United States
Environmental Protection
Agency

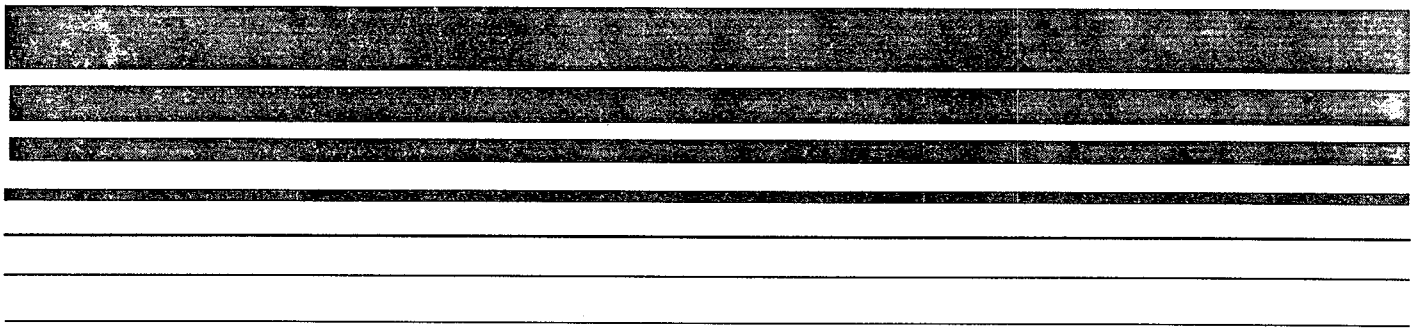
Office of Air Quality
Planning and Standards
Research Triangle Park NC 27711

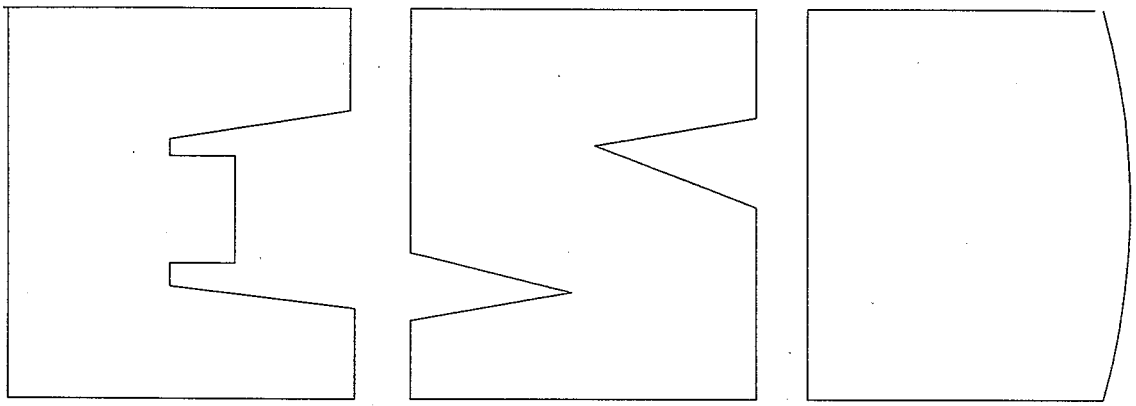
EPA-453/R-94-061b
November 1994

Air

EPA

Federal Operating Permit Programs: Permits for Early Reductions Sources - Background Information for Promulgated Rule





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Federal Operating Permit Programs: Permits for Early Reductions Sources - Background Information for Promulgated Rule

Emissions Standards Division

U.S. ENVIRONMENTAL PROTECTION AGENCY
Office of Air and Radiation
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711
November 1994

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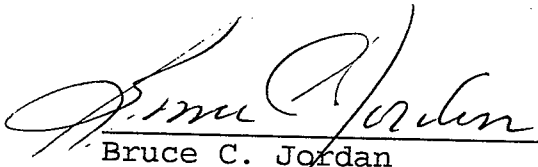
U.S. ENVIRONMENTAL PROTECTION AGENCY

Background Information
for Federal Operating Permit Programs:
Permits for Early Reductions Sources

Prepared by:



11/17/94
(Date)

Bruce C. Jordan
Director, Emission Standards Division
U.S. Environmental Protection Agency
Research Triangle Park, North Carolina 27711

1. The promulgated rule establishes an interim title V permit program solely for sources participating in the Early Reductions Program under section 112(i)(5) of the Clean Air Act.

