

STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY

Adoption of Rules Governing Air Quality  
Minnesota Rules, Chapters 7002 Emission  
Permit Fees, 7005 Definitions and Abbreviations,  
7007 Air Emissions Permits, 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

ORDER ADOPTING RULES

OAH Docket No. 19-9003-33170  
Revisor's ID: RD4097  
Governor's Office Tracking No. AR 2006

**WHEREAS:**

1. The Minnesota Pollution Control Agency (MPCA) submitted the rules on August 11, 2016, to the Office of Administrative Hearings for review and approval.
2. Administrative Law Judge (ALJ) Jeffery Oxley, issued his Report on August 25, 2016.
3. The ALJ found that the MPCA has the statutory authority to adopt rules, and has complied with the procedural requirements in *Minnesota Statutes*, chapter 14 (2016), and *Minnesota Rules*, chapter 1400 (2015).
4. During the public comment period on the rule, the MPCA received no requests for a public hearing. As identified in the Notice of Intent to Adopt Rules (Notice) published in the February 29, 2016, *State Register*, if 25 or more persons submit valid written requests for a public hearing on the rules, hearings will be held following the procedures in Minn. Stat. §§ 14.131 to 14.20. The MPCA did not hold a public hearing on the proposed rules because it received no requests. The MPCA received no requests for notice of submittal of the rules to the Office of Administrative Hearings.
5. The MPCA received eight (8) comment letters on the proposed rules during the public comment period. The MPCA has made modifications to the proposed rules as a result of comments received during the public comment period. The MPCA also made modifications it determined were needed based upon additional review of the proposed rules during the public comment period. These modifications are presented in Findings No. 13 through 135.
6. The MPCA response to other comments received that did not result in rule modifications are found in the MPCA's Response to Comments (Attachment 1). The MPCA incorporates by reference, the MPCA's Response to Comments, into this Order Adopting Rules.

7. As identified in his Report, the ALJ found that the proposed rule amendments, including the modifications to the rule amendments made by the MPCA in response to comments received, are needed and reasonable, and recommended the proposed rules, as modified by the MPCA, be adopted. The ALJ also provided several suggestions intended to enhance the clarity and readability of a proposed rule amendment.
8. The MPCA has made modifications to the rule based on several of the suggestions by ALJ Oxley in the Order on Review of Rules, dated August 25, 2016. These modifications are presented in Findings No. 136 through 186.
9. All modifications in Findings No. 13 through 186 are set forth in a revised version of the proposed rules which is attached to this Order Adopting Rules (Attachment 2).
10. The modifications to the proposed rules are not substantially different from the proposed rule based on the criteria set forth in Minn. Stat. § 14.05, subd. 2.
11. The issue of substantial difference is addressed in detail with regard to each modification. In general, the Notice provided fair warning that these rule changes could result because it notified readers of the subject matter of the rule such that they could understand that their interests could be affected, the subject matter and issues in the Notice are the same as the subject matter and issues addressed in the modifications, and the effects of the modifications are not greatly different from the rules as originally proposed. All the modifications are clearly within the scope of "Subject of the Rules," and are generally related to updates to air program definitions and ambient air quality standards, changes to permitting and performance testing rules, and incorporation by reference of new federal performance and emission standards; all of which were announced in the Notice. The modifications are a logical outgrowth of the Notice and the comments submitted in response to the Notice.
12. The MPCA finds that under the listed criteria of Minn. Stat. § 14.05, subd. 2, the rule with the modifications set forth in this Order Adopting Rules is not substantially different from the rule as originally proposed.

## **MODIFICATIONS TO THE RULE BASED ON PUBLIC COMMENT AND ADDITIONAL MPCA REVIEW.**

### **Change to Chapters 7007 and 7011**

13. The Fond du Lac Band commented that the proposed rule at part 7011.1135, subpart 2 states "shall be," where several previous lines addressing performance tests use "must be." During the public comment period, the MPCA also found, additional parts in the proposed rules where "shall" is used rather than "must." In some instances, it is appropriate to use "shall" which is why there are some parts where no change to "must" was made. The Office of the Revisor of Statutes, "Minnesota Rules Drafting Manual" recommends using "must" not "shall" to impose duties.
14. The following rule parts are modified by deleting "shall" and adding "must": part 7007.0300, subpart 1, item D; part 7007.0500, subpart 3; part 7011.0065, subpart 1; part 7011.0080; part 7011.0535, subpart 3; part 7011.1105; part 7011.1135, subparts 1 and 2; and part 7011.1265, subpart 2. These modifications align with the change from "shall" to "must" that was made throughout other parts of the rule chapters being amended in this rulemaking without changing the applicability of the rules. See the Statement of Need and Reasonableness (SONAR) at page 10. The MPCA finds this modification is reasonable because it provides consistency and clarity to the proposed rules.
15. These modifications do not make the proposed rule substantially different. Minnesota's statute on statutory construction defines both "shall" and "must" as mandatory. Minn. Stat. § 645.44, subds. 15a and 16. The

modifications are clearly within the scope of "Subject of the Rule" as announced in the Notice. The modifications are a logical outgrowth of the Notice and comment process and the Notice provided fair warning that this rule change could result. The modifications do not change who will be subject to the rule, nor does it change the applicability or effect of the proposed rules.

#### 7005.0100 DEFINITIONS.

##### Change to Part 7005.0100, subpart 4f, subpart 12a, and subpart 29a

16. During the public comment period on the rule, the MPCA determined that the proposed definitions for subpart 4f "condensable particulate matter," subpart 12a "inorganic condensable," and subpart 29a "organic condensable" may cause confusion because of similarity in the terminology. Therefore, modifications are needed in these subparts; each is described below.

##### Change to Part 7005.0100, subpart 4f

17. Subpart 4f defines "condensable particulate matter." The MPCA is modifying this subpart because the proposed definition of "condensable particulate matter" taken in context with the subpart 12a definition of "inorganic condensable" and the subpart 29a definition of "organic condensable" is potentially confusing. First, because "condensable particulate matter" could be either "inorganic condensable particulate matter" or "organic condensable particulate matter" or both, it is not useful to also define "condensable particulate matter." Second, the MPCA is revising the definitions of "inorganic condensable" and "organic condensable" in part 7005.0100 by adding "particulate matter" to each of these terms to clarify that "inorganic" or "organic" means the "inorganic" or "organic" "condensable particulate matter." In doing so, the definition of "condensable particulate matter" is not needed, and subpart 4f is modified by deleting this subpart. It is reasonable to delete a definition that is confusing and no longer needed.

*Part 7005.0100, Subp. 4f*

~~*Subp. 4f. **Condensable particulate matter.** "Condensable particulate matter" means material that is in vapor phase at stack conditions and upon discharge immediately condenses in the ambient air to form solid or liquid particulate.*~~

18. The MPCA finds that this modification does not make the proposed rule substantially different. The regulation of the forms of particulate matter remains the same and the change only makes the definitions clearer and more specific. The modification is clearly within the scope of "Subject of Rules" Chapter 7005 as announced in the Notice because all of these definitions were proposed to be added in this rulemaking. The modification is a logical outgrowth of the Notice and the Notice provided fair warning that this rule change could result. Deleting the definition of "condensable particulate matter" does not change the applicability or stringency of the proposed rules.

##### Change to Part 7005.0100, subpart 4g

19. The MPCA finds that a correction is needed at subpart 4g, the definition of "conditionally exempt stationary source." Subpart 4g is modified by deleting the reference to part 7007.0100, subpart 6b (Approved replicable methodology) and retaining the original reference to part 7007.0100, subpart 7 (Applicable requirement) in order to correctly reference the applicable requirements in part 7007.0100, subpart 7 to which this definition is intended to apply. It is reasonable to make a change to correct a rule reference.

*Part 7005.0100, Subp. 4g*

*Subp. 4g. **Conditionally exempt stationary source.** "Conditionally exempt stationary source" means a stationary source listed in parts 7008.2100 to 7008.2250 that complies with chapter 7008 and all applicable requirements as defined in part 7007.0100, subpart ~~6b~~ 7, and is not part of another stationary source.*

20. The MPCA finds that this modification does not make the proposed rule substantially different. The modification is clearly within the scope of "Subject of Rules" Chapter 7005 as announced in the Notice, is a logical outgrowth of the Notice, and the Notice provided fair warning that this rule change could result. Correcting the reference does not change the applicability or stringency of the proposed rules.

**Change to Part 7005.0100, subpart 4h**

21. The MPCA finds that a correction is needed at subpart 4h, the definition of "conditionally insignificant activity." Subpart 4h is modified by including references to all the rules that apply to sources that seek to qualify as a conditionally insignificant activity, and deleting the reference to part 7007.0100, subpart 6b (Approved replicable methodology) and retaining the original reference to part 7007.0100 subpart 7 (Applicable requirement). The first change is needed to include all activities that are intended to be regulated as conditionally insignificant. The second change is needed to correctly reference the applicable requirements in part 7007.0100 to which this definition is intended to apply. It is reasonable to make a change to correct a rule reference.

*Part 7005.0100, Subp. 4h*

*Subp. 4h. **Conditionally insignificant activity.** "Conditionally insignificant activity" means any emissions unit, emissions units, or activity listed in ~~part parts~~ 7008.4100 to 7008.4110 that complies with chapter 7008 and all applicable requirements as defined in part 7007.0100, subpart ~~6b~~ 7.*

22. The MPCA finds that these modifications do not make the proposed rule substantially different. The modifications are clearly within the scope of "Subject of Rules" Chapter 7005 as announced in the Notice, is a logical outgrowth of the Notice, and the Notice provided fair warning that this rule change could result. Correcting the reference does not change the applicability or stringency of the proposed rules.

**Change to Part 7005.0100, subpart 12a**

23. Subpart 12a is modified by adding "particulate matter" to the term "inorganic condensable" to clarify that "inorganic condensable" means "inorganic condensable particulate matter." As explained in the SONAR (page 9), the MPCA intended with this rulemaking to provide greater consistency and specificity when referring to particulate matter throughout the rule. Adding "particulate matter" to the term "inorganic condensable" makes clear the material being referred to. The MPCA finds that the change is reasonable because it clarifies that the definition is referring to a specific type of particulate matter.

*Part 7005.0100, Subp. 12a*

*Subp. 12a. **Inorganic condensable particulate matter.** "Inorganic condensable particulate matter" means inorganic material collected and measured by the sample train during a performance test for particulate matter.*

24. The MPCA finds that this modification does not make the proposed rule substantially different. The modification is clearly within the scope of "Subject of Rules" Chapter 7005 as announced in the Notice, is a logical outgrowth of the Notice, and the Notice provided fair warning that this rule change could result. Modifying the term "inorganic condensable" does not change the applicability or stringency of the proposed rules.

#### Change to Part 7005.0100, subpart 29a

25. Subpart 29a is modified by adding "particulate matter" to the term "organic condensable" to clarify that "organic condensable" means "organic condensable particulate matter." As explained in the SONAR (page 9), the MPCA intended with this rulemaking to provide greater consistency and specificity when referring to particulate matter throughout the rule. Adding "particulate matter" to the term "organic condensable" makes clear the material being referred to. The MPCA finds that the modification is reasonable because it clarifies that the definition is referring to a specific type of particulate matter.

