings

- 3.7.1 After a 30-day notice to the facility, a permit shall be reopened under the circumstances listed in Sections 3.7.1.1 to 3.7.1.3 and reissued by MBARD following the procedural requirements for initial permit issuance. The permit reopening shall affect only those parts of the permit for which the following causes to reopen exist:

- 3.7.1.1 additional federally enforceable requirements under the Act have become applicable to the source with a remaining permit term of at least 3 years, such reopening shall be completed no later than 18 months after promulgation of the federally enforceable requirement; or
- 3.7.1.2 MBARD or the USEPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or
- 3.7.1.3 the USEPA or MBARD determines that the permit must be revised to assure compliance with the federally enforceable requirements.

3.8 Permit Revisions

- 3.8.1 Administrative Permit Amendments

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Permit revisions for administrative permit amendments shall be completed within 60 days of notification. The administrative permit revision procedures are as follows:

- 3.8.1.1 the source may make changes immediately upon filing a complete application; and
 - 3.8.1.2 MBARD shall issue the revised permit and send a copy to the USEPA.
- 3.8.2 Minor Permit Modifications

Minor permit modifications shall be completed within 90 days of receipt of the application or 15 days after the end of the 45-day USEPA review period, whichever is later.

- 3.8.2.1 Within the above specified time frame MBARD shall:
 - 3.8.2.1.1 Issue the permit modification as proposed;
 - 3.8.2.1.2 Deny the permit modification application;
 - 3.8.2.1.3 Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or
 - 3.8.2.1.4 Revise the draft permit modification and transmit to the USEPA the new proposed permit modification.
- 3.8.2.2 The minor permit modification procedure is as follows:
 - 3.8.2.2.1 MBARD shall notify the USEPA within 5 days of receipt of a complete application for the minor permit modification; and
 - 3.8.2.2.2 the draft permit shall be forwarded to the USEPA for a 45-day review period; and
 - 3.8.2.2.3 if the USEPA objects to the issuance of the permit, MBARD has 90 days to revise and resubmit the draft permit. If MBARD fails to do so, the USEPA shall issue or deny the permit. Otherwise, MBARD shall issue the revised permit and send a copy to USEPA.

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3.8.3 Significant Permit Modifications

The procedural requirements for significant permit modifications are the same as for initial permit issuance under the provisions of Section 3.5 herein.

PART 4 PERMIT CONTENT REQUIREMENTS

Any permit issued pursuant to this Rule shall include all of the following requirements:

4.1 Incorporation of Federally Enforceable Requirements

The permit shall incorporate conditions to assure compliance with any federally enforceable requirement listed in Sections 2.9, 4.2 and 4.3 herein. The following procedure shall be used to incorporate a federally enforceable requirement as a permit condition:

- 4.1.1 All permit conditions that address non-federally enforceable requirements shall be specifically identified in the permit or otherwise distinguished from any requirement that is federally enforceable; and
- 4.1.2 Where a federally enforceable requirement and a similar requirement apply to the same emissions unit and are mutually exclusive (e.g., require different air pollution control technology), the requirement implemented in the preconstruction permit shall be incorporated as a permit condition and the other requirement shall be referenced.

4.2 General Permit Requirements

4.2.1 Each permit shall include the following provisions:

- 4.2.1.1 The permittee must comply with all conditions on the federal operating permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
- 4.2.1.2 The need to halt or reduce activity is 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.

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4.2.1.3 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, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

4.2.1.4 The permit does not convey any property rights of any sort, or any exclusive privilege.

4.2.1.5 The permittee shall furnish to MBARD, within a reasonable time, any information that MBARD 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 MBARD 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.

4.2.2 Preconstruction Permit Requirements

Each permit shall include all of the preconstruction permit conditions for each emissions unit.

4.2.3 New Source Performance Standards

Each permit shall require compliance with any applicable federal NSPS as set forth in 40 CFR Part 60.

4.2.4 Federal or State Implementation Plan Requirements

Each permit shall require compliance with any standard or other requirement set forth in the applicable implementation plan as defined in Section 301 of the Act.