2. Copies of this document have been sent to the following Federal departments: Labor, Health and Human Services, Defense, Transportation, Agriculture, Commerce, Interior, and Energy; and to the National Science Foundation; State and Territorial Air Pollution Program Administrators; the EPA's Regional Administrators; Local Air Pollution Control Officials; the Office of Management and Budget; and other interested parties.

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4. Copies of this document may be obtained from:

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1.0 SUMMARY

The U.S. Environmental Protection Agency (EPA) proposed a federal title V permits rule entitled "Permits for Early Reductions Sources" on December 29, 1993 (Federal Register, Volume 58, pages 68804-68826) under authority of sections 112(i)(5) and 502 of the Clean Air Act, as amended in 1990. Public comments were requested in the Federal Register notice. Five comment letters were received from industry and State/local agency representatives. The comments and subsequent responses serve as a basis for many of the revisions made to the rule between proposal and promulgation. Additional revisions were made to be consistent with changes proposed by EPA in a related rule, namely the part 70 rule for State programs for comprehensive title V permits. The final rule was promulgated on _____.

1.1 SUMMARY OF CHANGES SINCE PROPOSAL

The EPA has made a few changes and clarifications to the Permits for Early Reductions Sources rule since proposal. These changes and clarifications are not major, but rather constitute fine tuning of the rule as proposed. The more significant revisions are summarized below.

1. A definition of "post-reduction year" has been added to the rule, as well as clarifying language pertaining to deadlines for filing post-reduction emission information. These changes make clearer the requirements for demonstrating that qualifying reductions have been achieved. The proposed language restricted post-reduction emissions demonstrations to emissions occurring in the year beginning with the date early reductions had to be achieved [i.e., the date of proposal of the otherwise applicable

section 112(d) standard]. Inadvertently, this language prevents sources from making a post-reduction emissions demonstration for an earlier year long period. The new definition of "post-reduction year" allows sources to define an earlier post-reduction year and obtain a permit and compliance extension earlier than under the proposed language.

2. The proposed requirement to submit a permit application in a computerized format, in addition to the written application, has been deleted. The EPA has not yet settled on a computer format for such applications.

3. The proposed rule contained a provision requiring permittees to report any deviations from permit terms or conditions within ten days of occurrence. This requirement has been revised to require "prompt" reporting of deviations, where "prompt" will be defined in each early reductions permit and will be based on the type and degree of the deviation. This is consistent with similar language in the part 70 rule for State title V permit programs .

The intent in making the requirement generic instead of specific is to avoid rigid deadlines for reporting all permit deviations, even those that may be trivial. Within the context of the permit, different types of deviations can be assigned different reporting deadlines. Perhaps only two such deadlines are needed, one for deviations that are significant (e.g., a deviation that would compromise the source's ability to meet the alternative emission limitation or that is related to accurate monitoring of emissions or an emissions related parameter) and a presumably longer deadline for less significant deviations.

4. The procedures for making administrative amendments to existing early reductions permits have been revised. The revisions are consistent with recently proposed revisions to the administrative amendments procedures specified in the part 70

rule for State title V programs. The revised procedures clarify the permittee's actions in initiating an administrative amendment and set the effective date of an amendment at 60 days after receipt by the Administrator of the amendment application (assuming the Administrator does not reject the amendment prior to that time).

Also changed under the administrative amendments provisions of the rule is the list of actions qualifying as administrative amendments [§71.26(c)(1)]. A new provision has been added [§71.26(c)(1)(v)] which allows certain other permit revisions to be treated as administrative amendments provided that the Administrator determines, on a case-by-case basis, that the revision is similar to those qualifying actions already specifically listed. The new provision is based upon a similar provision in the part 70 rule and is a response to certain commenters requests for additional flexibility to make relatively insignificant changes at an early reductions source without having to wait for a lengthy EPA approval process. Under the new provision, EPA would be able to process through administrative amendment procedures certain changes not listed in paragraphs §71.26(c)(1)(i) through (iv) but which are ministerial in nature and therefore do not require the exercise of judgement on the part of EPA, or review by the public or affected States.

5. Another proposed provision deleted in the final rule was the requirement that specialty permit applications contain a statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act. This provision was included in the proposal because a similar provision appears in the part 70 rule. However, upon further reflection, EPA has realized that the provision is not relevant to early reductions permit applications. This specialty permit program focuses narrowly on implementing the Early Reductions Program for a defined early reductions source and associated HAP emissions, and within that

context the only applicable monitoring and compliance certification requirements will be those appearing in the specialty permit issued later to the participating company. Each specialty permit will implement the Act directive to provide for enhanced monitoring on major sources by specifying monitoring requirements tailored to the early reductions source and consistent with the characteristics of the Early Reductions Program. Compliance certification requirements also will be imposed to comply with title V of the Act. However, it is inappropriate to ask a source to discuss, in the permit application, its compliance status for these requirements because they do not yet exist.