#### *Part 7005.0100, Subp. 29a*

*Subp. 29a. **Organic condensable particulate matter.** "Organic condensable particulate matter" means organic material collected and measured by the sample train during a performance test for particulate matter.*

26. The MPCA finds that this modification does not make the proposed rule substantially different. The modification is clearly within the scope of "Subject of Rules" Chapter 7005 as announced in the Notice, is a logical outgrowth of the Notice, and the Notice provided fair warning that this rule change could result. Modifying the term "organic condensable" does not change the applicability or stringency of the proposed rules.

#### 7007.0300 SOURCES NOT REQUIRED TO OBTAIN A PERMIT.

#### Change to Part 7007.0300, subpart 1, item D

27. The Minnesota Chamber of Commerce (Chamber) disagrees with the MPCA's position that current rules do not adequately limit potential to emit from these activities. The Chamber points first to the volatile organic compound (VOC) usage in existing rules of 200 gallons or 2,000 pounds. The Chamber then points to particulate matter (PM) limits in part 7008.4110 that restrict particulate matter emissions by not allowing a source equipped with control equipment to exhaust outside of a building. The Chamber stated that the SONAR does not specifically reference a federal rule supporting the MPCA's position that a change is necessary to align conditionally exempt activities with federal air permitting rules. The Chamber disagrees with the MPCA that changes are necessary to adequately limit and permit conditionally insignificant activities, and requests that the proposed rules not be adopted.
28. The Alliance of Automotive Service Providers of Minnesota (AASP-MN) and the Chamber commented that by striking "conditionally insignificant activities" from part 7007.0300, subpart 1, item D, the permitting exemption for many very small air emission sources, would require these sources to seek a permit from the MPCA. The AASP-MN states that there are 800 plus such small collision repair businesses in Minnesota.
29. "Conditionally insignificant activities" are defined in part 7005.0100, subpart 4h and are those activities where the owner or operator of an air emissions source agrees to meet the conditions in *Minn. R. ch. 7008* to restrict

the operations and the air emissions at the emissions facility. These restrictions allow a facility to qualify for an exemption from the air emission permit requirements in *Minn. R. 7007.0300*. Facilities that most often qualify for a permitting exemption under *Minn. R. 7007.0300*, subpart 1, item D, are operations like auto body repair shops with activities that qualify as conditionally insignificant activities, or insignificant activities where the potential to emit of regulated air pollutants at a facility is above the permit thresholds, but because the equipment is operated infrequently, actual emissions of pollutants are very low. Potential to emit refers to the highest amount of a pollutant that the stationary source could release into the air; even if the stationary source has never actually emitted the highest amount and would not as a business choice. The MPCA created a permitting exemption for facilities that have only insignificant activities and conditionally insignificant activities because many air emission facilities are very small emission sources and are not currently sources of concern, as a class. "Insignificant activities" are defined by the conditions described in *Minn. R. 7007.1300*.

30. Limits on allowable amounts of air emissions must be federally enforceable in order to create a regulatory exemption from permit requirements in *Minn. R. ch. 7007*. "Federally enforceable" means that the United States Environmental Protection Agency (USEPA) has direct right and ability to enforce restrictions and limits imposed on an air emissions source to limit its exposure to Clean Air Act programs. Federally enforceable limits must also be enforceable as a practical matter. USEPA's guidance states that for rules and general permits that apply to categories of sources, practicable enforceability requires that limits (1) identify the types or categories of sources that are covered by the rule; (2) where coverage is optional, provide for notice to the permitting authority of the source's election to be covered by the rule; (3) specify the enforcement consequences relevant to the rule; (4) include a technically accurate limitation and the portions of the source subject to the limitation; (5) include the time period for the limitation; and (6) include a method to determine compliance including appropriate monitoring, record keeping and reporting.
31. Existing rules do not impose conditions that satisfy the six criteria in Finding No. 24 above to make those conditions federally enforceable. As a result, the MPCA proposed to delete the exemption for conditionally insignificant activities in parts 7008.4000 to 7008.4110.
32. The MPCA agrees that deleting the exemption for conditionally insignificant activities would require small stationary sources to apply for an air emissions permit. The MPCA finds that this is not currently an effective use of its resources. Modifications to the technical requirements in *Minn. R. ch. 7008* related to controlling emissions from small air emission sources, would allow the MPCA to continue to exempt "conditionally insignificant sources" from permitting. Therefore, rather than retain the existing language as the Chamber urges, the MPCA will modify part 7007.0300, subpart 1, item D.
33. Subpart 1, item D is modified to first create an itemized list of sources, then in subitem (2) add conditionally insignificant activities as exempt from permitting, and in subitem (3) to clearly indicate that sources that consist solely of insignificant activities and conditionally insignificant activities are exempt from permitting. Following this list, the statement that the owner or operator must comply with parts 7008.4000 to 7008.4110 has been added. These modifications remedy the gap in federal enforceability related to potential interpretation of voluntary applicability and reflect current practice. The MPCA finds that along with the requirements in *Minn. R. ch. 7008* that impose emission limits on volatile organic compounds and particulate matter, this permitting exemption is now federally enforceable for conditionally insignificant activities.
34. Additional rulemaking is necessary to complete the design and application of particulate matter limits for very small sources that emit only particulate matter (part 7008.4110). Significant changes are anticipated in part 7008.4110 to craft federally enforceable particulate matter limits; therefore, a separate rulemaking is needed to provide for additional data gathering and public participation in the rulemaking process.

Part 7007.0300, Subp. 1D

Subpart 1. **No permit required.** The owners and operators of the following stationary sources are not required to obtain a permit under parts 7007.0100 to 7007.1850:

D. any stationary source with only emissions units ~~listed as~~ that:

(1) are listed as insignificant activities in part 7007.1300, subparts 2 and 3;

(2) are conditionally insignificant activities under chapter 7008; or

(3) qualify under both subitems (1) and (2).

The owner or operator of a stationary source that has conditionally insignificant activities must comply with parts 7008.4000 to 7008.4110 to qualify for the permit exemption under this part. The owner or operator must maintain records that demonstrate that a permit is not required. These records ~~shall~~ must contain a list of all emissions units and the Minnesota Rules citation that defines those emissions units as an insignificant activity or conditionally insignificant activity. The records ~~shall~~ must be permanently kept at the stationary source or a central office and be readily available for examination and copying by the commissioner or a representative of the commissioner;

35. The MPCA finds that this modification does not make the proposed rule substantially different. With this modification, small emission facilities will continue to remain exempted from air emissions permitting provided they comply with the conditions of parts 7008.4000 to 7008.4110. The Notice provided fair warning that these rule changes could result because it notified readers of the subject matter of the rule such that they could understand that their interests could be affected, the subject matter and issues in the Notice are the same as the subject matter and issues addressed in the change are not different from the rule as proposed. The modification is clearly within the scope of "Subject of the Rules" Chapter 7008, as announced in the Notice, and is related to changes to permitting rules. This modification is a logical outgrowth of the Notice as it is a result of the comments submitted in response to the Notice.

## 7007.0500 CONTENT OF PERMIT APPLICATION.

### Change to Part 7007.0500, subpart 3

36. The United States Steel Corporation (US Steel) commented that "notice" is not a defined term and the purpose of adding it to subpart 3 is unclear. Title V permits frequently have requirements for notifying the agency of various conditions and to have a responsible official sign each and every one would be extremely burdensome. It does not appear in the SONAR that was the intent, but inclusion pursuant to part 7007.0100, subpart 7, item R would make it a requirement. US Steel requested that "notice" be removed from part 7007.0500, subpart 3.
37. As described in the SONAR (page 16), the purpose of the proposed change is to require notices that need to be either attached to the permit as required by rule or incorporated into the source's permit through a future permit action to have the same level of certification as information in a permit application. By requiring these specific notices to be signed and certified, the notice itself is adequate to make the changes to the permit at the next permit action, rather than the MPCA needing to request a new submittal to have the information certified at the next permit action. The proposed change is intended to reduce the permit application and review burden for both the permittee and the MPCA. However, the MPCA acknowledges that the proposed change resulted in a wider set of notices than this stated intention. Only those notices that are specifically attached to the permit itself, that are used to update the permit at the next permit action, or relate to permit status were intended to require signature and certification. These include notices submitted pursuant to part 7007.1150, item C (specified source changes allowed with notice); part 7007.1250, subpart 4 (accumulated insignificant

modifications); part 7007.1350, subpart 2 (contravening permit terms); part 7007.0800, subpart 10, item B (emissions trading changes); part 7007.1110, subparts 10 and 11 (registration permit ineligibility); and part 7007.1110, subpart 15a (registration permit source relocation). Therefore, these notices are included in the modified rule language. By contrast, the notice required under part 7007.1850, item C (Emergency Provisions) does not need to be signed and certified because this notice is not used as part of a permit action, and is therefore not included in part 7007.0500, subpart 3.

38. The reporting, monitoring, and testing requirements in *Minn. R. ch. 7017* that are included in the definition of applicable requirement under part 7007.0100, subpart 7, item R would not be considered a notice. However, part 7007.0500, subpart 3 requires a responsible official “to sign and certify any application, report, or compliance certification submitted pursuant to parts 7007.0100 to 7007.1850 with regard to truth, accuracy, and completeness” and no changes to that requirement are proposed. Rather than the change requested by US Steel, the MPCA will modify subpart 3 to specify the notices that must be signed and certified by a responsible official.
39. Subpart 3 is modified to delete “notice” in reference to parts 7007.0100 to 7007.1850, and to add the specific parts that allow for notices to which this part applies. This change is reasonable because it will eliminate confusion about what notices are to be signed and certified.

*Part 7007.0500, Subp. 3*

*Subp. 3. **Application certification.** A responsible official, as defined in part 7007.0100, subpart 21, ~~shall~~ must sign and certify any application, ~~notice~~, report, or compliance certification submitted pursuant to parts 7007.0100 to 7007.1850 or notice submitted pursuant to part 7007.1150, item C; 7007.1250, subpart 4; 7007.1350, subpart 2; 7007.0800, subpart 10, item B; or 7007.1110, subpart 10, 11, or 15a, with regard to truth, accuracy, and completeness. This certification and any other certification required by parts 7007.0100 to 7007.1850 ~~shall~~ must state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. This subpart ~~shall~~ must be complied with by both the owner and the operator of the stationary source if they are not the same.*

40. The MPCA finds that this modification does not make the proposed rule substantially different. The modification is clearly within the scope of the “Subject of Rules” Chapter 7007, as announced in the Notice and is the MPCA’s response to the comment submitted regarding the content of a permit application and provides clarification that the commenter requested. The modification is a logical outgrowth of the Notice and comments submitted in response to the Notice, the Notice provided fair warning that this rule change could result.

## 7007.0750 APPLICATION PRIORITY AND ISSUANCE TIMELINES.

### Change to Part 7007.0750, subpart 7, item A

41. After the public comment period, the MPCA further reviewed the proposed changes to this part and found redundant rule language. Part 7007.0750, subpart 7, item A contains the conditions under which a two-stage permit issuance procedure may be followed for permits authorizing construction or modification and operation of the source. Item A, subitem (2) is redundant with subitem (3) and is potentially confusing since there are no “requirements” of a Part 70 permit to include in a permit. The MPCA had intended “requirements” to mean following the procedures to obtain a Part 70 permit, a condition which is already identified in subitem (3), and which is not the same as “includes the requirements.” Therefore, the MPCA is modifying subpart 7, item A, by deleting subitem (2). It is reasonable to delete a proposed requirement that is redundant and confusing.

