

**RULE 216. FEDERAL PART 70 PERMITS**

*(Adopted 10/26/93; Revised 3/28/01; Revised 3/23/11)*

- A. GENERAL. This Rule specifies the requirements and procedures by which a specific source may obtain a Federally enforceable operating permit in accordance with the requirements of Part 70 to Title 40 of the Code of Federal Regulations. The Air Pollution Control Officer (APCO) may also issue a general Part 70 permit for numerous similar sources. For the purposes of this Rule, all references to Part 70 permits shall also apply to general Part 70 permits except where specific requirements are identified.

This Rule initially became effective upon its approval by the United States Environmental Protection Agency (EPA). However, the requirements of this Rule 216 shall be suspended during any time period in which a 40 CFR Part 71 operating permit program is being administered for sources under the jurisdiction of the San Luis Obispo County Air Pollution Control District, in lieu of Rule 216, unless:

1. The U.S. EPA is taking action to satisfy an objection in accordance with 40 CFR Parts 70.8(c)(4) and 71.4(e); or
2. The District and U.S. EPA jointly agree, in accordance with 40 CFR Section 71.10, "Delegation of Part 71 Program," that all or part of Rule 216 shall not be suspended; in which case the terms, conditions, and scope of such delegation shall be set forth in writing in the delegation agreement.

In addition to being enforceable pursuant to federal law, during any suspension of Rule 216, an existing permit issued pursuant thereto shall continue to be enforced by the District in accordance with Rule 202 and other applicable state and District rules and regulations. Action to modify, renew, or reopen such permit shall be conducted pursuant to the Federal Clean Air Act and 40 CFR Part 71 and/or Rule 202 and other applicable state and District rules and regulations, depending on whether the requirement involved in the permit action is District-only enforceable or enforceable by both the District and the U.S. EPA and the citizens of the United States.

The provisions of this Rule shall apply in addition to all other requirements found elsewhere in this Regulation for any source required to obtain a Part 70 permit.

- B. APPLICABILITY. The requirement to obtain a Part 70 permit pursuant to this Rule shall apply to:

1. Any stationary source with a potential to emit of 100 tons per year or more of any air pollutant except greenhouse gases.
2. Greenhouse gases equal to or exceeding the thresholds as specified in 40 CFR 70.2 in effect August 2, 2010.

3. Any stationary source or group of stationary sources located in a contiguous area and under common control with a potential to emit of:
  - a. 10 tons per year or more of any EPA hazardous air pollutant;
  - b. 25 tons per year or more of any combination of EPA hazardous air pollutants; or
  - c. A lesser quantity, as established by regulations promulgated by the Administrator of the EPA , of any EPA hazardous air pollutant.

For the purposes of this Subsection, EPA hazardous air pollutant emissions from any oil or gas exploration or production well and associated equipment, and from any pipeline compressor or pump station shall not be aggregated with such emissions from other similar units whether or not such units are located in a contiguous area or are under common control.

4. Any stationary source in a source category required to obtain a Part 70 permit pursuant to regulations promulgated by the Administrator of the EPA.
5. Any acid rain source.
6. Any solid waste incineration unit required to obtain a Part 70 permit pursuant to Section 129(e) of the federal Clean Air Act (CAA).

C. DEFINITIONS. For the purposes of this Rule the following definitions shall apply:

1. "Acid Rain Source": Any stationary source that includes one or more emission units that are subject to emission reduction requirements or limitations pursuant to Title IV of the CAA Amendments of 1990.
2. "Administrative Part 70 Permit Amendment": A modification to a Part 70 permit that is being made solely for the purpose of accomplishing one or more of the following objectives:
  - a. Corrects typographical errors.
  - b. Makes an administrative change at the source such as the name, address or phone number of a person named in the Part 70 permit.
  - c. Requires more frequent monitoring or reporting by the permittee.
  - d. Allows for the transfer of ownership or operational control of a stationary source provided that a written agreement containing a specific date for transfer of Part 70 permit responsibility, coverage, and liability between the current and new permittee has been submitted to the District.

- e. Qualifies as an alteration and does not affect any permit condition.
3. "Affected State": Any State:
- a. Whose air quality may be affected by the issuance, modification, or reissuance of a Part 70 permit and that is contiguous to the state of California; or
  - b. That is within 50 miles of the permitted source.
4. "Air Pollutant": Any pollutant that is emitted into or otherwise enters the ambient air, and that is listed among the following:
- a. Oxides of nitrogen and volatile organic compounds.
  - b. Any pollutant for which a national ambient air quality standard has been promulgated pursuant to Section 109 of the CAA.
  - c. Any pollutant subject to a new source performance standard promulgated pursuant to Section 111 of the CAA.
  - d. Any ozone-depleting substance specified as a Class I or Class II substance pursuant to Title VI of the CAA.
  - e. Any pollutant subject to a standard or requirement promulgated pursuant to Section 112 of the CAA, including:
    - 1) Any pollutant specified in the list of substances pursuant to Section 112(r) of the CAA shall be considered an air pollutant upon promulgation of such list.
    - 2) Any EPA hazardous air pollutant subject to a standard or requirement promulgated by EPA pursuant to Section 112(d) of the CAA shall be considered an air pollutant:
      - i. Upon promulgation of the standard or list, or
      - ii. 18 months after the standard or requirement was scheduled to be promulgated pursuant to Section 112(e)(3) of the CAA.
    - 3) Any EPA hazardous air pollutant subject to a District case-by-case emission limitation determination made pursuant to Section 112(j) of the CAA.
    - 4) Any EPA hazardous air pollutant subject to a District case-by-case emission limitation determination made pursuant to Section 112(g) of the CAA. For any case-by-case emission limitation determination made pursuant to Section 112(g), the EPA

hazardous air pollutant shall be considered an air pollutant only for the stationary source for which such emission limitation determination was made.

