AR2006

Minnesota Pollution Control Agency

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendments to Rules Governing Air Quality,
Minnesota Rule Chapters 7002, 7005, 7007, 7008, 7009, 7011, 7017, 7019, and 7030
Revisor No.: RD4097

Alternative Format:

Upon request, this Statement of Need and Reasonableness (SONAR)
can be made available in an alternative format, such as large print, Braille, or audio.
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Acronyms or abbreviations

40 CFR Part 70	Code of Federal Regulations, title 40, Part 70
Agency	Minnesota Pollution Control Agency
ASME	American Society of Mechanical Engineers
Btu	British thermal unit
CAA	Clean Air Act
CGA	Cylinder Gas Audit
Chapter 7002	Minnesota Rules chapter 7002
Chapter 7005	Minnesota Rules chapter 7005
Chapter 7007	Minnesota Rules chapter 7007
Chapter 7008	Minnesota Rules chapter 7008
Chapter 7009	Minnesota Rules chapter 7009
Chapter 7011	Minnesota Rules chapter 7011
Chapter 7017	Minnesota Rules chapter 7017
Chapter 7019	Minnesota Rules chapter 7019
Chapter 7030	Minnesota Rules chapter 7030
CEMS	Continuous Emission Monitoring System
COMS	Continuous Opacity Monitoring System
HAP	Hazardous Air Pollutants
MEK	Methyl Ethyl Ketone
MPCA	Minnesota Pollution Control Agency
Minn. R.	Minnesota Rules
Minn. R. ch.	Minnesota Rules chapter
Minn. Stat. ch. or §	Minnesota Statutes chapter or section
MAAQS	Minnesota Ambient Air Quality Standards
MDA	Minnesota Department of Agriculture
MMB	Minnesota Management and Budget
MPCA	Minnesota Pollution Control Agency
MSDS	Material Safety Data Sheet
NAAQS	National Ambient Air Quality Standards
NAC	Noise Area Classifications
NESHAP	National Emission Standards for Hazardous Air Pollutants
NSPS	New Source Performance Standards
NSR	New Source Review
PM	Particulate Matter
ppb	parts per billion
ppm	parts per million
PSD	Prevention of Significant Deterioration
QA/QC	Quality Assurance/Quality Control
RATA	Relative Accuracy Test Audits
SIP	State Implementation Plan
SONAR	Statement of Need and Reasonableness
tpy	tons per year
TSP	Total Suspended Particulate Matter
USEPA	United States Environmental Protection Agency
VOC	Volatile Organic Compound

1. Introduction

This rulemaking is part of a series of air quality "omnibus" rules and has the overall purpose of keeping the air quality rules current, making minor changes to existing rules, clarifying ambiguous rule language, and correcting gaps or errors identified while administering the existing rules. The informal name given to this rulemaking is the "omnibus air" rulemaking which is part of an ongoing effort to update and improve the Minnesota Pollution Control Agency's (MPCA) existing air quality rules. In addition, the MPCA is mindful of the Governor's and Legislature's mission to have all state agencies continually review and update their rules.

The omnibus air rulemaking is also a means of incorporating federal rules to ensure consistency with applicable federal and state regulations, and to make changes mandated by the U.S. Environmental Protection Agency (USEPA) which are minor and non-controversial in scope. This rule incorporates by reference, in *Minnesota Rules* chapter 7011, New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) that have been promulgated by the USEPA since the last such incorporation by reference was completed in a previous omnibus air rulemaking. The new incorporations by reference are necessary for the MPCA to meet the USEPA delegation requirements to implement the Clean Air Act (CAA).

Where applicable, the new and revised rules will be submitted to the USEPA for inclusion in the Minnesota State Implementation Plan (SIP). The SIP is the vehicle for states to demonstrate compliance with the air quality standards of the CAA. The SIP contains state rules and statutes, as well as site- and area-specific plans, permits, and orders that ensure that Minnesota will maintain its attainment with the National Ambient Air Quality Standards (NAAQS) as required in the CAA. Any revisions to these rules or statutes must be submitted to USEPA to be approved and incorporated into the SIP. All the contents of Minnesota's SIP can be found in 40 CFR Part 52, subpart Y, and are federally enforceable.

In this rulemaking, the MPCA is proposing amendments to *Minnesota Rules* chapters 7002 (Permit Fees), 7005 (Definitions and Abbreviations), 7007 (Permits and Offsets), 7008 (Exempt Air Emissions), 7009 (Ambient Air Quality Standards), 7011 (Standards for Stationary Sources), 7017 (Monitoring and Testing Requirements), 7019 (Emission Inventory Requirements), and 7030 (Noise Pollution Control). Examples of the kind of changes to the air quality rules that are included in this rule are: changes in permit processes related to the 2009 federal Flexible Air Permitting Rule and the State Permitting Efficiency Laws of 2011 and 2012; clarification of the forms of "particulate matter" or PM in various rule parts; updating state ambient air standards to match current federal standards; changes to performance standards and performance testing; and emission inventory requirements for certain registration permits. The proposed amendments affect air emission facilities with individual air emissions permits (federal Part 70 or State) and registration permit holders.

The MPCA has successfully used the omnibus rulemaking process on several prior occasions to complete housekeeping-type changes and to incorporate non-controversial rule amendments suggested by MPCA staff, USEPA, and outside parties. This rule continues this approach and is based on either USEPA mandates or on rule suggestions made since the last omnibus air rulemaking in 2007.

A Request for Comments on planned amendments to the rules governing air quality was published in the *State Register* on September 17, 2012. MPCA considered comments received

during this comment period and all comments received during this rulemaking in developing the rule amendments.

2. Public Participation in the Rule Process

The MPCA took the following steps to develop the rule amendments, notify interested parties about the rule revisions, and to solicit input on draft rule language:

A. The MPCA launched a specific omnibus air rule webpage on September 10, 2012.

B. The MPCA initiated use of an electronic notification system (GovDelivery) on July 5 and 6, 2012, to send electronic bulletins with required rulemaking notices and other information relevant to this rulemaking to interested parties.

C. The MPCA published public notice of a Request for Comments on Planned Miscellaneous Amendments to Rules Governing Air Quality, *Minnesota Rules* Chapters 7002, 7005, 7007, 7008, 7009, 7011, 7017, 7019, 7021, 7023, 7027, and 7030 (Omnibus Air Rule) in the *State Register* on September 17, 2012, and placed a copy of the notice on the Agency public notice webpage. The MPCA received one comment letter on the planned rulemaking during the public comment period.

D. Electronic notification of updated information on the omnibus air rule webpage and the opportunity to provide comment and input on this rulemaking was sent to interested parties via GovDelivery on December 6, 2012.

E. Preliminary draft rule language was posted on the MPCA's omnibus air rule webpage on September 2, 2014, to provide stakeholders and interested parties with the opportunity to consider the MPCA's approach to the rule amendments, and to provide input prior to the formal public comment period.

F. The MPCA held a stakeholder meeting at the St Paul office on September 10, 2014, to discuss the preliminary draft rule and to solicit input and informal comment prior to the formal public notice period. The MPCA received five comment letters on the preliminary draft rule after this meeting.

G. The MPCA met with Minnesota Power on October 14, 2014, to discuss its comments submitted (dated October 1, 2014) in response to the request for informal comment on the preliminary draft rule.

H. The MPCA also received written comments from GREnergy dated January 24, 2013, and from Associated General Contractors of Minnesota dated November 19, 2014. The MPCA considered these comments and all comments received in developing the rule amendments.

I. The MPCA had numerous conversations with USEPA Region V during development of the draft rule amendments relating to changes USEPA is prompting MPCA to make in order that the Agency's air program is consistent with federal rule.

3. Statutory Authority

The MPCA's statutory authority to adopt these rules is set forth in *Minn. Stat.* § 116.07, subd. 4 (2008), as follows:

> *Subd. 4.* ***Rules and standards.*** *(a) Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the Pollution Control Agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1967, chapter 882, for the prevention, abatement, or control of air pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement, or control of air pollution.*

Under the above cited statute, the MPCA has the necessary statutory authority to adopt the proposed rules.

4. Statement of Need for the Proposed Rules

The *Minn. Stat.* ch. 14 requires the MPCA to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the MPCA must not be arbitrary or capricious in proposing rules. However, to the extent that need and reasonableness are separate, "need" has come to mean that a problem exists that requires administrative attention, and "reasonableness" means that the solution proposed by the MPCA is appropriate. The basis of the need for this rule is described here; reasonableness is addressed in Sections 5 and 6.

Need for the Proposed Rule Amendments as a Whole

The omnibus air rulemaking is part of an ongoing effort to maintain and improve the MPCA's existing rules. This rulemaking has the overall purpose of keeping the air quality rules current, ensuring consistency with applicable federal and state regulations, removing redundant language, clarifying ambiguous rule language, and correcting gaps or errors identified while administering the rules.

The changes included in omnibus air rulemakings are often too small to warrant separate, individual rulemaking efforts. The omnibus air rulemaking process allows the MPCA to make a number of minor changes in a single rulemaking, thereby making more efficient use of staff resources and state funds.

The proposed amendments to *Minnesota Rules* chapters 7002, 7005, 7007, 7008, 7009, 7011, 7017, 7019, and 7030 are needed as part of the MPCA's periodic "housekeeping" for its air quality rules in order, for example, to correct or delete outdated rules, to resolve apparent conflicts between state and federal rules, and to update the incorporation by reference of federal rules. Amendments to the listed rule chapters will provide consistency and clarity, and ease overall understanding of the rules for regulated parties.

5. Reasonableness of the Proposed Rule Amendments as a Whole

The *Minn. Stat.* ch. 14 requires the MPCA to explain the facts establishing the reasonableness of the proposed rule amendments. "Reasonableness" means that there is a rational basis for the MPCA's proposed action.

Particles in Ambient Air

A significant number of proposed amendments in this rulemaking are related to the need to update state rules to address expanded federal regulations governing particulate matter (or PM) emissions.

In 1971, USEPA promulgated national primary and secondary ambient air quality standards for particulate matter, measured as "total suspended particulate matter" or TSP. A "high-volume" sample was specified for use in measuring TSP (40 CFR Part 50, Appendix B). This sample collects particulate matter up to a nominal size of 25 to 45 microns. This material constitutes TSP and is defined in the federal regulations by the measurement of this material:

> "Total Suspended Particulate" means particulate matter as measured by the method described in appendix B of Part 50 of this Chapter. (40 CFR 51.100(ss))

In July 1987, USEPA revised the ambient air quality standards for particulate matter. In that rulemaking, USEPA promulgated ambient air quality standards for PM-10, particulate matter with an aerodynamic diameter of 10 micrometers and less, and provided rules to retire the standards related to TSP. The USEPA chose to revise the ambient air quality standards to reflect a particle size designation due to the risks posed from smaller particles. Particulate size influences if and where the particle ends up in human respiratory tracts. Smaller particles penetrate furthest into the respiratory tract. The largest particles are captured in the head region of the tract, with smaller particles depositing in the tracheobronchial region. Still smaller particles can reach the deepest portion of the lung, the alveolar region.

The risks of adverse health effects associated with typical ambient fine and coarse particles when deposited in the lungs are far greater than those associated with large particles that deposit in the head region. The establishment of a size standard as an ambient air standard for particles recognizes the negative health impacts of small particles. In July 1997, USEPA revised ambient air standards again to create a particulate standard for PM-2.5 (particles with an aerodynamic diameter less than or equal to 2.5 micrometers), also called "fine particulates" to address ongoing evidence that these fine particulates contribute to health impacts. PM-2.5 is defined in 40 CFR Part 50.7 as:

"PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix L, and designated in accordance with part 53 of this chapter or by an equivalent method designated in accordance with part 53 of this chapter.

Over time and due to the consideration now given to the *size* of the particle, USEPA developed new measurement methods, to account for both the size as well as the physical state of the particle in both flue gas and in the ambient air. Therefore, within the various air quality regulatory programs one can no longer simply refer to "particulate matter" without further

characterizing the specific pollutant by defining the physical state and/or measurement methodology needed to quantify this pollutant.

There are differences in the definition of "particulate matter" between the federal air pollution control regulations and Minnesota's definitions. With the evolution of federal regulation language as well as measurement methodology, additional confusion and conflicting interpretations have developed between related portions of Minnesota's air regulations. This rulemaking is undertaken to provide specificity whenever the term "particulate matter" is used in Minnesota Rules. This specificity is very important to provide consistency between the particulate matter being regulated as defined by the compliance standard and the measurement method used to determine compliance with the standard. As the understanding of the health impacts of particulate matter expands, it is reasonable to incorporate resulting regulatory requirements and terminology.

Measuring Particulate Matter from an Emissions Source

Particulate matter emissions regulations address particulate matter in two forms: filterable particulate matter and condensable particulate matter. Filterable particulate matter is particulate that can be caught on a filter media. Condensable particulate matter are emissions that are vapor phase at stack conditions, but condense upon cooling in the ambient air to form solid or liquid particulate matter immediately after discharge from a stack. Existing *Minn. R.* 7005.0100, subpart 31 defines particulate matter as "…material, except water, which exists at standard conditions in a finely divided form as a liquid or solid as measured by an applicable reference method, or an equivalent or alternative method."

Since January 1, 2011, USEPA has required air agencies to account for condensable particulate matter in addition to filterable particulate matter in establishing enforceable emission limits for both PM-10 and PM-2.5 in all applicable new source review permits[1]. Furthermore, because emitting sources may not cause nor contribute to an exceedance of an ambient air standard[2], air quality permits may include emission limits for PM-10 and/or PM-2.5 in addition to state or federal standards of performance regulating particulate matter. For these reasons, condensable particulate matter must be included in certain emission limits for a facility. Because there are seldom published emission factors for PM-10 and PM-2.5, a facility must often conduct a performance test.

In regulations controlling releases of pollutants, the form of the particulate matter is specified in the performance standard by the measurement method (called "reference method") required in the performance standard. Reference methods are found in 40 CFR Part 60, Appendix A. In addition to specifying the form of the particulate matter, the reference method also describes the methodology and equipment needed for sampling and analysis of flue gases and prescribes how calculations must be made to determine particulate matter emissions.

Many federal and state performance standards define "particulate matter" as measured by reference Method 5. Method 5 tests capture "filterable" PM-10, PM-2.5, and particles that have an aerodynamic diameter greater than PM-10. Method 5 alone does not provide procedures for collecting a sample of the "wet" or "back half" of the emissions to analyze the "condensable" fraction. The condensable fraction of the emissions is most often measured using Method 202.

[1] http://www.epa.gov/ttn/emc/methods/psdnsrinterimcmpmemo4814.pdf

[2] *Minn. R.* 7009.0020

Minnesota codified a method for measuring a portion of condensable particulate matter in existing *Minn. R.* 7011.0725, but this method is now contradictory to federal test methodology, making the state method useless for determining compliance with federal particulate matter standards of performance or ambient air standards. USEPA has promulgated a number of methods for measuring "filterable" and condensable particulate matter, as well as methods for determining the size of these particulates. In this rulemaking, the MPCA is eliminating the outdated state rules for measuring particulates in favor of federal methods. It is reasonable to align Minnesota's particulate matter testing requirements with federal methods as ambient air standards are becoming more specialized, and federal methods must be used consistently at emission sources to successfully measure emissions and demonstrate compliance with ambient air standards.

6. Rule-by-Rule Analysis: Statement of Reasonableness for the Proposed Rules

Minn. Stat. ch. 14 requires the MPCA to explain the facts establishing the reasonableness of the proposed rules. "Reasonableness" means that there is a rational basis for the MPCA's proposed action. The reasonableness of the proposed rules is explained in this section, together with an explanation of the need for each change. As this rulemaking affects multiple chapters of existing air quality rules, the rule changes are grouped by rule chapter to aid the reader in reviewing this document.

A. Amendments to chapter 7002 relate to the federal Clean Air Interstate Rule.

B. Amendments to chapters 7005 and 7007 provide definitions and abbreviations for the air program.

C. Amendments to chapter 7007 primarily affect application for and issuance of air quality permits.

D. Amendments to chapter 7008 relate to conditionally exempt stationary sources and conditionally insignificant activities.

E. Amendments to chapter 7009 update ambient air quality standards.

F. Amendments to chapter 7011 relate to performance standards and performance testing, control equipment identification, and the incorporation by reference of National Emission Standards for Hazardous Air Pollutants (NESHAPs).

G. Amendments to chapter 7017 relate to monitoring and performance testing.

H. Minor amendments to chapter 7019 relate to the air emission inventory.

I. Minor amendments to chapter 7030 relate to noise pollution control.

Note - As recommended by the Office of the Revisor, a number of existing languages changes have been made throughout the rule. These include: changing "may" to "must" where it likely allows too much discretion, and replacing "shall" with "must."

A. CHAPTER 7002 PERMIT FEES

Chapter 7002 establishes the air emission permit fees for all persons required to obtain a permit under chapter 7007.

PART 7002.0019 AIR QUALITY PERMIT APPLICATION FEES AND ADDITONAL FEES.

Subp. 2. **Additional points**. Subpart 2, item D is revised to remove the reference to USEPA's Clean Air Interstate Rule. This change is needed due to the unclear status of the federal Clean Air Interstate Rule, and its successor, the Cross-State Air Pollution Rule, which were established under Section 110(a)(2)(D)(i)(I) in an effort to regulate interstate transport of pollutants. These rules have undergone several legal challenges and various rule proposals, leaving the MPCA uncertain as to the final name of the rule or requirements related to interstate transport that may apply to stationary sources in Minnesota. Therefore, the language of subpart 2, item D is revised to require that additional points are applied for reviews related to interstate transport regulations established under Section 110(a)(2)(D)(i)(I) of the CAA. This language is more generic than the current rule which specifically references the Clean Air Interstate Rule, but the intention of requiring fees based on reviews related to interstate transport of pollutants is not being changed. Some additional descriptive language is added to clarify the rule. The MPCA does not anticipate any changes in application review fees for permit applicants based on this rule change. A change related to the status of the Clean Air Interstate Rule is proposed in the definition of 'applicable requirement' under existing *Minn. R.* 7007.0100, subpart 7, item W. It is reasonable to update the rule and to make the updated language generic to provide for future changes to the federal rule.

In subpart 2, a new item E is added to clarify the additional points under item D. The proposed rule separates the additional points for Part 75 continuous emission monitoring from the additional points for interstate transport review in existing item D. This change is reasonable because these reviews are not related and there could be confusion about what is meant by combining them in item D. In addition, splitting these reviews into two items allows for additional descriptive language related to the review of requirements for interstate transport of pollutants under item D. It is reasonable to organize the rule in a format that will be more easily understood and provide descriptive language that will reduce confusion.

B. CHAPTER 7005 DEFINITIONS AND ABBREVIATIONS

Chapter 7005 provides the definitions and abbreviations for the MPCA's air program. Definitions in existing *Minn. R.* 7005.0100 have been designated as applying to all rules related to air pollution control or air quality. New terms and definitions in this rulemaking are proposed to be included in this part for general applicability across the air quality program.

PART 7005.0100 DEFINITIONS.

Subp. 4f. **Condensable particulate matter.** A new subpart 4f defines the term "condensable particulate matter." This definition is added in order to clarify the term as it is used throughout Minnesota Rules. The definition is the same as that used in 40 CFR Part 60, Appendix A, Test Method 202. It is reasonable to define "condensable particulate matter" because it is now a form of total particulate matter that the MPCA must regulate. It is also reasonable to adopt the federal definition so that there is consistency between state and federal regulation as it applies to "condensable particulate matter."

Subp. 11e. **Filterable particulate matter.** A new subpart 11e defines the term "filterable particulate matter." It is reasonable to add this definition to clarify the distinction between condensable, organic condensable, inorganic condensable, and "filterable particulate matter", and to provide consistency between the terminology used in chapters 7011 and 7017 as well as federal regulations.

Subp. 12a. **Inorganic condensable.** A new subpart 12a defines the term "inorganic condensable." This definition is added to provide clarification of the various forms (filterable, organic condensable, inorganic condensable) of particulate matter that will be applied to the standard of a stationary source, and to provide consistency between the terminology used in chapters 7011 and 7017 as well as federal regulations.

Subp. 29a. **Organic condensable.** A new subpart 29a defines the term "organic condensable." This definition is added to provide clarification of the various forms (filterable, organic condensable, inorganic condensable) of particulate matter that will be applied to the standard of a stationary source, and to provide consistency between the terminology used in chapters 7011 and 7017 as well as federal regulations.

Subp. 30. **Owner or operator.** The MPCA proposes to add "to any degree" to this definition to modify the words own, lease, operate, control or supervise. In the MPCA's experience, some persons who own, lease, operate, control or supervise discrete activities at a stationary source or on an occasional basis do not consider themselves "owners" or "operators." It is important that a MPCA air emissions permit identify everyone with decision-making authority at a stationary source. If questions or issues arise, MPCA staff must be able to work with the actual decision-makers to reach resolution. It is reasonable that an applicant seeking a permit from the MPCA should identify those persons that actually exercise control at the facility to be permitted.

Subp. 45. **Volatile organic compound or VOC.** The existing subpart 45 definition of "volatile organic compound" (VOC) list of compounds is revised to be consistent with federal rule. Some of the non-VOCs listed in the federal rule are missing from state rule. The definition of VOC is updated to identify additional non-VOC compounds to match the list in the federal rule at 40 CFR Part 51.100(s). It is reasonable to update the rules to be consistent with the federal definition of VOC.

This subpart is also being revised to correct two spelling errors in the definition of VOC. The compounds, 1,1,1,2,3-pentafluoropropane and 1,1,1,3,3-pentafluoropropane, are spelled incorrectly and are being corrected to match the list of VOC compounds in 40 CFR Part 51.100(s). It is reasonable to correct spelling errors.

C. Chapter7007 PERMITS AND OFFSETS

The amendments to chapter 7007 are mainly to clarify ambiguous rule language, correct gaps or errors identified in the rule, and incorporate new federal regulations as described in the introduction to this SONAR. The amendments primarily affect application for and issuance of air quality permits and changes are intended to clarify and update the rules related to permit application content, administrative amendment application and review, and submittal format.

In addition, revisions to chapter 7007 are to improve MPCA efficiency in processing permits and to address rule changes required by USEPA. Revisions related to MPCA permitting efficiency are made to conform to new statutory requirements for completeness determination and permit issuance timeliness. Some of these changes are a result of the administrative processes the MPCA implemented to meet the 150-day permit issuance goal established by the State Permitting Efficiency Laws of 2011 and 2012 and are needed to reflect changes to some permit application requirements. Revisions to chapter 7007 related to aligning state air permitting rules with federal requirements are made for the State's approved Part 70 permit program. However, regardless of federal requirements, the MPCA strives to work with both Minnesota businesses

and the USEPA to streamline the implementation of federal requirements and to be helpful to businesses regulated under these rules.

For the most part, revisions to chapter 7007 are made to clarify permit processes and the MPCA anticipates these revisions will result in only minimal impacts to permit applicants and to the MPCA's ability to meet the permitting efficiency goals.

AIR EMISSION PERMITS
PART 7007.0100 DEFINITIONS.

Subp. 6a. **Alternative operating scenario.** A new subpart 6a defines the term "alternative operating scenario." The definition of "alternative operating scenario" is added to be consistent with USEPA's Flexible Air Permitting Rule. On January 13, 2009, USEPA finalized a Flexible Air Permitting Rule, which revised the operating permits program under Title V of the CAA. This rule was designed to provide more flexibility in operations at a permitted source while ensuring equal or greater environmental protection. Among the approaches allowed in USEPA's Flexible Air Permitting Rule are the use of alternative operating scenarios and approved replicable methodologies as defined in 40 CFR Part 70.2. The MPCA proposes several rule changes in chapter 7007 to incorporate the changes to Part 70 based on the federal 2009 Flexible Air Permitting Rule. The definition of "alternative operating scenario" is based on the definition in 40 CFR Part 70.2. It is reasonable to incorporate this definition into this rule chapter to be consistent with federal rule and to achieve the same degree of permit flexibility allowed under federal law.

Subp. 6b. **Applicable requirement.** Subpart 6b, item W is revised to remove the reference to USEPA's Clean Air Interstate Rule. This change is needed due to the unclear status of the Clean Air Interstate Rule, and its successor, the Cross-State Air Pollution Rule, which were established under Section 110(a)(2)(D)(i)(I) in an effort to regulate interstate transport of air pollutants. These rules have undergone several legal challenges and replacement rule proposals, leaving the MPCA uncertain as to the final name or requirements that may apply to stationary sources in Minnesota. Therefore, the language of item W is being updated to reference any rule promulgated under the authority of the CAA under Section 110(a)(2)(D)(i)(I), related to interstate transport of air pollutants. The revised language is a more generic way to identify requirements related to interstate transfer of air pollutants as applicable requirements that may apply to stationary sources in Minnesota. A similar change is made in part 7002.0019, subpart 2, item D to indicate that points are applied for reviews related to interstate transport requirements established under Section 110(a)(2)(D)(i)(I) of the CAA.

The original intent of item W was to include requirements related to interstate transport of air pollutants in the definition of applicable requirement. It is reasonable to revise item W to ensure that requirements for stationary sources related to interstate transport of pollutants, regardless of the final name or form of the federal rule, are clearly identified in rule as an applicable requirement for the purposes of air permitting.

Subp. 6c. **Approved replicable methodology.** A new subpart 6c defines the term "approved replicable methodology." The definition of "approved replicable methodology" is based on the federal definition in 40 CFR Part 70.2. The MPCA proposes to add the definition to be consistent with federal rule and to ensure flexibility in permits in line with USEPA's Flexible Air Permitting Rule. On January 13, 2009, USEPA finalized a Flexible Air Permitting Rule, which revised the operating permits program under Title V of the CAA. This rule was designed to provide for more flexibility in operations at a permitted source while ensuring equal or greater environmental

protection. The approaches being allowed through USEPA's Flexible Air Permitting Rule include the use of alternative operating scenarios and approved replicable methodologies as defined in 40 CFR Part 70.2. It is reasonable to incorporate this definition to be consistent with federal rule.

PART 7007.0250 SOURCES REQUIRED TO OBTAIN A STATE PERMIT.

Subp. 4. **PTE threshold required state permit.** Subpart 4 is revised to correct an error in the abbreviation for the pollutant sulfur dioxide. It is reasonable to correct spelling errors.

PART 7007.0300 SOURCES NOT REQUIRED TO OBTAIN A PERMIT.

Subpart 1. **No permit required.** Subpart 1, item D is revised to limit its scope to "any stationary source with only emissions units listed as insignificant activities in part 7007.1300, subparts 2 and 3." Conditionally insignificant activities at a source are deleted from this rule. This change is needed to align Minnesota Rules with federal air permitting rules.

The requirements for conditionally insignificant activities identified in chapter 7008 do not result in practically enforceable limits that reduce the potential to emit of such activities; the potential to emit for these activities needs to be determined in accordance with *Minn. R.* 7005.0100, subpart 35a. However, the requirements for conditionally insignificant activities in chapter 7008 still allow the permit applicant and the MPCA to streamline the permitting process. If the owner or operator elects to follow the requirements for the conditionally insignificant activities under chapter 7008, those emissions units must still be listed as conditionally insignificant activities in the permit application, but emissions calculations for these units do not need to be included in the permit application unless requested by the Agency under *Minn. R.* 7007.0500, subpart 2 item C, subitem (2). As indicated in *Minn. R.* 7008.4000, emissions calculations for conditionally insignificant activities are required in the permit application if there is a need to determine: (a) if the emissions units are subject to section 114(a)(3) (Monitoring) or section 112 (Hazardous Air Pollutants) of the Clean Air Act; (b) if the units are part of a Title I modification; or (c) if the units make the source subject to a part 70 permit.

Conditionally insignificant activities allow the permit applicant and the MPCA to streamline the permit application and review process as follows: if the owner or operator of a source already required to obtain a Part 70 permit or other type of air permit also operates a unit qualifying as a conditionally insignificant activity under chapter 7008, then the unit can be considered a conditionally insignificant activity. This means that the permit application would need to list the activity; however, the calculations of potential to emit are only needed if requested by the Agency, as described in *Minn. R.* 7007.0500, subpart 2, item C, subitem (2), and the permit could list the emissions units as a conditionally insignificant activity.

To be consistent with federal rule, Minnesota Rules need to be revised such that owners and operators do not mistakenly believe they qualify as a source that is not required to obtain a permit under *Minn. R.* 7007.0300, subpart 1, item D. It is reasonable to revise the rule to be consistent with federal permitting requirements to ensure owners and operators correctly determine permit applicability.