6. A new paragraph (c) added to §71.21 explains that the primary consideration in an EPA determination to issue a specialty permit after a State obtains approval of its comprehensive title V permit program would be the degree of delay anticipated by deferring to the State for permit issuance.

7. A proposed provision [§71.25(a)(8)] would have allowed the Administrator to collect fees for processing specialty permits. The EPA has decided not to collect any fees for this permit program and this provision has been deleted.

Along with the proposed specialty permits rule, EPA proposed an amendment to 40 CFR part 63 subpart D (the Early Reductions Rule). The amendment proposed is promulgated without change and appends to an enforceable commitment made under the Early Reductions Program the information on emission reduction measures employed to achieve early hazardous air pollutant reductions. Such information is required to be submitted as part of a participant's post-reduction emission demonstration. Another amendment to the Early Reductions Rule is promulgated to make the rule consistent with the permits rule. The amendment mirrors the change described in item 1 of the above list of changes to the

proposed permits rule.

1.2 SUMMARY OF IMPACTS OF FINAL RULE

The Early Reductions Program, which this rule helps implement, is a voluntary program which provides sources of hazardous air pollutants an alternate means of complying with section 112(d) of the Clean Air Act. Because the program is voluntary, no environmental, economic, or energy impacts are directly attributable to the early reductions permits rule. However, should an owner or operator choose to take advantage of the Early Reductions Program, public health and the environment would benefit from reductions in hazardous air pollutants before such reductions would otherwise be required through promulgation of emission standards.

Additionally, any economic and energy impacts will occur sooner at sources making early reductions than at those waiting to comply with forthcoming emission standards. However, due to the greater flexibility to apply cost-effective emission reduction measures under the Early Reductions Program, the participating owner or operator likely would realize a net savings compared to compliance impacts from meeting a section 112(d) standard.

It is not possible to quantify early reductions benefits or impacts. These will depend on how many source owners or operators are able to take advantage of the Early Reductions Program, the characteristics of the sources participating, emission reduction measures employed, and the requirements of otherwise applicable section 112(d) standards.

2.0 SUMMARY OF PUBLIC COMMENTS

A total of 5 comment letters were received. All of the comment letters have been recorded and placed in the docket (Docket No. A-93-08). A list of commenters, their affiliation, and the docket item number assigned to their comment letter are shown in the list below.

Docket Item No.	Commenter and Affiliation
IV-D-01	John W. Walton, P.E. Technical Secretary Tennessee Air Pollution Control Board 9th Floor L&C Annex 401 Church Street Nashville, Tennessee 37243-1531
IV-D-02	L. Mark Wine, et al, counsel for: Basic Acrylic Monomer Mfrs. 1330 Connecticut Ave, N.W. #300 Washington, DC 20036-1702
IV-D-03	Thomas X. White Associate Vice President Science and Technology Division Pharmaceutical Manufacturers Association 1100 15th Street, N.W. Washington, DC 20005
IV-D-04	Charles D. Malloch Director, Regulatory Management Monsanto Company 800 N. Lindbergh Boulevard St. Louis, Missouri 63167
IV-D-05	Donald F. Theiler, Chairman STAPPA Air Toxics Committee and Robert H. Colby, Chairman ALAPCO Air Toxics Committee STAPPA and ALAPCO 444 North Capitol Street, N.W. Washington, DC 20001

The comments have been organized into the following categories:

2.1 Operating Flexibility
2.2 The Alternative Emission Limitation
2.3 Reporting and Recordkeeping
2.4 Timing and Transition Issues
2.4 Miscellaneous

2.1 OPERATING FLEXIBILITY

Comment 1: One commenter stated that EPA should include a 30-60 day minor modification procedure in the final rule or restore the minor permit modification procedure from the part 70 rule for State title V programs. If EPA adopts a 30-60 day process, it should be broader than under the part 70 rule. The commenter feels this is particularly important because EPA proposed eliminating the ability to make "section 502(b)(10) changes" (IV-D-03). Another commenter felt that to remain competitive in today's world, U.S. industry must have flexibility to modify operating methods and make minor changes to permitted facilities without undue permitting delays. A minor permit modifications procedure is essential. The commenter provided several examples demonstrating the need for such minor modification procedures, including frequent equipment changes, process changes to make "made to order" specialty goods, and changes in raw materials suppliers (the raw materials may differ slightly from supplier to supplier). The commenter concluded that EPA should adopt the minor permit modification procedures in the promulgated part 70 rule for State title V programs (IV-D-04).