- f. Greenhouse gases that are “subject to regulation” as defined in 40 CFR 70.2 in effect August 2, 2010.
5. “Alteration”: Any physical change in, or any change in the method of operation of an existing stationary source that is not subject to the modification requirements of Rule 204 and would otherwise qualify as a non-federal minor change.
6. "Applicable Requirement": Any federal, state, or District air pollution requirement and all federally-enforceable requirements.
7. "Emergency": Any situation arising from sudden and reasonably unforeseeable events beyond the control of a permittee, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the stationary source to exceed a technology-based emission limitation under the Part 70 permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
8. "Emissions Allowable Under the Part 70 Permit": A federally-enforceable permit condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including a work practice standard, or a federally enforceable emissions cap that a source has assumed to avoid an applicable requirement to which the source would otherwise be subject.
9. "Emissions Unit": Any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under Section 112(b) of the CAA.
10. "EPA Hazardous Air Pollutant": Any hazardous air pollutant listed pursuant to Section 112(b) of the CAA.
11. "Federally-Enforceable": Any requirement, standard, or limitation that is enforceable by the Administrator of the EPA and citizens under the CAA.
12. "Federally-Enforceable Requirement": Any air pollution requirement set forth in, or authorized by, the CAA or EPA regulations. Federally-enforceable requirements include requirements that are included in regulations promulgated by the administrator of the EPA at the time of issuance of a Part 70 permit but have future effective dates. Federally-enforceable requirements include all of the following:
  - a. Title I requirements of the CAA, including all of the following:

- 1) New Source Review (Rule 204, Requirements) requirements in the state implementation plan approved by the EPA and the terms and conditions of the authority to construct issued pursuant to such rule.
  - 2) Prevention of Significant Deterioration (PSD) requirements and the terms and conditions of the PSD permit (40 CFR Part 52).
  - 3) New Source Performance Standards (40 CFR Part 60).
  - 4) National Ambient Air Quality Standards, increment, or visibility requirements, but only as they would apply to sources permitted pursuant to Section 504(e) of the CAA.
  - 5) National Emissions Standards for Hazardous Air Pollutants (40 CFR Part 61).
  - 6) Any standard or other requirement under Section 112 of the CAA, including Maximum Achievable Control Technology or Generally Available Control Technology standards developed, and determinations made, pursuant to Subsections 112(g) and 112(j).
  - 7) Risk Management Plans (Section 112(r) of the CAA).
  - 8) Solid Waste Incineration requirements (Section 129 of the CAA).
  - 9) Consumer and Commercial Product requirements (Section 183 of the CAA).
  - 10) Tank Vessel requirements (Section 183 of the CAA).
  - 11) District rules that are approved into the state implementation plan.
  - 12) Federal Implementation Plan requirements.
  - 13) Enhanced Monitoring and Compliance Certification requirements (Section 114(a)(3) of the CAA).
- b. Title III, Section 328 (Outer Continental Shelf, OCS) requirements of the CAA (40 CFR Part 55), upon delegation by EPA of the OCS program to the District.
  - c. Title IV (Acid Deposition Control) requirements of the CAA (40 CFR Parts 72, 73, 75, 76, 77, 78).
  - d. Title VI (Stratospheric Ozone Protection) requirements of the CAA (40 CFR Part 82).
  - e. Monitoring and Analysis requirements (Section 504(b) of the CAA).

13. "General Part 70 permit": A Part 70 permit covering numerous similar sources that includes the criteria by which sources may qualify for the general Part 70 permit. A general Part 70 permit will be issued to a source by the APCO as a supplement, and not in lieu of, a Permit to Operate issued pursuant to Rule 202, Permits. Examples of sources for which a general Part 70 permit may be issued are perchloroethylene drycleaning facilities or motor vehicle gasoline dispensing facilities.
14. "Insignificant Activities": Those emission units that do not require a permit pursuant to Rule 201, Equipment Not Requiring A Permit.
15. "Minor Part 70 Permit Modification": A modification to a Part 70 permit that meets all of the following criteria:
  - a. The modification does not involve any addition, deletion, or revision to a Part 70 Permit condition under Section 112(g) of Title I of the CAA or under EPA regulations promulgated pursuant to Title I of the CAA, including 40 CFR Parts 51, 52, 60, 61, and 63.
  - b. The modification does not violate any federally-enforceable requirements.
  - c. The modification does not require or change a federally-enforceable case-by-case determination of an emission limitation or other standard.
  - d. The modification does not involve any significant change to any existing federally-enforceable monitoring term or condition or involve any relaxation of reporting or recordkeeping requirements in the Part 70 permit.
  - e. The modification does not seek to establish or change a Part 70 permit condition that established a federally-enforceable emissions cap assumed to avoid an otherwise federally-enforceable requirement.
16. "Non-Federal Minor Change": A modification to a non-federally-enforceable term or condition to a Part 70 permit that meets all of the following criteria:
  - a. The modification is not addressed or prohibited by the federally-enforceable portion of the Part 70 permit.
  - b. The modification does not involve any addition, deletion, or revision to a Part 70 Permit condition under Section 112(g) of Title I of the CAA or under EPA regulations promulgated pursuant to Title I of the CAA, including 40 CFR Parts 51, 52, 60, 61, and 63.
  - c. The modification does not violate any federally-enforceable requirement including those of Title IV to the CAA.