PART 7007.0325 BIOGENIC CARBON DIOXIDE EXCLUSION FROM APPLICABILITY THRESHOLDS.

Minn. R. 7007.0325 is proposed for repeal. This part allowed the exclusion of biogenic carbon dioxide emissions for the purposes of determining applicability of new source review/prevention of significant deterioration (NSR/PSD) and Part 70 requirements. This part was based on the federal deferral of biogenic carbon dioxide emissions; however, the federal deferral of biogenic carbon dioxide emissions expired on July 21, 2014. The expiration of the

biogenic deferral means that carbon dioxide generated biogenically or by the combustion of biogenic material must now be included when determining greenhouse gas emissions for the purposes of applicability of NSR/PSD and Part 70 requirements. This rulemaking repeals *Minn. R.* 7007.0325 related to the exclusion of biogenic carbon dioxide from applicability thresholds because the federal deferral of these emissions has expired and is no longer applicable. It is reasonable to repeal rules with outdated federal requirements.

PART 7007.0350 EXISTING SOURCE APPLICATION DEADLINES AND SOURCE OPERATION DURING TRANSITION.

Subpart 1. **Transition applications under this part; deadline based on SIC code.** Subpart 1 establishes the requirements for permit applications during the transition period for implementation of permitting rules. Subpart 1, items C, D, and F are being deleted because they are obsolete. The deadlines of this subpart have passed and these options are no longer available to a permit applicant or the Agency. It is reasonable to delete outdated rule language.

PART 7007.0500 CONTENT OF PERMIT APPLICATION.

Subp. 2. **Information included.** This existing subpart 2 specifies the information the permit applicant must submit as required by the standard application form. Item A is revised mainly for reorganization and clarification. The existing item A requirements are a poorly organized, long list of identifying information. The MPCA proposes to reorganize item A into a numbered list. In addition, item A is revised to clarify that a permit applicant should identify all owners and operators of the facility in the permit application. Some permit applicants have neglected to identify co-owners or have identified entities with no resources or employees as the sole owner and operator of a stationary source. It is reasonable to ensure that a permit is issued to the person or persons who have actual decision-making authority at the facility, even though they may only exercise that authority on an occasional basis.

Item B of this subpart is revised by changing the term 'alternate scenario' to "alternative operating scenario." This revision is needed to match the new definition in part 7007.0100, subpart 6a which was added to align with federal rule. It is reasonable to be internally consistent and consistent with federal rule.

Item C, subitem (2) establishes the information related to insignificant activities that are needed in the permit application. Existing *Minn. R.* 7007.1300 allows certain emission activities to qualify as insignificant activities for the purposes of *Minn. R.* 7007.0100 to 7007.1850. *Minn. R.* 7007.0500, subpart 2, item C, subitem (2) allows permit applicants to omit certain information about insignificant activities from a permit application. The concept of insignificant activities is for the purposes of streamlining Part 70 permit applications and permits by identifying those activities that are unlikely to impact overall emissions in a permit applicant's applicability analysis. (SONAR for "Proposed Rules Governing; Air Emission Permits, *Minn. R.* Parts 7007.0000 to 7007.1700" May 1993.) The concept of insignificant activities is introduced in federal rule at 40 CFR Part 70.5(c).

If, however, emissions from any of these activities impact the emissions analysis for the purposes of applicability of other air regulatory programs such as NSR/PSD, NSPS, NESHAPs or Part 70, these emissions need to be included in such analysis. This is based on 40 CFR Part 70.5(c), which states "An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement…" The current language could be considered misleading and a permit applicant may think that the MPCA never needs information related to activities that otherwise qualify as insignificant under *Minn. R.* 7007.1300, subpart 2.

Clarifying language is also being included at *Minn. R.* 7007.1300, subpart 2 as described below. The change clarifies and does not change the intent of the rule. It is reasonable to clarify this language in order to reduce confusion and ensure that, when necessary for determining the applicability of an applicable requirement, the MPCA is able to review the information.

Item C, subitem (4) is revised to delete the sentence "Pollutants in part 7007.0325 are excluded until they must be included under federal law. It is reasonable to delete this sentence because the referenced part 7007.0325 is proposed for repeal.

In item C, a new subitem (11) is added to require calculations of emissions changes required under existing *Minn. R.* 7007.1200 in applications for permit amendment. As part of reviewing applications for permit amendments, the MPCA reviews the applicability of the amendment process under *Minn. R.* 7007.1150 to 7007.1500. In order to verify that the correct amendment process is being used, the MPCA reviews the calculations of emissions changes required under *Minn. R.* 7007.1200. Therefore, subitem (11) is added to clarify that all calculations required under *Minn. R.* 7007.1200 need to be included in the application. In some cases, permit applicants have argued that the calculations of emissions changes are not required as part of the application for a permit amendment. If *Minn. R.* 7007.1200 has not been used as part of the analysis to determine the amendment process, then the MPCA does not need the information to process the permit application. However, when calculations are required by *Minn. R.* 7007.1200, the calculations must be included in the application. The MPCA does not anticipate this clarifying change to affect permit applicants because the Agency's intent and practice has always been to review calculations required by *Minn. R.* 7007.1200 in permit applications. It is reasonable to require these calculations in a permit application to allow the MPCA to verify that the applicant is using the correct amendment process.

In item K, a new subitem (4) describes the information related to alternative operating scenarios that needs to be included in a permit application. This requirement is added to be consistent with federal rule and to ensure flexibility in permits in line with USEPA's Flexible Air Permitting Rule, described above with related changes at *Minn. R.* 7007.0100, subpart 6a. This requirement is based on the definition at 40 CFR Part 70.5(c)(8)(ii)(D). It is reasonable to incorporate requirements for permit applications related to alternative operating scenarios to be consistent with federal rule.

Item K, existing subitem (4) is renumbered to subitem (5) and revised to add applicable requirements associated with a proposed alternative operating scenario as described in 40 CFR Part 70.5(c)(8)(iii). This change is made to be consistent with federal rule and to ensure flexibility in permits in line with USEPA's Flexible Air Permitting Rule, described above with related changes at *Minn. R.* 7007.0100, subpart 6a. It is reasonable to be consistent with federal rule.

Subp. 3. **Application certification.** Existing subpart 3 is revised to add notices to the list of submittals that require a certification under this subpart. This change applies only to notices required under chapter 7007. Some notices required under chapter 7007 already require the certification, such as the notice of contravening permit terms under *Minn. R.* 7007.1350, subpart 2, and the notification of accumulated insignificant modifications under *Minn. R.* 7007.1250, subpart 4. However, this was not made clear in other parts of the rule such as when a change is made under *Minn. R.* 7007.1150, item C, subitems (1), (2), or (3).

In most cases, the permittee and the MPCA each attach the written notice to the stationary source's permit as required in *Minn. R.* 7007.1150, item C and *Minn. R.* 7007.1350, subpart 2 (there are several notification options where the notice does not get attached to a permit, for

example, for accumulated insignificant modifications). Since the information submitted through a notice is incorporated into the permit at the time of the next permit action, the notice needs to be certified, as required for all other permit application information. This way, the information does not need to be resubmitted by the permittee with a certification. Certification is the means by which an applicant assures the MPCA that the information provided is sufficiently reliable and accurate to include in a permit. It is reasonable to require information provided in a notification that is used in a permit action to be certified in the same way a permit application is certified because the notice is incorporated into the permit.

PART 7007.0502 MERCURY EMISSIONS REDUCTION PLANS.

Subp. 2. **Applicability.** The mercury air emission reduction rules were adopted in September 2014. An important aspect of the mercury reduction rule is the requirement of *Minn. R.* 7017.3000, subpart 3, for mercury emission sources to annually report mercury emissions to the MPCA. As a result of the timing of the adoption of the rule, emission sources were required to report mercury emissions for 2014 by April 1, 2015, the deadline of the MPCA's annual air pollutant inventory.

To meet the requirements of the inventory rule, facilities were required to determine emissions for the calendar year 2014. A strict reading of subpart 2 would require a second inventory for an additional, earlier year, 2013. Because the effort to inventory emissions is not a small exercise for facilities and because the 2014 inventory already exists, the MPCA has decided that using the 2014 inventory will be sufficient to determine applicability of the reduction requirements of *Minn. R.* 7007.0502. As a result, the MPCA proposes to revise this subpart and delete September 29 to align the rule requirement with the Agency's determination.

PART 7007.0600 COMPLETE APPLICATION AND SUPPLEMENTAL INFORMATION REQUIREMENTS.

Subpart 1. **Complete application.** Existing subpart 1 establishes the requirements for a complete permit application. This subpart is revised to specify that a complete application for an administrative amendment under *Minn. R.* 7007.1400 need only include the information related to the proposed amendment, and does not necessarily need to provide all the information required under *Minn. R.* 7007.0500. It is reasonable to tailor the amount of information a permit applicant must provide to the type of amendment sought. For example, the Agency can prepare standard administrative amendment forms requiring the specific information needed to determine that the change qualifies under the administrative amendment rules at *Minn. R.* 7007.1400 and to issue the administrative amendment. It is reasonable to only require the information necessary to process the permit amendment application.

PART 7007.0650 APPLICATION SUBMITTAL.

The heading of existing *Minn. R.* 7007.0650 is changed from "Who Receives an Application" to "Application Submittal" to more clearly reflect the content of this part. It is reasonable to revise the heading to reflect the content of the rule part.

Subpart 1. **Who receives application.** The heading in existing subpart 1 is changed from "Application submittal" to "Who receives application" to more clearly reflect the content of this subpart. It is reasonable to revise the subpart heading to reflect the content of the rule part. The outdated address for application submittal is deleted and replaced with "address specified by

the Commissioner." It is reasonable to provide that the Commissioner specify the address the permit application should be sent to, as the address can then be easily updated as needed.

Subp. 2. **Electronic application submittal.** The heading in existing subpart 2 is changed from "computerized application submittal" to "electronic application submittal" because the word 'electronic' is broader and more encompassing in how applications can be submitted than the word 'computerized'. Subpart 2 is also revised to provide for electronic application submittal in a format specified by the Commissioner. It is reasonable to revise the rules to reflect changes in available technology.

New items A and B are being added under subpart 2 to establish the signature requirements for certification when a paper certification is submitted and when an approved electronic signature is used. It is anticipated that the MPCA will be able to accept online applications for certain types of permit actions in the near future (and perhaps by the time this rule becomes effective). It is reasonable to update the rules to reflect the Agency's ability to offer more efficient means of accepting and processing permit applications.

Item B, subitems (1) and (2) establish the application certification requirements. Subitem (1) requires that a paper certification must include an original signature. Subitem (2) provides for an electronic signature if such a method is approved by the Commissioner. Permit applicants usually understand that the certification on paper requires an original signature. However, there have been instances where a photocopy of a signature is provided; which does not meet the intent of this subpart or the federal Part 70 rule. It is reasonable to clarify the rule to ensure applications contain the required certification. This revision is reasonable because it identifies how the applicants can meet the certification requirements.

PART 7007.0700 COMPLETENESS REVIEW.

Part 7007.0700, items A through E are revised to align with revisions to part 7007.1400 administrative permit amendments and to clarify language with respect to minor amendment applications.

Items A and B are revised to remove the reference to minor amendment applications, because the change at item E specifies that items A and B do not apply to minor amendment applications. The term "minor amendment application" in items A and B is deleted. It is reasonable to delete this term because notification under these items A and B does not apply to this type of application.

Items C, D, and E are revised to delete "written request" or "request" when referring to an administrative amendment application. This revision reflects the revised part 7007.1400 that require an owner or operator to apply for, rather than request, an administrative amendment. It is reasonable to align application completeness review with administrative amendment application requirements.

PART 7007.0750 APPLICATION PRIORITY AND ISSUANCE TIMELINES.

Existing *Minn. R.* 7007.0750, subpart 7 appears to say that Part 70 permits authorize construction. The federal Part 70 permit program is an operating permit program, and therefore construction cannot be authorized through a federal Part 70 permit. As a result, the existing rule language is confusing. USEPA has asked that this rule be corrected to be consistent with federal Part 70 rules.

Minnesota operates a combined permit program, encompassing both construction and Part 70 operating permitting requirements in one permit. Therefore, one MPCA permit can meet the requirements of a Part 70 permit and also authorize construction. Two-stage issuance of such a permit is a desirable option for certain situations. The revised rule clarifies that when a combined construction and Part 70 permit is issued in two stages, the Part 70 portion of the permit is not authorizing construction. Specifically, certain construction-related conditions of a permit can be issued in the first stage under the two-stage issuance procedure; however, the Part 70 permit provisions do not authorize construction. The remaining conditions of the permit, including the Part 70 provisions, are issued in the second stage.

Subp. 2. **Application processing and issuance deadlines.** Existing subpart 2, item C is revised to delete "written request" or "request" when referring to an administrative amendment application. This revision reflects the revised part 7007.1400 that require an owner or operator to apply for, rather than request, an administrative amendment. It is reasonable to align application completeness review with administrative amendment application requirements.

Subp. 7. **Two-stage issuance of permits and permit amendments authorizing construction or modification.** The heading in subpart 7 is revised by deleting the term "part 70" to indicate that two-stage issuance does not relate to stand-alone Part 70 permits. Subpart 7, item A is revised to better indicate that a two-stage permit must include both a construction permit portion and an operating permit portion. The two-stage issuance process is available for permits and permit amendments that meet all of the following conditions: 1) include an authorization for construction; 2) include the requirements of a Part 70 permit; 3) must follow the 45-day USEPA review procedures required in *Minn. R.* 7007.0950; and 4) include either the requirements of a new source review program or an enforceable limitation to avoid being subject to new source review.

This revision does not change any requirements for permit applicants or the MPCA. These revisions are reasonable because they provide a clearer picture of the type of permit eligible for the two-stage issuance option and clarify that these permit actions are not an instance where a Part 70 permit is authorizing construction.

PART 7007.0800 PERMIT CONTENT.

Subp. 2. **Emission limitations and standards.** Subpart 2 is revised to add the option of incorporating an approved replicable methodology for Part 70 permits to be consistent with 40 CFR Part 70.6 (a)(1). This change is related to USEPA's 2009 Flexible Air Permitting Rule, described above with related changes at *Minn. R.* 7007.0100, subpart 6a, and is needed to maintain consistency with federal definitions and requirements for Part 70 permits. It is reasonable to incorporate the option for approved replicable methodology to be consistent with federal requirements.

Subp. 11. **Alternative operating scenarios.** Subpart 11 is revised to use the term 'alternative operating scenarios' to be consistent with the federal Part 70 rule as described above with related changes at *Minn. R.* 7007.0100, subpart 6a. It is reasonable to use the term "alternative operating scenario" which is consistent with federal requirements.

PART 7007.0801 CONDITIONS FOR AIR EMISSION PERMITS FOR WASTE COMBUSTORS.

Subp. 2. **Mixed municipal solid waste or refuse-derived fuel waste combustors.** Subpart 2, item G is revised to delete the sentence: "If the permit must be amended in order to include these conditions, the procedures of part 7007.1400 shall be used." USEPA has indicated that

certain changes that Minnesota had allowed by the administrative amendment process are not consistent with the CAA. As a result, the administrative amendment process will not be available for this change. Changes are also proposed to *Minn. R.* 7007.1400 to be consistent.

This provision regulating municipal waste combustors was adopted in 1997 to allow less frequent testing if mercury emission tests show superior compliance. The regulatory program for municipal waste combustors is mature, and all facilities have completed this demonstration, and have had their permits amended. The provision is therefore no longer needed, and removing the requirement will not alter their permitting options.

Subp. 3. **Waste combustors of nonmixed municipal solid waste.** Subpart 3, item F is revised to delete the sentence: "If the permit must be amended in order to include these conditions, the procedures of part 7007.1400 shall be used." The administrative amendment process will not be available for this change due to USEPA's objections as explained above in subpart 2.

This provision regulating nonmunicipal waste combustors was adopted in 1997 to allow less frequent testing if mercury emission tests show superior compliance. The regulatory program for these types of waste combustors is mature and those facilities to which the provision might apply have completed this demonstration and have had their permits amended. The provision is therefore no longer needed, and removing the requirement will not alter their permitting options.

PART 7007.0950 EPA REVIEW AND OBJECTION.

Existing *Minn. R.* 7007.0950, which establishes the requirements for USEPA review of Part 70 permits, is revised to align USEPA review requirements with the federal Part 70 program requirements. The MPCA revised the rule in 2003 to allow for a more streamlined public comment period and USEPA review period. However, based on comments from USEPA, these revisions do not meet the requirements of the federal Part 70 rules at 40 CFR Part 70.8 and cannot be included in an approved Part 70 program. Therefore, the rule language must be revised to the language of the rule prior to the 2003 rulemaking. This change is needed so the State air permitting rules are approvable under the federal Part 70 program. It is reasonable to align the MPCA public comment period and USEPA review period requirements with the federal Part 70 rules in order for the State to continue operating an approved Part 70 program.

Subpart 1. **Review by EPA.** Subpart 1, item A is revised to clarify that the Commissioner must provide USEPA the permit documents identified in this subpart. Reference to existing rule language that states the Agency provide these documents are deleted. It is reasonable to clarify the rule to remove any potential for confusion.

In subpart 1, item B is revised to clarify that USEPA will be provided the part 70 permit after the draft permit has been subject to public comment. Item B, subitems (1) and (2) are deleted to remove concurrent review of a Part 70 permit by USEPA and the public during the public comment period, as described above. It is reasonable to align the MPCA public comment period and USEPA review period requirements with the federal Part 70 rules in order for the State to continue operating an approved Part 70 program.

Subp. 2. **EPA objection.** Subpart 2, item B, subitems (1) through (3) are also deleted to align the state rule requirements with federal Part 70 rule requirements under 40 CFR Part 70.8, as described above. It is reasonable to align the MPCA public comment period and USEPA review period requirements with the federal Part 70 rules in order for the State to continue operating an approved Part 70 program.

PART 7007.1000 PERMIT ISSUANCE AND DENIAL.

Subpart 1. **Preconditions for issuance.** Subpart 1 is revised to simply state the preconditions to permit issuance. Some permit applicants interpreted the existing provision to impose a mandate on the MPCA to issue a permit when the applicant believed the preconditions were met, regardless of any other considerations or procedures that might apply. The MPCA never intended or interpreted the rule to impose a rigid, affirmative obligation on the Agency, but intended it simply to specify preconditions to permit issuance. This revision makes it clear that the rule is a recitation of preconditions to issuance and not a mandate to issue permits. It is reasonable to clarify the original intent of the rule. In addition, the periods after each item in items A through G are deleted and replaced with semi-colons, and an "and" is added after item G.

PART 7007.1100 GENERAL PERMITS.

Under existing *Minn. R.* 7007.1100 for general permits, a proposed change at a source with a general permit would need to follow the amendment procedures in *Minn. R.* 7007.1150 to 7007.1500. For example, the current Nonmetallic Part 70 General Permit allows for changes at a facility, stating, "If the construction, modification, or operation of a nonmetallic mineral processing stationary source by the permittee would not comply with all conditions of this general permit, the permittee must apply for and obtain an individual Part 70, state, or registration permit before beginning actual construction of the modification or change." However, the general permit rule at *Minn. R.* 7007.1100 does not preclude the need for the owner or operator to conduct an analysis of whether a permit amendment may be needed for a proposed change under *Minn. R.* 7007.1150 to 7007.1500. Generally, a change at a source that is covered by a general permit will not change the status of the facility with respect to the general permit, and therefore, an amendment process is not necessary. There would be no new requirements and the same general permit would apply. However, if a change were to make the source ineligible for the general permit, the owner and operator would need to apply for the right type of permit prior to making the change.

These changes to *Minn. R.* 7007.1100 are meant to fill a gap in the rules. Under the existing rules, if a change either in operations at a source or in regulations, renders the source ineligible for its general permit, there is not a clear path for the owner or operator to change the permit. The revised rule offers the steps that need to be taken and a timeframe. The new general permit rule language is similar to the requirements under part *Minn. R.* 7007.1110 for registration permits. This change is reasonable because owners and operators need to know what is needed to change a permit, if necessary, in order to ensure continued compliance with the air permitting rules.

Subpart 1. **Criteria.** Subpart 1 is revised to include the requirement that the MPCA identify in the public notice for the permit whether the general permit applies to an entire stationary source or a portion of a stationary source. It is reasonable that the public notice contain this information so the public is informed of the scope and applicability of the permit on notice.

Subp. 9. **Changes or modifications rendering stationary source ineligible for general permit.** A new subpart 9 is added to provide owners and operators with steps to follow when a proposed change or modification renders a source ineligible for its general permit. It is reasonable to indicate the steps an owner or operator needs to follow to change permits if they become ineligible for the general permit.

Subp. 10. **Regulatory change rendering stationary source ineligible for general permit.** A new subpart 10 is added to provide owners and operators with the steps to follow when a regulatory

change renders their source ineligible for its general permit. The owners and operators must submit a notification of the change in status of the stationary source and submit an application for a different type of permit within the specified timeframes. It is reasonable to indicate the steps an owner or operator needs to follow if they become ineligible for their permit and to provide a framework for the owners and operators to stay in compliance with the permitting rules.

Subp. 11. **Parts that do not apply to certain general permits.** A new subpart 11 is added to establish which rule parts do not apply to general permits. Since general permits may be issued to an entire stationary source or to specific portions of a stationary source, the option to make changes without following the procedures in *Minn. R.* 7007.1150 to 7007.1500 has been limited to those general permits covering an entire stationary source. It is reasonable to provide a framework in the air permitting rules that allows for changes at a stationary source covered by a general permit when the source, despite the change, would still be covered by the same general permit.

PART 7007.1142 CAPPED PERMIT ISSUANCE AND CHANGE OF PERMIT STATUS.

Subpart 1. **Capped permit issuance, denial and revocation.** Subpart 1 is revised to clearly state the conditions which must be satisfied for the Commissioner to issue a capped permit. Some permit applicants interpreted this provision to impose a mandate on the MPCA to issue a permit when the applicant believed the preconditions were met, regardless of any other considerations or procedures that might apply. The MPCA never intended or interpreted the rule to impose a rigid, affirmative obligation on the Agency, but intended it simply to specify preconditions to permit issuance. This revision makes it clear that the rule is a recitation of preconditions to issuance and not a mandate to issue permits. It is reasonable to clarify the original intent of the rule. In item A, subitem (3) the word 'anticipates' is deleted and replaced with "has reason to believe" to describe the consideration given by the Commissioner that the stationary source will comply with the capped permit.

Subp. 1a. **Changes that trigger new source performance standards.** A new subpart 1a is added to existing *Minn. R.* 7007.1142 to require an owner or operator to submit information to the MPCA when a change or modification at a stationary source results in the source being subject to a new source performance standard allowed under *Minn. R.* 7007.1140, subpart 2, item E, or if the change or modification adds an emissions unit subject to a standard listed in *Minn. R.* 7007.0300. The change makes the rule consistent with requirements applicable to holders of a registration permit. It is reasonable to bring more consistency to the state permit options.

Under the existing rules for capped permits, permit applicants are required to submit information related to applicable NSPS in the permit application. However, if the facility makes a change or modification that triggers one of the NSPS allowed under capped permits or adds a unit subject to one of the allowed NSPS, the owner or operator is not required to submit new information. The new subpart 1a is modeled after the requirements for registration permits under *Minn. R.* 7007.1110, subpart 10 and identifies the information the owner or operator of a stationary source must submit to the Commissioner if certain NSPS are triggered.

The SONAR for the 2004 omnibus air rules indicates in the capped permit rule that the capped permit program was intended to be more restrictive than the registration permit program. (SONAR for "Proposed Rules Governing Air Emission Permits to be codified in *Minnesota Rules* Chapter 7007, with conforming amendments to Chapters 7011 and 7019" 2004.) The SONAR

states that in developing the capped permit program, "the MPCA sought to develop permit options that … impose more requirements than registration permits, both to maintain an incentive for stationary sources to find the registration permit preferable (thus complying with its lower emission caps) and to have additional compliance requirements to assure that source emissions stay under federal thresholds." Because the existing rule does not require owners and operators of a source with a capped permit to submit information related to a change that triggers an NSPS, the capped permit program appears to have fewer requirements under these circumstances. It is reasonable to request up to date information on applicable requirements for a stationary source covered by a capped permit, such that the sources covered by a capped permit are subject to the same requirement as for sources covered by a registration permit.

PART 7007.1150 WHEN A PERMIT AMENDMENT IS REQUIRED.

Existing *Minn. R.* 7007.1150 and 7011.0065 are being revised to clarify the changes that qualify under *Minn. R.* 7007.1150, item C, subitem (3) for replacing existing control equipment with listed control equipment. The intent of this rule part is not changing. The sole purpose of the revisions is to help reduce confusion and ensure permittees are correctly applying the rule. The notification procedures under item C, subitem (3) may only be used when 'listed control equipment' as defined in *Minn. R.* 7011.0060, subpart 4 is replacing existing control equipment, and the replacement control has a higher efficiency, based on the table in *Minn. R.* 7011.0070, than the control being replaced.

In the MPCA's experience implementing *Minn. R.* 7007.1150 item C, subitem (3), there are two common misinterpretations of this rule. In some cases, permittees believe the rule allows any control equipment, not just 'listed control equipment' as defined in *Minn. R.* 7011.0060, subpart 4, to replace an existing control as long as they believe the control efficiency of the replacement control is higher. In other cases, permittees believe they may replace the existing control equipment with listed control equipment, but use the manufacturer's control efficiency to show the replacement control efficiency is higher than the existing, rather than using the control efficiency required by *Minn. R.* 7007.0070. However, in all cases, in order to qualify for the notification procedure in *Minn. R.* 7007.1150, item C, the replacement control must be 'listed control equipment' as defined in *Minn. R.* 7011.0060, subpart 4 and the control efficiency must be the efficiency listed in Table 1 at *Minn. R.* 7007.0070, subpart 1a. Therefore, two changes are being made to clarify item C.

Item C, subitem (3) is revised to clarify which control efficiencies are intended to be used for the replacement control equipment. Item C is also revised to specify that the notice shall be submitted in a format specified by the Commissioner and include all information needed to determine applicability of, or to impose, any applicable requirement. The word 'written' in the term "written notice" is deleted to allow for alternative formats to be used in the future, such as electronic notification.

Additionally, the notice needs to be submitted on a standard form, which will help the permittee submit all of the information needed for the type of notice being submitted. Standard forms will also help MPCA staff process the information for updating the permit more efficiently because standard forms will help to ensure that all of the necessary information will be submitted. This change is reasonable because submittal of the required information on a standard form facilitates and streamlines the review of information.

The changes in item C are intended only to clarify the rule and do not represent changes to the meaning or intent of the rule. It is reasonable to clarify the rule to reduce confusion for

permittees making changes to control equipment as to when the notification procedure under item C can be applied.

Item C is also revised by deleting the 'and' between subitems (2) and (3) and adding 'or.' The intent of the rule is to allow each of the three changes listed to qualify separately under this part. This change is reasonable because it meets the intent of the rule.

In item C, subitem (3), the word 'removal' is deleted from the term "removal efficiency" and replaced with 'control' because there is no definition of "removal efficiency" in the Control Equipment Rule found at *Minn. R.* 7011.0060 through 7011.0080 which is referenced in *Minn. R.* 7007.1150, item C. It is reasonable to update the terms used in item C to match the language of the rule being referenced.

PART 7007.1250 INSIGNIFICANT MODIFICATIONS.

Subpart 1. **When an insignificant modification can be made.** Subpart 1, item A is revised to include only emissions units or activities listed as insignificant activities in *Minn. R.* 7007.1300, subparts 2 and 3. The allowance for the construction and operation of a chapter 7008 conditionally insignificant activity as an insignificant modification is deleted from item A. This change is needed to align Minnesota Rules with federal air permitting rules.

To be consistent with federal rule, Minnesota Rules need to be revised such that owners and operators do not mistakenly believe they qualify for an insignificant modification when they may actually be subject to air permitting requirements. It is reasonable to revise the rule to be consistent with federal permitting requirements to ensure owners and operators correctly determine permit and permit amendment applicability.

Item B, Table 1 is revised to correct an error in the abbreviation for the pollutant sulfur dioxide. It is reasonable to correct spelling errors.

PART 7007.1300 INSIGNIFICANT ACTIVITIES LIST.