42. In addition, the Chamber commented that the wording in this subpart is unclear and confusing. The Chamber requested further clarification on this sentence in subpart 7: "...after all requirements of the applicable new source review program have been satisfied or after all requirements to avoid applicability of a new source review program have been completed..." The language could imply that, for example, pollution control equipment determined through a Best Available Control Technology analysis must be installed prior to issuance of the permit. The MPCA agrees that a clarification would be helpful to this rule part.
43. The MPCA intended that the permit be sent to the permittee after all procedural requirements, such as public participation, of the applicable new source review program are met. However, the rule language could imply that all requirements related to the applicable new source review program must be met, as indicated in the Chamber's example. Therefore, the MPCA is modifying the rule to clarify that only the procedural requirements of the applicable new source review program need to be satisfied, rather than all requirements. It is reasonable to clarify language to prevent a possible interpretation that the MPCA did not intend.

*Part 7007.0750, Subp. 7A*

***Subp. 7. Two-stage issuance of permits and permit amendments authorizing construction or modification.***

*A. If a permit or permit amendment:*

*(1) authorizes construction or modification;*

*(2) ~~includes the requirements of a part 70 permit;~~*

*(3) must follow the 45-day EPA review period procedures under part 7007.0950; and*

*(4)(3) includes either:*

*(a) the requirements of a new source review program under part C (Prevention of Significant Deterioration of Air Quality) or part D (Plan Requirements for Nonattainment Areas) of the act; or*

*(b) an enforceable limitation assumed to avoid being subject to a new source review program under part C or D of the act,*

*then the agency shall send the permit to the permittee after ~~all requirements~~ the procedural requirements, including public participation procedures, of the applicable new source review program have been satisfied or after all requirements to avoid applicability of a new source review program have been completed including any required notice and comment period. The agency shall at the same time notify the permittee in writing that those permit conditions required by the new source review program or developed to avoid applicability of a new source review program and designated as such by the agency in the permit or amendment, and only those conditions, shall be considered issued.*

44. The MPCA finds that these modifications do not make the proposed rule substantially different because redundant rule language is deleted and the rule is clarified. The modifications are clearly within the scope of the "Subject of Rules" Chapter 7007, as announced in the Notice. The modifications are the MPCA's response to an identified redundancy in the rule and are a logical outgrowth of the Notice and comments submitted in response to the Notice. Finally, the Notice provided fair warning that this rule may change due to comments submitted.

**7007.0800 PERMIT CONTENT.**

**Change to Part 7007.0800, subpart 2, item D**

45. Northern Tier-St. Paul Park Refining Company (SPPRC) and the Chamber submitted comments that suggested revisions to this rule. Northern Tier-SPPRC offered additional language with the apparent interest in expanding the description of the types of emission limits that might be considered for use in a permit.
46. The MPCA must modify this rule to ensure that it has the general authority to include in Title V permits conditions that ensure compliance with applicable standards during normal operation, including the setting into operation (start-up) and shutdown. Start-up and shutdown are not unusual or unexpected events, nor a malfunction. Rather than creating a list of potential means of establishing emission limits, the MPCA modified subpart 2, item D to delete reference to the examples of alternatives. The MPCA finds this change is reasonable to avoid the potential of overlooking or limiting a form that an alternative emission limit might take.

*Part 7007.0800, Subp. 2D*

*Subp. 2. Emission limitations and standards. The permit must:*

*D. contain provisions to ensure continuous compliance with applicable emissions limitations during periods of ~~startup~~ start-up and shutdown of an emissions unit, such as operating parameters or best practices to minimize emissions.*

47. The MPCA finds that these modifications do not make the proposed rule substantially different. The Notice provided fair warning that the rule changes could result because it notified readers of the subject matter of the rule such that they could understand that their interests could be affected. The modifications are clearly within the scope of the "Subject of Rules" Chapter 7007, as announced in the Notice and the subject matter and issues in the Notice are the same as the subject matter and issues addressed in the changes. The effects of the modifications are not different from the proposed rule; permits must contain provisions to ensure continuous compliance during start-up and shutdown.

**7008.0100 DEFINITIONS.**

**Change to Part 7008.0100, subpart 2a**

48. The Chamber submitted comments on part 7008.4100 expressing their concern about the potential that the proposed change from "VOC usage" to "material usage" would inadvertently exclude some activities. The Chamber requested that the MPCA revise the definition of "material usage" to be more general. The MPCA reviewed the Chamber's list of activities that would not qualify and believe that the application of ink is the only use that wasn't already included under "material usage."
49. After the public comment period ended, the MPCA noted that the definition of material usage was not written clearly. In order to clarify the definition of material usage, subpart 2a is modified from 'Material usage means an activity at a stationary source when a material such as paint, coating, adhesive, or solvent is applied or used...' to 'Material usage means an activity at a stationary source such as the application or use of ink, paint, coating, adhesive or solvent...' Subpart 2a is further modified to add ink as an example of a qualifying material under the definition of "material usage." This modification is reasonable because it adds an example of another type of material that is considered representative of material usage.

*Part 7008.0100, Subp. 2a*

*Subp. 2a. Material usage. "Material usage" means an activity at a stationary source ~~when a material~~*

such as ~~a~~ the application or use of ink, paint, coating, adhesive, or solvent is applied or used in a way that emits only VOC, hazardous air pollutants, particulate matter, PM-10, PM 2.5 or a combination thereof and emissions of these pollutants can be calculated on a mass balance basis as described in part 7008.4100. Material usage does not include material processes such as sanding, milling, materials reacting to form new materials, fuel usage, or grain or other material handling.

50. The MPCA finds that these modifications do not make the proposed rule substantially different. The Notice provided fair warning that the rule changes could result because it notified readers of the subject matter of the rule such that they could understand that their interests could be affected. The subject matter and issues in the Notice are the same as the subject matter and issues addressed in the modifications. Because permittees already viewed ink as a VOC-emitting material, this change more closely reflects current practices.

#### Change to Part 7008.0100, subpart 2b

51. In reviewing the proposed rules related to the administration and implementation of revised part 7008.4100, the MPCA notes that there is potentially some confusion in how VOCs are being accounted for in the emission calculations of part 7008.4100, subpart 2. Reference to the hazardous waste rule definition in part 7045.0020 in the proposed rule is unnecessary, as the definition of recycling is provided in the text of subpart 2b; therefore, the MPCA is modifying the definition to first delete reference to part 7045.0020. Next, subpart 2b is modified to add the references to the definitions of reclamation and reuse, because both of these terms are used in the definition of "recycling." This change is reasonable because it directs the reader to the rule parts that contain the definitions for the terms used to define recycling.

#### *Part 7008.0100, Subp. 2b*

*Subp. 2b. **Recycling.** "Recycling" means the reclamation or reuse of waste VOC-containing or hazardous air pollutant-containing materials from material usage activities, ~~as defined in part 7045.0020.~~ For purposes of this subpart, "reclamation" has the meaning given in part 7045.0020, subpart 73c, and "reuse" has the meaning given in part 7045.0020, subpart 75a.*

52. The MPCA finds that these modifications do not make the proposed rule substantially different. The Notice provided fair warning that the rule changes could result because it notified readers of the subject matter of the rule such that they could understand that their interests could be affected. The subject matter and issues in the Notice are the same as the subject matter and issues addressed in the changes. The effect of these modifications brings the definition of recycling into the current concept of recycling VOC-containing material, and these modifications only clarify which definitions in the hazardous waste rules are to be used.

#### 7008.4000 CONDITIONALLY INSIGNIFICANT ACTIVITIES.

#### Change to Part 7008.4000

53. Part 7008.4000 establishes the requirements for conditionally insignificant activities. As discussed in Findings No. 27 through 35, the MPCA is modifying the proposed rules in response to comments submitted by AASP-MN and the Chamber requesting that the MPCA restore the permit exemption status for air emission facilities that may qualify as conditionally insignificant activities. As part of restoring the permitting exemption under part 7007.0300, subpart 1, item D, part 7008.4000 is modified to specify that the owner or operator of the source must comply with the requirements in parts 7008.4000 to 7008.4110 in order to qualify for the exemption. This change remedies a gap in federal enforceability by making compliance with parts 7008.4100 and 7008.4110

mandatory if it is relied upon for a permit exemption. This change is reasonable because it clarifies for owners and operators the requirements they must comply with that allow them to be exempt from an air permit.

#### *Part 7008.4000*

*If operated in compliance with this part and parts 7008.4100 and 7008.4110, the activities and operation of the emissions units listed in parts 7008.4100 and 7008.4110 are insignificant activities for purposes of parts 7007.0100 to 7007.1850. To qualify for the exemption from permitting in part 7007.0300, subpart 1, item D, subitem (2) or (3), the owner or operator of a stationary source that has the potential to emit any pollutant in excess of a permitting threshold in chapter 7007 must comply with the requirements of parts 7008.4000 to 7008.4110. Listing in part 7008.4100 or 7008.4110 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.*

*The activities described in parts 7008.4100 and 7008.4110 must be listed in a permit application, and calculation of emissions from these activities shall be provided if required by the agency, under part 7007.0500, subpart 2, item C, subitem (2). If emissions units listed in part 7008.4100 or 7008.4110 are subject to additional requirements under section 114(a)(3) of the act (Monitoring Requirements) or section 112 of the act (Hazardous Air Pollutants), or if part of a title I modification, or, if accounted for, make a stationary source subject to a part 70 permit, emissions from the emissions units must be calculated in the permit application.*

54. The MPCA finds that this modification does not make the proposed rule substantially different. The Notice provided fair warning that the rule changes could result because it notified readers of the subject matter of the rule such that they could understand that their interests could be affected. The modification is clearly within the scope of "Subject of the Rules" Chapter 7008, as announced in the Notice, and is related to changes to conditionally insignificant activities requirements. The modification is a logical outgrowth of the Notice as it is a result of the comments submitted in response to the Notice. The effect of the change is to continue exemptions from permitting that existed prior to this rulemaking, but to do so the MPCA has modified the requirements in the rule to meet the definition of federally enforceable rules.

#### **7008.4100 CONDITIONALLY INSIGNIFICANT MATERIAL USAGE**

##### **Change to Part 7008.4100, subpart 2**

55. The AASP-MN submitted comments expressing concern about the proposed rule changes broadening the materials included in the limits to qualify as a "conditionally insignificant activity." The commenter noted that existing rule requires auto body repair shops to track only the VOC content of the materials they are using; the proposed rule change would add the tracking of hazardous air pollutants (HAPs) and particulate matter content of materials as well. The Chamber noted in their comments that there are expanded record keeping and reporting requirements along with the additional limits.
56. For owners or operators with conditionally insignificant activities who are using parts 7008.4000 to 7008.4110 to qualify as a source that is not required to obtain a permit under part 7007.0300, subpart 1, item D, the record keeping is needed to ensure that the exemption from permitting that they rely on is federally recognized. The permitting exemptions under part 7007.0300, subpart 1, item D are not recognized by federal law. To ensure that sources that rely on the exemptions are not in violation of federal law for failure to obtain a permit, the MPCA must include requirements that make the exemptions federally enforceable. Imposition of an emissions limit coupled with record keeping and reporting ensures that the exemption from permitting can be federally recognized. Without the required record keeping, the owner or operator cannot show that they are in compliance with the rule, and therefore, are unable to demonstrate that they do not need a permit.