17. "Part 70 Permit": A permit issued by the District to fulfill the requirements of Title V of the CAA and 40 CFR Part 70. This Part 70 permit shall also serve as a permit to operate issued to fulfill the requirements of Rule 202, Permits. Notwithstanding the previous sentence a general Part 70 permit shall not serve as a permit to operate issued to fulfill the requirements of Rule 202.
18. "Potential to Emit": The potential to emit for a stationary source is the sum of the potential to emit from all emissions units at the stationary source. If two or more EPA hazardous air pollutants are emitted from a stationary source, the potential to emit of each EPA hazardous air pollutant that is emitted shall be summed for the purpose of determining applicability pursuant to Subsection B.2.b. Fugitive emissions of EPA hazardous air pollutants that are associated with a stationary source shall be included in the potential to emit for the stationary source but fugitive emissions of all other pollutants need only be included if such stationary source is specified in 40 CFR 70.2 "Major Source" (2)(i-xxvii).

The potential to emit for an emissions unit is the maximum quantity of each air pollutant that may be emitted by the emissions unit, based on the emissions unit's physical and operational design. Physical and operational design shall include limitations that restrict emissions, such as hours of operation and type or amount of material combusted, stored or processed, provided such limitations are legally and practicably enforceable by EPA and citizens or by the District.

19. "Responsible Official": One of the following:
  - a. 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 Part 70 permit and either:
    - 1) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25,000,000 (in second quarter 1980 dollars); or
    - 2) The delegation of authority to such representative is approved in advance by the District.
  - b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively.
  - c. For a municipality, state, federal or other public agency: either a principal executive officer or ranking elected official. For the purposes of this Rule, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

- d. For acid rain sources:
  - 1) The designated representative in so far as actions standards, requirements, or prohibitions under Title IV of the CAA or any regulations promulgated thereunder are concerned; or
  - 2) The designated representative for any other purposes under this Rule.

20. "Significant Part 70 Permit Action": A permit action that would:

- a. Issue an initial Part 70 permit;
- b. Reissue a Part 70 permit; or
- c. Modify a Part 70 permit, except an administrative Part 70 permit amendment, non-federal minor change or minor Part 70 permit modification.

21. "Significant Part 70 Permit Modification": Any modification to a Part 70 permit that is not either an administrative Part 70 permit amendment, nonfederal minor change or minor Part 70 permit modification.

22. "Stationary Source": Any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the CAA.

D. EXEMPTIONS. The requirement to obtain a Part 70 permit for a source listed in Section B shall not apply to:

- 1. Any stationary source required to obtain a Part 70 permit solely because such source is subject to the provisions of 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters; or
- 2. Any stationary source or operation required to obtain a Part 70 permit solely because such source is subject to the provisions of 40 CFR 61, Subpart M, National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation; or
- 3. Any stationary source, including an area source, required to obtain a Part 70 permit solely because such source is subject to regulations or requirements pursuant to Section 112(r) of the CAA.

E. REQUIREMENTS - Application Contents

- 1. Required Information for a Part 70 Permit. A complete application for a Part 70 permit shall contain all the information necessary for the APCO to determine

compliance with all applicable requirements. The information shall, to the extent possible, be submitted on standard application forms available from the District. The following information shall be included at a minimum:

- a. Information identifying the stationary source.
- b. A description of the source's processes and products including any associated with an alternative operating scenario.
- c. Identification and description of all existing sources at the facility.
- d. For applications for initial issuance or reissuance, a list of all emissions units located at the stationary source that are insignificant activities because of size or production rate. Such list shall not omit information needed to determine the applicability of, or to impose, any applicable requirement.
- e. Emission-related information, including all stack and fugitive emissions of air pollutants for which the source would be subject to the provisions of Subsections B.1 or B.2 above, all emissions of air pollutants, emission calculations, and all assumptions used in the calculations including process rate assumptions.
- f. Citation and description of all applicable requirements and description of, or reference to, any associated test methods.
- g. An explanation of any proposed exemptions from any applicable requirements.
- h. A complete description of any alternative operating scenarios to be included in the Part 70 permit.
- i. A compliance plan as required by Subsection L.2 and, if required, a schedule of compliance approved by the District Hearing Board.
- j. Compliance certification for the stationary source as required by Subsection L.3.
- k. For acid rain sources, nationally-standardized forms as required by regulations promulgated under Title IV of the CAA .
- l. For a source of EPA hazardous air pollutants required to prepare a risk management plan pursuant to Section 112(r) of the CAA, 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.
- m. For applications requesting the use of minor Part 70 permit modification procedures the following information shall also be included:

- 1) A suggested draft Part 70 permit for the source that complies with the provisions of Section F.
- 2) Certification by a responsible official stating that the modification meets the criteria for use of minor Part 70 permit modification procedures.

The information required for a complete application is explained in more detail in "San Luis Obispo County Air Pollution Control District Guidelines for Part 70 Permit Applications."

2. Required Information for a General Part 70 Permit. A complete application to be covered by a general Part 70 permit shall contain all of the information required under Subsection E.1 above except for that information required by Subsections d through h. In addition, the application shall contain all information necessary to determine qualification for, and to assure compliance with, the general Part 70 permit.
3. Additional Information after an Application Is Complete. If the District determines that additional information is necessary to evaluate a Part 70 permit application after the application has been deemed complete, the District may request such information in writing and set a reasonable deadline for a response. The District may deny the application if the applicant fails to supply the information by the deadline set by the District.
4. Supplementary Information. Any applicant who has failed to submit any relevant information or who has submitted incorrect information to the District shall, upon becoming aware of such failure or incorrect submittal, promptly submit such relevant or corrected information. In addition, any applicant shall provide additional information as necessary to address any requirements that become applicable after a complete application has been submitted but before a proposed Part 70 permit is released.
5. Certification by Responsible Official. Any Part 70 permit application shall be certified by a responsible official. The certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

F. REQUIREMENTS - Permit Content

1. Each Part 70 permit shall conform to an EPA approved format and shall include the following elements:
  - a. Conditions that will assure compliance with all applicable requirements, including conditions establishing emission limitations and standards for all applicable requirements.