Subp. 2. **Insignificant activities not required to be listed.** Subpart 2 is revised to allow the Agency to request emissions calculations related to insignificant activities listed under subpart 2. This revision aligns subpart 2 with existing subpart 3, which identifies insignificant activities that must be listed. Under subpart 1, the existing rule states "The actions listed in this part, and operation of the emissions units listed in this part, are insignificant activities for the purposes of 7007.0100 to 7007.1850. Listing in this part has no effect on any other law, including laws enforced by the agency other than parts 7007.0100 to 7007.1850, to which the activity may be subject." It was originally anticipated that emissions from a unit qualifying under subpart 2 would not need to be counted in determining applicability of Part 70, which allows the MPCA to establish a list of insignificant activities for which information need not be provided in a permit. However, there is no allowance for insignificant activities, or the exclusion of emissions due to insignificant activities, under other potentially applicable air quality programs such as PSD, NSPS, or NESHAPs. This revision is needed in subpart 2 to ensure adequate information is provided to the Agency to evaluate applicability of these air quality programs. It is reasonable to make clear when emission calculations must be provided, since there have been sources for which potential emissions of activities qualifying under this subpart have affected applicability of various air programs. It is anticipated that the MPCA will only need to request this information when there appears to be a question about the applicability of a specific program or rule.

Subpart 2, item D, subitem (3) is deleted from this subpart and moved to subpart 3, item D. MPCA staff has identified examples of equipment venting particulate matter inside a building

that does not use air filtering where the potential emissions affect applicability of rules established under the CAA. Under subpart 2, these activities do not need to be listed in a permit application. Therefore, MPCA staff may not be aware the equipment exists and that emissions may affect applicability of a rule or requirement. By moving this insignificant activity to subpart 3, these activities will be listed in a permit application which will allow the MCPA staff to, if needed, either include the activity in the permit or request more information on the equipment. It is reasonable to list insignificant activities in a permit application in order to allow MPCA staff to correctly process the permit application.

Subp. 3. **Insignificant activities required to be listed.** In subpart 3, item B "furnaces and boilers" is deleted and replaced with "infrared electric ovens and indirect heating equipment." Furnaces are not described specifically in either of the item B, subitems (1) and (2), while the term "boilers" is narrower than the type of equipment identified in subitem (2). It is reasonable for the heading of an item to match the contents of the item. A reference to the existing definition of "indirect heating equipment" is also proposed. It is reasonable to use an existing definition of equipment addressed in the rule.

Subpart 3, item D is revised by adding the listed examples of equipment venting particulate matter inside a building that was deleted from subpart 2. As explained in subpart 2 above, listing these insignificant activities in a permit application allows MCPA staff, if needed, to request more information on the equipment. This change is reasonable because it informs the permittee that providing this list of activities is necessary for the MPCA to correctly process the permit application.

In item G, the term "emission facility" is replacing the term "facility" to clarify the type of activity that would not qualify as an insignificant activity under this part. Item G is meant to exclude any 'emission facility', as defined in *Minn. R.* 7005.0100, that manufactures or produces products for profit as distinct from a laboratory or research-type facility. It is reasonable to clarify this term to assist the permittee in understanding the types of activities that qualify as insignificant activities under this item.

Item H, subitem (7) is revised by deleting the term "associated burners." MPCA staff has observed that burners associated with alkaline/phosphate cleaners can be sized in a range that exceeds the potential emissions generally anticipated from equipment that qualifies as insignificant activities. Since this item does not provide for a limit on the burner size, it is possible that the burners could have high potential emissions. Historically, potential emissions from insignificant activities were expected to be less than about 1% of the federal permitting thresholds. Therefore, the associated burners are being deleted from this item. It is anticipated most of the burners associated with these types of cleaners will likely qualify under a different insignificant activity, such as subpart 2, item A, subitem (3); subpart 3, item B; or subpart 3, item I. It is reasonable to identify insignificant activities consistently with the original intent of streamlining permit applications and permits, yet ensure that emissions are accounted for properly to document compliance with applicable requirements.

Subp. 4. **Insignificant activities required to be listed in a part 70 application.** Subpart 4 is revised to clarify that this subpart applies to owners and operators applying for "the initial" Part 70 permit "for a stationary source." This subpart is intended to apply only to initial Part 70 applications, not permit amendment applications or permit reissuance applications. The only time activities may qualify as insignificant under this subpart is at the time of the initial Part 70 permit application. The reason for this particular insignificant activity category was to offer streamlining opportunities for first time Part 70 permit applicants and the MPCA. Applicants for

permit amendments or permit reissuances have, at times, proposed emissions units as insignificant activities under subpart 4, but these units do not qualify since it is not the initial Part 70 permit application. In addition, some permittees have attempted to use this subpart to try to qualify for an insignificant modification under *Minn. R.* 7007.1250, subpart 1, item A. It is reasonable to clarify that subpart 4 can be used only in an initial Part 70 permit application to reduce confusion for permit applicants and reduce MPCA staff time in processing permit applications.

Subp. 5. **Hazardous air pollutant threshold table.** Subpart 5 is revised by deleting the chemical Methyl ethyl ketone (MEK) from the list in subpart 5 because MEK is no longer a hazardous air pollutant (HAP). USEPA removed (i.e. delisted) MEK from the list of hazardous air pollutants in 2005. It is reasonable to update the list of HAPs to be consistent with USEPA's list of HAPs.

PART 7007.1350 CHANGES THAT CONTRAVENE CERTAIN PERMIT TERMS.

Subp. 2. **Procedure.** Subpart 2 is revised to require that the written notice of change be submitted in a format specified by the Commissioner and that certification of the notice needs to be consistent with *Minn. R.* 7007.0500, subpart 3. Review by the MPCA can be streamlined through the use of forms developed by the MPCA, much like the current forms used by a facility in completing an air emissions permit application. It is reasonable to require standard forms to provide consistency in the information requested and more efficient review.

PART 7007.1400 ADMINISTRATIVE PERMIT AMENDMENTS.

Subparts 1, 2, 3, and 7 are revised to require a permit application for an administrative amendment, due to recent statutory requirements for application completeness review under *Minn. Stat.* § 116.03, subd. 2b(d). The rule is revised to require administrative amendment permit applications on standard forms to allow for expeditious completeness review by MPCA staff. The use of standard forms will also ensure that the necessary information is provided to allow efficient review and issuance of these amendments. *Minn. R.* 7007.0500 Content of Permit Application is not being cited as the basis for the information needed in an administrative amendment application, since generally, administrative amendments do not require the level of information detailed in *Minn. R.* 7007.0500. Standard application forms can be developed to meet the information needs of the various changes that qualify for an administrative amendment, without requiring the same level of detail needed for other types of permit applications. It is reasonable to require the applicant to use specific permit forms to ensure efficient MPCA review of administrative amendment applications.

Subpart 1. **Administrative amendments allowed.** Subpart 1 is revised to specify that an owner or operator of a stationary source must apply for an administrative amendment, rather than request one. By requiring a permit application on standard forms, the MPCA will be able to process the permit application more efficiently because all needed information will be available in the application. The owner or operator will need to submit an application and comply with the certification requirements of *Minn. R.* 7007.0500. It is reasonable to align administrative amendments with other permit amendment application procedures.

Item D, subitem (2) is deleted. USEPA has indicated that changing the required test method by the administrative process is not consistent with 40 CFR Part 70.7(d). In order for the MPCA to obtain USEPA approval of Minnesota's Part 70 permit program the state rules need to be consistent with federal Part 70 rules. Therefore it is reasonable to revise these rules to be consistent with the federal Part 70 rules.

Item D, subitem (3) is deleted. USEPA has indicated that this is considered a change that would require a significant modification under 40 CFR Part 70.7(e)(4), and therefore cannot be made under an administrative amendment process under state rules. In order for the MPCA to obtain USEPA approval of Minnesota's Part 70 permit program the state rules need to be consistent with federal Part 70 rules. Therefore it is reasonable to revise these rules to be consistent with the federal Part 70 rules.

Item F is being revised. USEPA has indicated that incorporating standards adopted under 40 CFR Part 63 (NESHAPs) is considered a significant permit modification under Part 70 and cannot be done through an administrative amendment. When a permit action is incorporating a new standard and compliance requirements, this is the first time the permit specifically describes how the source will comply with the standard and public participation is needed to complete the permitting process. For this reason it is important to have USEPA and public review, and therefore, it is a significant modification to the permit.

Item F is also revised by deleting the option of lowering the plant-wide emission limits in permits with Plantwide Applicability Limits to reflect the impact of standards adopted under 40 CFR Part 63. USEPA has indicated that lowering a plant-wide emission limit in a permit, even when it is to reflect standards adopted under 40 CFR Part 63 (NESHAPs) is considered a significant permit modification under Part 70 and cannot be done through an administrative amendment. When a permit action is incorporating a new standard and compliance requirements, this is the first time the permit specifically describes how the source will comply with the standard. For this reason it is important to have USEPA and public review, and therefore, it is a significant modification to the permit. In order for the MPCA to obtain USEPA approval of Minnesota's Part 70 permit program the state rules need to be consistent with federal Part 70 rules. Therefore it is reasonable to revise these rules to be consistent with the federal Part 70 rules.

Item K is revised as follows. First, the option for including in a permit the operating conditions that ensure that waste combustors emit mercury at less than 50% of the applicable standard is deleted. This change coincides with changes being made at part 7007.0801. The MPCA anticipates that permits can be written to incorporate the option of an alternative performance test frequency without needing a permit amendment. Therefore the administrative amendment option is not needed. It is reasonable to remove the requirement to obtain a permit amendment when the permit can be written in a more streamlined way.

Next, item K is revised to allow administrative amendment procedures to be used for amending a permit to incorporate the extension of a deadline for construction authorization established under part C (Prevention of Significant Deterioration of Air Quality) of the CAA. Minnesota operates a combined construction and operating air permit program, where all requirements for a stationary source, including construction authorization deadlines under PSD, are included in one total facility permit. Currently, a major amendment is needed to update the permit with the new construction authorization deadline. Through this rule, if a permittee is interested in extending a deadline for construction authorization established under part C of the CAA, the permittee will request the extension in writing. Once the extension is approved, the permittee will apply for an administrative amendment to make the change to their total facility permit. USEPA has indicated that amending the permit to reflect an approved extension of construction authorization established under part C of the CAA can be done as an administrative permit amendment under Minnesota's Part 70 permit program. The administrative amendment process is less burdensome than the major amendment process for both the permittee and the

MPCA. It is reasonable to use the more streamlined administrative amendment process, rather than the major amendment process, to extend a deadline for construction authorization established under part C of the CAA.

Subp. 2. **Initiating an administrative amendment.** Subpart 2 is revised to require an administrative amendment application be certified by a responsible official consistent with *Minn. R.* 7007.0500, subpart 3. Since the application is for a permit change, it must be certified just as any other information provided by the regulated party in support of a permit action. It is reasonable to require all information supporting a permit amendment be certified as to the truth, accuracy, and completeness of the information submitted in the application.

Subp. 3. **Timeline for final action.** Existing subpart 3 is revised is revised to delete "request" when referring to an administrative amendment application. This revision reflects the revised subpart 2 of part 7007.1400 that requires an owner or operator to apply for, rather than request, an administrative amendment. It is reasonable to align application completeness review with administrative amendment application requirements.

Subp. 7. **When permittee may make change.** Existing subpart 7 is revised to delete "request" when referring to an administrative amendment application. This revision reflects the revised subpart 2 of part 7007.1400 that requires an owner or operator to apply for, rather than request, an administrative amendment. It is reasonable to align application completeness review with administrative amendment application requirements

PART 7007.1500 MAJOR PERMIT AMENDMENTS.

Subpart 1. **Major permit amendment required.** Subpart 1 is revised to ensure the major amendment rule is consistent with the revisions at *Minn. R.* 7007.1400, subpart 1, item D. Subitems (3) and (4) in item A of this subpart are deleted because according to USEPA the types of changes in subitems (3) and (4) do not qualify as changes that may be made by administrative amendment. Additional discussion for the reasons for the changes related to administrative amendments can be found above in Part 7007.1400 Administrative Permit Amendments.

Item B is revised to eliminate confusion about what "required to be based on a case-by-case determination" means. Some had believed it meant that a separate rule had to "require" each case-by-case permit condition. Originally, the MPCA had intended the rule to mean that a facility-specific permit condition was necessary to prevent pollution or protect human health and the environment. The revised language is more straightforward. It is reasonable for the rule to be internally consistent and to clarify rule language to reduce confusion for permittees.

PART 7007.1600 PERMIT REOPENING AND AMENDMENT BY AGENCY.

Subpart 1. **Mandatory reopening.** Subpart 1 establishes when the Agency shall reopen and amend a permit. Item A of this subpart is revised to add the requirement that the permittee submit a permit application as required under *Minn. R.* 7007.0400, subpart 3. The federal Part 70 rule requires an 18 month deadline for reopening and amending a Part 70 permit to incorporate federal requirements which become applicable to a stationary source with a remaining permit term of more than three years. This federal requirement is incorporated into *Minn. R.* 7007.1600. Additionally, *Minn. R.* 7007.0400, subpart 3 requires the permittee to submit a permit application for the same reason. Regulated parties have suggested to the MPCA that this appears to be an inconsistency in the rule, since on one hand, the permittee needs to submit a permit application, and on the other hand, the Agency needs to reopen and amend the permit. In reality, these two requirements are meant to complement each other. The goal of the

permit application is to provide the information needed by the MPCA to process the permit amendment. Without the application, MPCA staff would only be guessing as to which requirements apply or which compliance demonstration method a permittee might prefer. *Minn. R.* 7007.1600 provides the timeframes that the Agency needs to work within for the reopening and amendment. Therefore, it is reasonable to revise subpart 1, item A to require that a permit application is needed for the Agency to reopen and amend the permit.

D. CHAPTER 7008 CONDITIONALLY EXEMPT STATIONARY SOURCES AND CONDITIONALLY INSIGNIFICANT ACTIVITIES

The title of chapter 7008 is changed to Conditionally Exempt Stationary Sources and Conditionally Insignificant Activities. The existing title "Exempt Air Emissions" does not represent the contents of the chapter and may lead the reader to believe that the air emission sources and air emission activities described in the chapter do not need to meet any requirements under Minnesota air rules. As stated in *Minn. R.* 7008.0050, this chapter establishes the conditions under which certain air emission sources are exempt from the requirement to apply for and obtain an air emission permit as provided for under *Minn. R.* 7007.0300. The air emissions are not exempt; however, the source is exempted from certain permitting requirements as long as the conditions described in this chapter are met. In addition, this chapter also establishes the conditions under which certain activities will qualify as insignificant activities for purposes of *Minn. R.* 7007.0100 to 7007.1850. Conditionally insignificant activities are not exempt from permitting requirements as discussed in this SONAR, Section 6 C, at part 7007.0300; conditionally insignificant activities are simply one of the ways to streamline the permitting process. Conditionally insignificant activities still need to be included in a permit application and must be operated to comply with any applicable requirements. The conditionally insignificant activities have been a source of confusion for permit applicants at times and revising the title of the chapter is one of the ways the rule is being clarified. It is reasonable match the title of the chapter to the contents of the chapter.

PART 7008.0100 DEFINITIONS.

Subp. 2a. **Material usage.** A new subpart 2a defines the term "material usage." This definition is needed to accommodate changes in *Minn. R.* 7008.4100. "Material usage" is meant to be activities where all emissions from the activity can be determined through a simple mass balance calculation. "Material usage" includes activities at a stationary source which may emit VOC, hazardous air pollutants, particulate matter, PM-10, and PM-2.5 or a combination thereof, including spray, roller or brush application of coatings, such as paints and adhesives, and use of solvents for application, cleanup, or other purposes. This means that the "material usage" activities may emit any one or all of the pollutants listed. "Material usage" is not meant to include activities such as grain handling, activities resulting in chemical reactions, combustion, batch mixing, and other operations where the emissions cannot be determined based on a simple mass balance calculation.

Subp. 2b. **Recycling.** A new subpart 2b defines the term "recycling." The definition of "recycling" was included in existing *Minn. R.* 7008.4100, subpart 4; the definition will also apply to the new subpart 5 of this part. By moving the definition to *Minn. R.* 7008.0100 Definitions, "recycling" is defined only once in chapter 7008 rather than repeating the definition within the chapter where the term is used. It is reasonable to move a definition to the definitions part of the rule for reader ease and to reduce confusion.

Subp. 2c. **Solids.** A new subpart 2c defines the term "solids." The term "solids" is used in part 7008.4100, subpart 3, items C and D. Several federal rules provide various definitions of coating solids, such as the standards for coating operations under 40 CFR Part 60 and 40 CFR Part 63. Most of these definitions are similar to the definition under the federal rule at 40 CFR Part 63, subpart IIII, which provides a broad definition of coating solids for the surface coating of automobiles and light-duty trucks. The MPCA used this federal definition as the basis for defining "solids" in this rule part, rather than using other federal definitions for coating solids that are narrower in scope and would not include adhesives or other sticky/tacky coatings. It is reasonable to define "solids" so the reader understands the type of material they are to maintain records for.

Subp. 5. **Transfer efficiency.** A new subpart 5 defines the term "transfer efficiency." The definition is needed because regulated parties may apply "transfer efficiency" in their calculation of particulate matter, PM-10, and PM-2.5 emissions in order to verify that a stationary source qualifies for the conditionally insignificant material usage activity at *Minn. R.* 7008.4100. The owner or operator may use the "transfer efficiency" from the manufacturer of their coatings application equipment. It is reasonable to have a definition of "transfer efficiency" because the owner or operator may choose to use "transfer efficiency" as part of the calculation to determine that the materials usage activities at a stationary source qualify as an insignificant activity.

PART 7008.4100 CONDITIONALLY INSIGNIFICANT MATERIAL USAGE.

Existing *Minn. R.* 7008.4100 is revised because the language under this part related to conditionally insignificant VOC usage does not clearly include the activities that were originally meant to be included. The SONAR for the 2002 omnibus air rules includes an example of a small paint shop that applies paint with a spray gun. (SONAR for "Proposed New Rules Governing Conditionally Insignificant and Conditionally Exempt Air Emissions to be codified in *Minn. R.* Ch. 7008, and Amendments to Rules Governing Permits and Offsets, *Minn. R.* Ch. 7007, Amendments to Rules Governing Air Quality Division Definitions and Abbreviations, *Minn. R.* Ch. 7005 and Amendments to Rules Governing Standards for Stationary Sources, *Minn. R*. Ch. 7011," February 2002.) Spray application of paint results in particulate matter emissions as well as the VOC emissions that were limited in the original rule. The way the rule was originally written means that activities such as the spray application of paints may not qualify as a conditionally insignificant activity due to emissions of particulate matter, PM-10, PM-2.5 and hazardous air pollutants (HAPs), rather than the VOC emissions that were the focus of the rule. The emission of particulate matter, PM-10, PM-2.5, and HAPs were not considered in the original rule and as a result, were not explicitly limited as part of this conditionally insignificant activity. The limits on VOCs, particulate matter, PM-10, PM-2.5, and HAPs from material usage activities in *Minn. R.* 7007.4100, subpart 2 do not result in limits on potential to emit for determining applicability of any rule or requirement. The limits on particulate matter, PM-10, PM-2.5, and HAPs allow the material usage activity to be treated as a conditionally insignificant activity under *Minn. R.* 7007.0100 to 7007.1850.

To correct this problem, the conditionally insignificant activity is being changed from conditionally insignificant VOC usage, to the more inclusive "conditionally insignificant material usage," and the limits, monitoring and record keeping for HAPs, particulate matter, PM-10, and PM-2.5 emissions are added as described below. It is reasonable to revise this part to allow this conditionally insignificant activity to include the originally intended activities.

Subpart 1. **Applicability.** This subpart is first revised to identify that the requirements of this part apply to the owner or operator of the stationary source, rather than the source itself. It is reasonable to clarify that the owner or operator is responsible for complying with the rule.

Subpart 1 is next revised to identify material usage in coating and solvent cleaning operations, rather than VOC usage, as the conditionally insignificant activity. The applicability of *Minn. R.* 7008.4100 requires that all material usage activities at the stationary source be included in the limits under this part and excludes lead as a component in any of the material used. The 2002 omnibus air rules added VOC usage as a conditionally insignificant activity and the SONAR indicates activities such as spray coating were meant to be an activity qualifying under this part. However, the analysis focused only on VOC emissions and did not account for potentially associated particulate matter emissions from spray coating activities. Therefore, the resulting rule language was ambiguous with respect to HAP and particulate matter emissions and potentially confusing to owners and operators. The change to "material usage" from "VOC usage" will allow spray coating activities to qualify under this part. This revision will match the original intent of the rule. It is reasonable to identify material usage so affected permittees understand the type of activity that qualifies as a conditionally insignificant activity.

Revisions to this subpart also identify how to qualify as a conditionally insignificant activity under this part. In order for the owner or operator to claim certain activities as conditionally insignificant, all material usage in coating and solvent cleaning operations at the stationary source must be included in the limits under subpart 2. The rule needs to specify the conditions under which the material usage operations qualify as a conditionally insignificant activity. It is reasonable to identify the conditions that an owner or operator needs to meet for their material usage operations to qualify under this part.

Lastly, revisions to subpart 1 establish that lead is excluded as a pollutant allowed under this part because the state permitting threshold for lead is 0.5 tons per year (tpy) and the PSD significant emission rate is 0.6 tpy. Both of these thresholds are well below the 2,000 pound per year limit on particulate matter in this part. Therefore, in order to ensure compliance with state and federal permitting rules, this conditionally insignificant activity will not allow for emissions of lead. It is reasonable to exclude lead as a pollutant from this conditionally insignificant activity to ensure an owner or operator does not exceed permitting thresholds.

Subp. 2. **Material usage limits.** This subpart is revised to identify the specific requirements an owner or operator must meet in order for the material usage activities at their stationary source to qualify as a conditionally insignificant activity under *Minn. R.* 7008.4100.

Item A is revised to indicate the VOC usage limit applies only to material usage activities. The limit on VOC usage is not meant to include possible VOC emissions from other equipment at the stationary source, such as combustion equipment. VOC usage from all material usage activities at the stationary source is included in this limit, such as coating by spray, brush or roller, and solvent cleaning activities. The VOC limits at subpart 2, item A are not changing; however, clarifying language is added to indicate the limit applies to all material usage activities at the stationary source in the aggregate. An owner or operator cannot have multiple activities at their source that qualify independently as conditionally insignificant material usage. It is reasonable to clarify the rule to ensure owners and operators are able to verify that their activities qualify as a conditionally insignificant activity.

A new Item B establishes emission limits on HAP emissions. The limit for HAPs is set at 200 gallons or 2,000 pounds in a calendar year. It is reasonable to set a limit on hazardous air

pollutants emissions to allow spray coating to qualify as a conditionally insignificant activity under this part. It is also reasonable to include limits that ensure owners and operators can qualify for the conditionally insignificant activity as originally intended.

A new Item C establishes emission limits on particulate matter, PM-10, and PM-2.5 emissions. The limit for each pollutant is set at 2,000 pounds in a calendar year. This limit was selected to match the limit in *Minn. R.* 7007.1300, subpart 3, item I, which was originally set at 1% of the Part 70 thresholds for particulate matter and PM-10. It is reasonable to set a limit on particulate matter, PM-10, and PM-2.5 emissions to allow spray coating to qualify as a conditionally insignificant activity qualifying under this part. It is also reasonable to include limits that ensure owners and operators can qualify for the conditionally insignificant activity as originally intended.

Subp. 3. **Record keeping.** Subpart 3 is revised to clarify that the recordkeeping requirements apply to the owner or operator of a stationary source. These records make it possible to determine whether a particular activity qualifies as a conditionally insignificant activity under this rule. It is reasonable to specify the record keeping required to show that an activity qualifies as conditionally insignificant material usage.

A new item B establishes record keeping of information needed by the owner or operator to calculate HAP emissions. Required information includes the number of gallons of HAPs containing materials purchased or used, or the maximum HAP content of each material. It is reasonable to include record keeping requirements that ensure an owner and operator can show they qualify for conditionally insignificant material usage.

A new item C adds record keeping of information needed to calculate particulate matter, PM-10, and PM-2.5 emissions. Required information includes the number of gallons of solids-containing materials purchased or used and the maximum solids content of each material. It is reasonable to include record keeping requirements that ensure an owner and operator can show they qualify for conditionally insignificant material usage.

Item D is revised by adding the requirement to maintain a record of the material safety data sheet (MSDS) or a signed statement from the supplier indicating the maximum solids content of each material. The solids content is needed to calculate the particulate matter, PM-10, and PM-2.5 emissions to show the activity qualifies as conditionally insignificant material usage. This requirement is similar to the existing requirement for VOC content. It is reasonable to include a similar record keeping requirement for particulate matter, PM-10, and PM-2.5 that ensure an owner and operator can show they qualify for the conditionally insignificant activity.

Item E is revised to include records of maximum hazardous air pollutant content and maximum solids content for each material. This information is needed to complete calculations in subparts 5 and 6 to show that the material usage activities at the stationary source qualify for the conditionally insignificant activity.

A new item F is added specifically for activities involving spray application of a material. If owners and operators are using spray application, they will need to maintain records on the type of spray equipment and the minimum transfer efficiency of the spray application equipment. It is reasonable to require owners and operators to maintain records of the information they will use in calculations to show they qualify for conditionally insignificant material usage.

At Item G, new subitems (1), (2), and (3) are added to require the owner or operator, if requested by the Commissioner, to calculate and record the total VOC and particulate matter emissions using the methods described in rule. This requirement is reasonable because it ensures that owners and operators are able to verify that they qualify under this part.

Subp. 4. **Calculating VOC emissions.** Subpart 4 is revised to reflect the change from a VOC usage calculation to the VOC emissions calculation based on material usage. It is reasonable to distinguish between VOC usage as a conditionally insignificant activity and VOC emissions as basis for the emissions calculation methodology. The definition of "recycling" included in this subpart is deleted and moved to *Minn. R.* 7008.0100. Because this definition also applies to HAPs in subpart 5, it is reasonable to move this definition rather than repeat the definition within the chapter where the term is used. The record keeping requirement in this subpart for VOC shipped off site for recycling is deleted because the record keeping requirements for this part are contained in subpart 3. This change is reasonable to reduce duplication.

Item A is revised to clarify the calculation method used to determine if an owner or operator is meeting the material usage limit based on gallons of VOC in subpart 2. The calculation method itself is not changing, only the language describing the method is being revised. It is reasonable to clarify the calculation method used to demonstrate an activity qualifies as conditionally insignificant under this rule to reduce confusion for permittees choosing to qualify for this conditionally insignificant activity.

Item B is revised to clarify the calculation method used to determine if an owner or operator is meeting the material usage limit based on pounds of VOC in subpart 2. The calculation method itself is not changing, only the language describing the method is being revised. It is reasonable to clarify the calculation method used to demonstrate an activity qualifies as conditionally insignificant under this rule to reduce confusion for permittees choosing to qualify for this conditionally insignificant activity.

Subp. 5. **Calculating total hazardous air pollutant emissions.** A new subpart 5 is added to include a calculation method for hazardous air pollutants in a calendar year to show that the material usage activity meets the limits identified in subpart 2. The owner or operator may use either item A or item B to calculate the HAP emissions.

A new item A provides the calculation method for hazardous air pollutant emissions when the material usage records are in gallons and the HAP content is in volume percentage. A new item B provides the calculation method for hazardous air pollutant emissions when the material usage records are in gallons per year and the HAP content is in units or pounds per gallon or weight percent. It is reasonable to provide the calculation methodology for owners and operators to show an activity qualifies as conditionally insignificant.

Subp. 6. **Calculating PM, PM-10, and PM-2.5 emissions.** A new subpart 6 is added to include a calculation method for pounds of particulate matter, PM-10, and PM-2.5 emissions in a calendar year. The owner or operator may use either item A or item B to calculate particulate matter, PM-10, and PM-2.5 emissions. The owner or operator may choose to apply a transfer efficiency in the calculation for spray application of materials. If the owner or operator does not apply the transfer efficiency, the calculation results in higher, or more conservative, emissions of particulate matter, PM-10, and PM-2.5. When the owner or operator uses transfer efficiency in the particulate matter, PM-10, and PM-2.5 calculations, the results may be more accurate, but the owner or operator needs to maintain as many records. The transfer efficiency is based on the type of application method used as described above in the definition of transfer efficiency at

part 7008.0100, subpart 5. For example, for particulate matter emissions, when a transfer efficiency may be used due to spray application of a material, the equation under subpart 6, item A would be:

> PM emissions in pounds = [gallons of material used] x [pounds of solids/gallon of material] x [1-transfer efficiency]

A new item A provides the calculation method for particulate matter, PM-10, and PM-2.5 emissions when the material usage records are in gallons and the solids content is in units of pounds per gallon. A new item B provides the calculation method for particulate matter, PM-10, and PM-2.5 emissions when the material usage records are in pounds per year and the solids content is in weight percent. It is reasonable to provide the calculation methodology for owners and operators to show an activity qualifies as conditionally insignificant.