4.2.5 Operational and Emissions Limitations

Each permit shall include emission limitations and standards, including any operational requirements and limitations, that assure compliance with all federally enforceable requirements at the time of permit issuance. The origin of and authority for each term and condition shall be specified in the permit, and any difference in form as compared to the federally enforceable requirement upon which the term or condition is based will be identified.

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4.2.6 Equipment Identification

Each permit shall identify the equipment to which each permit condition applies.

4.2.7 Alternative Operating Scenarios

Where the responsible official requests that an alternative operating scenario be included in the permit for an emissions unit, the permit shall contain specific conditions for each operating scenario, including each alternative operating scenario. Each operating scenario identified in the permit must meet all federally enforceable requirements and all of the requirements of this Section. Furthermore, the source is required to maintain a log to record each change made from one operating scenario to another, such changes to be recorded as they are made.

4.2.8 Emissions Caps

When the responsible official requests that the APCO permit two or more emissions units under an emission cap, the permit for each emissions unit shall include terms and conditions for the trading of emissions increases and decreases in the permitted facility, to the extent that the federally enforceable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions shall include all terms required under Section 4.2 herein.

4.2.8.1 An emissions cap shall not allow emissions from any one emissions unit to exceed any applicable individual emission limit or other requirement; and

4.2.8.2 Any individual emission limit or other requirement for an emissions unit shall be enforced through continuous emission monitoring, where applicable; and

4.2.8.3 If an emissions cap is exceeded, all affected emissions units under the emissions cap shall be considered to be operating in violation of the permit.

4.2.9 Monitoring, Testing, and Analysis

Each permit shall contain conditions for all of the monitoring and analysis procedures, and test methods required to be performed to demonstrate compliance, including those pursuant to Sections 114(a)(3) and 504(b) of the Act, and 40 CFR Part 64. Periodic evaluations shall be required as a condition to ensure that the data collected are sufficient to represent the source's compliance with permit conditions over the evaluation period.

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Additionally, where the federally enforceable requirement does not require periodic testing or monitoring, the permit shall include periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. Such monitoring requirements shall assure use of terms, test methods, averaging periods, and other statistical conventions consistent with the federally enforceable requirement.

4.2.10 Record Keeping

Each permit shall incorporate all applicable record keeping requirements and require:

- 4.2.10.1 creation of records of all monitoring data and information that include the following:
 - 4.2.10.1.1 The date, place as defined in the permit, and time of sampling or measurement, and
 - 4.2.10.1.2 The date(s) analyses were performed, and
 - 4.2.10.1.3 The company or entity that performed the analyses, and
 - 4.2.10.1.4 The analytical techniques or methods used, and
 - 4.2.10.1.5 The results of such analyses, and
 - 4.2.10.1.6 The operating conditions as existing at the time of sampling or measurement; and
- 4.2.10.2 retention of records of all required monitoring data and information sufficient to demonstrate compliance with any federally enforceable requirements for a period of at least 5 years from the date of sample collection, measurement, or application, and
- 4.2.10.3 maintenance of any other record keeping deemed necessary by the APCO to demonstrate compliance with all federally enforceable requirements.

4.2.11 Reporting

Each permit shall contain all applicable reporting requirements and conditions that require:

- 4.2.11.1 Monitoring reports shall be submitted at least every six months; and

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- 4.2.11.2 each monitoring report shall be accompanied by a written statement from the responsible official which certifies the truth, accuracy, and completeness of the report; and
- 4.2.11.3 each report shall clearly identify any deviation from permit requirements; and
- 4.2.11.4 any deviation from permit requirements shall be also reported to MBARD within 96 hours of occurrence. The report shall include deviations attributable to upset conditions (as defined in the permit), the probable cause of any deviation, and any corrective actions or preventive measures taken.

4.2.12 Compliance Plan

Each permit shall include a compliance plan which assures that:

- 4.2.12.1 each emissions unit will remain in continuous compliance with each applicable permit condition; and
- 4.2.12.2 each emissions unit will meet any future federally enforceable requirement on a timely basis; and
- 4.2.12.3 a narrative description of how each emissions unit that is not in compliance at the time of permit issuance will achieve compliance.