- 1) With the exception of acid rain program requirements, where any two or more applicable requirements are mutually exclusive, the more stringent shall be incorporated as a permit condition and the other(s) shall be referenced.
  - 2) In the case of acid rain program requirements, where an applicable requirement of the CAA is more stringent than an applicable requirement of regulations promulgated under Title IV, both provisions shall be incorporated as separately enforceable requirements into the permit.
- b. The term of the Part 70 permit.
- c. Conditions establishing all applicable emissions monitoring and analysis procedures, emissions test methods or continuous monitoring equipment required under all applicable requirements; and related recordkeeping and reporting requirements.
- 1) Where the applicable requirement does not require periodic testing or monitoring, conditions establishing periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit as reported pursuant to Subsection F.1.c.3 .
    - i. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.
  - 2) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.
  - 3) Records of required monitoring information that include the following:
    - i. The date, place as defined in the permit, and time of sampling or measurements;
    - ii. The date(s) analyses were performed;
    - iii. The company or entity that performed the analyses;
    - iv. The analytical techniques or methods used;
    - v. The results of such analyses; and
    - vi. The operating conditions as existing at the time of sampling or measurement.
  - 4) All applicable records shall be maintained for a period of at least 5 years.
  - 5) All applicable reports shall be submitted every 6 months and shall be certified by a responsible official.

- i. All instances of deviations from permit requirements must be clearly identified.
- d. If applicable, a Part 70 permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the CAA or the regulations promulgated thereunder .
- e. A severability clause to ensure the continued validity of the various Part 70 permit requirements in the event of a challenge to any portions of the Part 70 permit.
- f. A statement that the permittee must comply with all conditions of the Part 70 permit and that any permit noncompliance constitutes a violation of the CAA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
- g. A statement that the need for a permittee to halt or reduce activity shall not be a defense in an enforcement action.
- h. A statement that the Part 70 permit may be modified, revoked, reopened, and reissued, or terminated for cause.
- i. A statement that the Part 70 permit does not convey any property rights of any sort, or any exclusive privilege.
- j. A statement that the permittee shall furnish to the permitting authority, within a reasonable time:
    - 1) Any information required to determine whether cause exists for modifying, revoking, reissuing or terminating the Part 70 permit;
    - 2) Any information required to determine compliance with the Part 70 permit; or
    - 3) Copies of any records required to be maintained by the Part 70 permit.
- k. A condition requiring the permittee pay fees due to the District consistent with all applicable fee schedules.
- l. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

- m. Applicable conditions for all reasonably anticipated operating scenarios identified by the source in its Part 70 permit application. Such conditions shall meet all applicable requirements.
  - n. Applicable conditions for allowing trading under a voluntary emission cap accepted by the permittee to the extent that the applicable requirements provide for such trading without a case-by-case approval of each emissions trade. Such conditions must meet all applicable requirements.
  - o. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and the corrective actions or preventive measures taken. For the purposes of this requirement, “prompt” shall be defined as a verbal report as soon as reasonably possible, but in any case within four (4) hours after the deviation’s detection, followed by a written report within 10 calendar days of having corrected the deviation.
  - p. For any condition based on a federally-enforceable requirement, references that specify the origin and authority for each condition, and identify any difference in form as compared to such federally-enforceable requirement.
2. Each Part 70 permit shall include the following compliance requirements:
- a. Inspection and entry requirements that require that the permittee shall allow the District to perform the following:
    - 1) Enter upon the permittee's premises where a part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;
    - 2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
    - 3) Inspect at reasonable times any facilities; equipment, including monitoring and air pollution control equipment; practices; or operations regulated or required under the permit; and
    - 4) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.
  - b. A schedule of compliance consistent with Subsection L.2.
  - c. If the stationary source is not in compliance with any federally-enforceable requirement, a schedule of compliance approved by the District Hearing Board. In addition, a condition that requires submittal of a progress report on the schedule of compliance at least semiannually. Those reports shall contain the following:

- 1) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and
  - 2) 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.
- d. A requirement that the permittee submit compliance certification pursuant to Subsection L.3.
3. Federally-enforceable Requirements. All conditions of the Part 70 permit shall be enforceable by the EPA and citizens under the CAA unless the conditions are specifically designated as not being federally-enforceable and, therefore, a District-only requirement.

G. REQUIREMENTS - Operational Flexibility

1. General. This section contains the provisions by which a source could: operate under alternative operating scenarios, trade emissions under a federally-enforceable emissions cap, or contravene a Part 70 permit condition. Any actions taken solely pursuant to and in accordance with the provisions of this section shall not be considered a significant Part 70 permit modification, minor Part 70 permit modification, or administrative Part 70 permit amendment.
2. Alternative Operating Scenarios. The owner or operator of any stationary source required to obtain a Part 70 permit may submit a description of all reasonably anticipated operating scenarios for the stationary source as part of the Part 70 permit application. The operating scenario descriptions shall contain emission information for each scenario and sufficient information for the District to develop reasonable permit conditions defining each scenario.

The owner or operator of any stationary source that is permitted to operate under different operating scenarios will be allowed to change between operating scenarios without any notice to the District but shall be required to maintain a log at the stationary source recording all changes of operating scenarios. All changes of operating scenarios must be recorded in the log contemporaneously with the change.