PART 7008.4110 CONDITIONALLY INSIGNIFICANT FINISHING OPERATIONS THAT EMIT ONLY PM, PM-10, AND PM-2.5.

The title of *Minn. R.* 7008.4110 is revised to match the conditionally insignificant activity in this rule part. This revised part establishes the requirements specific to stationary sources that claim finishing operations emitting particulate matter, PM-10, and PM-2.5 as a conditionally insignificant activity. The conditionally insignificant activities have been a source of confusion for permit applicants at times and revising the title of this part provides clarification. It is reasonable that the title of the rule part match the contents of the part.

Revisions to *Minn. R.* 7008.4110 are needed to clarify the activities that qualify as conditionally insignificant activities. Historically, the activities described in existing *Minn. R.* 7008.4110, subpart 2 were included in *Minn. R.* 7007.1300, subpart 3 as insignificant activities required to be listed in a permit application. The rule was originally written to identify lower emitting types of activities. Specifically, the 1995 rule identified the qualifying activity in this way:

> Finishing operations:
>
> > (2) equipment vented inside a building used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, surface grinding, or turning of ceramic, precision parts, leather, metals, plastics, masonry, carbon, wood, or glass".

The activities were later moved to chapter 7008 as conditionally insignificant activities for two reasons. First, the potential to emit of these activities could be rather high. Therefore, the activities do not necessarily fit the intended types of activities in *Minn. R.* 7007.1300, ones where the potential to emit is anticipated to be very low (generally less than 1%) when compared to regulatory thresholds. Second, the activities must be operated under certain conditions (emissions must be vented inside a building and filtered through an air cleaning system) to qualify as insignificant activities for permitting purposes.

In later rulemakings, chapter 7008 was revised and the activities listed were generalized, thereby expanding the types of activities that qualify as insignificant. Rather than identifying the activities specifically, the rule was revised to reference activities in a general way "for example: buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, surface grinding, or turning equipment"... The intent of generalizing the types of qualifying activities was to reduce the amount of work for permit applicants and MPCA staff by allowing more activities to qualify under this rule. However, MPCA staff have determined that permit applicants are applying this conditionally insignificant activity rule for activities that are not similar to the type of activities listed; permit applicants are using it for any particulate matter emitting activity

venting emissions through an air cleaning system and inside a building. This has resulted in increased work for permit applicants and the MPCA during processing of permit applications because the dissimilar activities often have higher potential to emit and need additional review to determine the applicability of various air programs. For these reasons, *Minn. R.* 7008.4110, subparts 1 and 2 are being revised to identify exactly the types of activities that qualify under this conditionally insignificant activity as well as clarify the pollutants allowed. It is reasonable to revise the rule to clarify the types of activities that qualify as conditionally insignificant activities under this rule to reduce confusion about rule applicability.

Subpart 1. **Applicability.** Subpart 1 is revised by adding "finishing operations" to identify the specific conditionally insignificant activity as it applies to part 7008.4110: equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, surface grinding, or turning ceramic, leather, metal, plastic, masonry, carbon, wood, or glass. These types of activities and materials, as first identified in the original rule, relate only to finishing operations. Other activities not identified in this subpart will not qualify as a conditionally insignificant activity. Because finishing operations have certain activities specific to their use under part 7008.4110, it is reasonable to identify these activities so permit applicants understand the types of activities and material that qualify for this conditionally insignificant activity. Identifying activities specific to finishing operations assists the permit applicant to determine applicability of the rule.

Subpart 1 is also revised to include the pollutant PM-2.5, rather than designating only particulate matter (PM) and PM-10, which were the specific pollutants regulated at the time of the original rulemaking. If PM-2.5 is not included in the list, then it is possible that an operation may not qualify as a conditionally insignificant activity under this part, since PM-2.5 is now a regulated pollutant. Adding PM-2.5 to the list of pollutants makes this rule consistent with the other changes to chapter 7008 and ensures owners and operators with PM-2.5 emissions can still qualify for this conditionally insignificant activity. This change is reasonable because the original intent of the rule was to allow certain activities to qualify as conditionally insignificant for the purposes of the air permitting program.

Subpart 1 is revised to identify that any activity emitting any other pollutant in addition to PM, PM-10, or PM-2.5 does not qualify under this part. The MPCA has identified situations where lead was one of the pollutants emitted from the activity being proposed as conditionally insignificant under *Minn. R.* 7008.4110. Pollutant emissions from this activity have always been limited to the pollutants identified in this part. However, because there has been some confusion on the part of permit applicants, subpart 1 is revised to specifically state that this part does not apply to any activity that emits any pollutant other than those identified in this subpart. This is reasonable, as it provides clarification regarding the types of pollutants this part applies to.

Subp. 2. **Requirements.** Subpart 2 is revised by adding "finishing operations" and deleting the example activities listed in this subpart. This change is reasonable because the types of activities and materials as they relate to finishing operations are now identified in the revised subpart 1 and including them in this subpart would be duplicative.

Subp. 3. **Monitoring and record keeping.** A new subpart 3 is added to establish the monitoring and record keeping requirements for conditionally insignificant finishing operations emitting particulate matter, PM-10, and PM-2.5. *Minn. R.* 7008.0200 includes general requirements for activities that qualify as conditionally insignificant activities under chapter 7008, such as ensuring the equipment is properly operated and that sufficient records are maintained.

Subpart 3 identifies the specific monitoring and record keeping that is required for the air cleaning system for the finishing operations emitting particulate matter, PM-10, and PM-2.5. These monitoring and record keeping requirements are needed to ensure particulate matter emissions are being properly controlled. The addition of these specific monitoring and record keeping requirements in subpart 3 ensures that the air cleaning system is operating as intended by the manufacturer and thus meets the manufacturer's specified air cleaning effectiveness. It is reasonable to add monitoring and recordkeeping for the air cleaning system so that owners and operators as well as the MPCA will be able verify compliance with the requirements that allow the activity to qualify as conditionally insignificant.

E. CHAPTER 7009 AMBIENT AIR QUALITY STANDARDS

PART 7009.0010 DEFINITIONS.

The MPCA proposes to add three new definitions to existing *Minn. R.* 7009.0010 to define terms that are used to interpret and apply the Minnesota Ambient Air Quality Standards or MAAQS in *Minn. R.* 7009.0080. These additions are "averaging time", "form of the standard", and "total suspended particulate." The state ambient air quality standards table in *Minn. R.* 7009.0080 is revised to include two new columns with the headings "form of the standard" and "averaging time" to aid the reader in applying the standards.

Subp. 1a. **Averaging time.** A new subpart 1a defines the term "averaging time." "Averaging time" is a critical piece of information needed to interpret the ambient air quality standards. The MPCA is proposing to define "averaging time" as the time period specified in *Minn. R.* 7009.0080 over which air pollution concentration data are averaged in preparation for comparison to the ambient air quality standard. The average is calculated by summing all data points for the time period and dividing by the number of data points. This information will appear in the table in *Minn. R.* 7009.0080. It is reasonable to define "averaging time" so that the reader can determine the averaging time needed to interpret the standard.

Subp. 1b. **Form of the standard.** A new subpart 1b defines the term "form of the standard." "Form of the standard" is a critical piece of information needed to interpret the state ambient air quality standards in *Minn. R.* 7009.0080. The MPCA is proposing to define "form of the standard" as the method used to determine if ambient air pollutant concentrations exceed applicable air quality standards. The table in existing *Minn. R.* 7009.0080 identifies the method of determining whether ambient pollutant concentrations exceed air quality standards under the column heading "Remarks." This existing heading is not a good description of the content of the column. The column with the heading "Remarks" is deleted and replaced with a new column with the term "form of the standard" for the heading. This new column heading will aid the reader in interpreting the primary and secondary ambient air quality standards. It is reasonable to define "form of the standard" in a way that is consistent with USEPA's use of the term and is consistent with current application for both modeling and monitoring in Minnesota.

Subp. 4. **Total suspended particulate.** A new subpart 4 defines the term "total suspended particulate." "Total suspended particulate" means particulate matter as measured by the method described in 40 CFR Part 50, Appendix B. This method provides a measurement of the mass concentration of total suspended particulate matter in ambient air for determining compliance with the primary and secondary NAAQS for particulate matter as specified in federal rule. Because "total suspended particulate" is a state ambient air quality standard for which the MPCA conducts air monitoring, along with PM-10, and PM-2.5 which are already defined in

chapter 7005, it is reasonable to provide a definition for "total suspended particulate." The definition is provided in chapter 7009 because the term "total suspended particulate" is only used in this chapter.

PART 7009.0020 PROHIBITED EMISSIONS.

The MPCA proposes to revise *Minn. R.* 7009.0020 by deleting the word "trespassers" from the categories of people that are exempt from the definition of "general public" when determining the boundaries for ambient air. This change is necessary to eliminate confusion between this part and the federal definition of ambient air. The federal rule at 40 CFR Part 50.1(e) defines ambient air as the portion of the atmosphere, external to buildings, to which the general public has access. The federal definition does not specifically exclude trespassers. USEPA Administrator Douglas M. Costle interpreted the definition in a December 19, 1980, letter to Senator Ralph Jennings Randolph. In that letter the USEPA administrator clarified that the "exemption from ambient is available only for the atmosphere over land owned or controlled by the source and to which public access is precluded by a fence or other physical barrier."

The proposed revision also corrects a befuddling sentence construction in which "trespassers," "employees" and "other categories of people who have been directly authorized by the property owner to enter or remain on the property for a limited period of time and for a specific purpose" are grouped and excluded from the definition of "general public." It is reasonable to revise this part to prevent confusion with the federal definition of ambient air and to remove "trespassers" from the group of persons who are authorized to enter property.

The term "Minnesota" was added to clarify which ambient air quality standards were being discussed in this provision of the rule and also, as a means to further distinguish them from the NAAQS. As a practice, the MPCA has made and applied this distinction in modeling for several years and it is characterized in its guidance in this manner. For purposes of determining compliance with the NAAQS (new part 7009.0090), the federal interpretation of ambient air applies (see 40 CFR Part 50.1(e), and 40 CFR Part 52.21(b)(6)). It is reasonable to clarify that this part applies only to the MAAQS in *Minn. R.* 7009.0080 to remove confusion that has existed in the applicability of this part to NAAQS.

PART 7009.0070 TIME OF COMPLIANCE.

Minn. R. 7009.0070 is proposed for repeal because the compliance date for the ozone and sulfur dioxide standards ended December 31, 1984, and this date is no longer relevant. Compliance dates are incorporated into the SIP if an area is out of compliance; therefore, it is not necessary to include a specific date in rule. It is reasonable to repeal rules that are no longer needed.

PART 7009.0080 MINNESOTA AMBIENT AIR QUALITY STANDARDS.

The title of *Minn. R.* 7009.0080 is revised to clarify the ambient air quality standards in this rule part are Minnesota Ambient Air Quality Standards or MAAQS, that is, the state ambient air quality standards as described in the rule text just below the title. It is reasonable that the title of the rule part match the contents of the part.

Minn. R. 7009.0080 is revised to align with recent revisions to the NAAQS for multiple pollutants. The format of the table of state ambient air quality standards in this part is also being revised to improve clarity and interpretation of the state ambient air quality standards.

It is important to have the NAAQS also as state standards in addition to their incorporation by reference in part 7009.0090. This allows the MPCA to evaluate keeping a federal standard as a

state standard, should the federal standard be revised to be made less stringent or vacated. If these rules only had the incorporation by reference of the NAAQS in part 7009.0090, the federal standard would automatically be revoked. It is the MPCA's intent to keep state standards to be protective of Minnesota's health and welfare - and through rulemaking change the state standards to match the federal standards. The expectation is that in the majority of instances, the state standard for a pollutant will match the federal standards, as the MPCA has done in this rulemaking. Having the NAAQS as state standards also enhances and clarifies the administration of the standards.

Changes to the format of the table containing the state ambient air quality standards include: deleting the heading "Air Contaminant" in the first column and adding the heading "Air Pollutant" (a more commonly used term), revising the headings in the second and third columns to "Level of Primary Standard" and "Level of Secondary Standard" respectively to more clearly identify content, adding two new columns for "Averaging Time" and "Form of the Standard", and deleting the column "Remarks" as described above in *Minn. R.* 7009.0010. As described in the discussion of proposed changes to definitions in *Minn. R.* 7009.0010, the existing table contains ambiguous information about how to appropriately apply ambient air quality standards for use in regulatory designations and/or enforceable air quality compliance decisions. The revised table will more clearly define the pieces of information that are used in determining compliance with state ambient air quality standards and will more consistently describe these standards across pollutants. A pollutant specific description of the revisions to the state ambient air quality standards is provided below. The MPCA does not propose to change the State's hydrogen sulfide standards. New language has been added to more clearly identify the averaging period and form of the design value for the hydrogen sulfide standards.

The state ozone standard is revised to reflect 2008 revisions to the ozone NAAQS (73 FR 16436) which lowered the 8-hour ozone standard to 75 parts per billion (ppb) and changed the official concentration reporting units from parts per million (ppm) to ppb. New language has been added to more clearly identify the averaging period and form of the design value for the ozone standard.

The state carbon monoxide standards are revised by deleting the secondary standards, which were previously set at the same level as the primary standard. In 1985, USEPA revoked the secondary carbon monoxide standards (50 FR 37484). This change aligns the state ambient air quality standards with the NAAQS. New language has also been added to more clearly identify the averaging period and form of the design value for the carbon monoxide standards.

The state sulfur dioxide standards are revised to reflect USEPA revisions to the sulfur dioxide NAAQS and to delete the requirement for more stringent secondary ambient air quality standards in prescribed Air Quality Control Regions. In 2010, USEPA revised the sulfur dioxide NAAQS (75 FR 35520) by introducing a new 1-hour primary standard. As a part of the final promulgation of the 1-hour primary standard, USEPA indicated that the existing annual and 24-hour average primary sulfur dioxide standards would be revoked one year after finalization of designations under the 1-hour standard. Because designations under the 2010 revisions have not yet occurred in Minnesota, the annual and 24-hour average sulfur dioxide standards will not be deleted from the state ambient air quality standards as part of this omnibus air rule. The new primary 1-hour sulfur dioxide standard has been added. The sulfur dioxide secondary standards are also revised as part of this omnibus air rule. The secondary standards which refer to specific Air Quality Control Regions are being deleted because these standards are not included in federal rules and are no longer needed to support the retired acid rain program. The 3-hour

secondary standard that applies to all areas of the state will remain in the state ambient air quality standards because it is a NAAQS. The existing 1-hour primary standard (maximum 1-hour concentration of 1300 micrograms per cubic meter not to be exceeded more than once per year) is deleted from the state ambient air quality standards to align with the NAAQS.

The state particulate matter standard is being renamed total suspended particulate to more accurately identify the particulate size fraction being measured. The total suspended particulate standards will remain as state ambient air quality standards as a tool to control nuisance dust emissions. New language has been added to more clearly identify the averaging period and form of the design value for the total suspended particulate standards.

The state nitrogen dioxide standard is revised to reflect 2010 revisions to the nitrogen dioxide NAAQS (75 FR 66964). As part of the 2010 revisions, USEPA introduced a new 1-hour nitrogen dioxide standard. In addition, USEPA retained the existing annual standard, but changed the official reporting units to parts per billion or ppb.

The state lead standard is revised to reflect 2008 revisions to the lead NAAQS (73 FR 66964). As part of the 2008 revisions, USEPA lowered the level of the standard from 1.5 micrograms per cubic meter to 0.15 micrograms per cubic meter. In addition, USEPA revised the form of the standard from a calendar quarter to a rolling 3-month average.

The state PM-10 standard is revised to reflect 2006 revisions to the particulate matter NAAQS. As part of the 2006 revisions, USEPA revoked the annual PM-10 standards. The annual PM-10 standards are deleted from the state ambient air quality standards to align with the NAAQS. The 24-hour PM-10 standard has also been revised to reflect the federal description of the form of the 24-hour PM-10 standard design value. This revision more clearly describes how compliance with the standard is determined, including the calculation of estimated exceedance days if monitoring is completed less frequently than daily and incorporates the 3-year averaging period to align with the 24-hour PM-10 NAAQS (40 CFR Part 50, Appendix K).

The state PM-2.5 standards are revised to reflect the 2006 and 2012 revisions to the particulate matter NAAQS (71 FR 61144 and 78 FR 3086). In 2006, USEPA lowered the primary and secondary 24-hour PM-2.5 standards from 65 micrograms per cubic meter to 35 micrograms per cubic meter, but retained the existing annual standard at 15 micrograms per cubic meter. In 2012, USEPA lowered the primary annual standard to 12 micrograms per cubic meter and retained the secondary annual standard at 15 micrograms per cubic meter.

It is reasonable that the state ambient air quality standards or MAAQS conform to changes in the federal ambient air quality standards or NAAQS.

PART 7009.0090 NATIONAL AMBIENT AIR QUALITY STANDARDS.

A new part 7009.0090 is added to distinguish the NAAQS from the MAAQS, as well as to clarify the applicability and enforceability of the NAAQS for related state air management programs (e.g., air quality permitting, compliance and enforcement, state-level environmental review, and the SIP). Minnesota requires USEPA approval of its SIP.

Having the NAAQS written in the rule rather than incorporated by reference requires the state to update state rules and the SIP each time USEPA modifies, amends, or vacates one of the NAAQS. The NAAQS are applicable requirements as soon as they are promulgated by USEPA; however, the lag-time between federal promulgation and incorporation into state rule by the state can cause confusion. Incorporating the NAAQS by reference also reduces administrative

burden on the state by removing the need to update state rules and revise the SIP any time USEPA modifies, amends, or vacates one of the NAAQS.

Distinguishing federal (NAAQS) from state (MAAQS) is important in supporting the overall goal of Minnesota's "infrastructure" (CAA Section 110(a)) SIP - to demonstrate to USEPA that Minnesota's statutes and rules provide for the implementation, maintenance, and enforcement of national primary and secondary air quality standards. Incorporating the NAAQS by reference eliminates confusion about the applicability of federal standards and state standards and strengthens the infrastructure SIP, and the likelihood of USEPA approval of these rules as a revision to our infrastructure SIP. USEPA's approval of the Minnesota's infrastructure SIP is necessary for the MPCA to operate its air quality programs.

Accordingly, items A through G of part 7009.0090 incorporate by reference the NAAQS for sulfur dioxide, PM-10, PM-2.5, carbon monoxide, ozone, nitrogen dioxide, and lead, respectively. It is reasonable to incorporate the NAAQS by reference into Minnesota Rules as it is consistent with programs in other states and enhances program implementation.

PART 7009.1060 TABLE 1.

USEPA sets forth criteria for a state's air pollution program and SIP in 40 CFR Part 51, "Requirements for Preparation, Adoption, and Submittal of Implementation Plans." This includes Subpart H, which requires the state to take measures for the prevention of air pollution emergency episodes, which are times of extremely high pollution. In 40 CFR Part 51.151, USEPA identifies "significant harm levels," and requires states to have a plan that includes actions to prevent pollution from reaching those levels. Furthermore, 40 CFR Part 51.152 requires states to have contingency plans with stages of "episode criteria" and actions to be taken at different stages or levels of pollution in order to ensure that pollution does not reach the significant harm levels. Example regulations are given in 40 CFR Part 51, Appendix L.

Table 1 in *Minn. R.* 7009.1060 establishes the episode levels at which the Commissioner shall declare an air pollution alert, warning, emergency, or significant harm episode. Other surrounding parts of chapter 7009 then dictate the actions to be taken. The episode levels in Table 1 are revised to match revised levels in 40 CFR Part 51, Appendix L and 40 CFR Part 51.151. Minnesota must revise its episode levels to match the levels USEPA established in order to maintain its SIP approval. It is reasonable that the state ensure maintenance of its SIP approval.

F. CHAPTER 7011 STANDARDS FOR STATIONARY SOURCES

Chapter 7011 contains the technical performance standards for air emission sources. In general, each standard of performance lays out the pollutant to be regulated, an emissions limit or work practice standards for controlling the release of pollutants, methods for measuring emissions of the pollutant to determine compliance with emission standards, and reporting and record keeping requirements.

As the MPCA has administered the air emissions permitting and control program, our knowledge of the health impacts of particles in air has expanded and pollution control and measurement technologies have advanced. These advancements have made rule language outdated or simply unworkable. As a result, the MPCA is amending state rules to make clarifications. Most of the changes are meant to clarify application of the standards of performance and are not intended to change the stringency of an emissions limit. When the MPCA does intend to impose new

emission limits, it is specifically identified and a discussion related to the need for and reasonableness of the proposed emission standard is provided.

Through the study of health impacts of particles in the air, the term "particulate matter" has evolved to include both solid particles as well as the materials that condense in the atmosphere upon leaving the flue gas stack. This understanding has resulted in new ambient air standards for particulate matter, and requires the MPCA to revise, expand or clarify existing requirements for measuring all forms of regulated particulates. The MPCA finds that to ensure that permit conditions reflect the nature of the particles being regulated and that the correct tests are used to measure particles, it must clarify which fraction of particulate matter emitted from a source is regulated by the standard. The MPCA believes it is reasonable to provide this specificity to this rule to avoid potential, and costly, misunderstandings. This revision will potentially avoid the time and expenses involved when the MPCA must void a test because a facility owner did not conduct a complete particulate matter test measuring all fractions of the regulated pollutant.

The MPCA has focused on the use of the term "particulate" and made an effort to clarify its use. The MPCA identified the terms "particulate," "total particulate," "total particulate matter," and "particulate matter," in existing technical standards and is proposing revisions to specify the intended fraction of particles are being regulated. When possible, the MPCA expands "particulate" to "particulate matter" because this is the defined pollutant being regulated. The MPCA eliminated "total particulate matter" when possible because it is not a regulated pollutant in state or federal rules, nor is it a technical term defined in the measurement methods used to determine particulate matter emission rates.

The MPCA must undertake rulemaking from time to time to incorporate new federal air pollution control regulations. The MPCA has been delegated by USEPA the authority to administer the federal air pollution control requirements of the CAA. The delegation agreements require that the MPCA give federal standards the full effect of state law, requiring the MPCA to incorporate federal regulations by reference into Minnesota's air pollution rules. Chapter 7011 includes the incorporation of newly promulgated new source performance standards or NSPS and national emission standards for hazardous air pollutants or NESHAP.

CONTROL EQUIPMENT

PART 7011.0065 APPLICABILITY.

Subpart 1. **Applicability.** In conjunction with a clarification at *Minn. R.* 7007.1150, item C; subpart 1, item F is added to require that a permittee comply with *Minn. R.* 7011.0060 to 7011.0080 for a change to qualify as a notification under *Minn. R.* 7007.1150, item C, subitem (3). See the discussion in this SONAR, Section 6 C at part 7007.0065 for a more detailed discussion of this change. It is reasonable to clarify this rule to assist permittees in determining compliance.

PART 7011.0070 LISTED CONTROL EQUIPMENT AND CONTROL EQUIPMENT EFFICIENCIES

The MPCA proposes changing the term "condensible" to "condensable" throughout *Minn. R.* 7011.0070. The change makes spelling of the term consistent with federal regulatory standards. This change will not change the meaning of condensable particulate matter as defined in *Minn. R.* 7005.0100.

Subp. 1a. **Exceptions where control efficiency disallowed.** In subpart 1a, Table A, the control equipment codes 128 in Section 1 and 116 in Section 2 are deleted from the table because they are no longer being used by USEPA. Codes 509 and 510 in Section 2, which were codes

developed by Minnesota, are being deleted because these codes are duplicative of USEPA codes already included in the rule. USEPA's code 086 for water curtains is being added to the table in Section 1 where water curtains are described. USEPA's water curtain code (086) was not available when this rule was created. It is reasonable to update state rules to be consistent with the federal USEPA's control equipment codes.

PART 7011.0080 MONITORING AND RECORD KEEPING FOR LISTED CONTROL EQUIPMENT.

In *Minn. R.* 7011.0080 the control equipment codes 128 in item A and 116 in item B are deleted from the table because they are no longer being used by USEPA. Codes 509 and 510 in item B, which were codes developed by Minnesota, are being deleted because these codes are duplicative of USEPA codes already included in the rule. These changes make the state rules consistent with USEPA's control equipment codes. It is reasonable to be consistent with the federal USEPA's control equipment codes.

INDIRECT HEATING FOSSIL-FUEL-BURNING EQUIPMENT

PART 7011.0510 STANDARDS OF PERFORMANCE FOR EXISTING INDIRECT HEATING EQUIPMENT.

Subpart 1. **Particulate matter and sulfur dioxide.** Subpart 1 is revised to add the term "filterable" to clarify the form of "particulate matter" that is subject to the prohibition against emitting more particulate matter into the atmosphere than allowed by *Minn. R*. 7011.0545.

The emission limits referenced in *Minn. R.* 7011.0550 regulated emissions of filterable particulate matter when the particulate matter limits were adopted. As discussed in this SONAR, Section 6 B for the proposed definition for "filterable particulate matter," this fraction of particles are those that are solid and captured on a filter in the stack sampling procedure, which for this source is the particulate matter measured with reference Method 5. Therefore, it is reasonable to include the term "filterable" to indicate which form of particulate matter is being regulated by the standard.

7011.0515 STANDARDS OF PERFORMANCE FOR NEW INDIRECT HEATING EQUIPMENT.

Subpart 1. **Particulate matter, sulfur dioxide, and nitrogen oxides.** Subpart 1 is revised to add the term "filterable" when defining particulate matter for the standard.

The emission limits referenced in *Minn. R.* 7011.0550 regulated emissions of filterable particulate matter when the particulate matter limits were adopted. As discussed in this SONAR, Section 6 B for the proposed definition for "filterable particulate matter," this fraction of particles are those that are solid and captured on a filter in the stack sampling procedure, which for this source is the particulate matter measured with reference Method 5. Therefore, it is reasonable to include the term "filterable" to indicate which form of particulate matter is being regulated by the standard.

PART 7011.0530 PERFORMANCE TEST METHODS.

Minn. R. 7011.0530 is revised to add "to demonstrate compliance" to help regulated parties understand the distinction in the forms of particulate matter that are being measured and the subset of the data that will be used to determine compliance with the particulate matter limit in *Minn. R.* 7011.0510 and 7011.0515. Elsewhere in this rulemaking, the MPCA clarifies that under *Minn. R.* 7017.2060 filterable, organic and inorganic condensable particulate matter must be measured, even when the regulated pollutant is only filterable. Because the standards of

performance for indirect heating sources regulate "filterable" particulate matter, it is reasonable to clarify which data is used for compliance purposes.

Item C of this part is revised by adding "filterable" to the term "particulate matter" to reflect the MPCA's effort to clarify which form of particulate matter is being regulated. Because there are a number of specific forms that make up particulate matter, it is reasonable to identify which forms are in fact being regulated.

7011.0535 PERFORMANCE TEST PROCEDURES.

Subp. 3. **Method 5.** Subpart 3 is revised to delete the language specifying performance test procedures because these are provided within the procedures of federal reference Method 5. It is unnecessarily duplicative of the reference method to include test procedures in state rule. It is reasonable to delete the state procedures, so that state rules do not create contradictory requirements as federal methods are revised to account for technical improvements and accuracy.

DIRECT HEATING FOSSIL-FUEL-BURNING EQUIPMENT

7011.0610 STANDARDS OF PERFORMANCE FOR FOSSIL-FUEL-BURNING DIRECT HEATING EQUIPMENT.

Subpart 1. **Particulate matter limitations.** The heading of Subpart 1 is revised from "particulate limitations" to "particulate matter limitations" because "particulate" is not a regulated pollutant. It is reasonable to use accurate terms to guide the reader in identifying applicable requirements.

Item A, subitem (1) must be revised to more clearly specify the forms of particulate matter. This item states that the applicable limit for direct heating equipment is the limit in parts 7011.0700 to 7011.7035. These referenced rules are structured to regulate both filterable particulate matter and the organic fraction of condensable particulate matter. As a result, in this standard regulating direct heating equipment, it is reasonable for the MPCA to add the clarifying terms "filterable and organic condensable" to the term "particulate matter" because these fractions of particles are regulated pollutants and have specific measurement methods.