57. The MPCA can satisfactorily address the commenters' concern about expanded difficulty of record keeping by not requiring the tracking and calculating of HAP emissions. Since most HAPs are emitted as a VOC or as a particulate, and the emission of HAPs is largely limited by placing limits on VOCs and particulate matter, the MPCA will not require the tracking of HAPs at these sources. The part 7007.0300, subpart 1, item D exemptions are intended to apply to very small sources whose actual HAP emissions are now limited by the VOC and particulate matter limits being adopted in this rulemaking. Therefore, part 7008.4100 subparts 2 and 3 are modified to delete references to HAP limits, record keeping, and reporting. Subpart 2, item B describing HAPs from material usage activities, and subpart 5, describing HAPs emissions calculations, are deleted in their entirety. The items in subpart 2 are renumbered as a result of multiple deletions.
58. The Fond du Lac Band commented that the unit of measurement for VOCs emissions is mass (pounds or tons), and that the 2,000 pounds is not necessarily equivalent to 200 gallons. The MPCA agrees that the structure of the text did not create and impose the emission limits properly. Subpart 2 is modified to add the condition in item A that the limit applies to all activities so that it is understood that the conditions apply to all limits itemized in items A and B. The VOC limit in subpart 2, item A is modified to clarify that VOC use is limited to 200 gallons. Additionally, the title "VOCs" is added to item A to identify applicable requirements for a source using this rule.
59. During its evaluation of the comments, the MPCA determined that it must modify the structure of the particulate matter limits by clarifying that particulate matter, PM-10, and PM-2.5 are three separate pollutants and must be calculated individually. It is reasonable to clarify language to prevent a possible interpretation that the MPCA did not intend. Subpart 2, item C is modified to clarify that emissions are calculated for each type of particulate matter pollutant, for all conditionally insignificant activities. Modified item C is now item B and the title "Particulate matter" is added to identify applicable requirements for a source using this rule.
60. Stationary sources that operate spray coating equipment, such as auto body shops and printers, will continue to be subject to the emission limits of this part, including the proposed particulate matter, PM-10, and PM-2.5 limits. During its evaluation of the comments, the MPCA recognized that the proposed threshold for particulate matter, PM-10, and PM-2.5 of 2,000 pounds, in part 7008.4100, subpart 2, item B, is too low to exempt most of the intended sources from permitting. Therefore, the proposed threshold of 2,000 pounds is modified to 8,000 pounds. This threshold of four (4) tons of actual particulate matter emissions per year is used by a number of other states to exempt small sources. Therefore, most if not all current small sources will continue to be exempt from permitting, provided that they keep records of materials used in order to demonstrate compliance.

*Part 7008.4100, Subp. 2*

*Subp. 2. **Material usage limits.** The owner or operator must ~~meet the limits in items A to C for limit emissions from all material usage as provided in items A and B~~ at the stationary source to qualify as a conditionally insignificant activity under this part.*

*A. VOCs. The owner or operator must limit VOC emissions of VOCs from all material usage activities at the stationary source to less than 200 gallons or 2,000 pounds, or VOC usage to less than 200 gallons, in each calendar year period calculated according to the method in subpart 4. All VOC emissions from all material usage activities at the stationary source must be accounted for in the annual calculation. This limit applies regardless of the hazardous air pollutant content of the VOC.*

*B. The owner or operator must limit emissions of all hazardous air pollutants from all material usage activities at the stationary source to less than 200 gallons or 2,000 pounds in each calendar year period*

~~calculated according to the method in subpart 5. All hazardous air pollutant emissions from all material usage activities at the stationary source must be accounted for in the annual calculation.~~

~~C. Particulate matter. The owner or operator must limit emissions of particulate matter, PM-10, and PM-2.5 to less than ~~2,000~~ 8,000 pounds each in each calendar year period calculated according to the method in subpart ~~4~~5. All particulate matter, PM-10, and PM-2.5 emissions from all material usage activities at the stationary source must be accounted for in the annual calculation. This limit applies regardless of the hazardous air pollutant content of the particulate matter.~~

### Change to Part 7008.4100, subpart 3

61. As explained above in Findings No. 55 through 57, the MPCA will not require owners and operators to track HAPs at these sources. Therefore, subpart 3, describing record keeping for material usage, is modified to delete references to the tracking of HAPs usage, and the items in subpart 3 are renumbered as a result of the deletion of item B.

#### Part 7008.4100, Subp. 3

*Subp. 3. **Record keeping.** The owner or operator of a stationary source claiming material usage as a conditionally insignificant activity must:*

*A. maintain records for each calendar year of the number of gallons of VOC-containing materials purchased or used and the maximum VOC content of each material;*

~~*B. maintain records for each calendar year of the number of gallons of hazardous air pollutant-containing materials purchased or used and the maximum hazardous air pollutant content of each material;*~~

*~~C. B.~~ maintain records for each calendar year of the number of gallons of solids-containing materials purchased or used and the maximum solids content of each material;*

~~*D. C.* maintain a record of the material safety data sheet (MSDS), or a signed statement from the supplier stating the maximum VOC content, ~~the maximum hazardous air pollutant content,~~ and the maximum solids content for each material;~~

~~*E. D.* if the owner or operator ships waste material from material usage activities off-site for recycling, keep records of the amount of material shipped off-site for recycling, the VOC content ~~and hazardous air pollutant content~~ of the waste materials shipped off-site for recycling, and the calculations done to determine the amount of VOC ~~and hazardous air pollutants~~ to subtract. Acceptable records include: the material safety data sheets, invoices, shipping papers, and/or hazardous waste manifests;~~

~~*F. E.* if a material usage activity includes spray application of material and the owner or operator chooses to apply the transfer efficiency in calculations, maintain information on the type of spray application equipment and transfer efficiency; and~~

~~*G. F.* if requested by the commissioner, calculate and record for any of the previous five calendar years:~~

~~(1) the VOC emissions using the method in subpart 4;~~

~~(2) the hazardous air pollutant emissions using the method in subpart 5;~~

~~(3) the particulate matter, PM-10, and PM-2.5 emissions using the method in subpart ~~4~~ 5;~~

~~(4)(3) the calculation used to arrive at the total for each of subitems (1) ~~to (3)~~ and (2); and~~

~~(5)(4) a list of the associated emissions units in which the material was used.~~

### Change to Part 7008.4100, subpart 5

62. As explained above in Findings No. 55 through 57, the MPCA will not require the tracking of HAPs at these sources. Therefore, subpart 5, describing HAPs emissions calculations, is deleted in its entirety.

Part 7008.4100, Subp. 5

~~Subp. 5. **Calculating total hazardous air pollutant emissions.** An owner or operator claiming material usage as a conditionally insignificant activity must calculate total hazardous air pollutant emissions using one of the methods in item A or B. If the owner or operator ships waste materials from material usage activities off-site for recycling, the amount of hazardous air pollutants recycled may be subtracted from the amount of total hazardous air pollutant calculated in item A or B:~~

~~A. gallons of hazardous air pollutants per calendar year equal gallons of hazardous air pollutant-containing material purchased or used in a calendar year multiplied by the volume percentage of hazardous air pollutants; or~~

~~B. pounds of hazardous air pollutants per calendar year equal gallons of hazardous air pollutant-containing material purchased or used in a calendar year multiplied by the pounds of hazardous air pollutants per gallon or pounds of hazardous air pollutant-containing material purchased or used in a calendar year multiplied by the weight percent of hazardous air pollutants.~~

Change to Part 7008.4100, subpart 6

63. As explained above in Findings No. 59 and 60, the MPCA finds that it must modify the structure of the particulate matter limits by clarifying that particulate matter, PM-10, and PM-2.5 are three separate pollutants and must be calculated individually. Subpart 6 is renumbered because of the deletion of subpart 5.

Part 7008.4100, Subp. 6

~~Subp. 6. **Calculating particulate matter, PM-10, and PM-2.5 emissions.** An owner or operator claiming material usage as a conditionally insignificant activity must calculate particulate matter, PM-10, and PM-2.5 emissions individually using one of the methods in item A or B:~~

~~A. pounds of particulate matter, PM-10, and PM-2.5 emissions per calendar year equal gallons of solids-containing material purchased or used in a calendar year multiplied by the pounds of solids per gallon; or~~

~~B. pounds of particulate matter, PM-10, and PM-2.5 emissions per calendar year equal pounds of solids-containing material purchased or used in a calendar year multiplied by weight percent of solids per gallon.~~

~~For material usage activities that involve spray application of materials, the owner or operator may apply a transfer efficiency in the calculation of particulate matter, PM-10, and PM-2.5 emissions by multiplying the result determined by item A or B by (1 - transfer efficiency).~~

64. The MPCA finds that these modifications in part 7008.4100 do not make the proposed rule substantially different. The modifications are clearly within the scope of the "Subject of Rules" Chapter 7008 as announced in the Notice. The differences between the modifications and the proposed rule are a logical outgrowth of the Notice and comments submitted by the commenters in response to the Notice. The Notice provided fair warning that this rule change could result because the commenters expressed the need for clarification on the point when they commented that the proposed rule relating to the permitting of conditionally insignificant activities required modification. By making the modifications in this part, most-if not all, conditionally insignificant facilities will retain their permitting status prior to rulemaking.

7008.4110 CONDITIONALLY INSIGNIFICANT PM AND PM-10 EMITTING OPERATIONS.

Change to Part 7008.4110, subpart 1

65. The Chamber commented that the existing rule applies to sources emitting particulate matter as a conditionally insignificant activity and noted that the MPCA's proposed changes narrowed the application of this standard to only the activities already listed in this rule as examples. As pointed out by the Chamber, there are many small activities that would no longer qualify under this rule as proposed. The Chamber suggested that the MPCA address any problematic internally venting sources individually rather than changing the rule and impacting all such sources.
66. The MPCA experience with this rule is that owners and operators have expanded the use of part 7008.4110 to categories of emissions units that the MPCA did not intend the rule to cover. The rule was originally intended to address finishing-type activities primarily at smaller sources, such as those provided by example in the rule (buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, surface grinding, or turning equipment). By expanding the application of the rule beyond the examples provided in the rule, the MPCA has identified instances where owners and operators at larger permitted facilities have tried to apply this rule part to emissions units with very high PM and PM-10 potential to emit, thereby removing them from permitting requirements. The MPCA is concerned that these facilities are in fact emitting particulate matter at amounts above permitting thresholds. Inappropriate application of this rule to large sources jeopardizes the source's synthetic minor status under the Prevention of Significant Deterioration program and could result in enforcement action.
67. MPCA finds merit in further examination of expanding the activities covered under this part but cannot modify the rule in this rulemaking to sufficiently address the many issues that are involved. Additional stakeholder input and data gathering will be necessary to amend this part so that it is federally enforceable and contains the conditions that adequately limit a source's potential to emit in the most efficient manner. That work will be done in a future rulemaking. Therefore, the MPCA is not adopting the proposed amendments to subparts 1 and 2 of this part that pertain to these concerns. However, the MPCA will retain the proposed amendments to subpart 3 because without specified compliance methods, these activities are not federally exempt from permitting. See comment 20 in the MPCA's Response to Comments (Attachment 1). The modifications to proposed subparts 1 and 2 restore the existing rule before this rulemaking was undertaken. The pollutant PM-2.5 was not regulated in the existing rule, so it is deleted in its entirety.
68. The modifications to proposed subpart 1 restore the existing rule before this rulemaking was undertaken. Subpart 1 is modified to delete the proposed rule language, and to add the original language that was struck from the existing rule.