4.2.13 Compliance Schedule

Each permit shall include a compliance schedule for each emissions unit which is not in compliance with current requirements. The compliance schedule shall:

- 4.2.13.1 list all preventive or corrective activities, and the dates when these activities will be accomplished, for each condition with which the emissions unit is not in compliance; and
- 4.2.13.2 provide the schedule of progress reports certified and submitted by the responsible official on at least a semiannual basis. This report must include the dates when "corrective activities" were actually accomplished and 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; and
- 4.2.13.3 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

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schedule of compliance shall be supplemental to and shall not sanction noncompliance with, the federally enforceable requirements on which it is based.

4.2.14 Compliance Certification

Each permit shall require the responsible official to certify every 12 months, or more frequently as specified in the federally enforceable requirement or by the APCO, that the emissions unit complies with all permit conditions. The certification of compliance shall be submitted to the APCO and the USEPA and must include the following:

- 4.2.14.1 identification of each term or condition of the permit that is the basis of the certification; and
- 4.2.14.2 the compliance status; and
- 4.2.14.3 whether compliance was continuous or intermittent; and
- 4.2.14.4 the method(s) used for determining the compliance status of the source, currently and over the reporting period.

4.2.15 Severability

Each permit shall include a severability clause to ensure the continued validity of otherwise unaffected permit requirements in the event of a challenge to any portion(s) of the permit.

4.2.16 Right of Entry

Each permit shall require that the source allow the entry of MBARD, ARB, or USEPA officials for the purpose of inspections and sampling as authorized by law, including:

- 4.2.16.1 inspection of the stationary source, including equipment, practices, operations, and emission-related activity; and
- 4.2.16.2 inspection of the stationary source, including equipment, practices, operations, and emission-related activity; and
- 4.2.16.3 inspection and duplication of records required by the permit to be maintained; and

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4.2.16.4 source sampling or other monitoring activities.

4.2.17 Permit Life

With the exception of solid waste incinerators subject to Section 129(e) of the Act, each permit to operate for any source shall include a condition for a fixed term of five years from the date of issuance. A permit to operate for a solid waste incinerator shall have a permit term of 12 years; however, the permit shall be reviewed at least every five years.

4.2.18 Payment of Fees

Each permit shall include a condition to ensure that appropriate permit fees are paid on schedule. The condition shall require the permit to be forfeited if fees are not paid on schedule.

4.2.19 Certification by a Responsible Official

Each permit shall require that any document (including reports) required by the permit shall contain a certification by a responsible official that meets the requirements of Section 5.4.1 herein.

4.3 Specific Requirements

Conditions addressing specific requirements shall be included in the FOPs for certain sources, including but not limited to:

4.3.1 Sources of Hazardous Air Pollutants

The permit for a HAP source shall include conditions which require compliance with any federal standard or other requirement promulgated pursuant to Section 112 of the Act, and any MBARD standard or requirement pertaining to toxic air contaminants, including:

4.3.1.1 any National Emissions Standard for Hazardous Air Pollutant (NESHAP) promulgated pursuant to 40 CFR Part 61 prior to November 15, 1990, until such standard is superseded; and

4.3.1.2 any federal MACT, GACT, or other standard or requirement, including any MBARD MACT standard, adopted to satisfy a federal requirement pursuant to

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Section 112(d), (f), (g), and (j) of the Act; however, compliance with such requirements may be postponed pursuant to Section 112(i) of the Act; and

4.3.1.3 any requirement for a risk management plan promulgated pursuant to Section 112(r) of the Act;

4.3.2 Sources of Stratospheric Ozone Depleters

The permit for sources of stratospheric ozone depleters listed in 40 CFR Part 82, Appendices A and B (Class I and II substances) shall include conditions which require compliance with any federal standard or other requirement for stratospheric ozone protection promulgated pursuant to Title VI of the Act;

4.3.3 Portable Sources

A permit issued to any portable source (no acid rain sources shall be permitted as portable sources), which may operate at two or more locations, shall contain conditions that require the portable source to:

4.3.3.1 meet all applicable MBARD, state, and federal requirements for each location; and

4.3.3.2 specify the monitoring methods or other methods (e.g., air quality modeling) approved by the APCO, that will be used to demonstrate compliance with all applicable MBARD, state, and federal requirements; and