Response: The EPA has carefully considered the commenter's request for a more expedited permit revision procedure, and has decided not to include such a procedure at this time. There are two primary reasons for this decision. First, the part 70 permit revision procedures are currently the subject of litigation in the D.C. Circuit Court of Appeals. In part as a response to this

litigation, EPA has proposed revisions to these part 70 procedures. The current uncertainty over EPA's legal discretion to provide for expeditious permit revision procedures cautions against providing for any such procedures here in this final rule. Second, as stated in the preamble to the proposal of this rule, EPA believes the nature of these specialty permits, containing limitations that are uniquely tailored to the facility, should reduce the need for permit revisions. Another factor that deemphasizes the need for a more expedited revision procedure is the fact that a specialty permit will, relatively soon after permit issuance, be transferred to the jurisdiction of the State, following which it will be subject to the revision procedures of the State program.

The EPA may in the future decide to revise this rule to provide more expedited procedures for permit revisions. However, EPA currently intends await the outcome of the revisions to part 70 before taking any such action.

Comment 2: One commenter stated that operational flexibility is vital to a "batch" processing industry, such as the pharmaceutical industry. Therefore, it is important that the final specialty permits rule retain the emissions trading provisions (IV-D-03). Another commenter felt that industry could only remain competitive internationally if adequate flexibility to act on short notice is allowed. One means of implementing this flexibility is through the §71.25(a)(10), the emissions trading provision (IV-D-04). This section of the Clean Air Act allows sources to make certain changes within a permitted facility without requiring a permit revision, and is required in any title V permitting program, including the specialty permit program (IV-D-04). Another commenter opposes emission trading programs, particularly those that allow interpollutant trading. Although emissions trading increases flexibility for industry, it adds complexity and additional administrative burdens for the implementing agency and may not be protective of public health.

(IV-D-05).

Response: Section 502(b)(10) of the Act requires title V permit programs to contain provisions to allow changes within a permitted facility without requiring permit revision, if the changes are not modifications under title I of the Act and the changes do not exceed the emissions allowable under the permit. In its part 70 rulemaking, EPA implemented this requirement by delineating three operational flexibility provisions, two of which were mandatory for State programs for comprehensive title V permits. The two mandatory elements, which were potentially applicable to this specialty permits rule, consisted of provisions allowing: (a) certain narrowly defined changes at a permitted facility that contravene permit terms [so called "section 502(b)(10) changes"] and (b) emissions trading within a permitted facility for the purposes of complying with a federally enforceable emissions cap. Consistent with the proposed specialty permits rule, EPA has decided to incorporate an emissions trading provision in the final rule, but leave out a provision for "section 502(b)(10) changes." [The decision on "section 502(b)(10) changes" is discussed in the response to comment 3 below.]

Similar to the preamble discussion of operational flexibility in the preamble to the proposed rule, the final decision to include an emission trading provision is based on the section 502(b)(10) directive that title V programs provide for limited changes in a permitted facility without permit revision and the perceived need to provide participants in the Early Reductions Program a limited emissions trading program. Providing for changes which affect emissions (but which overall remain within the cap) without having to modify a permit is crucial to participating sources which need to be able to respond to market conditions, process technology advances, and other business forces quickly to compete successfully.

As mentioned above, the types of emission changes that may be undertaken without permit revision are restricted to those

that are not modifications under title I of the Act and that do not exceed allowable emissions (i.e., the alternative emission limitation). Additionally, all emission trades must be quantifiable and meet the compliance provisions of the permit.

Comment 3: One commenter supports the EPA's decision in the proposed rule not to allow "section 502(b)(10)" changes (IV-D-05). Another commenter felt that the specialty permit program must include provisions for "section 502(b)(10)" changes (IV-D-04).

Response: The EPA continues to believe that the provision for "section 502(b)(10) changes" found in 40 C.F.R. §70.4(b)(12)(i) is unecessary for the specialty permits program both from a policy and legal standpoint. As explained in the preamble to the proposed rule (58 FR 68812, December 29, 1993), the authority for "section 502(b)(10) changes" is intended to address situations where permits have been inappropriately written to contain terms that are superfluous to implementation and enforcement of the requirements of the Act. The EPA does not anticipate that this will be the case for specialty permits because of their single-purpose nature and because EPA will be the permitting authority. Moreover, the EPA interprets section 502(b)(10) to require some form of operational flexibility in any rule promulgated under title V. The specialty permits rule is consistent with this interpretation because it requires emissions trading under §71.25(a)(10).