*Part 7008.4110, Subp. 1*

*Subpart 1. **Applicability.** This part applies to any the owner or operator of a stationary source claiming finishing operations that emit only particulate matter (PM) or particulate matter of less than ten microns (PM10 PM-10) venting equipment, PM-10, or PM-2.5 as a conditionally insignificant activity and applies to activities that emit only PM, PM-10, or PM-2.5. For purposes of this part, "finishing operations" means buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, surface grinding, or turning ceramic, leather, metal, plastic, masonry, carbon, wood, or glass.*

**Change to Part 7008.4110, subpart 2**

69. The modifications to proposed subpart 2 restore the existing rule before this rulemaking was undertaken. The definition of "finishing operations" is restored by deleting it from subpart 1 and restoring it to subpart 2.

Part 7008.4110, Subp. 2

*Subp. 2. **Requirements.** Emissions from equipment venting finishing operations that emit PM or PM<sub>10</sub>, PM-10, PM<sub>10</sub>, or PM-2.5 inside a building, for example: buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, surface grinding, or turning equipment, must be:*

- A. filtered through an air cleaning system; and*
- B. vented inside of the building 100 percent of the time.*

**Change to Part 7008.4110, subpart 3**

70. The modifications to proposed subpart 3 are needed to be consistent with the modifications to proposed subparts 1 and 2, including adding the reference to the equipment this subpart applies to. The pollutant PM-2.5 was not regulated in the existing rule in subparts 1 or 2, so it is deleted in subpart 3.

Part 7008.4110, Subp. 3

*Subp. 3. **Monitoring and record keeping.** An owner or operator of a A stationary source claiming finishing operations that emit PM, or PM-10, or PM-2.5 venting equipment as a conditionally insignificant activity must:*

- A. operate the air cleaning system as required by the manufacturer's specification and part 7008.0200, item D;*
- B. inspect the air cleaning system as required by the manufacturer's specification;*
- C. maintain the air cleaning system according to the manufacturer's specification; and*
- D. maintain a record of inspection, maintenance, and repair activities for the air cleaning system for at least five years.*

71. The MPCA finds that these modifications in part 7008.4110 do not make the proposed rule substantially different. The modifications are clearly within the scope of the "Subject of Rules" Chapter 7008 as announced in the Notice. The differences between the modifications and the proposed rule are a logical outgrowth of the Notice and comments submitted by the commenters in response to the Notice. The Notice provided fair warning that this rule change could result because the commenters expressed the need for clarification on the point when they commented that the proposed rule required modification. By making the modifications in this part, conditionally insignificant facilities will retain their permitting status prior to rulemaking. The MPCA plans to address the concerns raised by the commenters in a future rulemaking.

**7009.0010 DEFINITIONS.**

**Change to Part 7009.0010, subpart 1a**

72. During the public comment period on the rule, the MPCA determined that the second sentence of the proposed definition for "averaging time" could cause confusion. Specifically, the second sentence of the definition describes the mathematical operations used to calculate the average, but may contradict calculations for standards that rely on alternative averaging methods, such as a geometric mean. To prevent the confusion, subpart 1a is modified to delete the second sentence in the definition. This change is reasonable because it eliminates potential confusion with the procedures specified in *Minn. R. 7009.0050*.

Part 7009.0010, Subp. 1a

*Subp. 1a. Averaging time. "Averaging time" means the time period specified in part 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.*

73. The MPCA finds that this modification does not make the proposed rule substantially different. The modification is clearly within the scope of the "Subject of Rules" Chapter 7009 as announced in the Notice. The modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result. The effect of the modification does not differ from the effect of the proposed rule because it does not change the meaning of the term "averaging time."

**7009.0080 MINNESOTA AMBIENT AIR QUALITY STANDARDS.**

**Change to Part 7009.0080, Ozone**

74. On October 26, 2015, the USEPA codified revisions to the National Ambient Air Quality Standards (NAAQS) for ozone. As a result of these revisions, the level of the 8-hour ozone standard has been reduced from 75 ppb to 70 ppb. To be consistent with federal regulations, the MPCA is revising the state ozone standard to 70 ppb. One of the primary purposes of this rulemaking is to update certain MPCA air rules so that they are consistent with federal rule.

*Part 7009.0080*

<i>Ozone</i>	<i><del>75</del> <u>70</u> ppb by volume (<del>150</del> <u>137</u> micrograms per cubic meter)</i>	<i>Same as primary standard</i>	<i>8-hour</i>	<i>3-year average of the annual fourth high daily maximum 8-hour concentration does not exceed standard</i>
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75. The MPCA finds that these modifications do not make the proposed rule substantially different and are clearly within the scope of the "Subject of Rules" Chapter 7009 as announced in the Notice.

**Change to Part 7009.0080, Sulfur Dioxide**

76. The Chamber commented that the conversions of the standard to micrograms included in the parentheses in part 7009.0080 are not consistent with USEPA's conversion methods and should be removed or recalculated to reflect the specific form and rounding conventions contained in 40 CFR Part 50.
77. The MPCA has considered the Chamber's request to remove or revise the parenthetical concentrations proposed for part 7009.0080. The MPCA finds that the continued inclusion of the parenthetical concentrations is beneficial for some stakeholders; therefore, the MPCA is not removing the parenthetical concentrations in this rulemaking. The MPCA also evaluated whether the parenthetical concentrations should be revised to reflect the specific form and rounding conventions contained in 40 CFR Part 50. The MPCA disagrees that the parenthetical concentrations in the "Level of the standard" column of part 7009.0080 must reflect the rounding conventions contained in 40 CFR Part 50. Rather, the parenthetical concentrations should be a direct unit conversion of the

level of the standard from the default units to the alternate units, assuming standard temperature and pressure. Instructions for data handling, including rounding are specified in part 7009.0050 or applicable guidance.

78. During the MPCA's review of the Chamber's comment, however, the MPCA identified errors in the parenthetical concentration for the sulfur dioxide standards. The MPCA is modifying the parenthetical concentrations for the annual, 24-hour, 3-hour, and 1-hour sulfur dioxide standards such that they are a direct conversion from the default units of parts per billion (ppb) to micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), assuming standard temperature and pressure.

*Part 7009.0080*

<i>Sulfur Dioxide</i>	<i>30 ppb by volume (<del>80-79</del> micrograms per cubic meter)</i>	<i>Annual average</i>	<i>Annual average concentration does not exceed standard</i>
	<i>140 ppb (<del>365</del> <u>367</u> micrograms per cubic meter)</i>	<i>24-hour</i>	<i>Annual second-high 24-hour concentration does not exceed standard</i>
	<i>500 ppb by volume (<del>1,300</del> <u>1,310</u> micrograms per cubic meter)</i>	<i>3-hour</i>	<i>Annual second-high 3-hour concentration does not exceed the standard</i>
	<i>75 ppb (<del>196</del> <u>197</u> micrograms per cubic meter)</i>	<i>1-hour</i>	<i>3-year average of the annual 99th-percentile daily maximum 1-hour concentration does not exceed standard</i>

79. The MPCA finds that these modifications do not make the proposed rule substantially different. The modifications are clearly within the scope of the "Subject of Rules" Chapter 7009 as announced in the Notice. The change corrects an error in the unit conversion from default units to alternate units for the sulfur dioxide standards. The modifications are a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result.

**Change to Part 7009.0080, Total Suspended Particulate**

80. During the public comment period on the rule, the MPCA determined that the form of the standard for the annual total suspended particulate standard was incorrectly listed as "annual average concentration does not exceed standard." The form of the annual total suspended particulate standard should read "annual geometric mean concentration does not exceed standard." Part 7009.0080 is modified to delete "average" and add "geometric mean" in referring to the form of the standard to be used for the annual total suspended particulate standard. This change is reasonable because it corrects an error in the listing.

*Part 7009.0080*

<i>Total</i>	<i>75</i>	<i>60</i>	<i>Annual</i>	<i>Annual <del>average</del></i>
<i>Suspended</i>	<i>micrograms</i>	<i>micrograms</i>	<i>average</i>	<i><u>geometric mean</u></i>
<i>Particulate</i>	<i>per cubic</i>	<i>per cubic</i>		<i>concentration</i>
	<i>meter</i>	<i>meter</i>		<i>does not exceed</i>
				<i>standard</i>
	<i>260</i>	<i>150</i>	<i>24-hour</i>	<i>Annual</i>
	<i>micrograms</i>	<i>micrograms</i>		<i>second-high</i>
	<i>per cubic</i>	<i>per cubic</i>		<i>24-hour</i>
	<i>meter</i>	<i>meter</i>		<i>concentration</i>
				<i>does not exceed</i>
				<i>standard</i>

81. The MPCA finds that this modification does not make the proposed rule substantially different. The modification is clearly within the scope of the "Subject of Rules" Chapter 7009 as announced in the Notice, and corrects an error that was inadvertently introduced in the proposed rule.

**Change to Part 7009.0080**

82. The Chamber commented that the use of the phrase "quarterly-weighted average" to describe the form of the PM-2.5 annual standard is inappropriate, as no weighting is applied to the federal PM-2.5 annual standard.

83. In the proposed rule, the MPCA used the phrase, "quarterly-weighted average" to reflect the calculation methodologies included in 40 CFR Part 50, Appendix N, which provides the methodology for interpreting the NAAQS for PM-2.5. The form of the federal PM-2.5 annual standard is a seasonally-weighted annual average concentration, averaged over three-years. To calculate the seasonally-weighted annual average concentration, Appendix N specifies that the annual average shall be calculated by taking the average of each separately calculated quarterly average. Due to the subjectivity associated with the phrase "seasonally-weighted average," the MPCA included the more precise phrase, "quarterly-weighted average" in part 7009.0080.

84. The MPCA agrees that the difference in terminology between the state and federal rules may create confusion. Part 7009.0080 is modified by replacing the phrase “quarterly-weighted average” with the phrase “seasonally-weighted average.” This change is reasonable because it provides consistency with the terminology used in 40 CFR Part 50, Appendix N for the PM-2.5 calculation methodologies.

*Part 7009.0080*

<i>PM-2.5</i>	<i>35 micrograms per cubic meter</i>	<i>Same as primary standard</i>	<i>24-hour</i>	<i>3-year average of the annual 98th-percentile 24-hour concentration does not exceed the standard</i>
	<i>12.0 micrograms per cubic meter</i>	<i>15.0 micrograms per cubic meter</i>	<i>Annual average</i>	<i>3-year average of the annual <del>quarterly-</del> <u>seasonally-</u> weighted average does not exceed the standard</i>

85. The MPCA finds that this modification does not make the proposed rule substantially different. The modification is clearly within the scope of the “Subject of Rules” Chapter 7009 as announced in the Notice, is a logical outgrowth of the Notice and comments process, and the Notice provided fair warning that this rule change could result because the commenter requested the change when they commented on the rule.

**7009.0090 NATIONAL AMBIENT AIR QUALITY STANDARDS.**

**Change to Part 7009.0090**

86. The Chamber commented on the incorporation of the NAAQS by reference and identified several incorrect and/or incomplete references to the current NAAQS. The Chamber provided proposed language to correct these errors.
87. The MPCA has reviewed the federal rules referenced in part 7009.0090 and acknowledges the inadvertent errors and/or omission of applicable standards. Part 7009.0090 is revised to reflect the correct and complete references to the federal standards. It is reasonable to make these modifications to correct the federal rule citations.