7011.0615 PERFORMANCE TEST METHODS.

Minn. R. 7011.0615 is revised to add "to demonstrate compliance" to help regulated parties understand the distinction in the forms of particulate matter that are being measured and the subset of the data that will be used to determine compliance with the particulate matter limit in *Minn. R.* 7011.0610. Elsewhere in this rulemaking, the MPCA clarifies that under *Minn. R.* 7017.2060 filterable, organic and inorganic condensable particulate matter must be measured. Because the standards of performance for this emission source were intended to regulate "filterable" and "organic condensable" particulate matter, it is reasonable to clarify which data is used for compliance purposes.

Item C of this part is revised by adding "filterable" to the term "particulate matter" to reflect the MPCA's effort to clarify which form of particulate matter is being measured. This item is also being revised to specify that condensable particulate matter is measured with Method 202, the method that replaces the procedures of repealed *Minn. R.* 7011.0725. Since the MPCA does not intend to change the pollutant being regulated, it is reasonable to provide for the continued measurement of the organic form of condensable particulate matter.

7011.0620 PERFORMANCE TEST PROCEDURES.

Subp. 3. **Sampling time for Methods 5 and 202.** Because the standards of performance for direct heating units were established to regulate "filterable" and "organic condensable" particulate matter, subpart 3 is revised to add Method 202 for measurement of the organic portion of condensable particulate matter. Method 202 is replacing the testing procedures being repealed in *Minn. R.* 7011.0725 and with the change to this part the rules will be internally consistent.

Subpart 3 is revised to clarify owners or operators may, prior to testing, request approval from the Commissioner to conduct particulate matter emission tests with a modified test. The existing language stating that the Agency makes this approval is deleted. To remove any potential for confusion it is reasonable to clarify that the approval to modify the particulate matter test is given by the Commissioner.

The rule is also clarified to indicate that the approval should be sought prior to testing. It can be costly, in both dollars and staff time, to prepare for, conduct and review tests; those costs are only increased if there is a need for subsequent follow up if the tests do not meet quality assurance procedures or if they show non-compliance. It is advantageous for both owners and the MPCA if the owner or operator seeks prior approval and explains the nature of the process variables that do not allow for complete test runs before the tests are conducted, thus avoiding the MPCA invalidating tests after they are conducted.

INDUSTRIAL PROCESS EQUIPMENT

PART 7011.0710 STANDARDS OF PERFORMANCE FOR PRE-1969 INDUSTRIAL PROCESS EQUIPMENT.

Existing *Minn. R.* 7011.0705 explains that *Minn. R*. 7011.0700 to 7011.0735 apply to industrial process equipment when no other state or federal standard applies. The standards of performance for industrial process equipment were established to regulate "filterable" and "organic condensable" particulate matter. Regulating the organic condensable fraction of particulate matter is currently accomplished through the performance test procedures in *Minn. R.* 7011.0725 where specific steps are provided for modifying particulate matter tests to measure "organic vapors which condense at standard temperature and pressure." Elsewhere in this rulemaking, *Minn. R.* 7011.0725 is being repealed because these procedures are now obsolete. The MPCA is therefore proposing that emission sources now use federal methods instead to measure organic condensable particulate matter.

Subpart 1. **Prohibited discharge of gases.** Subpart 1, item A is revised to clearly specify the forms of particulate matter. The MPCA has found that the use of the term "particulate matter" in this standard no longer accurately describes the pollutant being regulated. Regulated parties have overlooked the requirements to measure organic vapors. By adding "the sum of filterable and organic condensable" to the term "particulate matter" to specify which fraction of particulate matter is being regulated, it is less likely that the regulation of the condensable organic fraction of emissions will be overlooked.

7011.0715 STANDARDS OF PERFORMANCE FOR POST-1969 INDUSTRIAL PROCESS EQUIPMENT.

Existing *Minn. R.* 7011.0705 explains that *Minn. R*. 7011.0700 to 7011.0735 apply to industrial process equipment when no other state or federal standard applies. The standards of performance for industrial process equipment were established to regulate "filterable" and "organic condensable" particulate matter. Regulating the organic condensable form of particulate matter is currently accomplished through the performance test procedures in

Minn. R. 7011.0725 where specific steps are provided for modifying particulate matter tests to measure "organic vapors which condense at standard temperature and pressure". Elsewhere in this rulemaking, *Minn. R.* 7011.0725 is being repealed because these procedures are now obsolete. The MPCA is proposing that emission sources now use federal methods instead to measure organic condensable particulate matter.

Subpart 1. **Prohibited discharge of gases.** Subpart 1, item A is revised to clearly specify the forms of particulate matter. The use of the term "particulate matter" in this standard no longer accurately describes the pollutant being regulated. Regulated parties have overlooked the requirements to measure organic vapors, intentional or not. Adding "the sum of filterable and organic condensable" to the term "particulate matter" to specify which form of particulate matter is being regulated clarifies that both forms of particulate matter are regulated by the rule. Because there are a number of specific forms that make up particulate matter, it is reasonable to identify which forms are in fact being regulated.

7011.0720 PERFORMANCE TEST METHODS

Minn. R. 7011.0720 is revised to add "to demonstrate compliance" to help regulated parties understand the distinction in the forms of particulate matter that are being measured and the subset of the data that will be used to determine compliance with the particulate matter limit in *Minn. R.* 7011.0710 and 7011.0715. Elsewhere in this rulemaking, the MPCA clarifies that under *Minn. R.* 7017.2060 filterable, organic and inorganic condensable particulate matter must be measured. Because the standards of performance were established for this emission source to regulate "filterable" and "organic condensable" particulate matter, it is reasonable to clarify which data is used for compliance purposes.

Item D of this part is revised by adding "filterable" to the term "particulate matter" to reflect the MPCA's effort to clarify which fraction of particulate matter is being measured. This item is also being revised to specify that condensable particulate matter is measured with Method 202, the method that replaces the procedures of repealed *Minn. R.* 7011.0725. Since the MPCA does not intend to change the pollutant being regulated, it is reasonable to provide for the continued measurement of the organic form of condensable particulate matter.

PART 7011.0725 PERFORMANCE TEST PROCEDURES.

Minn. R. 7011.0725 is proposed for repeal. This part provides instruction on recovery of organic condensable material samples, and was promulgated by the MPCA in 1969. USEPA has promulgated Method 202 found in 40 CFR Part 51 Appendix M, which provides the standard methodology for measuring condensable particulate matter, making *Minn. R.* 7011.0725 obsolete. It is reasonable to repeal rules with outdated requirements.

HOT MIX ASPHALT PLANTS

7011.0905 STANDARDS OF PERFORMANCE FOR EXISTING HOT MIX ASPHALT PLANTS.

The standards of performance for existing hot mix asphalt plants were promulgated to regulate "filterable" and "organic condensable" particulate matter. Regulating the organic condensable fraction of particulate matter is accomplished through the reference to *Minn. R.* 7011.0700 to 7011.0735. The performance test procedures in *Minn. R*. 7011.0725 describe specific steps for modifying particulate matter tests to measure "organic vapors which condense at standard temperature and pressure." Elsewhere in this rulemaking, *Minn. R.* 7011.0725 is being repealed because these procedures are now obsolete. The MPCA is proposing that emission sources now use federal methods instead to measure organic condensable particulate matter.

Minn. R. 7011.0905, item A is revised to clearly specify the forms of particulate matter. The use of the term "particulate matter" in this standard no longer accurately describes the pollutant being regulated. Item A adds "the sum of filterable and organic condensable" to describe the specific forms of particles being regulated in this standard. Because there are a number of specific forms that make up particulate matter, it is reasonable to identify which forms are in fact being regulated.

COAL HANDLING FACILITIES

7011.1105 STANDARDS OF PERFORMANCE FOR CERTAIN COAL HANDLING FACILITIES.

Minn. R. 7011.1105 is revised to add the term "filterable" when identifying the form of particulate matter for the standard.

The emission limit for particulate matter in *Minn. R.* 7011.1105, item F, subitem (2) and item G, subitem (1) regulates emissions of filterable particulate matter. As discussed in this SONAR Section 6 B for the proposed definition for "filterable particulate matter," this is the fraction of particles that are solid and captured on a filter in the stack testing procedure, which for this source is the particulate matter measured with reference "Method 5." The use of the term "particulate matter" no longer accurately describes the pollutant being regulated and the term "filterable" is added to describe the specific form of particles being regulated in this standard. Because there are a number of specific forms that make up particulate matter, it is reasonable to identify which forms are in fact being regulated.

7011.1115 STANDARDS OF PERFORMANCE FOR PNEUMATIC COAL-CLEANING EQUIPMENT AND THERMAL DRYERS AT ANY COAL HANDLING FACILITY.

Subpart 1. **Pneumatic coal-cleaning equipment.** Subpart 1, item A is revised to add the term "filterable" when defining particulate matter for the standard.

The emission limit for particulate matter in *Minn. R.* 7011.1115 regulates emissions of filterable particulate matter. As discussed in this SONAR Section 6 B for the proposed definition for "filterable particulate matter," this fraction of particles are those that are solid and captured on a filter in the stack sampling procedure, which for this source is the particulate matter measured with reference Method 5. The use of the term "particulate matter" no longer accurately describes the pollutant being regulated and the term "filterable" is added to describe the specific form of particles being regulated in this standard. Because there a number of specific forms that make up particulate matter, it is reasonable to identify which forms are in fact being regulated.

Subp. 2. **Thermal dryers.** Subpart 2, item A is also revised to add the term "filterable" when defining particulate matter for the standard. See discussion above in subpart 1.

PART 7011.1130 PERFORMANCE TEST METHOD.

In *Minn. R.* 7011.1130 the reference to the Code of Federal Regulations is deleted because this form of referencing federal test methods is outdated. The rule is revised to reflect the regulatory language used in other rules, which also accommodates allowing alternative test methods if approved by the Commissioner. It is reasonable to update the rules to the current form of referencing federal test methods and to allow for use of alternative test methods that was not previously provided.

Item B of this part is revised by adding "filterable" to the term "particulate matter" to reflect the MPCA's effort to clarify which form of particulate matter is being regulated. Because there are a

number of specific forms that make up particulate matter, it is reasonable to identify which forms are in fact being regulated.

PART 7011.1135 PERFORMANCE TEST PROCEDURES.

Subp. 2. **Special procedures.** Subpart 2 is revised to include the requirement to restrict the conditions under which a facility may modify a particulate matter test. The revision requires a description of the site specific conditions that necessitate a modification to the test. It is advantageous for owners and the MPCA if, before the tests are conducted, the owner or operator explains to the MPCA the nature of the process variable that does not allow for complete test runs. Prior approval avoids the MPCA invalidating modified tests after they are conducted.

This subpart is also revised to delete requirements that are already specified by the reference method for filterable particulate matter. It is reasonable to delete duplicate requirements so that if federal methods are revised in the future, conflicts do not develop with state rules.

WASTE COMBUSTORS

PART 7011.1227 TABLE 1.

Minn. R. 7011.1227 Table 1 contains emission limits for municipal waste combustors operating in Minnesota for Class A and Class C waste combustors. Class A waste combustors are defined in *Minn. R.* 7011.1201, subpart 9, which conform to the definition of designated facilities in federal regulations at 40 CFR Part 60 Subpart Cb "Emission Guidelines and Compliance Times for Large Municipal Waste Combustors That are Constructed on or Before September 20, 1994" (40 CFR 60.32b)."

Under the CAA, USEPA is required to review and revise as necessary the standards of performance for solid waste incinerators once every five years. (CAA sec 129(a)(5)). USEPA's most recent review of standards was in 2007, and resulted in adjustments to the limits for a number of pollutants emitted from Class A units. For the MPCA to retain its delegation authority, the emission limits for Class A units must be revised to reflect the federal emission guidelines. As a result, the emission limits for filterable particulate matter, mercury, cadmium and lead are proposed for revision in this rulemaking.

Additionally, the MPCA is deleting from Table 1 emission limits for both Class C and Class A facilities that are no longer applicable. Specifically, short- and long-term mercury emission limits for modular units are deleted from the rule because federal standards for Class C municipal waste combustors are now in effect (40 CFR Part 62 Subp. JJJ). With the federal rules in effect, all waste combustors in Minnesota will now meet the mercury control requirements in state rules because they will be required by federal law to use wet or dry scrubbers to meet acid gas control requirements. It is reasonable to remove obsolete provisions from rules.

In Table 1 language is added to revise the term used for identifying particulate matter being regulated in the emission standard. Because this rulemaking is adopting a definition for "filterable particulate matter," the term "front-half" is deleted because it is not a defined term. It is reasonable to provide specificity as to the form of particulate matter being regulated in the standard.

PART 7011.1229 TABLE 2, PART 7011.1231 TABLE 3, PART 7011.1233 TABLE 4

In Tables 2, 3, and 4 language is added to revise the term used for identifying particulate matter being regulated in the emission standard. Because this rulemaking is adopting a definition for

"filterable particulate matter," the term "front-half" is deleted because it is not a defined term and it is no longer needed. It is reasonable to provide specificity as to the form of particulate matter being regulated in the standard.

PART 7011.1231 TABLE 3.

Part 7011.1231 contains emission limits for a subset of waste combustors. Because the MPCA is repealing the definition of Class D waste combustors, the emission standards for this class of waste combustor are no longer applicable. It is reasonable to delete unnecessary rule language to promote overall rule clarity.

PART 7011.1233 TABLE 4.

Part 7011.1233 contains emission limits for a subset of waste combustors. Hospital waste incinerators are regulated by federal rules that have been incorporated into state rules at *Minn. R.* 7011.1370, or federal rules at 40 CFR Part 62 Subpart HHH (existing hospital waste incinerators). Because there is one operating hospital incinerator in Minnesota, and any new hospital waste incinerator must comply with federal standards that are more stringent that these state standards, it is reasonable to delete these outdated state standards from state rule.

PART 7011.1265 REQUIRED PERFORMANCE TESTS, METHODS, AND PROCEDURES.

Subp. 2. **Performance test methods for criteria pollutants.** Subpart 2, item A is revised to replace references to *Minn. R.* 7011.0725 proposed elsewhere in this rule for repeal.

This subpart is revised by replacing the references to *Minn. R.* 7011.0725 with Method 202. The term "front half" is replaced with "filterable" and the term "filterable" is defined in this rulemaking.

Since Tables 1, 2, 3, and 4 are revised to address the sum of filterable and organic condensables, the MPCA proposes to refer to the procedures for completing this calculation in proposed part 7017.2060, subpart 3, item B.

PART 7011.1280 OPERATOR CERTIFICATION.

USEPA rules require municipal waste combustor operators to obtain certification through the American Society of Mechanical Engineers (ASME) or an equivalent state program. States are allowed to develop their own program as an alternative to USEPA's requirements for operator training and certification. The MPCA developed its own operator training and certification program, codified in *Minn. R.* 7011.1280 to 7011.1282. The program was approved by USEPA on August 12, 1998, as a program equivalent to that required in federal regulation 40 CFR 60.36b. (63 FR 43060).

Minnesota's waste combustor operator training program was developed through initial funding by the Minnesota Legislature by directing funding to the Minnesota Job Skills Partnership. This grant program partners Minnesota businesses with an accredited Minnesota educational institution. Grants are awarded to the educational institution to develop and deliver training specific to the business needs. Training was developed by Red Wing Technical College in partnership with the MPCA, NSP (now Xcel Energy), United Power Association (now Great River Energy), Minnesota county solid waste officers and waste combustor operators, and has continued to be offered at Red Wing (now Minnesota State College Southeast Technical—Red Wing Campus). Because the cost of ASME certification can be significant, and is borne by the counties that own and operate the waste combustors, it is important for the MPCA and these local units of government that there continues to be a convenient, less expensive alternative to

ASME certification. This partnership has grown into a mature program and continues to be very successful at ensuring that municipal waste combustor operators have expert knowledge of their responsibilities to meet state and federal environmental rules and permit requirements.

From time to time, the MPCA via the Commissioner will delegate responsibilities to others through agreements or grants, depending on staffing resources or expertise. This happens through the Commissioner's authorities of *Minn. Stat*. § 116.02, subd. 2.

> *Minn. Stat. § 116.03, subd. 2.*
> ***Organization of office.*** *The Commissioner shall organize the agency and employ such assistants and other officers, employees and agents as the Commissioner may deem necessary to discharge the functions of the Commissioner's office, define the duties of such officers, employees and agents, and delegate to them any of the Commissioner's powers, duties, and responsibilities, subject to the Commissioner's control and under such conditions as the Commissioner may prescribe. The Commissioner may also contract with, and enter into grant agreements with, persons, firms, corporations, the federal government and any agency or instrumentality thereof, the Water Research Center of the University of Minnesota or any other instrumentality of such university, for doing any of the work of the Commissioner's office. None of the provisions of chapter 16C, relating to bids, shall apply to such contracts.*

Because the MPCA is interested in delegating some of the training and certification program for waste combustor operators, revisions to the rules governing waste combustor training and certification are needed. It is reasonable that the MPCA have the latitude to delegate training and certification duties to others outside the Agency where others have the capability to take on the tasks.

Subp. 5. **Examinations.** This subpart requires that final examinations administered during training be written, closed book exams, and that the Commissioner approve the written examinations. To ensure program integrity, in particular when the certification program is administered by the same educational institution that is offering waste combustor operator training, the Commissioner will retain the authority to approve examination questions.

Subp. 7. **Renewal.** This subpart is revised to clarify the expectations and requirements for renewing waste combustor operator certifications.

Item A is revised in a number of ways. The first revision is to address timely submittal of renewal applications. Item A is revised to indicate that the application is due no later than 30 days prior to the expiration of the certificate; existing language requires the submittal precisely on the 30th day prior to the expiration date of the certificate. The MPCA intends that the renewal application could come in at any time before the 30 days before expiration and is taking this opportunity to clarify this language.

Second, item A is revised to clarify the renewal requirements. Since the Commissioner cannot reissue a certificate unless an application is submitted, the MPCA proposes to delete the wordiness of the existing language and indicate that the renewal application must contain the stated evidence of training.

Third, revisions are needed to adjust the types of training that can be used to satisfy the requirements of earned continuing training credits. The MPCA offers few training programs of

its own that are relevant to waste combustor operators, and therefore is proposing to delete the automatic approval of MPCA-sponsored training as qualified continued training credit. Additionally, the MPCA proposes to repeal subpart 8 in its entirety and the reference to subpart 8 in this item be deleted. In place of these two conditions, the MPCA proposes that the rule state the specific criteria of training that qualifies for earned credit. Because an operator's certification is focused on skills related to maintaining compliance with environmental regulations, it is reasonable that training in the operation, maintenance and environmental compliance of a waste combustor qualify for earned credit.

Item B is revised to specify that the procedures of existing subpart 3 are to be followed when individuals who did not apply for timely renewal of their certificate do not have sufficient training that qualifies for earned credit when renewing a certificate. With this revision the applicant must retake a certification exam as required by the procedures in subpart 3. Training credit hours were established in rules to keep an operator's knowledge of operations and environmental regulations current; therefore, it is reasonable to require recertification for applicants who do not have sufficient training to ensure current knowledge.

Item C is revised to properly state that the Commissioner will reissue a certificate. Because the individual will have passed the exam, thereby demonstrating proper knowledge of waste combustor operations, it is reasonable that no further consideration by the Commissioner of an individual's qualifications is needed.

Subp 8. **List of Courses.** Subpart 8 is proposed for repeal. The Commissioner believes that it is no longer necessary to maintain a list of training courses that qualify for earned credit under the provisions of the operators' certification program. When first adopted, there was little training available specific to waste combustor operations, and owners and operators had to identify relevant content within other training courses (safety training, landfill operation, operation and maintenance training), while working on developing training that addressed compliance with environmental standards. The waste combustor operator certification program is a mature program, having been in operation since the rule was adopted in 1994 (18 SR 2584). Since that time, sufficient training capacity directly related to waste combustor operations has developed in the waste combustor industry such that the Commissioner is no longer asked to prepare a list of approved courses. Minnesota's technical colleges, the waste combustor industry in its sponsored courses, and air pollution control equipment and monitoring suppliers and vendors all have training capacity. It is reasonable to repeal rules when they have no further need or purpose.

Subp. 11. **Record keeping.** Subpart 11 is revised by deleting "approved by the MPCA under subpart 8." This clarification is needed for two reasons: the existing language requires the MPCA to approve training, which was never intended; and second, subpart 8 is being repealed, so reference to subpart 8 is no longer appropriate. It is reasonable to clarify these rule requirements to ensure that waste combustor owners, operators, and certified individuals understand their responsibilities in maintaining training records.

7011.1282 CERTIFIED MUNICIPAL WASTE COMBUSTOR EXAMINER CERTIFICATE.

Subp. 2. **Certification process for a certified municipal waste combustor examiner.** Subpart 2 is revised by deleting text in item A to eliminate wordiness and streamline the rule. No duties or responsibilities of the Commissioner or the applicant change with this revision. It is reasonable to clarify rule language to reduce potential confusion and save regulated party and MPCA staff time.

Subp. 3. **Examination for certified municipal waste combustor examiner.** The MPCA proposes to revise the qualifications of the members of the board of examiners for an individual interested in being certified as a municipal waste combustor examiner. The municipal waste combustor examiner is responsible for overseeing the training and onsite certification of fully certified operators, a class of certified individuals required by federal regulations.

In place of the MPCA member, the rule is revised so the third member is a person capable of discharging the functions of the board of examiners, under conditions specified by the Commissioner. After adopting this rule revision, as the Commissioner carries out his duties under *Minn. Stat*. § 116.03, subd. 2, the Commissioner can then identify appropriate candidates for board members, which could include MPCA staff persons, but may also include other qualified individuals.

INCINERATORS

PART 7011.1305 STANDARDS OF PERFORMANCE FOR EXISTING SEWAGE SLUDGE INCINERATORS.

Minn. R. 7011.1305 is revised to add the term "filter for the standard.

The emission limit for particulate matter in *Minn. R.* 7011.1305, items A, B, and C regulates emissions of filterable particulate matter. As discussed in this SONAR, Section 6 B for the proposed definition for "filterable particulate matter," this fraction of particles are those that are solid and captured on a filter in the stack sampling procedure, which for this source is the particulate matter measured with reference Method 5. The MPCA has found that that the use of the term "particulate matter" no longer accurately describes the pollutant being regulated and is adding the term "filterable" to describe the specific form of particles being regulated in this standard. Because there are a number of different regulated pollutants addressed in "particulate matter," it is reasonable to identify which of those pollutants is in fact being regulated.

PART 7011.1310 STANDARDS OF PERFORMANCE FOR NEW SEWAGE SLUDGE INCINERATORS.

Minn. R. 7011.1310 is revised to add the term "filterable" when defining particulate matter for the standard.

The emission limit for particulate matter in *Minn. R.* 7011.1310, item A regulates emissions of filterable particulate matter. As discussed in this SONAR, Section 6 B for the proposed definition for "filterable particulate matter," this is the fraction of particles that are solid and captured on a filter in the stack sampling procedure, which for this source is the particulate matter measured with reference Method 5. The MPCA has found that the use of the term "particulate matter" no longer accurately describes the pollutant being regulated, and is adding the term "filterable" to describe the specific form of particles being regulated in this standard. Because there are a number of specific forms that make up particulate matter, it is reasonable to identify which forms are in fact being regulated.

PART 7011.1320 PERFORMANCE TEST METHODS.

Minn. R. 7011.1320 is revised to add "to demonstrate compliance" to help regulated parties understand the distinction in the forms of particulate matter that are being measured and the subset of the data that will be used to determine compliance with the particulate matter limit in *Minn. R.* 7011.1305 and 7011.1310. Elsewhere in this rulemaking, the MPCA clarifies that under

Minn. R. 7017.2060 filterable, organic and inorganic condensable particulate must be measured. It is reasonable to clarify which data is used for compliance purposes.

PETROLEUM REFINERIES

Minn. R. 7011.1400 to 7011.1435 contains Minnesota's standards of performance controlling air emissions from petroleum refineries. The standards of performance must be revised to address USEPA's determination that the existing exemption of releases of process gas from the standards of performance during startup, shutdown and malfunctions is impermissible, and to clarify the regulatory requirements.

7011.1400 DEFINITIONS.

Subp. 11. **Process gas.** Subpart 11 is revised to delete the term "process upset gas" because the use of the term is being repealed elsewhere in this rulemaking. Because the exemption for process upset gas is being repealed, the term "process upset gas" is deleted in this definition.

Subp. 12. **Process upset gas.** Subpart 12 is proposed for repeal. The term "process upset gas" is only used in the definition of "process gas" at subpart 11, which is being revised, and in *Minn. R.* 7011.1415, exemptions relating to the combustion of process upset gas. Because *Minn. R.* 7011.1415 is proposed for repeal, the term "process upset gas" is no longer needed and the definition is repealed.

7011.1405 STANDARDS OF PERFORMANCE FOR EXISTING AFFECTED FACTILTIES AT PETROLEUM REFINERIES.

Subpart 1. **Fluid catalytic cracking unit catalyst regenerator and incinerator-waste heat boiler.** Subpart 1 is first revised to better indicate that the owner or operator is responsible for preventing discharges of gases from an existing fluid catalytic cracking unit catalyst regenerator or its incinerator-waste heat boiler that does not meet the particulate matter limit. Next, as discussed in this SONAR, Section 5, reasonableness of the rule amendments as a whole, standards of performance are being revised to specify the nature of the particulate matter being regulated in the emission limit. Subpart 1, item A, which establishes the particulate matter limit, is revised to clarify that in this instance the form of particulate matter being regulated is "filterable." It is reasonable to make this clarification because this rulemaking is updating particulate matter definitions and measurement requirements.

Subp. 3. **Indirect heating equipment.** This subpart is revised to include a provision clarifying the applicability of standards to existing indirect heating equipment. Existing *Minn. R.* 7011.1415, which is proposed for repeal, describes exemptions that apply to indirect heating equipment. The MPCA still intends that the state standards of performance in *Minn. R.* 7011.0500 to 7011.0530 for indirect heating equipment do not apply to existing indirect heating equipment at a petroleum refinery. The standards that are found in this subpart 3 apply. It is reasonable to place the exemption in this subpart, because the exemption logically relates to the conditions in this existing rule where a reader would expect to find all conditions related to indirect heating equipment.

Second, as discussed in this SONAR, Section 5, standards of performance are being revised to specify the nature of the particulate matter being regulated in the emission limit. Subpart 3, item A, which establishes the particulate matter limit, is revised to clarify that the limit applies to filterable particulate matter. It is reasonable to make this clarification because this rulemaking is updating particulate matter measurement requirements and it is important to make it clear the form of particulate matter to which the limit applies.

7011.1410 STANDARDS OF PERFORMANCE FOR NEW AFFECTED FACTILTIES AT PETROLEUM REFINERIES.

Minn. R. 7011.1410 contains the standards of performance for *new* affected facilities at petroleum refineries. Subparts 1 and 3 are revised to make the same changes to these rules for new affected facilities as are being proposed for *Minn. R.* 7011.1405, the standard of performance for *existing* affected facilities at petroleum refineries.

PART 7011.1415 EXEMPTIONS.

Minn. R. 7011.1415 is proposed for repeal because this part contains provisions that are contrary to the requirements of the CAA. The standards of performance for petroleum refineries are a part of Minnesota's USEPA-approved State Implementation Plan (or SIP). The SIP is the clean air plan required by the CAA, Section 110, and is the vehicle for states to demonstrate compliance with the NAAQS. The SIP contains state rules and statutes, as well as site- and area-specific plans, permits and orders that ensure that Minnesota will maintain its attainment with the NAAQS as required in the CAA.

The Sierra Club petitioned USEPA to remove conditions in state SIPs that allowed excess emissions during periods of startup, shutdown, and malfunction to be exempt from compliance with standards of performance. USEPA determined that inclusion of automatic exemptions from SIP requirements that are intended to set continuous emission limitations is a substantial inadequacy and that the specific provision is impermissible. USEPA is proposing to issue a "SIP call" to states that have such provisions within the state's SIP, requiring removal of such conditions and updating of the SIP (78 FR 12460). The proposed repeal of *Minn. R.* 7011.1415 will help fulfill this requirement and make it possible for Minnesota to continue to operate the federal air pollution control program with regard to emissions from petroleum refineries.