2.2 THE ALTERNATIVE EMISSION LIMITATION

Comment 4: One commenter was concerned because alternative emissions limitations will be written in terms of an annual cap. The concern is that risks to public health could increase under this use of caps, particularly for the high-risk pollutants. The shortcomings of the annual cap are potentially exacerbated by not having annual caps for each individual hazardous air pollutant,

thus allowing interpollutant trading (IV-D-05).

Response: The Early Reductions Provision [section 112(i)(5)] of the Clean Air Act requires participants to demonstrate qualifying HAP reductions with respect to verifiable and actual emissions in a base year. Thus, a source documenting 100 tons of actual HAP emissions in a base year must reduce emissions by 90 percent or 90 tons per year to qualify for a compliance extension, leaving the source with emissions of 10 tons per year. (For particulate HAP, the required reduction is 95 percent). Section 112(i)(5) further directs the Administrator to issue permits to successful participants containing an "alternative emission limitation" reflecting the reduction which qualified the source for the extension. The simple implication is that such a limitation would be the annual emission level representing the 90 percent reduction, in this case an annual cap of 10 tons per year. Nowhere in section 112(i)(5) is it stated or implied that the various HAPs emitted by the source must achieve the 90 percent reduction individually or must have individual alternative emission limitations. In fact the opposite is implied in paragraph (E) of section 112(i)(5) where the Administrator is directed to take into account emissions of "high-risk" HAP by limiting "the use of offsetting reductions in emissions of other hazardous air pollutants from the source as counting toward the 90 per centum reduction in such high-risk pollutants qualifying for an alternative emissions limitation under this paragraph." In other words, Congress did not prohibit using greater reductions in some HAPs to offset lesser reductions in other emitted HAP, provided that the source overall meets the 90 percent reduction requirement and provided that the Administrator places some limit on such averaging in situations involving "high-risk" pollutants. The EPA has adopted weighting factors for the high-risk pollutants to provide limits on such interpollutant averaging.

Since participating sources are achieving 90 percent reductions in HAP emissions, the annual cap to maintain that

reduction should afford considerable risk reduction. Coupled with the high-risk pollutant weighting system, the capped emissions from the early reductions source will continue to provide this reduced risk through the compliance extension period. Moreover, it is important to remember that the annual cap on an early reductions source is fixed for the entire compliance extension period, unlike allowable HAP emissions from a source meeting a section 112(d) standard which often may increase as a source increases production (as long as a percent reduction requirement or emission per pound of product requirement is met, for example). Finally, the Early Reductions Program does not prohibit State/local agencies from enacting more stringent standards for HAP sources.

Comment 5: One commenter stated that a quarterly rolling annual emission determination should not be incorporated into the alternative emission limitation (AEL). The Early Reductions Provisions of the Clean Air Act establish an AEL that is related to verifiable and actual emissions in a base year. The use of a base year to establish the AEL clearly establishes the AEL as an annual limit. An annual cap gives the source some flexibility in managing its air compliance program. For example, emissions from a busy season could be offset by less emissions during periods of lower production (IV-D-04).

Response: The EPA agrees with the commenter that the Early Reductions Provision of the Clean Air Act established an annual limit on emissions (see also the response to the preceding comment). Therefore, early reductions permits will not be required to include an alternative emission limitation based on a rolling quarterly calculation of HAP emissions from the latest 12 month period (although it will remain an option for the owner or operator). The limitation will be a cap on calendar year HAP emissions. However, to track a source's progress toward meeting the annual limit, early reductions permits will require sources to make a quarterly calculation of actual HAP emissions from the

early reductions source and report them to the permitting authority.

2.3 REPORTING AND RECORDKEEPING

Comment 6: One commenter felt that the proposed 10-day reporting requirement proposed at §71.25(a)(5) was too restrictive and not warranted considering that the alternative emission limitation is based on annual emissions. The 40 CFR part 70 rules for State comprehensive title V programs provide each State with the latitude to establish prompt reporting for deviations from permit terms [§70.6(a)(3)(iii)(B)]. The EPA should follow this example and allow specialty permit writers to define reasonable reporting criteria on a case-by-case basis (IV-D-04). Another commenter thought the 10-day reporting deadline appropriate (IV-D-05).
Response: In response to the comment, EPA is replacing the 10-day reporting requirement with a provision that will allow the specialty permits writer the discretion to establish reporting periods for deviations in each permit on a case by case basis. The EPA believes this approach is justified in this rule because most if not all specialty permits will be transferred to the jurisdiction of the state before renewal. Since part 70 allows each state the discretion to establish periods for reporting of deviations, any standard set by EPA in this rule would likely result in states having to take jurisdiction over permits containing reporting requirements that vary from those established in the state program. The EPA believes it is better to leave the EPA specialty permits writer the discretion, where appropriate, to establish timelines for reporting of deviations that are consistent with timelines established in the part 70 program to which the source will ultimately be subject.