3. Voluntary Emission Caps. The owner or operator of any stationary source required to obtain a Part 70 permit, as part of the Part 70 permit application, may request the District to establish a federally-enforceable emissions cap independent of any federally-enforceable requirement for any pollutant emitted by the stationary source. The emissions cap request shall contain proposed replicable procedures and permit terms that ensure the emissions trades will be quantifiable and enforceable. The District shall not be required to include in the emissions

trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades.

The owner or operator of any stationary source that is permitted to operate under an emissions cap will be allowed to trade emissions within the emissions cap with 30 calendar days written notification to the District and the Administrator of the EPA, unless the District objects in writing to the emissions trade within the 30 day notice period.

The written notice shall state when the emissions trade will occur and shall describe the changes in emissions that will occur. The written notice shall also demonstrate that the requested change meets all of the following criteria:

- a. The emissions trade will not violate any applicable requirement, including Rule 204, Requirements.
- b. The modification does not involve any addition, deletion, or revision to a Part 70 Permit condition under Section 112(g) of Title I of the CAA or under EPA regulations promulgated pursuant to Title I of the CAA, including 40 CFR Parts 51, 52, 60, 61, and 63.
- c. The emissions trade does not result in exceeding the emissions allowable under the Part 70 permit whether expressed as a rate of emissions or in terms of total emissions.
- d. The emissions trade will comply with all Part 70 permit conditions.

The District shall object to the emissions trade only if one or more of these criteria are not satisfied. The source, the District, and the EPA shall attach each such notice to their copy of the relevant permit.

4. **Contravening Express Part 70 Permit Conditions.** The owner or operator of any stationary source required to obtain a Part 70 permit will be allowed to contravene an express Part 70 permit condition with 30 calendar days prior written notification to the District and the Administrator of the EPA, unless the District objects in writing to the change within the 30 day notice period.

The written notice shall include a brief description of the change, the date on which the change will occur, any change in emissions, and any Part 70 permit condition that will no longer be applicable as a result of the change. The written notice shall also demonstrate that the requested change meets all of the following criteria:

- a. The change will not violate any applicable requirement, including Rule 204, Requirements.
- b. The modification does not involve any addition, deletion, or revision to a Part 70 Permit condition under Section 112(g) of Title I of the CAA or

under EPA regulations promulgated pursuant to Title I of the CAA, including 40 CFR Parts 51, 52, 60, 61, and 63.

- c. The change does not result in exceeding the emissions allowable under the Part 70 permit whether expressed as a rate of emissions or in terms of total emissions.
- d. The change will not contravene federally-enforceable Part 70 permit conditions that are monitoring, including test methods; recordkeeping; reporting; or compliance certification requirements.

The District shall object to the contravening of an express Part 70 permit condition only if one or more of these criteria are not satisfied. The source, the District, and the EPA shall attach each such notice to their copy of the relevant permit.

## H. REQUIREMENTS - Timeframes for Applications, Review, and Reissuance

### 1. Significant Part 70 Permit Actions

- a. Timely Submission of Applications. Any stationary source required to obtain a Part 70 permit pursuant to Section B shall submit an application for such permit in the following manner:
  - 1) For any stationary source that is required to obtain a Part 70 permit pursuant to Section B on the effective date of this Rule, an application for a Part 70 permit shall be submitted to the District no later than six (6) months after the effective date of this Rule.
  - 2) For any stationary source that becomes subject to the requirement to obtain a Part 70 permit, pursuant to Subsections B.2.c or B.3 after the effective date of this Rule, and provided the source was being operated within San Luis Obispo County prior to the date on which such source becomes subject to the requirement to obtain a Part 70 permit, an application for a Part 70 permit shall be submitted to the District by no later that twelve (12) months after such source becomes subject to such requirement.
  - 3) For any stationary source that becomes subject to the requirement to obtain a Part 70 permit after the effective date of this Rule, except a source subject to Subsection H.1.a.2, an application for a Part 70 permit shall be submitted to the District prior to commencing operation of those portions of the source that caused the source to become subject to the requirement to obtain a Part 70 permit.
  - 4) For any stationary source that is requesting a significant Part 70 permit modification, an application for a modified Part 70 permit

shall be submitted to the District. The APCO must take final action to approve the application before the source may be operated pursuant to the modification.

- 5) For any stationary source that is applying for reissuance of a Part 70 permit, an application for a Part 70 permit shall be submitted to the District no more than 18 months prior to the expiration date and no less than six (6) months prior to the expiration date of the Part 70 permit.
  - 6) Applications for initial phase II acid rain permits shall be submitted to the APCO by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.
- b. **Completeness Determinations.** The APCO shall provide written notice to an applicant regarding whether or not a Part 70 permit application is complete. Unless the APCO requests additional information or otherwise notifies the applicant that the application is incomplete within 60 calendar days after receipt of such application, the application shall be deemed complete.
- c. **Action on Applications.** The APCO shall take final action on each complete Part 70 permit application as follows:
- 1) For applications for a Part 70 permit that are submitted pursuant to Subsection H.1.a.1 the APCO shall take final action:
    - i. On at least one third of all such applications by no later than one year after the effective date of this Rule;
    - ii. On at least two thirds of all such applications by no later than two years after the effective date of this Rule; and
    - iii. On all such applications by no later than three years after the effective date of this Rule.
  - 2) For any complete application for a Part 70 permit that contains an early reduction demonstration pursuant to Section 112(i)(5) of the CAA, the APCO shall take final action by no later than nine months after receipt of such complete application.
  - 3) For any applications for a Part 70 permit for a phase II acid rain source, the APCO shall take final action in accordance with the deadlines in Title IV of the CAA and regulations promulgated thereunder .
  - 4) Except for applications listed pursuant to Subsections H.1.c.1 through 3, the APCO shall take final action on an application by no later than 18 months after the receipt of such complete application.