In *Minn. R.* 7011.1400, "process upset gas" is defined as "any gas generated by a petroleum refinery process unit as a result of start-up, shutdown or malfunction." *Minn. R.* 7011.1415 provides an automatic exemption for flares burning process upset gas when the flares are caused by startup, shutdown, or malfunction. USEPA now considers this exemption from emission limitations a violation of the CAA requirements concerning excess emissions, and that such an exemption interferes with CAA enforcement by USEPA and citizens. Under the CAA section 110(a)(2)(A), SIPs must contain emission limitations, and as defined by the CAA section 302(k), the limitations must be continuous. Thus, any excess emissions above the level of the applicable emission limitation must be considered a violation of the limitation. Including this exemption in the state SIP effectively eliminates USEPA and citizens' ability to enforce against those violations. The rule is thus a substantial inadequacy and renders this specific SIP provision impermissible.

To continue administering the federal air pollution control program in the state, it is reasonable to repeal *Minn. R.* 7011.1415 to remove the exemption from emission limits for flares that are operated during startup, shutdown, and malfunctions.

7011.1425 PERFORMANCE TEST METHODS.

As described in this SONAR, Section 5, the MPCA is proposing to revise these rules to expand and clarify the definition and measurement of particulate matter. *Minn. R.* 7011.1425 contains the requirement and procedures to be used when conducting particulate matter tests at petroleum refineries. A petroleum refinery operator will conduct tests for a number of purposes in addition to compliance.

Subpart 1. **In general.** Subpart 1 is revised to clarify that the performance test methods in this part must be used when conducting a test to determine compliance with the standards. It is reasonable to revise this subpart to clarify that a petroleum refinery must use the procedures in this rule when conducting compliance tests.

Subp. 2. **Gases released to atmosphere from fluid catalytic cracking unit catalyst regenerator.** Subpart 2, item C is revised to add the term "filterable" to correspond with the stationary source standard. The addition provides consistency between the form of particulate matter defined in the stationary source standard and the performance test method used for purposes of demonstrating compliance.

Subp. 5. **Gases to atmosphere from combustion.** Subpart 5, item C is revised to add the term "filterable" to correspond with the stationary source standard. The addition provides consistency between the form of particulate matter defined in the stationary source standard and the performance test method used for purposes of demonstrating compliance.

SECONDARY BRASS AND BRONZE INGOT PRODUCTION PLANTS

PART 7011.1905 STANDARDS OF PERFORMANCE FOR SECONDARY BRASS AND BRONZE INGOT PRODUCTION PLANTS.

Minn. R. 7011.1905 is revised to add the term "filterable" when defining particulate matter for the standard.

The emission limit for particulate matter in *Minn. R.* 7011.1905, item A regulates emissions of filterable particulate matter. As discussed in this SONAR, Section 6 B for the proposed definition for "filterable particulate matter," this is the fraction of particles that are solid and captured on a filter in the stack sampling procedure, which for this source is the particulate matter measured with reference Method 5. The MPCA has found that the use of the term "particulate matter" no longer accurately describes the pollutant being regulated and is adding the term "filterable" to describe the specific form of particles being regulated in this standard. Because there are a number of specific forms that make up particulate matter, it is reasonable to identify which forms are in fact being regulated.

7011.1910 PERFORMANCE TEST METHODS.

Minn. R. 7011.1910 is revised to add "to demonstrate compliance" to help regulated parties understand the distinction in the forms of particulate matter that are being measured and the subset of the data that will be used to determine compliance with the particulate matter limit in *Minn. R.* 7011.1905. Elsewhere in this rulemaking, the MPCA clarifies that under *Minn. R.* 7017.2060 filterable, organic and inorganic condensable particulate matter must be measured. It is reasonable to clarify which data is used for compliance purposes.

Item D of this part is revised by adding "filterable" to the term "particulate matter" to reflect the MPCA's effort to clarify which fraction of particulate matter is being regulated. Because there are a number of specific forms that make up particulate matter, it is reasonable to identify which forms are in fact being measured.

IRON AND STEEL PLANTS

PART 7011.2005 STANDARDS OF PERFORMANCE FOR IRON AND STEEL PLANTS.

Minn. R. 7011.2005 is revised to add the term "filterable" when defining particulate matter for the standard.

The emission limit for particulate matter in *Minn. R.* 7011.2005 regulates emissions of filterable particulate matter. As discussed in this SONAR, Section 6 B for the proposed definition for "filterable particulate matter," this is the fraction of particles that are solid and captured on a filter in the stack sampling procedure, which for this source is the particulate matter measured with reference Method 5. The MPCA has found that the use of the term "particulate matter" no longer accurately describes the pollutant being regulated and is adding the term "filterable" to describe the specific form of particles being regulated in this standard. Because there are a number of specific forms that make up particulate matter, it is reasonable to identify which forms are in fact being regulated.

7011.2010 PERFORMANCE TEST METHODS.

Minn. R. 7011.2010 is revised to add "to demonstrate compliance" to help regulated parties understand the distinction in the forms of particulate matter that are being measured and the subset of the data that will be used to determine compliance with the particulate matter limit in *Minn. R.* 7011.2005. Elsewhere in this rulemaking, the MPCA clarifies that under *Minn. R.* 7017.2060 filterable, organic and inorganic condensable particulate matter must be measured. It is reasonable to clarify which data is used for compliance purposes.

Item D of this part is revised by adding "filterable" to the term "particulate matter" to reflect the MPCA's effort to clarify which form of particulate matter is being regulated. Because there are a number of specific forms that make up particulate matter, it is reasonable to identify which forms are in fact being measured.

STATIONARY INTERNAL COMBUSTION ENGINES

PART 7011.2300 STANDARDS OF PERFORMANCE FOR STATIONARY INTERNAL COMBUSTION ENGINES.

Subp. 2. **Sulfur dioxide.** This subpart is revised to address the lower sulfur dioxide (SO_2) emissions limit for internal combustion engines. The existing subpart 2 requirements are in item A. A new item B establishes the lower the sulfur dioxide emissions limit for internal combustion engines to 0.0015 pounds per million Btu effective January 31, 2018, as discussed below.

The MPCA proposes to lower the sulfur dioxide emissions limit for internal combustion engines to 0.0015 pounds per million Btu effective January 31, 2018. This change is proposed primarily in response to the new, more stringent one-hour sulfur dioxide NAAQS recently promulgated by USEPA, which require that facilities demonstrate attainment of the standard when conducting ambient air impact dispersion modeling. The change aligns the rule with current fuel sulfur content, availability, and use practices.

The current fuel sulfur limit was established in the 1970s and represented the fuel availability and standard of practice at that time. Changing the sulfur content limit will align the rule with common fuel-use practices today. Most stationary sources in Minnesota have already begun using ultra-low sulfur fuel and many more-recent permits require its use. Ultra-low sulfur fuel has been readily available for several years, because USEPA requires its use in on-road diesel vehicles. Of facilities that report to the MPCA's emissions inventory, less than 5% reported using higher-sulfur fuels in 2012. The MPCA conducted interviews with facilities that reported using higher-sulfur fuels in 2012 and many of them indicated that they have since converted to using ultra-low sulfur diesel because it is cleaner to handle in facility equipment and helps the facility to maintain compliance with the NAAQS. Through interviews with facilities and refineries, the

MPCA has also come to understand that higher sulfur fuels now have limited availability in Minnesota.

The new, more stringent one-hour sulfur dioxide NAAQS require that states model facilities' air emissions to demonstrate compliance with the standard. To comply with these standards, modeling must use the highest-emitting fuel allowed at a given facility. The most straight-forward way of reducing sulfur dioxide emissions is to require a reduction in sulfur content in the fuels that are allowed for use at emitting facilities. Requiring the use of ultra-low sulfur fuel in rule will eliminate the need to include this standard in individual permits. It provides an enforceable control which can be included in Minnesota's sulfur dioxide SIP, without requiring individual permitting actions for multiple smaller sources. The new NAAQS only require modeling for facilities that, when burning the highest-emitting fuel that they are allowed to burn (called the "potential to emit"), emit more than a threshold amount of sulfur dioxide. By limiting the sulfur content of allowable fuels, this rule would reduce the number of facilities over this threshold and therefore reduce the number of facilities that are required to model to determine compliance with the NAAQS.

It is reasonable to establish a limit of 0.0015 pounds per million Btu actual heat input because it is the maximum emission rate that can result from burning ultralow sulfur diesel, the most widely available liquid fuel.

For facilities that wish to maintain their fuel flexibility, the rule change allows individual permits to allow alternate fuels at facilities if they can demonstrate compliance with the sulfur dioxide NAAQS. Since the requirement for ultra-low sulfur fuel is based on a need to conform to the NAAQS, it is reasonable to allow facilities to use alternative fuels if they can demonstrate compliance with the NAAQS while using the alternate fuel. The MPCA recognizes that some facilities in the state still use higher-sulfur fuels as a backup fuel source. These facilities will be able to continue to use these higher-sulfur fuels if they obtain a permit to do so. The role of the individual permit is to allow site-specific conditions, such as alternative fuel types, for individual facilities.

The MPCA proposes to require compliance with this rule change by January 31, 2018. It is necessary to provide time for facilities to come into compliance with this new rule so that they can use or reprocess any higher-sulfur fuels that they may have in storage and obtain permit changes, perform modeling, or change out equipment, if necessary.

STATIONARY GAS TURBINES

7011.2375 INCORPORATION BY REFERENCE OF NEW SOURCE PERFORMANCE STANDARD FOR STATIONARY COMBUSTION TURBINES.

This new part 7011.2375 incorporates by reference the federal NSPS 40 CFR Part 60, subpart KKKK for stationary combustion turbines. The current delegation agreement between USEPA and the State of Minnesota requires that for an NSPS standard to be delegated to the state for state implementation and enforcement, the standard must first have the force of law in Minnesota (Attachment 1). The MPCA adopts this NSPS by reference to comply with this condition of the delegation agreement.

This rule is needed to fulfill the MPCA's delegation commitment and to avoid confusion regarding whether the USEPA or MPCA will be responsible for the implementation and enforcement of the standard. Once the MPCA has established primacy in enforcement of a standard, facilities that are subject to the standard need only communicate and report to the

MPCA when operating under the standard. The rules will apply to facilities whether or not the MPCA incorporates the standard into state rule. If the MPCA did not complete the delegation process, affected facilities would encounter much more duplication of submittals to the USEPA and MPCA, leading to uncertainty regarding who makes compliance decisions. It is reasonable to adopt the standard in order to avoid duplicative reporting requirements and confusion regarding enforcement of rules, and to inform regulated parties about the delegated status of the program to the MPCA.

7011.2450 STANDARDS OF PERFORMANCE FOR NEW KRAFT PULP MILLS.

Minn. R. 7011.2450 is revised to incorporate by reference new federal standards controlling emissions from kraft pulp mills constructed after May 23, 2013. The existing provisions of this part are in item A and the new standard in item B.

This rule is needed to fulfill the MPCA's delegation commitment and to avoid confusion regarding whether the USEPA or MPCA will be responsible for the implementation and enforcement of the standard. Once the MPCA has established primacy in enforcement of a standard, facilities that are subject to the standard need only communicate and report to the MPCA when operating under the standard. The rules will apply to facilities whether or not the MPCA incorporates the standard into state rule. If the MPCA did not complete the delegation process, affected facilities would encounter much more duplication of submittals to the USEPA and MPCA, leading to uncertainty regarding who makes compliance decisions. It is reasonable to adopt the standard in order to avoid duplicative reporting requirements and confusion regarding enforcement of rules, and to inform regulated parties about the delegated status of the program to the MPCA.

EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

7011.7185 GASOLINE DISPENSING FACILITIES.

This new part 7011.7185 incorporates by reference the federal NESHAP 40 CFR Part 63, subpart CCCCCC for gasoline dispensing facilities. USEPA delegated the NESHAP program to the MPCA in a Federal Register notice dated July 23, 2002 (67 FR 48036). The notice described the procedure for delegation of both already promulgated standards and future standards in that program. The process includes a commitment by the MPCA to incorporate the standards by reference into state rules. Rulemaking completes the delegation process by giving the MPCA implementation and enforcement authority for the affected standards. Although the MPCA's NESHAP delegation covers only those sources considered to be "major sources" under Part 70, the MPCA has decided to incorporate by reference into state rule all of the NESHAP standards, including standards for "area sources" which are not automatically subject to Part 70. This will be beneficial if the MPCA requests further delegation of the area source standards in the future or if USEPA changes the exemption from Part 70 status of any of the area source categories.

The proposed rule incorporates by reference the NESHAP for Gasoline Dispensing Facilities, as amended, and identifies the parts of the federal rule that are not delegated to the MPCA but are retained by the USEPA administrator. This rule is needed to fulfill the MPCA's delegation commitment and to avoid confusion regarding whether the USEPA or MPCA will be enforcing standards for these sources. Once the MPCA has established primacy in enforcement of a standard, facilities that are subject to the standard need only communicate and report to the MPCA when operating under the standard (with a few exceptions, e.g., key decision making authority that is retained by USEPA and Title V compliance certifications that go to both the MPCA and USEPA). The rules will apply to facilities whether or not the MPCA incorporates the

standard into state rule. If the MPCA does not complete the delegation process, affected facilities will encounter much more duplication of submittals to the USEPA and MPCA, leading to uncertainty regarding who makes compliance decisions. It is reasonable to adopt the standard in order to avoid duplicative reporting requirements and confusion regarding enforcement of the rules.

PART 7011.7630 PORTLAND CEMENT KILNS.

This new part 7011.7630 incorporates by reference the federal NESHAP 40 CFR Part 60, subpart LLL for portland cement kilns. USEPA delegated the NESHAP program as it regulates major hazardous air pollutant sources to the MPCA in a Federal Register notice dated July 23, 2002 (67 FR 48036). The notice described the procedure for delegation of federal standards such as this one. The process includes a commitment by the MPCA to incorporate the standards by reference into state rules. Additionally, the USEPA and MPCA executed a memorandum of agreement to establish procedures to facilitate federal delegation of authority to implement and enforce the major source NESHAPs. The implementation of major source NESHAPs was automatically delegated to the MPCA under the memorandum of agreement. Delegation of enforcement requires that the major source NESHAP be incorporated into state law. Rulemaking completes the delegation process by giving the MPCA implementation and enforcement authority for this standard.

Part 7011.7630 also identifies the portions of the federal standards that are not delegated to states. The USEPA Administrator retains authority to make all decisions identified in 40 CFR Part 63.1358(c). It is necessary to include this reference in the rule so that the reader understands the limits of the MPCA's authority to regulate facilities under federal rule.

This rule is needed in order to fulfill the MPCA's delegation commitment and to avoid confusion regarding whether the USEPA or MPCA will be responsible for the implementation and enforcement of the standard. Once the MPCA has established primacy in enforcement of a standard, facilities that are subject to the standard need only communicate and report to the MPCA when operating under the standard. The rules will apply to facilities whether or not the MPCA incorporates the standard into state rule. As a result, if the MPCA does not complete the delegation process, affected facilities will encounter much more duplication of submittals to the USEPA and MPCA, leading to uncertainty regarding who makes compliance decisions. It is reasonable to incorporate these standards by reference in order to avoid duplicative reporting requirements and confusion regarding enforcement of rules.

G. CHAPTER 7017 MONITORING AND TESTING REQUIREMENTS

CONTINUOUS MONITORING SYSTEMS

PART 7017.1002 DEFINITIONS.

Subp. 7a. **Grace period.** A new subpart 7a adds the term "grace period." This term is used to describe the additional time that the MPCA allows a regulated party to complete a quality control audit after the period in which the audit was due expires. The definition uses the concept established in 40 CFR Part 75, Appendix B, sections 2.2.4 and 2.3.1 to describe how a "grace period" is calculated and applied. Proposed part 7017.1170 offers grace periods to perform cylinder gas and relative accuracy test audits before data collected prior to their due date is no longer valid. Because the MPCA is offering a grace period, it is reasonable to define

the term. It is also reasonable for state rules to mirror federal regulations when appropriate. Using the same term ensures common understanding and eases compliance.

Subp. 11a. **Quality assurance operating quarter.** A new subpart 11a adds the term "quality assurance operating quarter" or "QA operating quarter." This term is used in proposed part 7017.1170 where it is used to tell the operator when a continuous monitor must be operated. The definition is the same as that found in 40 CFR Part 72.2 and used in 40 CFR Part 75. Because the MPCA uses the term in the rule, it is reasonable to define it. It is also reasonable for state rules to mirror federal regulations when appropriate. Using the same term ensures common understanding and eases compliance.

Subp. 13. **Stack operating hour.** A new subpart 13 adds the term "stack operating hour." This term is used in part 7017.1002 to refer to the specific time frames related to "grace period." The definition is the same as that found in 40 CFR Part 72.2 and used in 40 CFR Part 75. Because the MPCA uses the term in the rule, it is reasonable to define it. It is also reasonable for state rules to mirror federal regulations when appropriate. Using the same term ensures common understanding and eases compliance.

Subp. 14. **Unit operating hour.** A new subpart 14 adds the term "unit operating hour." This term is used in part 7017.1002 to refer to the specific time frames related to "grace period" and "quality assurance operating quarter." The definition is the same as that found in 40 CFR Part 72.2 and used in 40 CFR Part 75. Because the MPCA uses the term in the rule, it is reasonable to define it. It is also reasonable for state rules to mirror federal regulations when appropriate. Using the same term ensures common understanding and eases compliance.

PART 7017.1080 CERTIFICATION TEST REPORT REQUIREMENTS.

Subpart 1. **Report required.** Subpart 1 is revised to clarify that the certification test report is to be submitted in a format specified by the Commissioner. This revision provides the opportunity for electronic reporting or reporting through other alternate means. With changing technological advancements, the MPCA needs the ability to change the format in which a report is submitted without going through rulemaking. With this rule amendment, the Commissioner can determine what formats will be acceptable given an array of options. The change is reasonable due to the rapid pace at which technological advancements take place.

Subp. 3. **Microfiche submittal deadline.** This subpart is proposed for repeal because this format for submittal has become an obsolete means of submitting information. The revised subpart 1 provides for the format of the certification test report to be specified by the Commissioner. It is reasonable to repeal rules that are no longer needed.

PART 7017.1110 EXCESS EMISSIONS REPORTS.

Subp. 2. **Contents of excess emissions report.** New items D and E are added to subpart 2. Item D requires cylinder gas audit (CGA) and relative accuracy test audit (RATA) summaries as part of each Excess Emission Report. These quality assurance/quality control (QA/QC) audits are completed based on schedules outlined in rule. The facility need not submit complete audit results unless requested by the MPCA. In order to ensure audits are completed at the frequency required, the owner or operator of a facility must include a summary that verifies the audit was completed, provides the date the audit took place, and gives summary results. It is reasonable to submit a report summary because it reduces the burden placed on facilities as they do not need to submit a complete report each time an audit is completed unless specifically requested.

Item E requires that any exception of applicability from the standard frequency of QA/QC audits required by Minnesota Rules, as allowed for by *Minn. R.* 7017.1170, subparts 4a and 5a, item A, and *Minn. R.* 7017.1215 must be reported as part of the Excess Emission Report. It is reasonable that this information is reported in order for the MPCA to determine that the audits are being completed on time or that proper justification exists as to why the audits are not being completed at the standard frequency specified in chapter 7017, the air emissions permit, or by another applicable standard.

PART 7017.1120 SUBMITTALS.

Subpart 1. **Address.** Subpart 1 is revised by deleting the MPCA address provided for submittals required by *Minn. R.* 7017.1002 to 7017.1220. The address is no longer needed because the MPCA receives submittals in several ways, including electronically. As a result, the existing address is not correct for all forms of submittal. The rule is revised to state that the owner or operator must send all submittals, and that the submittal format will be specified by the Commissioner. This revision provides the option for electronic reporting or reporting through other alternate means. With this change the MPCA may provide a variety of submittal options as the Agency's technological capabilities develop. This change is reasonable due to the rapid pace of technological advancements.

Subp. 2. **Alternative format.** This subpart is proposed for repeal. The revised subpart 1 now takes into account the concept of alternative formats for required submittals making subpart 2 obsolete. It is reasonable to repeal rules that are no longer needed.

Subp. 3. **Date.** Subpart 3 is revised by adding "regulation" as a source containing submittal dates under this part. Some submittals are required by rules that include the submittal deadline. It is reasonable to identify for permittees that regulations can also contain submittal requirements.

Subp. 4. **Certification.** Subpart 4 is revised to require that all submittals, with two exceptions, must include a certification statement in a format specified by the Commissioner. This change aligns with revisions to subpart 1. Subpart 4 is also revised by deleting rule language that describes how a hard copy of a signed certification was to be submitted to the MPCA. This change is reasonable due to the rapid pace of technological advancements.

PART 7017.1170 QUALITY ASSURANCE AND CONTROL REQUIREMENTS FOR CEMS.

Subpart 1. **Exclusion from applicability.** This subpart is proposed for repeal because the exclusion in this subpart differs from the exceptions in subparts 4 and 5 of this part and is confusing. Revisions to the quality assurance and control requirements of chapter 7017 provide exclusions from applicability under other subparts making the existing subpart 1 exclusion unnecessary. It is reasonable to repeal rules that are no longer needed.

Subp. 1a. **Applicability.** A new subpart 1a identifies the applicability requirements for part 7017.1170. Subpart 1a limits applicability of the rule to continuous emission monitoring systems (CEMS). It also establishes that if multiple regulations govern the monitoring of a unit, all applicable requirements must be met; that is, meeting one regulation in no way relieves a facility of meeting other applicable regulations. It is reasonable to clarify the rules so owners and operators understand what they need to do to comply with the quality assurance and control requirements for CEMS.

Subp. 2. **Quality assurance plan required.** Subpart 2 is revised by making certain stylistic changes and deleting the phrase "within 60 days after March 8, 1999." The deadline for the

quality assurance plan based on this date is obsolete. It is reasonable to delete a date that is no longer relevant.

Subp. 3. **Daily calibration drift assessment and adjustment.** Subpart 3 is revised to make stylistic changes and to add a reference to 40 CFR Part 75, Appendix B, section 2.1, which provides instruction on how to complete the daily calibration drift assessments. This revision is necessary because some monitors in the state are subject to Part 75 rather than Part 60. Subpart 3 also adds "as applicable" to make clear that the Part 75 procedures should only be used if the emission unit is subject to Part 75. Part 60 will be the default set of standards to be used. This revision is reasonable because it adds reference to a necessary part of the Code of Federal Regulations and helps to avoid confusion.

Subp. 4. **Semiannual cylinder gas audit (CGA).** This subpart is proposed for repeal because the deadline for the initial CGA ended on March 8, 1999, and the related audit schedules are no longer relevant. Subpart 4 is being replaced with subpart 4a. It is reasonable to repeal rules that are no longer needed.

Subp. 4a. **Cylinder gas audit.** A new subpart 4a establishes the frequency required for a CGA at "no later than the end of every other QA operating quarter, regardless of whether the quarters are consecutive calendar quarters…"

A calendar quarter with less than 168 operating hours does not qualify as a quality-assured operating quarter and can be excluded in determining the deadline for the next CGA. A CGA must be completed at the end of every second QA operating quarter regardless if the quarters fall consecutively or with periods of non-quality assurance operating quarters in between.

This is a change from the previous requirement to conduct the audit at least once every calendar half year. Using a QA operating quarter is reasonable because it removes the unnecessary requirement to complete a CGA on monitors for units that are not in operation. Subpart 4a is modeled after the audit frequency in 40 CFR Part 75 which takes into consideration infrequently operated emission units. Units that are operated routinely (four QA operating quarters per year) will continue to complete audits at the same rate as subpart 4 required.

Subpart 4a also establishes exceptions to the CGA frequency and requires the owner or operator to submit notification to the MPCA with each Excess Emission Report identifying any audit frequency exception that the owner or operator used during the reporting period. Item A establishes that a CGA is not required in a calendar half year in which a RATA was performed. This exception was previously provided for in subpart 1 which is proposed for repeal. Item A is reasonable because a RATA is a more encompassing audit procedure than a GCA resulting in equal or greater assurance that the readings taken by the monitor are accurate.

In item B, the intent of the grace period is to allow for a down or infrequently operated unit to begin operation and complete the audit. If a unit has been down or is infrequently operated, it is reasonable to allow the owner or operator a 168-hour grace period to start up the unit and perform the CGA to avoid invalidating CEMS data. The rule provides that the CEMS data will be invalid at the end of the grace period. The MPCA intends to ensure that monitors are being properly maintained to provide valid emissions data. Item B is reasonable because it offers a level of practicality given the realities of various emission units' operation.

Item B clarifies that this frequency only relates to units subject to Minnesota Rules. Any other monitoring requirement based on other standards is still applicable. It is reasonable to provide clarity to the rule to avoid confusion in its application.

Item B also states "The frequency in Code of Federal Regulations, title 40, part 60, Appendix F, as amended, applies only if the unit is subject to Code of Federal Regulations, title 40, part 60." It is reasonable to clarify that the monitor is to be audited using the CGA procedure but not at the frequency stated in Appendix F unless the monitor is located at a unit that is subject to 40 CFR Part 60 as well as Minnesota Rules.

Subp. 5. **Relative accuracy test audits (RATA).** This subpart is proposed for repeal because this rulemaking is incorporating the federal QA/QC requirements of 40 CFR Part 60, Appendix B and 40 CFR Part 75, Appendix A and B. This subpart is replaced in a new subpart 5a with revised procedures that reorder the requirements related to conducting RATAs and determining their required frequency. Many CEMs are required by federal rules, and must follow federal rules in order for the data the monitors generate to be valid. The MPCA views this as a matter of "housekeeping" related to the RATAs. It is reasonable to revise the rules to clarify their application.

Subp. 5a. **Relative accuracy test audits.** A new subpart 5a identifies the requirements for completing RATAs. Item A adds reference to 40 CFR Part 60, Appendix B and 40 CFR Part 75, Appendix A and Appendix B as the applicable procedures the owner or operator must use when conducting RATAs. Many CEMs are required by federal rules, and must follow federal rules in order for the data the monitors generate to be valid. It is reasonable to incorporate the federal requirements so owners and operators understand what they need to do to comply with the QA/QC requirements for CEMS.

Item B establishes the frequency required for a RATA from once every calendar year to "no later than the end of every fourth QA operating quarter regardless of whether they are consecutive…" Using a QA operating quarter is reasonable because it removes the unnecessary requirement to complete a RATA on units that are not in operation, eliminating the obligation of facilities to start up a unit and increase emissions only to complete an audit for an emission unit that otherwise would not be operating. This requirement is modeled after the audit frequency of 40 CFR Part 75 which takes into consideration infrequently operated emission units more readily than 40 CFR Part 60 and the existing rule.

In item C, the MPCA is proposing that an owner or operator include each time it uses one of the exceptions to RATA frequency in Item C, subitems (1) and (2) in its quarterly Excess Emissions Report. Filing the Excess Emission Report is an existing requirement of *Minn. R.* 7017.1110. It is reasonable for a facility to report the postponement of RATAs to alert the MPCA of any change in frequency so the MPCA does not assume the owner or operator missed completing the RATA.

The revised rule also establishes the exceptions to the frequency of a RATA. In item C, subitem (1) allows reduced RATA frequency based on previous RATA results. The RATA frequency will be reduced to within six operating quarters if the relative accuracy value is less than 75% of the applicable performance specification rather than the previous 15% relative accuracy. The six operating quarters establishes a reduced frequency similar to the existing rule language which allows the facility to skip a calendar year and then complete the RATA in the first half of the subsequent year. The allowable percentage was changed to account for units where 20% relative accuracy is not the standard. The MPCA is proposing 75% of the performance specification because the existing 15% relative accuracy is 75% of the previously assumed 20%

performance specification. The adjustment is reasonable because the level of performance achieved with the RATA is maintained; however, the reduced frequency option is now available to a broader group of monitors.

Units that are operated routinely (four QA operating quarters per year) will continue to complete one RATA per year just as the existing rule requires. A RATA must be completed at the end of every fourth QA operating quarter regardless if the quarters fall consecutively or with periods of non-QA operating quarters in between. Item C, subitem (2) establishes a grace period of 720 hours to complete a RATA for units that are not operating at the time a RATA is due. This grace period begins once operation of the unit has recommenced. The intent of the grace period is to allow for a down or infrequently operated unit to begin operation and complete the audit. Item C, subitem (2) also states that CEMS data will be invalid at the end of the grace period. Subitem (2) is reasonable because it offers a level of practicality given the realities of various emission units' operation and ensures that monitors are being properly maintained to provide valid emissions data.