Comment 7: The commenter states that the proposed record retention requirements are excessive, particularly the requirement to retain "all supporting information." The

commenter attached extensive comments on this subject that were previously submitted for the Enhanced Monitoring Rule proposal and the proposed section 112(d) standard for synthetic organic chemical manufacturing facilities (IV-D-04).

Response: The part 70 rule for State permitting programs states that title V permits must contain provisions requiring "Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application." The identical language was proposed in this part 71 rule and is retained in the promulgated rule. However, the fact that records of all required monitoring information must be retained for 5 years is not automatically overly burdensome. The burden will be in direct proportion to what is decided, through permit terms and conditions, to be "required monitoring and support information." Each permit issued to an early reductions source will contain monitoring and recordkeeping requirements determined specifically for that source. These requirements will be based on the EPA's evaluation of the appropriateness of the source's proposed monitoring requirements in the permit application, the Clean Air Act directive to incorporate "enhanced monitoring" on major sources, the nature of compliance with an annual emissions cap (i.e., the alternative emission limitation), and the costs associated with various monitoring strategies. An example of how factors similar to these affected monitoring decisions for the section 112(d) standard for the synthetic organic chemical manufacturing industry can be found in the preamble to that rule, which was promulgated in the FEDERAL REGISTER on April 22, 1994 (especially pages 19434-19437).

2.4 TIMING AND TRANSITION ISSUES

Comment 8: The commenter addressed EPA's intent to delegate enforcement of specialty permits to States that demonstrate having enforcement authority substantially equivalent to that

described in the part 70 rule (§70.11). The commenter supported EPA's intent to allow States a reasonable level of flexibility in their enforcement programs, as long as the "substantially equivalent" criterion is met. This would expedite the transfer of permitting and enforcement authority to the States, thus avoiding duplicate systems (IV-D-04).
Response: The proposed language requiring States to demonstrate enforcement authority "substantially equivalent" to §70.11 has remained the same in the final rule.

Comment 9: Two commenters supported the proposed rule provision [§71.21(b)] giving EPA the discretion to process and issue specialty permits where a permit application was submitted to EPA prior to approval of the State program. One of the commenters felt this was necessary to avoid confusion and delays inherent in dealing with two permitting agencies (IV-D-04). The other commenter thought EPA should have this flexibility, because some State or local agencies may wish to assume all title V authorities upon program approval, but others would prefer not to disrupt an application in process (IV-D-05).
Response: The provision will be promulgated as proposed.

Comment 10: The commenter considers it imperative that an early reductions participant have a permit before the source becomes subject to the relevant section 112(d) standard. The commenter also wants the EPA to clarify that compliance with the terms of an enforceable early reductions permit exempts a source from case-by-case review under section 112(g) of the Act. The commenter feels that early reductions participants should not be subject to section 112(g) requirements even before a permit is issued. A source participating in the Early Reductions Program should not be required to obtain a permit to be shielded from section 112(g); companies will be making changes at their facilities before the permit can be issued (IV-D-03).
Response: The Early Reductions Provisions of the Clean Air Act

allow a source demonstrating sufficient reductions to meet an alternative emission limitation, instead of an otherwise applicable section 112(d) standard, for a period of six years beyond the section 112(d) compliance date. Until it expires, the alternative emission limitation takes the place of the section 112(d) standard. Therefore, compliance with the alternative emission limitation essentially is the same as compliance with a section 112(d) standard, and section 112(g) would not be triggered by any allowable emission increases within the emissions cap established by the alternative emission limitation.

Prior to issuance of a permit granting a compliance extension and establishing an alternative emission limitation, a source planning to demonstrate early reductions is not protected from the possible effects of section 112(g). However, emissions at such a source should be decreasing dramatically, hopefully preventing triggering 112(g).