4.3.3.3 notify the APCO 10 working days prior to a change in location;

4.3.4 Consumer or Commercial Products

The permit shall include conditions which require compliance with any federal standard or other requirement promulgated pursuant to Section 183(e) of the Act which is applicable to manufacturers, processors, wholesale distributors, or importers and suppliers of such entities, of consumer or commercial products for sale or distribution in interstate commerce in the United States. The term "consumer or commercial product" means any substance, product (including paints, coatings, and solvents), or article (including any container or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of volatile organic compounds. The term does not include fuels or fuel additives regulated pursuant to Section 211 of the Act or motor vehicles, non- road vehicles, and non-road engines as defined in Section 216 of the Act;

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4.3.5 Electric Utility Units

The permit for an electric utility unit shall include conditions which require compliance with any federal standard or requirement promulgated pursuant to Title IV (Acid Deposition Control) of the Act and any standard or requirement promulgated pursuant to Title V of the Act, except as modified by Title IV. Phase I and II requirements of the acid deposition control program include:

- 4.3.5.1 copy of the certificate of representation submitted to the USEPA in accordance with 40 CFR Part 72; and
- 4.3.5.2 any continuous emission monitoring requirement promulgated pursuant to 40 CFR Part 75, including: the installation, operation and certification of equipment by November 15, 1993 for units covered under phase I; and by January 1, 1995, or within 90 days of the start of commercial operation, whichever is later, for units covered under phase II; and
- 4.3.5.3 the submission of quality assurance and quarterly monitoring reports; and
- 4.3.5.4 any application requirement for an Acid Rain Permit pursuant to Section 3.1.3 herein; and
- 4.3.5.5 any emissions limitation, including requirements that:
 - 4.3.5.5.1 an electric utility unit not exceed the annual sulfur dioxide emission allowances allocated in 40 CFR Part 73 which allows a unit to emit one ton per year of sulfur dioxide for each emission allowance allotted while not allowing use of the allowances as a defense for non-compliance with the requirements of MBARD Rule 207 (Review of New or Modified Sources) or any other applicable rules and regulation, and
 - 4.3.5.5.2 an electric utility unit not exceed the nitrogen oxides emission limitations promulgated pursuant to 40 CFR Part 76 for units subject to phase I and coal-fired units subject to phase II and for which permits shall be reopened, before January 1, 1999, to include NO_x requirements; and
- 4.3.5.6 any required compliance plan, or other requirement, for repowering units in accordance with 40 CFR Part 72;

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4.3.6 Solid Waste Incinerators

The permit for a solid waste incinerator shall include conditions which require compliance with any emission limitation or other requirement promulgated pursuant to Section 111 or 129 of the Act;

4.3.7 Tank Vessels

The permit for any tank vessel, which loads or unloads in MBARD, shall include conditions which require compliance with any federal standard or other requirement promulgated pursuant to Section 183(f) of the Act, or any state or MBARD standard or requirement;

4.3.8 Outer Continental Shelf (OCS) Sources

The permit for any OCS source shall include conditions which require compliance with any federal standard or other requirement promulgated pursuant to Section 328 of the Act and any state ambient air quality standard promulgated to comply with Part C of Title I of the Act. The same state and MBARD requirements for emissions controls, emission limitations, emission offsets, permitting, monitoring, testing, and reporting that apply to sources onshore located in MBARD shall apply to OCS sources within 25 miles of the seaward boundary of MBARD. As defined in Section 328(a)(4)(C) of the Act, an OCS source includes any equipment, activity, or facility which:

- 4.3.8.1 emits, or has the potential to emit, any air pollutant (the emissions from any vessel within 25 miles, which services or is associated with the OCS source, shall be included in the calculation of the source's potential to emit), and
- 4.3.8.2 is regulated, or authorized, under the Outer Continental Shelf Lands Act, and
- 4.3.8.3 is located on the outer continental shelf or in, or on, waters above the outer continental shelf.