88. In addition, during the MPCA's review, to provide clarity in the interpretation and applicability of the NAAQS, the MPCA identified the need to incorporate a reference to 40 CFR Part 50 which contains the definitions and methodologies used by the MPCA to determine compliance with these standards, and to support Minnesota Ambient Air Quality Standards (MAAQS) and NAAQS air quality modeling demonstrations. Therefore, the MPCA is modifying part 7009.0090 to add a reference to part 7009.0050.

*Part 7009.0090*

*The following national ambient air quality standards, established pursuant to section 109 of the Clean Air Act, are adopted and incorporated by reference: Interpretation of the standards and measurements made to determine compliance with these standards must be performed as specified in part 7009.0050:*

- A. sulfur dioxide (SO<sub>2</sub>), Code of Federal Regulations, title 40, sections ~~50.4(b) and 50.5(a)~~ 50.4, 50.5, and 50.17, as amended;*
- B. PM-10, Code of Federal Regulations, title 40, sections ~~50.6(a)~~ 50.6, as amended;*
- C. PM-2.5, Code of Federal Regulations, title 40, ~~section 50.7(a)~~ sections 50.13 and 50.18, as amended;*
- D. carbon monoxide (CO), Code of Federal Regulations, title 40, section ~~50.8(a)(1) and (2)~~ 50.8, as amended;*
- E. ozone (O<sub>3</sub>), Code of Federal Regulations, title 40, sections ~~50.9(a) and 50.10(a)~~ 50.9 and 50.19, as amended;*
- F. nitrogen dioxide (NO<sub>2</sub>), Code of Federal Regulations, title 40, section ~~50.11(a) and (b)~~ 50.11, as amended; and*
- G. lead (Pb), Code of Federal regulations, title 40, section ~~50.12~~ 50.16, as amended.*

89. The MPCA finds that these modifications do not make the proposed rule substantially different. The modifications are clearly within the scope of the "Subject of Rules" Chapter 7009 as announced in the Notice. The modifications are a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result because the commenter requested the change when they commented on the rule.

**7011.0070 LISTED CONTROL EQUIPMENT AND CONTROL EQUIPMENT EFFICIENCIES.**

**Change to Part 7011.0070, subpart 1a, item A**

90. The MPCA finds that with the deletion of the proposed definition for "condensable particulate matter," as described in Finding No. 17, part 7011.0070, subpart 1a, item A must be modified to add "organic or inorganic" to the term "condensable particulate matter." This change relates to the same subject matter as the originally proposed rule but further clarifies the exact fractions of particulate matter considered for compliance demonstration purposes (see SONAR page 43). It is reasonable to provide consistent use of terms throughout the rule.

*Part 7011.0070, Subp. 1a.A*

*Subp. 1a. **Exceptions where control efficiency disallowed.** The owner or operator may not use a control efficiency listed in Table A if:*

- A. the commissioner determines that the listed efficiency is inapplicable or is not representative of the source due to complexity of the process or source of emissions, lack of reliable data, presence of a pollutant*

*or constituent such as organic or inorganic condensable particulate matter or an organic compound significantly more difficult to control than the overall VOC gas stream that makes the categorical efficiency nonrepresentative, or other site-specific conditions; or*

91. The MPCA finds that this modification does not make the proposed rule substantially different. The modification is clearly within the scope of the "Subject of Rules" Chapter 7011 as announced in the Notice, and is a logical outgrowth of the Notice and comments process. The effects of the modification are not different from the proposed rule; the Notice provided fair warning that the rule would result in further definition related to the forms of particulate matter.

#### **7011.0615 PERFORMANCE TEST METHODS.**

##### **Change to Part 7011.0615, item C**

92. The MPCA finds that with the deletion of the proposed definition for "condensable particulate matter," as described in Finding No. 17, part 7011.0615, item C must be modified to add "organic" to the term "condensable particulate matter." This change relates to the same subject matter as the originally proposed rule but further clarifies the exact fractions of particulate matter considered for compliance demonstration purposes (see SONAR page 43). It is reasonable to provide consistent use of terms throughout the rule.

##### *Part 7011.0615, Item C*

*Unless another method is approved by the agency, any person required to submit performance tests for direct heating equipment must use the following test methods to demonstrate compliance:*

- A. Method 1 for selection of sampling site and sample traverses;*
- B. Method 3 for gas analysis;*
- C. Method 5 for concentration of filterable particulate matter and the associated moisture content and Method 202 for concentration of organic condensable particulate matter;*
- D. Method 6 for concentration of SO<sub>2</sub>; and*
- E. Method 9 for visual determination of opacity.*

93. The MPCA finds that this modification does not make the proposed rule substantially different. The modification is clearly within the scope of the "Subject of Rules" Chapter 7011 as announced in the Notice and is a logical outgrowth of the Notice and comments process. The effects of the modification are not different from the proposed rule; the Notice provided fair warning that the rule would result in further definition related to the forms of particulate matter.

#### **7011.0720 PERFORMANCE TEST METHODS.**

##### **Change to Part 7011.0720, item D**

94. During the public comment period on the rule, the MPCA found that a correction in the spelling of "condensable" in part 7011.0720, item D is needed. Item D is modified to delete "condensable" and add "condensable" so that the correct spelling of the word is used throughout the rules. This change is consistent with the same correction made in the proposed rules (see SONAR page 41). The subject matter is the same as the originally proposed rule and only corrects the spelling to be uniform throughout the rule.

Part 7011.0720, Item D

*Unless another method is approved by the agency, any owner or operator required to submit performance tests for any industrial process equipment must use the following test methods to demonstrate compliance:*

- A. Method 1 for sample and velocity traverses;*
- B. Method 2 for velocity and volumetric flow rate;*
- C. Method 3 for gas analysis;*
- D. Method 5 for the concentration of filterable particulate matter and associated moisture content and Method 202 for the concentration of organic ~~condensibles~~ condensables; and*
- E. Method 9 for visual determination of the opacity of emissions from stationary sources.*

95. The MPCA finds that this modification does not make the proposed rule substantially different. The modification is clearly within the scope of the "Subject of Rules" Chapter 7011 as announced in the Notice and is a logical outgrowth of the Notice and comments process. The effects of the modification are not different from the proposed rule; the Notice provided fair warning that the rule would result in further definition related to the forms of particulate matter.

**7011.1270 PERFORMANCE TEST, WASTE COMPOSITION STUDY, AND ASH SAMPLING FREQUENCY.**

**Change to Part 7011.1270, item A, subitem (5); item B, subitem (3); item C, subitem (3); and item E**

96. During the MPCA's review of the administration and implementation of the proposed rules, the MPCA determined that the proposed amendment at part 7007.1400, subpart 1, item K, which eliminated the option to use an administrative amendment "to include operating conditions that ensure waste combustors emit mercury at less than 50 percent of the applicable standard" should have had a coordinating amendment in part 7011.1270, item A, subitem (5); item B, subitem (3); item C, subitem (3); and item E. Therefore, these items are modified to delete the reference to "...and the owner or operator has submitted a request for an administrative amendment according to the procedures of part 7007.1400." As described in the SONAR, (page 27) for part 7007.1400, subpart 1, item K, waste combustor permits are written such that this type of change can be made without a permit amendment. It is reasonable to make this change to align part 7011.1270 with the proposed rules at part 7007.1400.

*Part 7011.1270, Item A(5), Item B(3), Item C(3), and Item E*

*The owner or operator of a waste combustor shall conduct the performance tests required in part 7011.1265, subpart 5, based on the schedules in items A to E.*

- A. Class A waste combustors shall conduct performance tests as described in subitems (1) to (6).  
(5) From Class A waste combustors that are not burning RDF, for mercury emissions every three months.*

*The facility may implement testing for mercury not less than once every 12 months under the following conditions: the facility has demonstrated that mercury emissions have been below 50 percent of the facility's permitted long-term limit for three consecutive years; and the owner or operator has submitted a request for an administrative amendment according to the procedures of part 7007.1400.*

*Waste combustors combusting RDF may choose to conduct performance tests for mercury every 12 months. If a test shows that an emission limit for mercury from a waste combustor combusting RDF is exceeded, the commissioner shall require testing every three months thereafter until compliance with the standard is demonstrated.*

B. Class II and C waste combustors shall conduct performance tests as described in subitems (1) to (4).

(3) For mercury emissions, Class C waste combustors shall commence testing June 20, 1995, and continue testing every 90 days until August 1, 1997. Thereafter, Class C waste combustors that are not burning RDF shall conduct mercury emissions testing every three months.

The facility may implement testing for mercury not less than once every three years or according to federal applicable requirements, whichever is more stringent, under the following conditions: the facility has demonstrated that mercury emissions have been below 50 percent of the facility's permitted long-term limit for three consecutive years; ~~and the owner or operator has submitted a request for an administrative amendment according to the procedures of part 7007.1400.~~

If a facility is granted testing for mercury not less than once every three years or according to federal applicable requirements, whichever is more stringent, and a mercury performance test shows mercury emissions greater than 50 percent of the facility's permitted mercury limit, the facility shall conduct annual mercury stack sampling until emissions are below 50 percent of the facility's permitted mercury limit. Once the facility demonstrates that mercury emissions are again below 50 percent of the facility's permitted limit, the facility may resume testing every three years, upon notifying the commissioner in writing.

Waste combustors combusting RDF may choose to conduct performance tests for mercury emissions every 12 months. If a test shows that emission limits for mercury from a waste combustor combusting RDF are exceeded, the commissioner shall require performance testing every three months until compliance is demonstrated.

C. Class III and D waste combustors shall conduct performance tests as described in subitems (1) to (6).

(3) For Class III waste combustors, emissions of mercury, every three months.

The facility may implement testing for mercury not less than once every three years or according to federal applicable requirements, whichever is more stringent, under the following conditions: the facility has demonstrated that mercury emissions have been below 50 percent of the facility's permitted long-term limit for three consecutive years; ~~and the owner or operator has submitted a request for an administrative amendment according to the procedures of part 7007.1400.~~

If a facility is granted testing for mercury not less than once every three years or according to federal applicable requirements, whichever is more stringent, and mercury performance test shows mercury emissions greater than 50 percent of the facility's permitted mercury limit, the facility shall conduct annual mercury stack sampling until emissions are below 50 percent of the facility's permitted mercury limit. Once the facility demonstrates that mercury emissions are again below 50 percent of the facility's permitted limit, the facility may resume testing every three years, upon notifying the commissioner in writing.

D. Class IV waste combustors shall conduct performance tests:

(1) once within the normal start-up;

(2) every five years after the test in subitem (1), but not more than 60 months following the initial performance test; and

(3) for ash, in accordance with part 7045.0131 every 60 months for toxic characteristic leach procedure for arsenic, barium, cadmium, chromium, lead, mercury, selenium, and nickel.

E. Class I waste combustors shall conduct performance tests for mercury emissions every three months for waste combustors that are not burning RDF.