Comment 11: Two commenters agreed with EPA's position that an early reductions permit should be incorporated, without reopening, into a source's comprehensive title V permit (IV-D-03,IV-D-04). States should not be given the option of eliminating operational flexibility, the permit shield, or the upset provision from an early reductions permit (IV-D-03, IV-D-04). Another commenter believed that State and local agencies should have the right to reopen specialty permits when they are incorporated into a facility's comprehensive title V permit, particularly for the purposes of excluding certain elements of the specialty permit, such as the permit shield, operational flexibility, etc. This would allow State and local agencies to maintain consistency among their title V permits. Moreover, the commenter recommended that EPA develop specialty permits as a module that may be inserted into the comprehensive permit in a reserved section. This would facilitate incorporation, especially when reopening is not necessary (IV-D-05).
Response: The EPA cannot prohibit states from reopening

specialty permits after they are transferred to the state to administer. However, any permit reopening must, pursuant to 40 C.F.R. §70.7(f)(2), include an opportunity for EPA veto. The EPA thus will have the opportunity to review any permit reopening so as to ensure that the requirements of the Act, including section 112(i)(5), are complied with. Once an Alternative Emissions Limit has been established in a specialty permit issued by EPA, there should, in general, be no reason to alter that emissions limit when the permit is transferred to the state.

However, other aspects of the EPA permit will not be so fixed. Once a permit has been transferred to the state, the permit then becomes subject to the permitting procedures of the state's part 70 program. So, for instance, if the state's program does not provide a permit shield, the source could not enjoy a shield though it may have had one under the Federal specialty permits program. If the EPA-issued permit expressly provided for a shield, then the state should, for the sake of clarity, reopen the permit to delete the shield provisions.

The EPA expects that similar results will obtain for any permit terms that are dictated by procedures of general applicability (such as the shield or permit revision procedures), as opposed to permit terms that are uniquely tailored to the source (such as the AEL), which should not change when the permit is transferred.

Comment 12: The commenter stated that there should be flexibility regarding when State and local agencies assume responsibility for the Early Reductions Program to accommodate those State and local agencies that wish to obtain early delegation. Furthermore, issues regarding the delegation of the Early Reductions Program should be worked out between the EPA Regional Offices and the involved State or local agency (IV-D-05).

Response: The EPA has provided for States or local agencies to obtain early delegation to implement the Early Reductions Rule,

specifically through the delegation process under a rule promulgated pursuant to section 112(l) of the Clean Air Act.

2.5 MISCELLANEOUS

Comment 13: Two commenters believe it is important to retain the permit shield (IV-D-03, IV-D-04). The shield could become important in States with different interpretations of the Early Reductions Rule (IV-D-03); without the shield continuing changes in interpretations and/or changes in permit requirments during the life of the permit would undermine a permittee's efforts to develop meaningful programs to assure compliance (IV-D-04).
Response: Specialty permits issued by EPA will include a permit shield that states that compliance with the terms and conditions of the specialty permit constitutes compliance, for the defined early reductions source only, with the applicable requirement from section 112(d) of the Act. As discussed in the response to comment 11, once a State incorporates a specialty permit into the comprehensive title V permit issued to a facility, the State title V program rules regarding a permit shield will apply and it is possible that the State would not provide such a shield.

Comment 14: The commenter recommended that EPA explicitly state in the specialty permit rule that the terms and conditions of a specialty permit do not supercede any existing State requirements regarding allowable emissions, emissions trading, modifications, permit renewals, etc. Furthermore, the existence of a specialty permit does not prevent a State from promulgating additional requirements for protection of public health and safety (IV-D-01).
Response: States do, of course, have the right to pass standards or other rules and regulations that are stricter than EPA's. The preamble to the promulgated Early Reductions Permits Rule reminds participants that a compliance extension granted under the Early Reductions Program applies only to section 112(d) standards the

source otherwise would be subject to, and does not exempt the source from complying with other EPA regulations or State or local agency regulations.

Comment 15: Two petitions for review of a chemical on the list of "high-risk" pollutants have been filed in the Court of Appeals. The commenter felt that if either or both of these petitions are granted, the EPA should extend the deadline for participation in the Early Reductions Program for facilities that emit the affected chemical(s). The reason for this is that emission of one unit of a "high-risk" pollutant must be offset by a reduction of ten units or more (depending on the factor assigned by EPA) of other pollutants according to the Early Reductions Rule. This requirement has made it difficult, if not practically impossible for a source that emits significant levels of a high-risk pollutant to participate in the Early Reductions Program (IV-D-02).