Subp. 6. **Criteria for excessive CEMS audit inaccuracy.** Subpart 6, item A is revised to add reference to 40 CFR Part 75, Appendix A to define the criteria for excessive CEMS audit inaccuracy. This revision is reasonable because some monitors may be subject to Part 75 rather than Part 60 and should follow the requirements of the applicable standard. This revision eliminates confusion and contradictory requirements in the existing language.

Subp. 8. **Out of control periods.** A new subpart 8 is added to address emissions calculations during out of control periods. "Out of control" is defined in *Minn. R.* 7017.1002, subpart 11; however, no specific instruction is provided in the rules. Subpart 8 clarifies that out of control periods are considered downtime and data recorded during out of control periods is not valid. It is reasonable to clarify the rules so owners and operators understand when data will not be considered valid when conducting RATAs.

Subpart 8 also specifies that sources subject to 40 CFR Part 75 and another standard, for example Minnesota Rules, should not use the Part 75 data substitution procedures for data generated to meet requirements for standards other than Part 75. Part 75 requires data substitution. The MPCA wants to make sure that facilities know that meeting one set of standards does not always mean that the facility is meeting all applicable standards. It is reasonable to make this clarification since the reasons for monitoring for Part 75 are different from other standards such as Minnesota Rules, 40 CFR Part 60, or 40 CFR Part 63 which require continuous compliance with emission limits. Data substitution can and shall still be used to meet the requirements of Part 75.

PART 7017.1210 QUALITY ASSURANCE AND CONTROL REQUIREMENTS FOR COMS.

Minn. R. 7017.1210 is proposed for repeal because a new part 7017.1215 incorporates the new federal standards of performance for new stationary sources, including procedures for continuous opacity monitoring system (COMS) that are used to demonstrate compliance with NSPS. It is reasonable to repeal rules with outdated federal requirements.

PART 7017.1215 QUALITY ASSURANCE AND CONTROL REQUIREMENTS FOR COMS.

This new part 7017.1215 establishes that all facilities operating a COMS are now subject to Procedure 3 - Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources, 40 CFR Part 60, Appendix F, which became effective on November 12, 2014. USEPA wrote this procedure to provide direction for owners and operators of COMS that are

used to demonstrate compliance with New Source Performance Standards and provides requirements for daily instrument zero and upscale drift checks and status indicator checks, quarterly performance audits (which include optical alignment, calibration error and zero compensation), and annual zero alignment. These requirements are presented in general terms to allow owners and operators to develop a quality assurance and control program that is most effective for the owner or operator's circumstances. It is reasonable to adopt the new applicable federal requirements in order to avoid confusion and contradictory requirements for permittees.

PERFORMANCE TESTS

PART 7017.2001 APPLICABILITY.

Subp. 2. **Transition to new rule.** This subpart is proposed for repeal because the deadline for the transition to *Minn. R.* 7017.2001 to 7017.2060 has past. It is reasonable to repeal rules that are no longer needed.

PART 7017.2015 INCORPORATION OF FEDERAL TESTING REQUIREMENTS BY REFERENCE.

Subp. 4. **Document submission.** Subpart 4 is revised by deleting reference to part 7017.2018, and adding the correct rule cite, *Minn. R.* 7017.2017. It is reasonable to make this revision in order to align with other rule revisions in chapter 7017.

PART 7017.2017 SUBMITTALS.

This new part 7017.2017 establishes that the format and address for submittals will be specified by the Commissioner. The MPCA may provide a variety of submittal options as the Agency's technological capabilities develop. This part provides the MPCA the opportunity to offer a variety of formats, such as electronic reporting. This is reasonable due to the rapid pace of technological advancements which makes it impossible for the MPCA to provide a reasonable and inclusive list of options at this time.

PART 7017.2018 SUBMITTALS.

Minn. R. 7017.2018 is proposed for repeal because the mailing address for submittals required under *Minn. R.* 7017.2015 to 7017.2060 and the format for these submittals are outdated. It is reasonable to repeal rules with outdated requirements.

PART 7017.2025 OPERATIONAL REQUIREMENTS AND LIMITATIONS.

Subp. 3a. **Compliance with new operating limits.** Subpart 3a, item C is revised to clarify that pollution control equipment limits may also be set based on performance test rates. The change is necessary to clarify that in addition to operating limits, pollution control equipment limits may also need to be established as the result of performance tests.

The test plan requirements are deleted in item C. The MPCA has a pretest process in place. MPCA staff and the owner or operator discuss and agree to the deleted test requirements as part of the pretest meeting. The owner or operator submits in their test plan only the requirements that pertain to the facility. Some, all, or other requirements unique to the facility's situation that are not identified in item C may apply. Because the MPCA uses a pretest process, it is reasonable to delete a list of requirements that does not universally reflect what is applicable to each facility.

Subp. 4. **Failure to demonstrate compliance.** Subpart 4, item A, requires an owner or operator that has failed an initial performance test to retest within a limited time. Subpart 4, item B

offers an extension of the time to retest, provided certain criteria are met. Item B is revised to clarify that obtaining the extension of the time is conditioned on the owner or operator demonstrating in writing that it satisfies at least one of the criteria in item B. It is reasonable to clarify that the owner or operator must make the written demonstration so there is no misimpression that extensions are automatic and so there is a factual record to support the Commissioner's decision on the extension.

The original intent of subpart 4, item B, subitem (6) was to allow an owner or operator sufficient time to make facility or operational changes before retesting for compliance with existing emission limits. The language was vague, however, and over time, owners and operators' interest in relaxing emission limits overtook the original intent. Applying for a permit amendment to change the emission limit that the owner or operator failed is not contemplated under subpart 4. At least one retest will always be required prior to pursuing a permit amendment. The retest is needed to gather additional data about facility operations, emissions, and limits that may be achievable.

Subp. 5. **Failure of retest.** Subpart 5 is revised to establish two steps for facilities to return to compliance after a second test failure. The proposed language is intended to recapture the original intent of allowing the owner or operator enough time to make facility or operational changes and to reserve relaxing emission limits as a last choice. The proposed language also clarifies that shutting down an emission unit is only required when all other options have been exhausted.

Under item A, an owner or operator must begin by making changes that will ensure that the emission unit can demonstrate compliance at all times. Subitem (1) provides that if the Commissioner approves such changes, the owner or operator may continue to operate the emission unit. Some changes could require the owner or operator to obtain a permit amendment, but continued operation is allowed during the permitting process. Again, relaxation of the emission limit is not contemplated under item A. It is reasonable to allow an owner or operator to continue to modify its facility or operations to achieve compliance, rather than face shutting down the emission unit.

Subitem (2) requires that if the owner or operator cannot identify the corrective actions or procedural changes then the owner or operator must comply with item B, the next step. If the owner or operator cannot make changes to its facility or operations that will return the emissions unit to compliance, it is reasonable to provide the owner or operator another option to ensure compliance, rather than face shutting down the emission unit.

Under item B, if the owner or operator cannot make changes to its facility or operations that will return the emissions unit to compliance, the owner or operator must propose new permit terms and conditions (including possibly a new emission limit) that will satisfy all the requirements underlying the original emission limit. For example, if the original limit was taken to ensure compliance with the NAAQS or MAAQS, new permit terms and conditions or a new limit must also ensure compliance with the national or Minnesota standards.

In new subitems (1) and (2), the Commissioner will determine that either the new terms and conditions are valid, achievable, and will ensure compliance with the conditions or requirements underlying the original limit, or if compliance cannot be ensured, the owner or operator must shut down the affected emissions unit until the owner or operator can correct the deficiencies in its proposal.

Subitem (1) requires the owner or operator to apply for a permit amendment to incorporate the terms and conditions into the facility permit if the Commissioner determines that the proposed terms and conditions ensure compliance. It is reasonable and necessary to ensure that the newly proposed terms and conditions that will return the emissions unit to compliance are incorporated into the facility permit and to use the existing permitting process to accomplish that.

The proposed language intentionally does not specify whether the owner or operator may continue operations if the Commissioner determines that the proposed terms and conditions will ensure compliance. This is reasonable because the Commissioner's determination will be based on case-specific terms and conditions that the owner or operator will propose. The MPCA expects that the affected emission unit will remain in operation; however, there may be instances for which the Agency will expect the affected emission unit to shutdown long enough to provide an analysis or assessment to prove that emissions are satisfying the requirements that underlay the original emissions limit.

Subitem (2) requires that, if the Commissioner determines that the proposed terms and conditions will not ensure compliance, the owner or operator will shut down the affected emissions units. Further, before the affected emissions unit can be restarted, the owner or operator must correct the deficiencies in its proposal and such that the Commissioner can approve the corrected proposal. It is reasonable to require an owner or operator to shut down an emission unit that can neither meet its existing emission limits nor make a proposal that ensures compliance with the underlying limits it is subject to.

Item C is deleted because the process described has now been replaced and is provided for in Item A.

PART 7017.2035 PERFORMANCE TEST REPORTING REQUIREMENTS.

Subp. 2. **Submittal schedule.** In subpart 2, the requirement to submit a microfiche or compact disc copy of the performance test report is deleted. This revision is necessary to reflect the change in *Minn. R.* 7017.2018 allowing for submittal of electronic test reports. It is reasonable to delete outdated means of report submittals.

Subp. 3. **Complete report.** When emissions are measured by performance testing, it is necessary to determine compliance with an emission limit. A performance test generates an emission factor that is used in calculations to determine compliance with an emission limit. There are situations where the emissions limit is a long-term limit, such as a 12-month rolling sum limit. To determine compliance with a 12-month rolling sum limit the permittee will use two or more variables and an equation to calculate emissions, usually once a month, to verify compliance with the limit. One of those variables is the emission factor that has been determined through performance testing.

The existing subpart 3, item D, subitem (1) was originally written assuming that the emissions limit is a short-term limit, and that compliance is determined within the time period of the performance test. This is not an appropriate requirement if the performance test is conducted to generate an emission factor rather than to determine compliance with an emission limit. As currently required, the test results must be in the same unit as the limit. Accordingly, this requirement should not apply to testing conducted for emission factor evaluation, verification, or updates.

In the MPCA's experience, owners or operators sometimes submit test reports that provide the test results from tests to establish an emission factor testing on an extrapolated ton-per-year basis, which is incorrect. The test report needs to report the test result in the unit of measure of the emission factor such as lb/mmBtu, lb/ton of product, or lb/thousand gallons of product, as specified in the permit (an applicable compliance document).

It is reasonable to clarify that, in situations where the testing is not for directly determining compliance with the limit but is for evaluating, verifying, or updating an emission factor, it is appropriate to report test results in a unit of measure other than that of a limit.

PART 7017.2050 PERFORMANCE TEST METHODS.

Subpart 1. **Test methods.** Subpart 1 is revised to describe the test methods relating to exemptions and exclusions in methods that do not meet the requirements of *Minn. R.* 7017.2001 to 7017.2060. This revision is needed to clarify that the MPCA provides final approval of test methodology selected based on both the test method and the requirements of Minnesota Rules. It is reasonable to clarify for permittees what is required when Minnesota Rules are different from other rules or test methodologies.

PART 7017.2060 PERFORMANCE TEST PROCEDURES.

Minn. R. 7017.2060 provides the procedures applicable to all performance tests conducted under the requirements of Minnesota's air emissions program.

The MPCA proposes changing the term "condensible" to "condensable" throughout *Minn. R.* 7017.2060. The change makes spelling of the term consistent with federal regulatory standards. This change will not change the meaning of condensable particulate matter as defined in *Minn. R.* 7005.0100.

Subp. 3. **Particulate matter determination.** The subpart 3 heading is changed from "Total particulate matter determination" to "Particulate matter determination." This change is reasonable because the term "particulate matter" is consistent with the terminology used in chapters 7011 and 7017, as well as in federal regulations.

Subpart 3 is revised to clarify testing requirements for particulate matter (or PM). This subpart identifies the test methods that are used to test for particulate matter and describes how to demonstrate compliance with the limit. It is reasonable to include this provision so that the owner or operator is informed of how to demonstrate compliance with its particulate matter emission limit.

Item A is revised by adding the use of Method 202. This change is needed to replace the testing requirement for condensable particulate matter in Method 5 given in *Minn. R.* 7011.0725 which is proposed for repeal. Method 5 for filterable particulate matter will remain in place.

Item A is also revised to delete test procedures already incorporated into the federal methods being referenced. It is reasonable to delete these procedures so that should the federal method be revised, the state rule does not create an unnecessary conflict. The owner or operator must use Methods 5 and 202; however, item A allows an equivalent method if approved by the Commissioner. It is reasonable to establish this provision in order to allow for an equivalent method on a case-by-case basis. Emission testing evolves over time and an equivalent method may be appropriate as technology changes. Allowing for an alternative method for particulate matter emission tests allows for changes without requiring rule revisions.

Item B is revised to account for the repeal of the portion of Minn. R. 7011.0725 which described how organic condensable particulate matter was to be measured and calculated. The existing rule required that a compliance demonstration based on a particulate matter test include organic condensables. This caused confusion between the chapter 7011 Standards for Stationary Sources and the chapter 7017 Performance Test Requirements.

A new subitem (1) requires that the results of measuring each form of particulate matter be reported, since each form is required to be measured regardless of the emission standard. A new subitem (2) requires that the sum of all forms of particulate matter combined for compliance demonstration purposes also be reported. This item is a logical outgrowth of the conditions in item C that describe how the emission facility's compliance status will be determined. It is necessary to clarify that the forms of particulate matter to be tested and reported are not driven solely by the facility's emissions standards since test results can be used for purposes other than compliance demonstration such as emissions inventory, modeling, and developing emissions standards to address new ambient air standards. It is reasonable to clarify the rule to ensure that the facility owner understands how to report particulate matter test results.

A new item C establishes how an emission facility's compliance status is determined. Compliance must be based on the sum of filterable and organic condensable particulate matter, unless otherwise required in chapter 7011. It is reasonable to define the forms of particulate matter to compare for compliance demonstration purposes for any facility that does not have a PM emission standard established in chapter 7011, since other federal and state requirements define particulate matter differently.

A new item D revises existing item C which identified how the determination of condensable particular matter may be waived. Item D allows an owner or operator to apply to the Commissioner to exclude condensable particulate matter from a performance test for particulate matter. This change is reasonable because it clarifies for the owner or operator how to get approval to exclude condensable particulate matter from a performance test.

A new subitem (1) revises existing item C which allowed a facility owner or operator to use a mass balance calculation as rationale for waiving measurement of condensable particulate matter. MPCA staff is unaware of any sources that have used this provision and do not believe that a facility owner could successfully use it. It is reasonable to delete this provision since it has not been and is unlikely to be used.

A new subitem (2) adds "the owner or operator's demonstration that an exception in Method 202, section 1.4(h), as amended applies" as a criteria not to include condensable particulate matter testing. Method 202 states that sources with stack gas temperatures less than 30°C (85°F) need not employ Method 202 because sources at true ambient conditions should not be a source of condensable particulate matter. It is reasonable to clarify when Method 202 is not used. These revisions make the state air testing program consistent with current federal test Method 202.

Subp. 4. **PM-10 determination.** Subpart 4 is revised to clarify testing requirements for PM-10. Some air emission permits have PM-10 emission limits, and this subpart identifies the test methods that are used to test for PM-10 and describes how to demonstrate compliance with the limit. It is reasonable to include this provision so that the owner or operator is informed of how to demonstrate compliance with its PM-10 emission limit.

Item A is revised by adding the use of Method 202, the appropriate federal method for testing the condensable form of particulate matter. Methods 201 and 201A will remain in place. Item A is also revised to delete test procedures that are already incorporated into the federal methods being referenced. It is reasonable to delete these state provisions so that should the federal method be revised, the state rule does not create an unnecessary conflict. The owner or operator must use Method 201 or 201A, and Method 202; however, item A allows an equivalent method if approved by the Commissioner. It is reasonable to establish this provision in order to allow for an equivalent method on a case-by-case basis. Emission testing evolves over time and an equivalent method may be appropriate as technology changes. Allowing for an alternative method for PM-10 emission tests allows for changes without requiring rule revisions.

Item B is revised to delete the reference to federal test Method 202. Method 202 has been added to item A with the other federal test methods the owner or operator must use.

The revised item B provides a more complete explanation of how particulate matter emissions are to be reported, which clarifies how PM-10 test results must be reported.

A new subitem (1) requires that the results of measuring each form of PM-10 be reported, since each form is required to be measured regardless of the emission standard. A new subitem (2) requires that the sum of all forms of PM-10 combined for compliance demonstration purposes also be reported. This item is a logical outgrowth of the conditions in item C that describe how the emission facility's compliance status will be determined. It is necessary to clarify the form of PM-10 to be tested and reported are not driven solely by the facility's emissions standards since test results can be used for purposes other than compliance demonstration including: emissions inventory, modeling, and developing emissions standards to address new ambient air standards. It is a reasonable to clarify the rule to ensure that the facility owner understands which data is considered in the compliance determination process.

Revised item C clarifies that the emission facility's compliance status must be based on comparison of the sum of filterable, organic condensable, and inorganic condensable PM-10 to the applicable PM-10 limit, unless otherwise required in chapter 7011. It is reasonable to define which forms of particulate matter to sum and compare for compliance demonstration purposes for any facility that does not have a PM-10 emission standard established in chapter 7011 with any other federal or state definitions. Item C also provides a distinction with the use of the terms "organic condensable" and "inorganic condensable" which are referred to both collectively as "condensibles" in existing *Minn. R.* 7017.2060.

Existing item D identified how an owner or operator may apply to exclude condensable PM-10 from a performance test. Revised item D establishes what an owner or operator must show to get approval to exclude condensable PM-10 from the test.

A new subitem (1) revises existing item D conditions to clarify that it is the owner or operator who makes the demonstration through previous performance test results that the emissions unit is not a source of condensable PM emissions. The provision in existing item D that allowed a facility owner or operator to use a mass balance calculation as rational for waiving measurement of condensable particulate matter is deleted. MPCA staff is unaware of any sources that have used this provision and do not believe that a facility owner could successfully use it. It is reasonable to delete this provision since it has not been and is unlikely to be used.

A new subitem (2) adds "the owner or operator's demonstration that an exception in Method 202, section 1.4(h), as amended applies" as a criteria not to include condensable particulate matter testing. Method 202 states that sources with stack gas temperatures less than 30°C

(85°F) need not employ Method 202 because sources at true ambient conditions should not be a source of condensable particulate matter. It is reasonable to clarify when Method 202 is not used. These revisions make the state air testing program consistent with current federal test Method 202.

Subp. 4a. **PM-2.5 determination.** This new subpart 4a establishes testing requirements for PM-2.5. Some air emission permits have PM-2.5 emission limits, and this subpart identifies the test methods that are used to test for PM-10 and describes how to demonstrate compliance with the limit. It is reasonable to include this provision so that the owner or operator is informed of how to demonstrate compliance with its PM-2.5 emission limit.

Item A references the federal rules for Methods 201A and Method 202 as the appropriate federal method for conducting PM-2.5 emission tests. By adopting federal methods, the state air testing program is consistent with federal test methodologies and regulatory requirements, and will allow for the MPCA to continue administering regulatory programs designed to maintain Minnesota's air in compliance with the NAAQS for PM-2.5. The owner or operator must use Method 201A and Method 202; however, item A allows an equivalent method if approved by the Commissioner. It is reasonable to establish this provision in order to allow for an equivalent method on a case-by-case basis. Emission testing evolves over time and an equivalent method may be appropriate as technology changes. Allowing for an alternative method for PM-2.5 emission tests allows for changes without requiring rule revisions.

Item B establishes how PM-2.5 emissions are to be reported, which allows the owners and operators to clearly differentiate between the data used for compliance determinations and performance test data submitted for other purposes. Item B provides the owner or operator instructions for reporting the particulate matter data that is generated from the PM-2.5 emission tests.

Subitem (1) requires that the results of measuring each form of PM-2.5 be reported, since each form is required to be measured regardless of emission standard. Subitem (2) requires that the sum of all forms of PM-2.5 combined for compliance demonstration purposes also be reported. This item is a logical outgrowth of the conditions in item C that describe how the emission facility's compliance status will be determined. It is a reasonable to clarify the rule to ensure that the facility owner understands which data is considered in the compliance determination process. It is necessary to clarify the forms of PM-2.5 to be tested and reported are not driven solely by the facility's emissions standards since test results can be used for purposes other than compliance demonstration including: emissions inventory, modeling, and developing emissions standards to address new ambient air standards.

Item C establishes that the emission facility's compliance status must be based on the sum of filterable, organic condensable, and inorganic condensable PM-2.5, unless otherwise required in chapter 7011. It is reasonable to define the forms of particulate matter to sum and compare for compliance demonstration purposes for any facility which does not have a PM-2.5 emission standard established in chapter 7011. (Note - at the time of this rulemaking, there are no PM-2.5 standards in chapter 7011.) Item C also provides a distinction with the use of the terms "organic condensable" and "inorganic condensable" which are referred to both collectively as "condensibles" in existing *Minn. R.* 7017.2060.

Item D establishes the conditions on which the Commissioner must base a decision not to include organic condensable particulate matter as part of a performance test for particulate matter. These are the same conditions established in subpart 3, item D and subpart 4, item D of

this part. Subitem (1) establishes that it is the owner or operator who makes the demonstration through previous performance test results that the emissions unit is not a source of condensable PM emissions. Subitem (2) adds "the owner or operator's demonstration that an exception in Method 202, section 1.4(h), as amended applies" as a criteria not to include condensable particulate matter testing.

H. CHAPTER 7019 EMISSION INVENTORY REQUIREMENTS

PART 7019.3020 CALCULATION OF ACTUAL EMISSIONS FOR EMISSION INVENTORY.

At *Minn. R.* 7019.3020, a new item C requires an owner or operator obtaining an option A registration permit to report actual emissions calculated to meet *Minn. R.* 7007.1110, subpart 8, which is the requirement for registration permitees to submit an emission inventory for the calendar year. The requirement that the information be submitted in a format specified by the Commissioner is needed in order to facilitate efficient and complete data entry. This item provides a reasonable process for the MPCA to keep its records complete, which facilitates future permitting work and inspections.

Owners and operators of facilities with option A registration permits have been meeting the requirement to submit emission inventory data; however, *Minn. R.* 7019.3020 was silent about how they should report their emission inventory. Item C is reasonable because it corrects that omission.

I. CHAPTER 7030 NOISE POLLUTION CONTROL

PART 7030.0010 INCORPORATION BY REFERENCE.

Minn. R. 7030.0010 is revised to correct the address for the MPCA. The previous address in Roseville is deleted and the current address of 520 Lafayette Road North in Saint Paul is added.

7030.0050 NOISE AREA CLASSIFICATION.

Subp. 2. **Noise area classifications.** Subpart 2 is revised to clarify the noise area classifications (NACs) and delete duplicative language. For instance, "Bus passenger terminals (intercity)" and "Bus passenger terminals (local)" were removed because these categories are covered by "Bus passenger terminals (intercity and local)." Individual listings of types of manufacturing, such as "Food and kindred products – manufacturing" were combined into one "manufacturing" category and the same was done for "Transportation (except for passenger terminals)." Listing specific subcategories of manufacturing left open the possibility that a type of manufacturing not specifically identified might be viewed as not covered by the rule, creating the potential for confusion. The combined categories capture all of the subcategories originally listed and any that might not have been explicitly listed or that might develop in the future. These changes are reasonable because they do not reclassify any land uses into different NACs, but rather shorten the list by creating logical groups that are easier to read and understand.

7. Regulatory Analysis

Minn. Stat. § 14.131 sets out eight factors for the regulatory analysis that must be included in a SONAR. Items (1) through (8) below quote these factors and then provide MPCA's response. Items (9) and (10) address additional requirements listed in *Minn. Stat.* §§ 14.002 and 14.14.

(1) "a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule"

Who is affected?

Affected parties are owners and operators of stationary sources that have air emissions permits and applicants for air emissions permits. These include industrial, institutional, and commercial establishments that generate enough air pollution to require an air permit plus those emission sources to which a state and/or federal standards of performance already applies such as the stack testing rule.

Who bears the cost of complying with these rules?

Entities that already hold air emissions permits are most likely to bear the cost of complying with the amended rules. The proposed rule amendments are unlikely to result in a significant increase in the cost of complying with the rules however because most changes clarify existing requirements, Minnesota Rules conform to federal law, or eliminate outdated or duplicative requirements. The MPCA expects some of the changes will actually reduce costs for permittees while some may increase costs slightly.

The proposed revisions to chapter 7007, administrative permit amendments, may result in additional costs for a few permit actions. Revisions to chapter 7007 are needed to conform to new statutory requirements for completeness determination and permit issuance, and to create a simple process for revising non-regulatory permit information, such as the facility description. Revisions are also needed to reflect changes to some permit application requirements. These revisions are a result of the administrative processes the MPCA implemented to meet the 150-day permit issuance goal established by the Permitting Efficiency Law of 2011 and Laws of Minnesota 2012.

It is also possible that certain permit amendment applicants may be subject to some additional permitting fees under chapter 7002 due to the changes for administrative amendments. However, as described in Section 6, this change is being made to be consistent with federal rule and to maintain Minnesota's Title V operating permit program approval; therefore, the MPCA does not have an option available that would allow the use of the administrative amendment rule to continue and still be in compliance with federal rule. It is anticipated that very few permit applicants will be affected based on review of permit applications over the last few years.

Who benefits?

Owners and operators of permitted sources and stationary sources, and permit applicants are expected to benefit from the proposed rule amendments. The proposed amendments will make the rules clearer, resulting in fewer errors on the part of permit applicants. Processing of air permits is more efficient for both the MPCA and permit applicants when there are fewer errors in the applications.

The citizens of Minnesota and the environment will benefit. The efficient issuance of permits allows the MPCA to better issue permits that include all applicable requirements.

(2) "the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues"

What are the costs to the MPCA of implementation and enforcement?

The proposed rule amendments clarify practices already in place for permit applications and compliance with performance standards, and therefore are unlikely to result in a significant increase in costs to the state. Costs associated with the implementation and enforcement of the existing rules includes MPCA staff time and staff resources to review permit amendments and compliance reporting. One goal of the proposed rules is to reduce staff time needed to process permit applications and permit amendments by aligning state and federal requirements, and ensuring permit applications and notices include the necessary information for processing the permit appropriate action.

What are the costs to the other agencies of implementation and enforcement?

Some other agencies hold MPCA permits. Those agencies already incurred costs to apply for the initial permit and they incur some additional costs for renewals and amendments. Most of the permitting changes proposed in this rulemaking are intended to make permitting and compliance clearer and easier, so any increase in costs as a result of this rule should be nominal. In addition, other agencies that are subject to any of the revised standards in this rulemaking could receive an enforcement action from the MPCA if they were to violate the standards. The same would be true if they were to violate the existing standards.

What is the anticipated effect on State revenue?

The State will not need to request additional funds to implement and enforce this rulemaking. Any additional staff resources needed on a temporary basis for rule outreach and implementation will be achieved through reassignment of existing staff resources.

(3) "a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule"

One of the goals of this rulemaking is to ensure that the MPCA identifies opportunities to streamline the rules or reduce the burden of compliance. For example, in this rulemaking the MPCA clarifies the forms of particulate matter for which a permittee must complete testing. This prevents costly error and ensures that only the required tests are completed. To the extent this rule makes it easier to understand and comply with air quality regulations, and to more speedily obtain necessary permits, this rule may reduce costs. The MPCA's alternatives are limited. There is no reasonable alternative to this rulemaking; the proposed changes could not be addressed through agency policy or internal rule interpretation. In particular, Minnesota must present a SIP to USEPA that shows how Minnesota will comply with the CAA. Many of the changes in the rulemaking are to conform to federal requirements. USEPA requires all components of the SIP to be enforceable at the state level, thereby requiring their incorporation into rule. Consequently, there are no less costly methods for achieving the purpose of the proposed rule changes.

(4) "a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule"

The alternative of not conducting this rulemaking was considered. However, this would not achieve the purpose(s) of the proposed rules, including clarifying the rules, keeping the rules up to date, and incorporating federal rules. Therefore, not amending the existing rules was rejected by the MPCA in favor of the proposed rule amendments.

Again, the MPCA's alternatives are limited. The proposed changes could not be addressed through agency policy or internal rule interpretation. For regulated parties to take advantage of streamlined options, they must be available in a rule. The MPCA is required to adopt many of

the changes in this rule related to NESHAPs in order to retain delegation of regulatory authority from the USEPA under Section 112 (l) of the federal CAA. If the MPCA were to lose its delegation of regulatory authority from USEPA, the NESHAPs would still apply to the same regulated entities, but USEPA would enforce them.