The facility may implement testing for mercury not less than once every 12 months under the following conditions: the facility has demonstrated that mercury emissions have been below 50 percent of the facility's permitted long-term limit for three consecutive years; ~~and the owner or operator has submitted a request for an administrative amendment according to the procedures of part 7007.1400.~~

*Waste combustors combusting RDF may choose to conduct performance tests for mercury every 12 months. If a test shows that an emission limit for mercury from a waste combusting RDF is exceeded, the commissioner shall require testing every three months thereafter until compliance with the standard is demonstrated.*

97. The MPCA finds that these modifications do not make the rule substantially different and are clearly within the scope of the "Subject of Rules" Chapter 7007 and 7011 as announced in the Notice. The Notice provided fair warning that the rule changes could result because it notified readers of the subject matter of the rule such that they could understand that their interests could be affected. The conditions of this rule were adopted in 1994, and the affected facilities have all completed emissions testing and re-permitting under the existing provision, meaning that the need for an administrative amendment to their operating permits is no longer necessary. The effect of the modification to part 7011.1270 means that the rule now aligns with the permitting rules in part 7007.1400.

#### **7011.1280 OPERATOR CERTIFICATION.**

##### **Change to Part 7011.1280, subpart 7, item A**

98. The Fond du Lac Band commented that at part 7011.1280, subpart 7, item A, subitem (1), there is a reference to Class D waste combustors whereas other references to Class D waste combustors were removed from several other pages. The MPCA has reviewed the rule and agrees with the commenter. Subpart 7, item A, subitem (1) is modified to delete the reference to Class D.

*Part 7011.1280, subp. 7A*

##### *Subp. 7. Renewal.*

*A. A certified individual shall apply for certificate renewal no later than 30 days prior to certificate expiration. The application for renewal must include evidence that the person has, during the preceding three years, earned credit for attending training courses in the direct operation and maintenance of and environmental compliance for a waste combustor, including personnel training described in part 7011.1275, for the number of hours as identified as follows:*

- (1) Class I, II, III, A, or C, ~~or D~~, 24 hours; and*
- (2) Class IV, eight hours.*

*An individual whose certificate has expired must comply with item B or C.*

99. The MPCA finds that this modification does not make the proposed rule substantially different. The Notice provided fair warning that the rule changes could result because it notified readers of the subject matter of the rule such that they could understand that their interests could be affected; the subject matter and issues in the Notice are the same as the subject matter and issues addressed in the change; and the effects of the modification do not differ from the proposed rule.

#### **7011.1405 STANDARDS OF PERFORMANCE FOR EXISTING AFFECTED FACILITIES AT PETROLEUM REFINERIES.**

#### **7011.1410 STANDARDS OF PERFORMANCE FOR NEW AFFECTED FACILITIES AT PETROLEUM REFINERIES.**

##### **Change to Part 7011.1405 and Part 7011.1410**

100. The MPCA proposed to delete the exemption from standards for flares by repealing *Minn. R. 7011.1415* to address USEPA's Finding of Failure with Minnesota's State Implementation Plan (see SONAR page 53). Northern Tier- SPPRC and Flint Hills Resources commented that with the proposed rule, flares become subject to the

emission limits of either part 7011.1405 or 7011.1410, because flares are defined as a “fuel gas combustion device.”

101. The commenters requested that instead the rules be modified to require the compliance with federal standards in the new source performance standard for petroleum refineries, 40 CFR Part 60, Subpart Ja. The MPCA agrees; federal rules address operation of flares during periods of start-up, shutdown and malfunction. As these standards already apply to flares and the MPCA must include these requirements in the facilities' air emission permits, it is reasonable to simply adopt the federal rules. Therefore, the standards of performance for both existing and new affected facilities at petroleum refineries are modified to exempt flares from state standards if the flares are subject to federal standards. The MPCA finds that this alternative will address USEPA's Finding of Failure with Minnesota's State Implementation Plan.

*Part 7011.1405*

*Subp. 2. **Fuel gas combustion device and indirect heating equipment.** Flares subject to the conditions of Code of Federal Regulations, title 40, part 60, subpart Ja, are not subject to limits of this subpart. No owner or operator of existing fuel gas combustion devices and indirect heating equipment at a petroleum refinery shall cause to be discharged into the atmosphere from such devices and equipment any gases which contain sulfur dioxide in excess of 1.75 pounds per million Btu (3.15 grams per million cal) heat input. The total emissions of sulfur dioxide from all existing fuel gas combustion devices and all indirect heating equipment shall be divided by the total heat input of all such devices and equipment to determine compliance with this section; provided that no owner or operator shall cause to be discharged from any one fuel gas combustion device or any one unit of indirect heating equipment any gases which contain sulfur dioxide in excess of 3.0 pounds per million Btu (5.4 grams per million cal) heat input.*

*Part 7011.1410*

*Subp. 2. **Fuel gas combustion device.** Flares subject to the conditions of Code of Federal Regulations, title 40, part 60, subpart Ja, are not subject to the limits of this subpart. No owner or operator of a new fuel gas combustion device at a petroleum refinery shall burn in any such device any fuel gas which contains H<sub>2</sub>S in excess of 0.10 gr/dscf, (230 mg/dscm) except as provided herein. The owner or operator may elect to treat the gases resulting from the combustion of fuel gas in a manner which limits the release of SO<sub>2</sub> to the atmosphere if it is shown to the satisfaction of the commissioner that this prevents SO<sub>2</sub> emissions as effectively as the H<sub>2</sub>S restriction set forth above.*

102. The MPCA finds that these modifications do not make the proposed rule substantially different. The modifications are clearly within the scope of the “Subject of Rules” Chapter 7011 as announced in the Notice. The differences between the modifications and the proposed rule are a logical outgrowth of the Notice and comments submitted by the commenters in response to the Notice. The effects of the modification incorporate federal standards to which affected facilities acknowledge they are already subject.

**7011.1435 INCORPORATION BY REFERENCE OF NEW SOURCE PERFORMANCE STANDARDS.**

**Change to Part 7011.1435**

103. Northern Tier-SPPRC and Flint Hills Resources submitted comments proposing that the MPCA incorporate by reference the new source performance standard for refineries. The MPCA agrees with the commenters and is modifying part 7011.1435 to add new items D and E to incorporate by reference federal standards of

performance for refineries and flares. The delegation process with USEPA requires that the MPCA adopt the federal standards to give them the effect of state law, as explained in the Reasonableness of the Proposed Rule Amendments as a Whole (see SONAR page 5). As a result, it is the MPCA's practice that from time to time, rules are updated to include promulgated federal standards. The MPCA finds that incorporations proposed in new items D and E is consistent with that practice.

*Part 7011.1435, Items D and E*

*The following New Source Performance Standards are adopted and incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 60, subpart J, as amended, entitled "Standards of Performance for Petroleum Refineries," except that decisions made by the administrator under Code of Federal Regulations, title 40, sections 60.105(a)(13)(iii) and 60.106(i)(12), are not delegated to the commissioner and must be made by the administrator.*

*B. Code of Federal Regulations, title 40, part 60, subpart GGG, as amended, entitled "Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries," except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.592(c), are not delegated to the commissioner and must be made by the administrator. C. Code of Federal Regulations, title 40, part 60, subpart QQQ, as amended, entitled "Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems," except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.694, are not delegated to the commissioner and must be made by the administrator.*

*C. Code of Federal Regulations, title 40, part 60, subpart QQQ, as amended, entitled "Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems," except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.694, are not delegated to the commissioner and must be made by the administrator.*

*D. Code of Federal Regulations, title 40, part 60, subpart Ja, as amended, entitled "Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007," except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.109a(b), are not delegated to the commissioner and must be made by the administrator.*

*E. Code of Federal Regulations, title 40, part 60, subpart GGGa, as amended, entitled, "Standards of Performance for Equipment Leaks of VOCs at Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006."*

104. The MPCA finds that these modifications do not make the proposed rule substantially different. The modifications are clearly within the scope of the "Subject of Rules" Chapter 7011 as announced in the Notice. The differences between the modifications and the proposed rule are a logical outgrowth of the Notice and comments submitted by the commenters in response to the Notice. 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. The federal rules apply to facilities whether or not the MPCA incorporates the standard into state rule.

**7011.1730 INCORPORATION BY REFERENCE OF NEW SOURCE PERFORMANCE STANDARDS.**

**Change to Part 7011.1730**

105. Northern Tier-SPPRC and Flint Hills Resources submitted comments proposing that the MPCA incorporate by reference the new source performance standard for refineries. The MPCA agrees with the commenters and is modifying part 7011.1730 to add new item B to incorporate by reference federal standards of performance for Nitric Acid plants, a product that can be produced at refineries. The delegation process with USEPA requires that

the MPCA adopt the federal standards to give them the effect of state law, as explained in the Reasonableness of the Proposed Rule Amendments as a Whole (see SONAR page 5). As a result, it is the MPCA's practice that from time to time, rules are updated to include promulgated federal standards. The MPCA finds that incorporations proposed in new item B is consistent with that practice.

*Part 7011.1730, Item B*

*A. Code of Federal Regulations, title 40, part 60, subpart G, as amended, entitled "Standards of Performance for Nitric Acid Plants," is adopted and incorporated by reference.*

*B. Code of Federal Regulations, title 40, part 60, subpart Ga, as amended, entitled "Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction or Modification Commenced After October 14, 2011," is incorporated by reference.*

106. The MPCA finds that this modification does not make the proposed rule substantially different. The modification is clearly within the scope of the "Subject of Rules" Chapter 7011 as announced in the Notice. The differences between the modification and the proposed rule are a logical outgrowth of the Notice and comments submitted by the commenters in response to the Notice. 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. The federal rules apply to facilities whether or not the MPCA incorporates the standard into state rule.

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

**Change to Part 7011.2375**

107. The MPCA proposed to adopt by reference federal standard 40 CFR Part 60, Subpart KKKK. In reviewing the proposed rule for implementation and administration, the MPCA noted it included portions of the federal rule that USEPA specifically reserved to itself and will not delegate to a state. The MPCA is modifying this rule to clarify that *section 60.737(b)* is not delegated to the Commissioner. It is common practice for the MPCA to identify which portions of federal rules the MPCA will accept delegation and which provisions USEPA will retain administrative responsibility.

*Part 7011.2375*

*Code of Federal Regulations, title 40, part 60, subpart KKKK, as amended, entitled "Standards of Performance for Stationary Combustion Turbines," is adopted and incorporated by reference, except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.737(b), are not delegated to the commissioner and must be made by the administrator.*

108. The MPCA finds that this modification does not make the proposed rule substantially different. The federal rules apply to facilities whether or not the MPCA incorporates the standard into state rule. The modification is clearly within the scope of the "Subject of Rules" Chapter 7011 as announced in the Notice. The differences between the modification and the proposed rule are a logical outgrowth of the Notice and comments submitted by the commenters in response to the Notice. This modification 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.

## 7011.2900 INCORPORATION BY REFERENCE OF NEW SOURCE PERFORMANCE STANDARDS.

### Change to Part 7011.2900

109. Northern Tier-SPPRC suggested that new source performance standards for refineries should be incorporated into Minnesota rules at this time. The MPCA agrees, and modified the rule to add a new item D at part 7011.2900 to incorporate by reference the federal new source performance standard 40 CFR Part 60, Subpart VVa for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry. The current delegation agreement between USEPA and the state of Minnesota requires that for a new source performance standard to be delegated to the state for state implementation and enforcement, the standard must first have the force of law in Minnesota. 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. The rules will apply to facilities whether or not the MPCA incorporates the standard into state rule. The MPCA adopts this standard by reference to comply with this condition of the delegation agreement.