Response: Section 112(i)(5) of the Clean Air Act requires a source to demonstrate a 90 (95) percent reduction of HAP emissions from base year levels to obtain a compliance extension. A source emitting a single HAP would have to reduce emissions of that HAP by 90 (95) percent to qualify, regardless of whether the HAP is a high-risk pollutant. There is no greater reduction requirement for high-risk pollutants. For sources emitting more than one HAP, the owner or operator is allowed to demonstrate a composite reduction of 90 (95) percent across all HAP emitted. Thus, the owner or operator has the option to reduce some of the HAP emissions by more than 90 percent and others by less, as long as the composite reduction is 90 percent of total HAP emissions. The only limitation on this allowed "averaging" of the HAP reductions occurs when an owner or operator chooses to undercontrol (i.e., control by less than 90 percent) a high-risk pollutant emitted. In this situation, the owner or operator would have to offset the undercontrol by achieving overcontrol of some other HAP(s) emitted by the source. The amount of

overcontrol required is equal to the amount of undercontrol times the appropriate high-risk pollutant weighting factor (usually 10 or 100). However, the owner or operator always can control the high-risk pollutants by 90 percent to avoid the offset requirement. Therefore, EPA disagrees that it is "difficult, if not practically impossible" for sources emitting significant quantities of high-risk pollutants to participate in the Early Reductions Program. In fact, many such sources currently are participating.

Moreover, section 112(i)(5) of the Act establishes the deadline by which early reductions must be achieved, either January 1, 1994 for sources making enforceable commitments or the date of proposal of an otherwise applicable section 112(d) standard for all other participating sources. This statutory deadline cannot be changed by EPA.

(Note: On October 21, 1994, EPA promulgated in the Federal Register (59 FR 53109) an amendment to the Early Reductions Rule deleting acrylic acid from the list of high-risk pollutants. That final action also removed methylene diphenyl diisocyanate (MDI) from the list. The EPA's listing of MDI as a high-risk pollutant was vacated by the United States Court of Appeals for the District of Columbia Circuit on July 19, 1994.)

Comment 16: The commenter states that EPA should not collect fees under the part 71 specialty permit program. Most States are already charging fees based on emissions, and industry should not have to pay again on these same emissions. Assessing fees would penalize sources that elect to undertake early reductions.
Response: The EPA has decided not to collect fees for issuing permits under this interim permitting program. However, States delegated authority to issue specialty permits may at their discretion collect such fees.

Comment 17: The commenter objects to the requirement that notices of permit actions be sent to "any unit of local

government having jurisdiction over the area where the early reductions source is located..." The requirement should be limited to those units of local government with authority for regulating air pollution. Other agencies, to the extent they may be interested, will be put on notice through the notice by publication provisions (IV-D-04).
Response: The EPA agrees with the commenter. The final rule has been revised to clarify this point.

Comment 18: The proposed deadline at §71.24(b)(1) is unclear and potentially in conflict with the requirements of the Early Reductions Rule [§63.77(c)(1)]. The deadline language should mirror that in the Early Reductions Rule (IV-D-04).
Response: Although intended to convey the same application deadline, the wordings at the cited paragraphs are slightly different in the two rules. The EPA agrees with the commenter that the deadline wording should be identical, and the specialty permits rule has been changed to use the Early Reductions Rule language at §63.77(c)(1).

Comment 19: The duty to supplement or correct an application [§71.24(d)] should provide for a reasonable amount of time in which to act, particularly in situations where revised regulatory requirements cause the need to revise the application. The commenter suggests a maximum 120 day response time (IV-D-04).
Response: Although no such deadline appears in the rule, the permitting authority has the discretion to set such deadlines as the need arises.

Comment 20: The regulation at proposed §71.24(e) should clearly state that information need not be submitted in a computerized format unless the EPA has finalized the Aerometric Information Retrieval System (AIRS) formatting requirements for submission of title V permit information at least 120 days before a permit application is due. Changing the format after initiating the

preparation of the permit application will significantly add to the resources required and is therefore inappropriate (IV-D-04).

Response: Since final AIRS format requirements have not been available to Early Reductions Program participants to date and because the specialty permits program is a short-lived, interim program, the language requiring AIRS compatible permit application data has been dropped.

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(Please read Instructions on reverse before completing)

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15. SUPPLEMENTARY NOTES

16. ABSTRACT

The promulgated rule entitled "Permits for Early Reductions Sources" establishes a Federal, interim title V permit program solely for sources participating in the Early Reductions Program under section 112(i)(5) of the Clean Air Act. Permits issued under the rule are "specialty" in nature, that is they encompass only the requirements of the Early Reductions Program and no other applicable requirements of the Act. This document contains a summary of public comments received on the proposed rule (58 FR 68804, December 29, 1993), EPA responses to the comments, and a summary of changes made to the rule since proposal.

17. KEY WORDS AND DOCUMENT ANALYSIS

a. DESCRIPTORS	b. IDENTIFIERS/OPEN ENDED TERMS	c. COSATI Field/Group
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