And at the request of the applicant, the FOP shall include the following:

4.4 Permit Shield

- 4.4.1 A provision stating that compliance with the conditions of the FOP shall be deemed compliance with any applicable requirements as of the date of FOP issuance, provided that:

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- 4.4.1.1 Such applicable requirements are included and are specifically identified in the FOP; or
- 4.4.1.2 MBARD, in acting on the FOP application or revision determines in writing that other requirements specifically identified are not applicable to the source, and the FOP includes the determination or a concise summary thereof.
- 4.4.2 A FOP that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.
- 4.4.3 The permit shield shall not alter or affect the following:
 - 4.4.3.1 The provisions of Section 303 of the Act (emergency orders), including the authority of the Administrator under that section;
 - 4.4.3.2 The liability of an owner or operator of a source for any violation of applicable requirements prior to, or at the time of FOP issuance;
 - 4.4.3.3 The applicable requirements of the acid rain program, consistent with Section 408(a) of the Act;
 - 4.4.3.4 The ability of USEPA to obtain information from a source pursuant to Section 114 of the Act.

PART 5 ADMINISTRATIVE REQUIREMENTS

5.1 Confidentiality

- 5.1.1 Information entitled to confidentiality protection consists of items specified at Section 114(c) of the Act, except:
 - 5.1.1.1 the contents of the permit shall not be entitled to the confidentiality protection under Section 114(c) of the Act.

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5.2 Availability of Information

All information, except as noted in Section 5.1, submitted to MBARD pursuant to this Rule shall be made available to the public.

5.3 Payment of Title V Fees

5.3.1 All permit applicants shall pay the applicable filing fee set forth in MBARD Rule 308 upon submittal of their permit application. The application is not deemed complete until this filing fee is paid.

5.3.2 All permit applicants shall, in addition to the filing fee, pay the applicable permit evaluation fee set forth in MBARD Rule 308.

5.3.3 Annual Federal Operating Permit Fees (AFOPFs) required under the provisions of MBARD Rule 308 are due on an annual basis commencing one year after the date of permit issuance. These annual fees shall be calculated as set forth in MBARD Rule 308.

5.4 Certification by Responsible Official

5.4.1 Any application form, report, or compliance certification submitted pursuant to this Rule shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Rule shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

5.5 Operational Flexibility

5.5.1 Upon request of the owner or operator, the APCO may allow certain changes in facility operations without requiring a permit revision. The changes allowed under this Section shall not apply to changes in operations that constitute a significant or minor permit modification under this Rule or a modification MBARD Rule 207, or that result in an exceedance of the emissions allowable under the permit. This Section shall apply to requests for:

5.5.1.1 the use of alternative operating scenarios for which the terms and conditions are: identified by the owner or operator in the permit application, approved in advance by MBARD, specified in the permit conditions, and in compliance

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with all federally enforceable requirements; and a log shall be maintained at the facility at all times that records the scenario under which it is operating; or

5.5.1.2 the use of a voluntary facility-wide emission limit for the purpose of emissions trading within the facility if all existing emission limits and performance standards for emission units and operations remain in effect, and the terms and conditions for the facility-wide emission limits are:

5.5.1.2.1 identified by the owner or operator in the permit application; and

5.5.1.2.2 approved in advance by MBARD as quantifiable and enforceable; and

5.5.1.2.3 specified in the permit conditions; and

5.5.1.2.4 in compliance with all federally enforceable requirements; and

5.5.1.2.5 the facility provides both MBARD and the USEPA with written notification a minimum of 14 days in advance of the proposed changes.

5.5.1.2.5.1 The notification shall state when the change will occur and shall describe 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; or

5.5.1.3 changes that contravene an express permit term provided such changes do not violate federally enforceable requirements or contravene federally enforceable permit terms and conditions that are monitoring, record keeping, reporting, or compliance certification requirements, if MBARD and the USEPA receive written notice from the owner or operator at least 30 days before making the change, and all of the following conditions are met:

5.5.1.3.1 the change does not cause or allow any exceedance of any emission limitation or emission standard which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a facility or emission unit to assure continuous emission reduction and any design, equipment work practice or operational standard; and

5.5.1.3.2 the change does not cause or allow any exceedance of any standard of performance that requires continuous emission reduction, including any requirement relating to the operation or maintenance of a facility or emission unit to assure continuous emission reduction; and

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5.5.1.3.3 the written notice is clearly marked as a request for operational flexibility under this Section and includes the following information:

5.5.1.3.3.1 a description of the change; and

5.5.1.3.3.2 the date on which the change will occur; and

5.5.1.3.3.3 the change in emissions of any air pollutant, whether the air pollutant is regulated or not and any new emissions of any air pollutant not emitted before the change, whether the air pollutant is regulated or not; and

5.5.1.3.4 MBARD does not provide the owner or operator a written denial of the request for an operational change within at least 30 days of receipt of the request for an operations change.