2. Administrative Part 70 Permit Amendment Procedures. An applicant shall submit an application for an administrative Part 70 permit amendment prior to implementing the requested change. An applicant may implement the changes addressed in an application for an administrative Part 70 permit amendment upon submission of such application to the District.

The APCO shall take final action on any request for an administrative Part 70 permit amendment within 60 calendar days after receipt of such request.

Administrative Part 70 permit amendments for purposes of the acid rain portion of a Part 70 permit shall be governed by regulations promulgated under Title IV of the CAA.

3. Minor Part 70 Permit Modifications

- a. Timely Submission of Applications. For any stationary source that is requesting a minor Part 70 permit modification, an application for a modified Part 70 permit shall be submitted to the District. The APCO must take final action to approve the application before the source may be operated pursuant to the modification.
- b. Action on Applications. The APCO shall not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the District that it will not object to the permit modification, whichever is first. The APCO shall take final action on an application for a minor Part 70 permit modification within 90 calendar days of receipt of such application or within 15 calendar days after EPA's 45-day review period, whichever is later. Under this final action the APCO shall:
  - 1) Issue the Part 70 permit modification as proposed;
  - 2) Deny the Part 70 permit modification application;
  - 3) Determine the proposed Part 70 permit modification does not meet the minor Part 70 permit modification criteria and should be reviewed under the significant Part 70 permit action procedures; or
  - 4) Revise the proposed Part 70 permit and transmit the revised proposed Part 70 permit to EPA.

4. Non-federal Minor Changes

- a. Timely Submission of Applications. For any stationary source that is requesting a non-federal minor change to their Part 70 permit, an application for a modified Part 70 permit shall be submitted to the District, with a copy to the EPA.

- b. Action on Applications. The APCO shall take final action on an application for a non-federal minor change within 180 calendar days of receipt of such application. Under this final action the APCO shall:
  - 1) Issue the permit modification as proposed;
  - 2) Deny the permit modification application; or
  - 3) Determine the proposed permit change does not meet the non-federal minor change criteria and should be reviewed under the significant Part 70 permit action procedures or minor Part 70 permit modification procedures.
5. EPA Objection. The APCO shall not issue a Part 70 permit if the EPA objects to the issuance of the Part 70 permit in writing within 45 calendar days of receipt by EPA of a copy of a complete application for a significant Part 70 permit action or minor Part 70 permit modification, the proposed Part 70 permit and all necessary supporting information or until EPA has notified the District that EPA will not object to such permit action, whichever occurs first.

In any case where a proposed Part 70 permit has been revised after the proposed Part 70 permit was provided to EPA, the APCO shall not issue a Part 70 permit if the EPA objects to the issuance of the Part 70 permit in writing within 45 calendar days of receipt by EPA of the revised proposed Part 70 permit and all necessary supporting information pertaining to such revision to the proposed Part 70 permit or until EPA has notified the District that EPA will not object to such permit action, whichever occurs first.

#### I. REQUIREMENTS - Permit Term and Permit Reissuance

1. All Part 70 permits shall be issued for a fixed term of 5 years from the date of issuance of the permit by the District.
2. An application for reissuance of a Part 70 permit, with the exception of a general Part 70 permit, shall be submitted no more than 18 months prior to the expiration date and no less than six (6) months prior to the expiration date on the Part 70 permit. The application will be subject to the same procedural requirements, including those for public participation and EPA review, that apply to initial Part 70 permit issuance.

All facilities eligible to be covered by a general Part 70 permit must submit an application to be covered by the general Part 70 permit within six (6) months after the general Part 70 permit is reissued.

3. With the exception of a general Part 70 permit, the Part 70 permit expiration date in the permit terminates the stationary source's right to operate unless a timely and complete application for permit reissuance has been submitted consistent with Subsection I.2 above.

A stationary source subject to a general Part 70 permit shall lose its right to operate six (6) months after the permit expiration date unless a timely and complete application for permit reissuance has been submitted consistent with Subsection I.2 above.

4. If a timely and complete application has been submitted, then the Part 70 permit shall not expire, and all conditions of the permit shall remain in effect, until the permit has been reissued or denied.

J. REQUIREMENTS - Notification

1. Public Notification

- a. The APCO shall publish a notice, as specified in Subsection J.1.b, of any preliminary decision to grant a Part 70 permit, if such granting would constitute a significant Part 70 permit action. The APCO's decision on an application from a source to be covered by a general Part 70 permit is not subject to this subsection.
- b. Any notice of a preliminary decision required to be published pursuant to Subsection J.1.a shall:
  - 1) Be published in at least one (1) newspaper of general circulation in San Luis Obispo County, by no later than ten (10) calendar days after such preliminary decision.
  - 2) Be provided to all persons on the Part 70 permit action notification list. This list shall include any persons that request to be on such list.
  - 3) Be provided by other means as necessary to assure adequate notice to the affected public.
  - 4) Include the following:
    - i. Information that identifies the source, and the name and address of the source.
    - ii. A brief description of the activity or activities involved in the Part 70 permit action.
    - iii. A brief description of any change in emissions involved in any significant Part 70 permit modification.
  - 5) Include the location where the public may inspect the information required to be made available pursuant to Subsection J.1.c.