The MPCA finds it necessary to proceed through the rulemaking process because many of the proposed changes were made with the intent to help clarify the existing rules. Additionally, rulemaking is the most open, consistent process that also assures that the requirements are legally enforceable, as required by USEPA. The MPCA is unaware of any viable alternatives that would achieve the stated purpose and scope of this rulemaking. Therefore, there were no other alternative methods for achieving the purpose of the proposed rules seriously considered by the MPCA.

(5) "the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals"

When considering the cost of complying with proposed rules, it is important to remember that this rulemaking is a housekeeping rule, not a programmatic development rule. The MPCA is making many small changes to a variety of air-related rules. The goal of the rulemaking is to bring the rules up to date, to correct errors and to make compliance with some existing requirements easier. As a result, the MPCA did not develop the usual cost analysis that would accompany a rule to implement a programmatic development for several reasons:

1. Most of the amendments clarify or update existing rules, so regulated entities are already incurring the cost of compliance.
2. The MPCA believes that some of the amendments may reduce costs, but it is very difficult to quantify by how much. For example, the clarifications to the testing for the various types of particulate matter could avoid costly errors. But quantifying the costs saved by avoiding a mistake is an effort to prove a negative. The MPCA can state, however, that particulate matter performance tests cost in the range or $3,000 to $4,000 each, so if a regulated entity avoids even one error, it saves $3,000 to $4,000.
3. The cost of complying with new NESHAPs exists whether or not the MPCA incorporates them into Minnesota Rules.

(6) "the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals"

It is unlikely that there would be significant new costs to the affected parties if the proposed rule amendments are not adopted. As identified in item (1) above, costs are mainly borne by permittees. The State incurs costs, primarily staff costs, when reviewing permit applications and reports submitted by the permttees.

As stated in item (2) above, the intent of the proposed rules is to keep the air quality rules up to date, reduce uncertainty in the rules and, where possible, increase efficiency by streamlining the regulatory process. The consequences of not adopting this rule would be maintaining the somewhat less efficient and more cumbersome regulatory process that currently exists. The consequences of not incorporating by reference the additional NESHAP standards would be more severe. If the MPCA did not adopt the standards, USEPA would not be able to complete its delegation process and many facilities would have to demonstrate compliance to both the

MPCA and USEPA, resulting in confusion for all parties and duplicative regulatory burden on individual facilities.

(7) *"an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference"*

There are no federal regulations that govern rulemaking procedures for Minnesota state agencies that are adopting, amending, or repealing its rules through *Minn. Stat.* ch. 14. The purpose of this rulemaking is to complete minor clarifications, revisions and updates to existing air quality rules. The MPCA believes that the proposed rule amendments do not differ greatly from federal rules. Many of the revisions are to align state rule with federal rules and requirements. These are listed below in Section 15 and described in the Rule-by-Rule Analysis in Section 6 above.

(8) *"an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule "…cumulative effect" means the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules"*

The MPCA is proposing these rule amendments to provide clarity and consistency, to keep the air quality rules up to date, reduce uncertainty in the rules and, where possible, increase efficiency by streamlining the regulatory process. The proposed rule amendments are intended to align state air rules with the most current federal rules and do not establish overlapping or cumulative requirements or standards that would apply in addition to federal regulations. The proposed rule amendments will not result in any cumulative effect in association with any other state or federal regulations. The MPCA believes that the rules will benefit permittees in their understanding of the air quality rules by providing clear and consistent direction and regulatory requirements.

(9) *"describe how the agency, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory systems set forth in section 14.002" Minnesota Statutes § 14.002 states:*

"…the legislature finds that some regulatory rules and programs have become over prescriptive and inflexible, thereby increasing costs to the state, local governments, and the regulated community and decreasing the effectiveness of the regulatory program. Therefore, whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulatory party and the agency in meeting those goals…"

Although the MPCA proposes to add a few new rule parts, most of the proposed changes are amendments to existing rules. Many changes are made to update the rules to conform to federal requirements as well as clarify rule language. Updating the rules for these reasons achieves the policy outlined in *Minn. Stat.* § 14.002 because it attempts to clarify the purpose of the rules and any applicable procedure outlined in the rules. Updating the rules should help remove confusing language and discrepancies in the existing rules, thereby increasing the effectiveness of the regulatory program and the ease of following its requirements.

In developing the proposed rule amendments, the MPCA tried to be very conscientious about including in the revised rules only that information needed to enable the MPCA to carry out its responsibilities in an effective and efficient manner. By making the rules clearer and in some cases deleting outdated rule text, the proposed rules increase flexibility within the limited scope of the rule. In general, however, the MPCA is constrained by the need to retain delegation of certain programs from USEPA and to enforce specific rules which are protected of the NAAQS.

(10)"describe the Agency's efforts to provide additional notification under section 14.14, subdivision 1a, to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made".

Minn. Stat. § 14.14, subd. 1a. Notice of rule hearing, item (a), states the following:

(a) Each agency shall maintain a list of all persons who have registered with the Agency for the purpose of receiving notice of rule proceedings. Persons may register to receive notice of rule proceedings by submitting to the Agency:
(1) their electronic mail address; or
(2) their name and United States mail address

The agency may inquire as to whether those persons on the list wish to maintain their names on it and may remove names for which there is a negative reply or no reply within 60 days. The agency shall, at least 30 days before the date set for the hearing, give notice of its intention to adopt rules by United States mail to all persons on its list, and by publication in the State Register. The mailed notice must include either a copy of the proposed rule or an easily readable and understandable description of its nature and effect and an announcement that a free copy of the proposed rule is available on request from the agency. In addition, each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication. The notice in the State Register must include the proposed rule or an amended rule in the form required by the revisor under section 14.07, together with an easily readable and understandable summary of the overall nature and effect of the proposed rule, a citation to the most specific statutory authority for the proposed rule, a statement of the place, date, and time of the public hearing, a statement that persons may register with the agency for the purpose of receiving notice of rule proceedings and notice that the agency intends to adopt a rule and other information required by law or rule. When an entire rule is proposed to be repealed, the agency need only publish that fact, along with an easily readable and understandable summary of the overall nature of the rules proposed for repeal, and a citation to the rule to be repealed.

The MPCA prepares and implements an Additional Notice Plan regularly with each rulemaking. The MPCA considered these statutory requirements governing additional notification and as detailed in the Additional Notice Plan in Section 8, intends to fully comply with them. Also, as detailed in Section 2, public participation and stakeholder involvement in the rule process, the MPCA has made reasonable efforts, thus far, to notify and involve the public and stakeholders in the rule process, including various meetings and publishing public notice of a Request for

Comments on Planned Miscellaneous Amendments to Rules Governing Air Quality in the *State Register* on September 17, 2012.

8. Additional Notice Plan

Minn. Stat. § 14.131 requires that the SONAR describe how the MPCA provided additional notification of the rulemaking to potentially affected parties, if applicable.

Specifically, *Minn. Stat.* § 14.131 states that the SONAR:

> *"…must also describe the agency's efforts to provide additional notification under section 14.14, subdivision 1a, to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made".*

The MPCA intends to request that the Office of Administrative Hearings review and approve the Additional Notice Plan, pursuant to *Minn. R*. 1400.2060.

The MPCA's Additional Notice Plan includes giving notice as required by statute.

A. The MPCA plans to send an electronic notice with a hyperlink to electronic copies of the Notice of Intent to Adopt Rules (or Notice), proposed rule amendments, and the SONAR to all parties who have registered electronically (through GovDelivery) with the MPCA for the purpose of receiving notice of rule proceedings, as required by *Minn. Stat*. § 14.14, subd. 1a. The MPCA will send the electronic notice on the date the Notice is published in the *State Register*, which shall be at least 33 days before the end of the public comment period. The MPCA plans to produce a list of persons registered to receive notice of these rules on its GovDelivery system at the time of the Notice.
B. Individuals and representatives of associations the MPCA has on file as interested and affected parties that do not wish to receive an electronic notice shall be mailed a paper copy of the Notice and proposed rule amendments. The Notice and the proposed rule amendments shall be sent at least 33 days before the end of the comment period.
C. The MPCA plans to send a cover letter with a hyperlink to electronic copies of the Notice, proposed rule amendments, and SONAR to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules, and to the Legislative Coordinating Commission, as required by *Minn. Stat.* § 14.116. This notice will be sent at least 33 days before the end of the comment period.
D. The MPCA plans to send a copy of the SONAR to the Legislative Reference Library in accordance with *Minn. Stat.* § 14.131 when the Notice is mailed under *Minn. Stat*. § 14.14, subd. 1a. This Notice will be sent at least 33 days before the end of the comment period.
E. *Minn. Stat*. § 14.116 also states that if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency shall make reasonable efforts to send a copy of the notice and SONAR to all sitting house and senate legislators who were chief authors of the bill granting the rulemaking. This requirement does not apply because the MPCA is using its general rulemaking authority for these rules, and no bill was authored within the past two years granting special authority for this rulemaking.
F. At least 33 days before the end of the comment period, the MPCA plans to send an electronic notice with a hyperlink to electronic copies of the Notice, proposed rule amendments, and SONAR to the following associations:

- Association of Metropolitan Municipalities
- Association of Minnesota Counties
- Coalition of Greater Minnesota Cities
- Iron Mining Association of Minnesota
- League of Minnesota Cities
- Metropolitan Council
- Minnesota Chamber of Commerce
- Minnesota City/County Management Association
- Minnesota Environmental Science and Economic Review Board
- Minnesota Center for Environmental Advocacy
- Minnesota Environmental Partnership
- Clean Water Minnesota Isaak Walton League (Minnesota Division)
- Sierra Club North Star Chapter

Note: members of some of these associations may already subscribe to GovDelivery to receive notifications regarding this rulemaking; however, it is appropriate to send a separate e-mail notification to help ensure that these associations are notified of the proposed rule amendments.

G. At least 33 days before the end of the comment period, the MPCA plans to send an electronic notice with a hyperlink to electronic copies of the Notice, proposed rule amendments, and SONAR to the Continuous Emission Monitoring (CEM) User Group. It is appropriate to send a separate notification to these representatives of facilities with air permits with monitoring requirements to help ensure they are notified of the proposed rules.

H. At least 33 days before the end of the comment period, the MPCA plans to send an electronic notice with a hyperlink to electronic copies of the Notice, proposed rule amendments, and SONAR to the 11 federally recognized tribes in Minnesota, specifically the air tribal contacts. The list of air and water tribal contacts is maintained by the MPCA and is edited quarterly.

I. At least 33 days before the end of the comment period, the MPCA plans to provide notice in the MPCA publication Air Mail that it is amending its' air quality rules and planning to publish Notice of the proposed rules. Air Mail is an e-mail list that provides air quality information to interested stakeholders. It includes a quarterly newsletter and bulletins for time-sensitive information sharing. Air Mail goes out to approximately 1,400 subscribers (as of November 2015) who have voluntarily registered to receive air quality updates. Subscribers include a wide range of stakeholders, including private citizens, regulated parties, consultants, other levels of government, nonprofits, and media organizations.

In addition, a copy of the Notice of Intent to Adopt Rules, proposed rule amendments, and SONAR will be posted on the MPCA's public notice webpage at: http://www.pca.state.mn.us/yrwc6a9.

The MPCA believes that by following the steps of this Additional Notice Plan, and its regular means of public notice, including publication in the *State Register* and on the MPCA's public notice webpage, the Agency will adequately provide notice of this rulemaking to persons interested in or affected by these rules, pursuant to *Minn. Stat.* § 14.14, subd. 1a.

9. Consideration of Economic Factors

In exercising its powers, the MPCA is required by identical provisions in *Minn. Stat*. § 116.07, subd. 6, and *Minn. Stat*. § 115.43, subd. 1, to give due consideration to:

> *"…the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result there from, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances…"*

In determining whether to adopt proposed rules or amendments, the MPCA must consider the impact that economic factors have on the feasibility and practicability of the proposed rules or amendments. The MPCA must take into account different and sometimes competing goals when engaging in rulemaking proceedings. The MPCA must address budget constraints in all economic sectors and choose among programs and projects that compete for scarce budget resources. Thus, the MPCA must balance the economic or financial limits of persons subject to environmental regulation with the application and enforcement of laws devoted to environmental protection. The MPCA, mindful of this balance, seeks to implement the least-cost regulatory solutions if it does not compromise environmental goals or regulatory responsibilities.

In proposing these rules, the MPCA has given due consideration to the economic impacts of implementing the proposed rule amendments. The MPCA has determined that the proposed rules either do not impose a significant cost burden on the regulated community or the costs are those that must be incurred to comply with a federal regulation and would apply regardless of these rules. In addition, the MPCA believes that some of the proposed amendments will actually decrease the economic impact of implementing existing rules. The MPCA is responsible for implementing Minnesota's air permitting rules and therefore local units of government are not anticipated to have regulatory responsibilities related to these rules. However, there are a few local units of government required to have air permits who will be impacted in a similar way to other facilities that hold air permits.

The proposed rules likely do not result in significant cost savings. However, indirect cost savings may be realized by facilities that can benefit from the clarifications and streamlining in the MPCA's programs.

10. Impact on Farming Operations

Minn. Stat. § 14.111 requires the Agency to provide a copy of the proposed rule changes to the Commissioner of Agriculture no later than 30 days prior to publication of the proposed rule in the *State Register*, if the rule has an impact on agricultural land. These rule amendments are not expected to directly impact agricultural land or farming operations. However the Commissioner of Agriculture in a letter dated July 30, 2014, to the Commissioner of the MPCA requested that the MPCA submit potential rule changes to the Minnesota Department of Agriculture (MDA). Therefore, the MPCA will notify the Commissioner of Agriculture and MDA staff as requested in the July 30, 2014, MDA letter.

11. Impact on Chicano/Latino People

Minn. Stat. § 3.9223, subd. 4 requires the Agency give notice to the State Council on Affairs of Chicano/Latino People for review and recommendation at least fifteen days before initial publication in the State Register, if the rules have their primary effect on Chicano/Latino People. These rule amendments are not expected to have a primary effect on Chicano/Latino people, thus, the MPCA will not notify the State Council on Affairs of Chicano/Latino People.

12. Consult with Minnesota Management and Budget on Local Government Impact

Minn. Stat. § 14.131 requires the Agency to consult with Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and benefits of proposed rules on local governments. As required by *Minn. Stat.* § 14.131, the MPCA will consult with MMB and will accomplish this by sending MMB copies of the documents that will be sent to the Governor's Office for review and approval on the same day they are sent to the Governor's office. The MPCA will send the documents before the MPCA's publishing of the Notice of Intent to Adopt Rules. The documents will include: the Governor's Office Proposed Rule and SONAR form, the proposed rules, and the SONAR. The MPCA will submit a copy of the cover correspondence and any response received from MMB to Office of Administrative Hearings at the hearing or with the documents it submits for administrative law judge review.

13. Determination if Local Government will be Required to Adopt or Amend an Ordinance or Other Regulation to Comply with Proposed Agency Rule

Minn. Stat. § 14.128, subd. 1, requires the Agency to determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed Agency rule. The Agency must make this determination before the close of the hearing record or before the Agency submits the record to the administrative law judge if there is no hearing. The statute defines "local government" to mean "a town, county or home rule charter or statutory city."

This statute is intended to address situations where an agency requires local government to change their ordinances to, for example, be consistent with agency requirements. The MPCA has determined that the proposed rule amendments do not require local governments to amend their ordinances or other regulation to comply with these rules. These rules are administered by the MPCA and no local government has the authority to issue air quality permits under the State air program.

14. Determination if the Cost of Complying with a Proposed Rule in the First year After the Rule Takes Effect will Exceed $25,000 for a Small Business or City

Minn. Stat. § 14.127, subd. 1 requires the Agency to assess the potential economic impact to small businesses or cities of this proposed rule. The statutory provision is as follows:

> *An agency must determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed $25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees. For purposes of this section, "business" means a business entity organized for profit or as a nonprofit, and includes an individual, partnership, corporation, joint venture, association, or cooperative.*

The MPCA has considered the cost of complying with the proposed rules and has determined that the cost of complying with the rules in the first year after the rules take effect will not exceed $25,000 for any small business or small city. The MPCA has made this determination based on the probable costs of complying with the proposed rules, as described in the Regulatory Analysis, Section 7 of this SONAR. The MPCA has determined that the proposed rules either do not impose a significant cost burden on the regulated community or where a cost is imposed it is a cost that is required to comply with a federal regulation that would apply regardless of these rules.

15. Assessment of the Difference Between the Proposed Rule and Federal Standards, Rules in Bordering States and Rules in States with EPA Region V

Minn. Stat. § 116.07, subd. 2 requires that for proposed rules adopting air quality standards, the SONAR include an assessment of any differences between the proposed rule and existing federal standards adopted under the CAA, United States Code, title 42, section 7412(b)(2); similar standards in states bordering Minnesota; similar standards in states within EPA Region V; and a specific analysis of the need and reasonableness of each difference. *Minn. Stat.* § 116.07, subd. 2, item f, states:

> *(f) In any rulemaking proceeding under chapter 14 to adopt standards for air quality, solid waste, or hazardous waste under this chapter, or standards for water quality under chapter 115, the statement of need and reasonableness must include:*
> *(1) an assessment of any differences between the proposed rule and:*
> *(i) existing federal standards adopted under the Clean Air Act, United States Code, title 42, section 7412(b)(2); the Clean Water Act, United States Code, title 33, sections 1312(a) and 1313(c)(4); and the Resource Conservation and Recovery Act, United States Code, title 42, section 6921(b)(1);*
> *(ii) similar standards in states bordering Minnesota; and*
> *(iii) similar standards in states within the Environmental Protection Agency Region 5; and*
> *(2) a specific analysis of the need and reasonableness of each difference.*

The purpose of this rulemaking is to complete minor clarifications, revisions and updates to existing air quality rules. The proposed rule amendments do not differ greatly from federal rules. Many of the revisions are to align State rules with federal rules and requirements. As

described in this SONAR in Section 6, rule amendments to specifically align with federal requirements include:

- Amendments to chapters 7005 and 7007 definitions and abbreviations for the air program.
- Amendments to chapter 7007 to incorporate the 2009 federal Flexible Air Permitting Rule (e.g. revisions related to alternative operating scenarios and approved replicable methodologies).
- Amendments to chapter 7007 to be consistent with federal Part 70 Program requirements (e.g. administrative amendments and USEPA review).
- Amendments to chapter 7009 State ambient air quality standards to match current federal standards.
- Amendments to chapter 7011 related to performance standards and performance testing, control equipment identification, and the incorporation by reference of NESHAPs.

The amendments the MPCA is proposing to Minnesota Rules chapters 7002, 7005, 7007, 7008, 7009, 7011, 7017, 7019, and 7030 do not establish new standards for air quality, solid waste, or hazardous waste under *Minn. Stat*. ch. 116, nor do they propose any new standards for water quality under *Minn. Stat*. ch. 115. As described in this SONAR in Section 4, the proposed amendments to existing air quality rules are needed to keep the air quality rules current, ensure consistency with applicable federal and state regulations, remove redundant language and clarifying ambiguous rule language, and correct gaps or errors identified while administering the rules. The MPCA is also taking this opportunity to provide clarification to certain existing rules, without changing the intent of the existing rules.

16. List of Authors and SONAR Attachments

A. Authors

- Anne Jackson, P.E.
- Mary H. Lynn
- Cassie McMahon
- Andy Place
- Sarah Sevcik, P.E.
- Mark Severin
- Amanda Smith

B. SONAR Attachments

1. Letter from Valdas V. Adamkus, Regional Administrator, USEPA Region V, to Thomas J. Kalitowski, Executive Director, MPCA, August 25, 1986

17. Conclusion

In this SONAR, the MPCA has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rules chapters 7002, 7005, 7007, 7008, 7009, 7011, 7017, 7019, and 7030. The MPCA has provided the necessary notifications and in this SONAR documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the foregoing, the proposed rules are both needed and reasonable.

12/14/2015
Date

John Linc Stine, Commissioner
Minnesota Pollution Control Agency

Attachment 1

Delegation of Authority

FA1.2 P8610 A09-003

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

25 AUG 1986

REPLY TO THE ATTENTION OF

(5RA-14)

CERTIFIED MAIL RETURN
RECEIPT REQUESTED

RECEIVED
AUG 2 1986
MINN. POLLUTION CONTROL AGENCY

Mr. Thomas J. Kalitowski
Executive Director
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113-2785

Dear Mr. Kalitowski:

On February 21, 1984, the Executive Director of the Minnesota Pollution Control Agency (MPCA) requested an expansion of the U.S. Environmental Protection Agency's (USEPA) delegation of authority to Minnesota to implement and enforce the New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS). The request included all future promulgated NSPS and NESHAPS and all revisions and amendments to existing and future NSPS and NESHAPS. On March 29, 1984, USEPA revised the delegation in accordance with the State's request. This letter revises the March 29, 1984, delegation letter by including a list of NSPS and NESHAPS sections which can not be delegated to the State because they involve regulation setting and amending actions that require notification in the Federal Register.

We have reviewed the pertinent procedures and supporting regulations of the State of Minnesota and have determined that the State has an adequate program for the implementation and enforcement of the NSPS and NESHAPS. Therefore, in accordance with Clean Air Act Sections 111(c) and 112(d) and subject to the specific terms and conditions set forth below, the USEPA hereby delegates authority to the State of Minnesota to implement and enforce the NSPS and NESHAPS as follows:

A. Authority for all sources located or to be located in the State of Minnesota subject to the NSPS promulgated in 40 CFR Part 60. This delegation includes all future standards promulgated for additional pollutants and source categories and all revisions and amendments to existing and future standards. The delegation of authority to enforce future standards, revisions, and amendments will be effective as of the date that such standards become applicable pursuant to State law.

B. Authority for all sources located or to be located in the State of Minnesota subject to the NESHAPS promulgated in 40 CFR Part 61. This delegation includes all future standards promulgated for additional pollutants and source categories and all revisions and amendments to existing and future standards. The delegation of authority to enforce future standards, revisions, and amendments will be effective as of the date that such standards become applicable pursuant to State law.

C. This delegation of authority for NSPS and NESHAPS supersedes the previous statewide delegations of September 20, 1977; September 1, 1982; June 17, 1983; and March 29, 1984; and is subject to the following terms and conditions:

1. Upon approval of the Regional Administrator of Region V, the Executive Director of the Minnesota Pollution Control Agency (MPCA) may subdelegate this authority to implement and enforce the NSPS and NESHAPS to other air pollution control authorities in the State when such authorities have demonstrated that they have equivalent or more stringent programs in force.

2. The State of Minnesota will at no time grant a waiver of compliance with NESHAPS. The State of Minnesota may grant variances from State standards which are more stringent than the NSPS so long as the variances do not prevent compliance with the NSPS requirements.

3. The Federal regulations in 40 CFR Parts 60 and 61, as amended, do not have provisions for granting waivers by class of testing requirements or variances; hence this delegation does not convey to the State of Minnesota authority to grant waivers by class of testing requirements or variances from NSPS or NESHAPS regulations. Minnesota may waive a performance test or specify the use of a reference method with minor changes in methodology under 40 CFR 60.8(b) on a case-by-case basis, and with respect to 40 CFR 61.14 may on a case-by-case basis approve minor modifications to sampling procedures or equipment that affect single sources; however, the State must inform USEPA of such actions.

4. The State of Minnesota will utilize the appropriate methods specified in appendices and Subparts of 40 CFR Parts 60 and 61 in performing source tests pursuant to the regulations.

5. Enforcement of NSPS and NESHAPS in the State of Minnesota will be the primary responsibility of the State of Minnesota, and will be conducted in accordance with the requirements in "Guidance on Timely and Appropriate EPA/State Enforcement Response for Significant Air Violators." If, after appropriate discussion with the MPCA, the Regional Administrator determines that a State procedure for implementing and enforcing the NSPS or NESHPAS is not in compliance with Federal regulations (40 CFR Parts 60 or 61), or is not being effectively carried out, this delegation will be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Executive Director of the MPCA.

6. The Division of Air Quality and the USEPA Region V will develop a system of communication for the purpose of insuring that each office is informed on (a) the current compliance status of subject sources in the State of Minnesota; (b) the interpretation of application regulations; (c) the description of sources and source inventory data; and (d) the decisions the State makes where the State is delegated certain discretionary authority in the following sections: 40 CFR 60.8(b)(4), 40 CFR 60.8(c), 40 CFR 60.46(b), 40 CFR 60.46(d), and 40 CFR 61.23(b). The reporting provisions in 40 CFR Section 60.4 and 61.04 requiring industry to make submissions to the USEPA are met by sending such submissions to the MPCA. The MPCA will make available this information, as requested by USEPA, on a case-by-case basis.

   MPCA's annual report, submitted to USEPA pursuant to 40 CFR Part 51, will include information relating to the status of sources subject to 40 CFR Parts 60 and 61. Such information, will include the name, address, type and size of each facility, date facility commenced operation, date of most recent stack test, compliance status of facility, enforcement actions initiated, surveillance action undertaken for each facility and results of reports relating to emissions data.

7. Prior USEPA concurrence is to be obtained on any matter involving the interpretation of Sections 111 or 112 of the Clean Air Act or 40 CFR Parts 60 and 61 to the extent that implementation, administration, or enforcement of these sections have not been covered by determinations or guidance sent to the Division of Air Quality. All applicability determinations, including those submitted under 40 CFR 60.5 and 61.06, which have not been specifically treated in the Compendium of Applicability Determinations issued by USEPA are reserved for USEPA.

8. If the State of Minnesota determines that a violation of a delegated NSPS or NESHAPS exists, the Division of Air Quality shall notify USEPA, Region V within 30 days, or earlier where appropriate in an emergency situation, of the nature of the violations together with a brief description of the State's efforts or strategy to secure compliance. Furthermore, if the State determines that it is unwilling or unable to enforce a NSPS or NESHAPS standard, the State shall immediately notify USEPA, Region V. This delegation in no way limits the Administrator's concurrent enforcement authority as provided in Sections 111(c)(2) and 112(d)(2) of the Clean Air Act.

9. In addition to any future provision which may be cited in forthcoming NSPS and NESHAPS which cannot be delegated, the Administrator retains authority for (1) those sections of the NSPS and NESHAPS listed in Appendix A and Appendix B, respectively; (2) approval of equivalency for design, equipment, work practice, operational standards or combinations thereof, purusant to Section 111(h) and Section 112(e) of the Clean Air Act; and, (3) for the granting of innovative technology waivers, pursuant to Section 111(j) of the Clean Air Act.

10. If the State of Minnesota determines that for any reason, including budget reductions, it is unable to administer any new NSPS or NESHAPS, the Executive Director of the MPCA will notify the Regional Administrator. Upon such notification by the State, the primary enforcement responsibility for such new standards will return to the USEPA.

Valdas V. Adamkus
Regional Administrator

Attachments

Appendix A June 1986

The following sections of the NSPS are not delegated by the USEPA to the State for implementation and enforcement. These sections either require rulemaking in the Federal Register or require Federal overview in order to ensure national consistency.

1. Subpart A
   60.8(b)(2)
   60.8(b)(3)
   60.11(e)
2. Subpart Da
   60.45a
3. Subpart Ka
   60.114a
4. Subpart S
   60.195(b)
5. Subpart DD
   60.302(d)(3)
6. Subpart GG
   60.332(a)(3)
   60.335(a)(ii)
7. Subpart VV
   60.482-1(c)(2)
8. Subpart WW
   60.493(b)(2)(i)(A)*
   60.496(a)(1)
9. Subpart GGG
   60.592(c)
10. Subpart JJJ
    60.623

* For last sentence only concerning values of Se and Sh in equation for determining fraction of total VOC.

Appendix B June 1986

The following sections of the NESHAPS are not delegated by the USEPA to the State for implementation and enforcement. These sections either require rulemaking in the Federal Register or require Federal overview in order to ensure national consistency.

1. Subpart A
   61.04(b)
   61.12(d)(1)
   61.13(h)(1)(ii)
2. Subpart E
   61.53(c)(4)*
3. Subpart J
   61.112(c)
4. Subpart O
   61.172(b)(2)(ii)(B)
   61.172(b)(2)(ii)(C)
   61.174(a)(2)
   61.174(a)(3)
5. Subpart WW
   61.242-1(c)(2)
   61.244

* Restricted delegation applies only to development of list.