5.6 Injunctive Authority

No person shall violate, or fail to comply with, any term or condition of the FOP issued by MBARD. Any such noncompliance shall be a violation of Rule 218, the Federal Operating Permits Rule.

5.7 Penalties

Any person who operates a source in violation of any provision of this Rule shall be subject to a fine of not more than twenty-five thousand dollars (\$25,000) per day per violation. This penalty shall be assessed in addition to any fines pursuant to provisions of the California Health and Safety Code.

5.8 Burden of Proof

The burden of proof and degree of knowledge or intent required under State law for establishing violations under 40 CFR 70.11(a)(3) shall be no greater than the burden of proof or degree of knowledge or intent required under the Act.

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PART 6 MONITORING AND RECORD KEEPING REQUIREMENTS

6.1 Monitoring

All emissions monitoring and analysis procedures or test methods required under the Act will be specified in the conditions of the permit.

6.2 Record Keeping

Owners or operators subject to the provisions of this Rule shall maintain for a period of not less than five years a record in a permanent form suitable for inspection, and shall make such record available upon request to the USEPA, the ARB and MBARD. The records shall include, but are not limited to:

6.2.1 the occurrence and duration of any startup, shutdown, or malfunction in the operation of any affected facility; and

6.2.2 the data from all performance testing, evaluations, calibration checks, adjustments, and maintenance of any continuous emission monitors; and

6.2.3 the emission rate, concentration data and other measurements necessary to demonstrate compliance.

6.3 Reporting

6.3.1 Report Contents

The report shall include, but is not limited to:

6.3.1.1 the time intervals, date and magnitude of excess emissions, nature and cause of the excess (if known), corrective actions and preventive measures adopted; and

6.3.1.2 the averaging period used for data reporting corresponding to averaging period specified in the emission test period used to determine compliance with an emission standard for the pollutant/source category in question; and

6.3.1.3 the time and date of each period during which the Continuous Emission Monitoring system was inoperative except for zero and span checks and the nature of system repairs and adjustments; and

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6.3.1.4 all information pertaining to any monitoring as required by the permit; and

6.3.1.5 a negative declaration specifying when no excess emissions occurred.

6.3.2 Reporting Period

The reporting periods are as follows:

6.3.2.1 Owners or operators subject to the provisions of this Rule shall submit to MBARD in a MBARD-approved format a semi-annual report, within 45 days of the end of the previous 6-month period ending each June 30 and December 31.

6.3.2.2 Owners or operators subject to the provisions of Title IV shall submit to MBARD in a MBARD-approved format a quarterly report for each calendar quarter, within 45 days of the end of the previous calendar quarter ending each March 31, June 30, September 30 and December 31, rather than the semi-annual periods in Subsection 6.3.2.1.

6.3.3 Reports of Violations

Any violation of any emissions standard to which the stationary source is required to conform, as indicated by the records of the monitoring device, shall be reported by the operator of the source to MBARD within 96 hours after such occurrence. MBARD shall, in turn, report the violation to the ARB and the USEPA after receiving the report of the violation from the operator.

6.3.3.1 The violation report shall include the time intervals, date and magnitude of excess emissions; nature and cause of the excess (if known), corrective actions and preventive measures adopted.

6.3.4 Data Reduction

Data shall be reduced according to the procedure established in 40 CFR, Part 51, Appendix P, paragraphs 5.0 through 5.3.3, or by other methods deemed equivalent by joint decisions of MBARD, the ARB and the USEPA.

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PART 7 USEPA PROGRAM SUBMITAL REQUIREMENTS

7.1 Interim Approval

The USEPA may grant interim approval to this Rule if it meets each of the minimum requirements of 40 CFR 70.4(d)(3).

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