- 6) Provide at least 30 calendar days from the date of publication for the public to submit written comments regarding such preliminary decision.
  - 7) Provide a brief description of comment procedures including procedures by which the public may request a public hearing, if a hearing has not been scheduled. The APCO shall provide notice of any public hearing scheduled pursuant to this subsection at least 30 calendar days prior to such hearing.
- c. The APCO shall, by no later than the date of publication, make available for public inspection at the District office the information submitted by the applicant and the APCO's supporting analysis for any preliminary decision subject to the notification requirements of Subsection J.1.a. Information that contains trade secrets shall be handled in accordance with Section 6254.7 of the Government Code.
  - d. The APCO shall maintain records of those who comment and issues raised during the public participation process.
  - e. The APCO shall only consider comments regarding a preliminary decision to grant a Part 70 permit if the comments are germane to the applicable requirements implicated by the permit action in question. Comments will only be germane if they address whether the permit action in question is consistent with applicable requirements, requirements of this Rule, or requirements of 40 CFR Part 70. In addition, comments that address a portion of a Part 70 permit that would not be affected by the permit action in question would not be germane.

## 2. EPA Notification

- a. Administrative Part 70 Permit Amendments. The APCO shall submit a copy of the revised Part 70 permit to the EPA.
- b. Minor Part 70 Permit Modifications
  - 1) The APCO shall, by no later than five (5) working days after receipt of a complete application for a minor Part 70 permit modification, provide to the EPA and affected states a copy of such application. If the proposed Part 70 permit is revised after the proposed Part 70 permit has been provided to EPA, the District shall provide EPA a copy of such revised proposed Part 70 permit and all necessary supporting information pertaining to such revision to the proposed Part 70 permit.
  - 2) The APCO shall provide, to the EPA and any affected state, written notification of any refusal by the District to accept all recommendations that an affected state submitted for the Part 70

permit. The notice shall include the District's reasons for not accepting such recommendations.

- 3) The APCO shall provide written notification of the final decision to grant or deny a minor Part 70 permit modification to EPA.

c. Significant Part 70 Permit Actions

- 1) The APCO shall, by no later than the date of publication specified pursuant to Subsection J.1.b.1, provide to the EPA, affected states, and any person that requests such information a copy of any notification made pursuant to Subsection J.1.a, and the supporting data and analysis relating to any such preliminary decision. If the proposed Part 70 permit is revised after the proposed Part 70 permit has been provided to EPA, the District shall provide EPA a copy of such revised proposed Part 70 permit and all necessary supporting information pertaining to such revision to the proposed Part 70 permit.
- 2) The APCO shall provide, to the EPA and any affected state, written notification of any refusal by the District to accept all recommendations that an affected state submitted for the Part 70 permit. The notice shall include the District's reasons for not accepting such recommendations.
- 3) The APCO shall provide written notification of the final decision to grant or deny a Part 70 permit to EPA, and any person and/or agency that submitted comments during the comment period.

- d. Public Petitions to EPA. If the EPA does not object in writing to the issuance of a Part 70 permit pursuant to Subsection H.5, any person may petition the EPA within 60 calendar days after the expiration of EPA's 45 day comment period.

Such petition shall be based only on issues relating to the Part 70 permit that were raised during the public comment period specified pursuant to Subsection J.1.b.5, unless:

- 1) The petitioner demonstrates that it was impracticable to raise such issues during such public comment period, or
- 2) Grounds for such petition arose after the end of such public comment period.

If the EPA objects to the Part 70 permit as a result of a petition filed pursuant to this section, the District shall not issue the permit until EPA's objection has been resolved. Notwithstanding the previous sentence, a petition does not stay the effectiveness of a Part 70 permit if the permit

was issued after the end of the 45 day EPA comment period and prior to an EPA objection.

K. REQUIREMENTS - Reopening of Permits

1. Reopening of Part 70 Permits for Cause. Each issued Part 70 permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A Part 70 permit shall be reopened and revised under any of the following circumstances:
  - a. A source, which has a remaining Part 70 permit term of three years or more and that is required to obtain a Part 70 permit pursuant to Subsections B.1 or B.2 of this Rule, becomes subject to additional federally-enforceable requirements. No such reopening is required if the effective date of the requirement is later than the date on which the Part 70 permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to Subsection I.4.
  - b. Additional requirements become applicable to an acid rain source under the acid rain program. Upon approval by the EPA, excess emission offset plans shall be deemed to be incorporated into the Part 70 permit.
  - c. The District or the EPA determine that the Part 70 permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
  - d. The District determines that the Part 70 permit must be revised or revoked to assure compliance with any applicable requirement, or EPA determines that the permit must be revised or revoked to assure compliance with any federally-enforceable requirement.

Administrative requirements to reopen and issue a Part 70 permit shall follow the same procedures as apply to initial Part 70 permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Reopenings made under Subsection K.1.a shall be completed no later than 18 months after promulgation of the applicable requirement.

Reopenings under Subsection K.1.a shall not be initiated before a notice of such intent is provided to the permittee by the APCO at least 30 calendar days in advance of the date that the Part 70 permit is to be reopened, except that the APCO may provide a shorter time period in the case of an emergency.

Reopenings under Subsections K.1.b through d shall be made as expeditiously as practicable.

2. Reopenings for Cause by EPA. If the EPA finds that cause exists to terminate, modify, or revoke and reissue a Part 70 permit pursuant to Subsection K.1, the EPA shall notify the District and the permittee of such finding in writing.

The District shall, within 90 calendar days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The EPA may extend this 90-day period for an additional 90 calendar days if it finds that a new or revised Part 70 permit application is necessary or that the District must require the permittee to submit additional information.

The District shall, within 90 calendar days after receipt of an EPA objection, resolve any such EPA objection and terminate, modify, or revoke and reissue the Part 70 permit in accordance with such EPA objection.

#### L. REQUIREMENTS - Compliance Provisions

1. Permit Required and Application Shield. No stationary source required to obtain a Part 70 permit shall operate after the date it is required to submit a timely and complete permit application except in compliance with its Part 70 permit or under one of the following conditions:
  - a. When a timely and complete Part 70 permit application has been submitted, the stationary source may continue to operate until the Part 70 permit is either issued or denied. This provision does not allow the stationary source to operate in violation of any applicable requirement.
  - b. When a timely and complete application for reissuance of a Part 70 permit has been submitted, the stationary source must continue to comply with its existing Part 70 permit until the Part 70 permit is reissued or denied.
  - c. When a complete application to modify a Part 70 permit has been submitted, the stationary source must be operated in compliance with all applicable conditions on its Part 70 permit, except as allowed under Subsections H.2 and all applicable conditions on an Authority to Construct for the modification issued pursuant to Rules 202, Permits, and 218, Federal Requirements for Hazardous Air Pollutants, until the Part 70 permit is revised or the modification is denied.
  - d. The protection granted by Subsections L.1.a through c above shall cease if, subsequent to the District's determination that an application is complete, the applicant fails to submit by the deadline specified in writing by the District any additional information identified as being needed to process the application.
  - e. The protection granted by Subsections L.1.a through c above for a significant Part 70 permit modification shall not be applicable where a federally-enforceable condition of an existing Part 70 permit would

prohibit the modification of a source corresponding to the significant Part 70 permit modification. In this case, the source shall obtain such modification to the source's Part 70 permit prior to commencing operation of the modified portion of the source.

- f. After the 30 day notice period required by Subsection G.4, a permittee may operate in violation of the Part 70 permit condition that was the subject of the notification if no written objection has been received from the District.
  - g. Notwithstanding the provisions of Subsection K.1.a above, a source subject to the general Part 70 permit requirements of this Rule shall be subject to enforcement action for operation without such a Part 70 permit if the source is at any time determined not to qualify for the conditions and terms of the general Part 70 permit.
2. Compliance Plans. A compliance plan must be submitted with any Part 70 permit application. The compliance plan shall contain all of the following information:
- a. A description of the compliance status of the source with respect to all federally-enforceable requirements.
  - b. For federally-enforceable requirements with which the source complies, the plan must state that the source will continue to comply.
  - c. For federally-enforceable requirements that will become effective during the Part 70 permit term, the plan must state that the source will comply with such requirements in a timely manner.
    - 1) A detailed schedule shall be included for compliance with any federally-enforceable requirement that includes a series of actions.
  - d. For federally-enforceable requirements with which the source does not comply, the plan must include a schedule of compliance approved by the District Hearing Board. A permittee shall submit certified progress reports on any schedule of compliance at least every six (6) months or more frequently if ordered to do so by the Hearing Board.
    - 1) A narrative description of how compliance will be achieved shall be included.
    - 2) A compliance schedule that includes remedial measures and milestones shall be included. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order.
  - e. The requirements of Subsections L.2.a through d above shall apply and be included in the acid rain portion of a compliance plan for an acid rain source, except as specifically superseded by regulations promulgated

under Title IV of the CAA with regard to schedule and methods the source will use to achieve compliance.

3. **Compliance Certification.** All permittees and applicants must submit certification of compliance with all applicable requirements and all Part 70 permit conditions. A compliance certification shall be submitted with any Part 70 permit application and annually, on the anniversary date of the Part 70 permit, or on a more frequent schedule if required by an applicable requirement or permit condition.

Compliance certification shall identify each applicable requirement or condition of the Part 70 permit, the compliance status of the stationary source, whether the compliance was continuous or intermittent since the last certification, and the method(s) used to determine compliance. In addition, the certification shall indicate the stationary source's compliance status with any applicable enhanced monitoring and compliance certification requirement of the CAA.

A copy of each compliance certification shall be submitted to EPA.

4. **Document Certification.** Any Part 70 permit application and any document, including reports, schedule of compliance progress reports and compliance certifications, required by a Part 70 permit shall be certified by a responsible official. The certification 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. **Emergency Provision.** An emergency constitutes an affirmative defense to an enforcement action brought for noncompliance with a technology-based emission limitation violated as a result of the emergency if all of the following actions have been taken by the permittee:
  - a. The permittee can document with properly signed, contemporaneous operating logs that an emergency occurred and can identify the cause(s) of the emergency.
  - b. The permittee can document that the source was being properly operated at the time the emergency occurred.
  - c. The permittee can demonstrate that all reasonable steps were taken to minimize emissions in excess of Part 70 permit conditions or other Part 70 permit requirements.
  - d. The permittee submitted a description of the emergency and all mitigating and corrective actions taken to the District within two (2) working days of the emergency.

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

6. Permit Shield

- a. Compliance with all of the conditions of a Part 70 permit shall be deemed compliance with any applicable requirements as of the date of issuance of the Part 70 permit, provided that the Part 70 permit application specifically requests such protection and one of the following conditions is satisfied:
  - 1) Such applicable requirements are included and specifically identified in the Part 70 permit, or
  - 2) The District determines in writing that other applicable requirements specifically identified are not applicable to the stationary source and the Part 70 permit includes such determination.
  
- b. The provisions of Subsection L.6.a above shall not alter or affect any of the following:
  - 1) Minor Part 70 permit modifications.
  - 2) Non-federal minor changes.
  - 3) Contravening of express Part 70 permit conditions.
  - 4) The provisions of Section 303 of the CAA.
  - 5) The liability of an owner or operator of a stationary source for any violation of applicable requirements prior to or at the time of issuance of the Part 70 permit.
  - 6) The applicable requirements of Title IV of the CAA and the regulations promulgated thereunder.
  - 7) The ability of EPA or the District to implement the provisions of Section 114 of the CAA and the regulations promulgated thereunder.