#### *Part 7011.2900*

*The following New Source Performance Standards are adopted and incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 60, subpart VV, as amended, entitled "Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry," except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.482-1(c)(2), are not delegated to the commissioner and must be made by the administrator.*

*B. Code of Federal Regulations, title 40, part 60, subpart III, as amended, entitled "Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes," except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.613(e), are not delegated to the commissioner and must be made by the administrator.*

*C. Code of Federal Regulations, title 40, part 60, subpart NNN, as amended, entitled "Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations," except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.663(e), are not delegated to the commissioner and must be made by the administrator.*

*D. Code of Federal Regulations, title 40, part 60, subpart VVa, as amended, entitled "Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006." With this incorporation, reporting requirements of Code of Federal Regulations, title 40, section 60.487a, remain unchanged.*

110. The MPCA finds that this modification does not make the proposed rule substantially different. The modification is within the scope of the "Subject of Rules" Chapter 7011 as announced in the Notice. The differences between the modification and the proposed rule are a logical outgrowth of the Notice and comments submitted by the commenters in response to the Notice. The effects of the modification to incorporate by reference federal standards do not differ from the proposed rule because they do not change the meaning or applicability of the federal rules.

## 7011.7050 INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL BOILERS AND PROCESS HEATERS; MAJOR SOURCES.

### Change to Part 7011.7050

111. During the public comment period on the rule, the MPCA found that a correction to the federal citation in part 7011.7050 is needed. Part 7011.7050 is modified to correct the reference so that this rule refers to the proper federal regulation describing delegation of the industrial boiler emission standards. It is reasonable to make a change to correct a federal rule citation.

*Part 7011.7050*

*Code of Federal Regulations, title 40, part 63, subpart DDDDD, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters," is incorporated by reference, except that the authorities identified in Code of Federal Regulations, title 40, section ~~63.313(d)~~ 63.7570(b), are not delegated to the commissioner and are retained by the administrator.*

112. This modification does not make the proposed rule substantially different. It simply corrects an error in a citation. The subject matter and issues in the Notice are the same as the subject matter and issues addressed in the change. The effects of the modification are not different from the proposed rule.

**7011.7630 PORTLAND CEMENT KILNS.**

**Change to Part 7011.7630**

113. During the public comment period on the rule, the MPCA found that proposed part 7011.7630, the National Emission Standards for Hazardous Air Pollutants from Portland Cement Manufacturing Industry" is already provided for in existing *Minn. R.* 7011.7640. Therefore, the MPCA finds that it must modify the rule and delete part 7011.7630. It is reasonable to delete a proposed rule that is duplicative of an existing rule.

*Part 7011.7630*

*Code of Federal Regulations, title 40, part 63, subpart LLL, as amended, entitled "National Emission Standards for HAPs From the Portland Cement Manufacturing Industry," is adopted and incorporated by reference, except that the decisions made by the administrator under Code of Federal Regulations, title 40, section 63.1358(c), are not delegated to the commissioner and must be made by the administrator.*

114. The MPCA finds that this modification does not make the rule substantially different. The subject matter is the same as the proposed rule and the effect of the rule remains the same as the proposed rule is duplicative of an existing rule.

**7017.1170 QUALITY ASSURANCE AND CONTROL REQUIREMENTS FOR CEMS.**

**Change to Part 7017.1170, subpart 2**

115. The Chamber submitted comments on the subpart 2 Quality Assurance Plan requirements and stated that the proposed rule appears to imply that a Part 75 source would only follow the Part 60 Quality Assurance Plan requirements. The Chamber proposed that subpart 2 be amended to reference the Part 75 Appendix B Quality Assurance/Quality Control Plan requirements as applicable, in addition to the existing Part 60 references. The MPCA agrees that a clarification would be helpful to this rule part.
116. Subpart 2 is modified to add a reference to 40 CFR Part 75, Appendix B to avoid conflicting standards. The modification is not substantially different from the proposed rule in that reference to the Part 75 procedures are

to be adopted wherever allowable and practicable. The Notice provided explanation of this intent and the effect of the rule remains the same as that originally proposed to mirror federal requirements and avoid potential rule conflicts.

*Part 7017.1170, Subp. 2*

*Subp. 2. **Quality assurance plan required.** The owner or operator of the facility must develop and implement a written quality assurance plan that covers each CEMS. The plan must be on site and available for inspection within 30 days after monitor certification. The plan must be revised as needed to keep the plan up to date with the facility's current policies and procedures. The plan must contain all of the information required by Code of Federal Regulations, title 40, part 60, appendix F, section 3, or Code of Federal Regulations, title 40, part 75, Appendix B, as amended. The plan must include the manufacturer's spare parts list for each CEMS and require that those parts be kept at the facility unless the commissioner gives written approval to exclude specific spare parts from the list. The commissioner may approve requested exclusions if the commissioner determines that it is not reasonable to keep a specific part on site after consideration of the consequences of a malfunction of the part, the likelihood of a malfunction, the time required to obtain the part and other pertinent factors.*

117. The MPCA finds that this modification does not make the rule substantially different. The modification is clearly within the scope of the "Subject of Rules" Chapter 7017 as announced in the Notice. The differences between the modification and the proposed rule are a logical outgrowth of the Notice and comments submitted by the commenters in response to the Notice.

**Change to Part 7017.1170, subpart 4a, item A**

118. Ottertail Power Company submitted comments suggesting a clarification to subpart 4a, item A which is the requirements for cylinder gas audits. Ottertail Power Company proposes adding clarifying language to subpart 4a, item C stating that units subject to the quality assurance and control requirements for continuous emissions monitoring system (CEMS) in 40 CFR Part 75, fulfill their obligation under part 7017.1170, subpart 4a by complying with the Part 75 requirements. The MPCA agrees that a clarification would be helpful to this rule part.
119. Subpart 4a, item A is modified to incorporate by reference 40 CFR Part 75, Appendix A, 6.2 as an acceptable methodology for completing a monitor cylinder gas audit. Although Part 75 does not use the term cylinder gas audit, the linearity test required in 40 CFR Part 75 is an equivalent and, in fact, a more stringent monitor assessment than the cylinder gas audit tests required in part 7017.1170, subpart 4a. It is reasonable to reference the federal Part 75 procedures wherever allowable and practicable.
120. The MPCA also modified the subpart 4a, item A cylinder gas audit requirement from every "other" to every "second" quality assurance operating quarter and deleted "calendar" to further reduce any confusion related to the cylinder gas audit due dates. Changing from every "other" to every "second" provides a clearer due date. Deleting "calendar" is reasonable since the cylinder gas audit frequency will be based on quality assurance operating quarters defined in rule and therefore, reference to "calendar" is no longer needed.

*Part 7017.1170, Subp. 4a.A*

**Subp. 4a. Cylinder gas audit.**

*A. The owner or operator must complete the initial cylinder gas audit (CGA) within 180 days following certification of the CEMS. The owner or operator must conduct subsequent CGAs on each concentration*

*and diluent monitor on each CEMS no later than the end of every ~~other~~ second QA operating quarter, regardless of whether the quarters are consecutive ~~calendar~~ quarters. ~~The audit must be performed, according to Code of Federal Regulations, title 40, part 60, Appendix F, section 5.1.2, or Code of Federal Regulations, title 40, part 75, Appendix A, section 6.2, as amended.~~ As part of each quarterly excess emission report, the owner or operator must submit notification of any exception to CGA frequency that is used during the reporting period. A CGA is not required during any ~~calendar half-year~~ quarter in which a relative accuracy test audit was performed on the CEMS.*

121. The MPCA finds that these modifications do not make the rule substantially different. These modifications relate to the subject matter of setting a specific cylinder gas audit due date while aligning state and federal monitoring requirements and are clearly within the scope of the "Subject of Rules" Chapters 7011 and 7017, as announced in the Notice. The modification is a logical outgrowth of the Notice and comments submitted in response to the Notice. Finally, the Notice provided fair warning that this rule change could result because the commenter proposed adding the procedures in the Code of Federal Regulations for cylinder gas audit tests.

#### **Change to Part 7017.1170, subpart 5a, item B**

122. The Chamber requested relative accuracy test audit (RATA) be completed at only the normal range of the monitor to be consistent with Part 75 requirements. The proposed rule requires a RATA at each monitor range. In an effort to align Minnesota rules more closely with those of Part 75, the MPCA agrees this is a valid change to make. Testing at a secondary range may require a facility to increase emissions to the point of being out of compliance with emission limits. Therefore, subpart 5a, item B is revised to delete "monitor range" of a CEMS.
123. US Steel commented that existing rule language and permit conditions allow for a reduced RATA frequency if the RATA's accuracy is less than 15%. The MPCA proposed reduced RATA frequency requirements in existing *Minn. R. 7017.1170, subpart 5a, item C. Subitem (1)* proposed that for units that "demonstrate less than 75 percent of the performance specification...the next RATA is due before the end of the sixth subsequent QA operating quarter." As explained in the SONAR (page 62) this proposed rule was consistent with the existing rule language when the performance specification is 20%. A demonstrated 15% relative accuracy would require no RATA for the following year.
124. To provide clarification, subpart 5a, item B is modified to delete "calendar quarters" and add the reference to the conditions in item C. This change is reasonable because it reduces the likelihood of miscalculation from referral to both QA operating quarters and calendar quarters. It is also reasonable because an audit is still required at the normal range of the monitor and auditing this way achieves the goal of proving the monitor is operating properly. The modification does not change the due date in the proposed rule.

#### *Part 7017.1170, Subp. 5a.B*

*Subp. 5a. **Relative accuracy test audits.** The owner or operator must complete relative accuracy test audits (RATAs) as required by this subpart.*

*A. RATAs must be conducted using the applicable procedures in Code of Federal Regulations, title 40, part 60, Appendix B, or Code of Federal Regulations, title 40, part 75, Appendix A, sections 6.5 to 6.5.2.2, and Appendix B, sections 2.3.1.3 and 2.3.1.4, as amended, as applicable.*

*B. The owner or operator must complete a RATA on each CEMS within 365 days following certification of the CEMS. Subsequent RATAs must be conducted on each ~~monitor range of a~~ CEMS no later than the end of every fourth QA operating quarter, regardless of whether the operating quarters are consecutive ~~calendar quarters~~, unless the conditions in item C apply.*

*C. The owner or operator may conduct less frequent RATAs as described in subitems (1) and (2). The owner or operator must include notification of the reduced frequency or delay in performing a RATA to the commissioner in each quarterly excess emission report during which a RATA would have been due. Nothing in this subpart relieves the owners' or operators' obligation to comply with quality assurance provisions imposed by other applicable requirements or compliance documents.*

125. The MPCA finds that these modifications do not make the rule substantially different. The modifications are clearly within the scope of the "Subject of Rules" Chapters 7011 and 7017, as announced in the Notice, and are a logical outgrowth of the Notice and comments submitted by the commenters in response to the Notice. The Notice provided explanation of this intent and the effects of the modification do not differ from the proposed rule, while further mirroring federal requirements.

#### **Change to Part 7017.1170, subpart 8.**

126. US Steel and the Chamber submitted comments stating that the proposed rule appears to imply that the data substitution requirements do not apply at any time. There are times when data substitution per 40 CFR Part 75 is necessary. For example, for emission inventory purposes, under part 7019.3040, item B, subitem (3), Acid Rain affected units are required to use the data substitution scheme under Part 75, or when Part 60, Appendix F, 4.3.2 and 5.2.2 sections do not apply. The commenters stated this appeared clear in the SONAR but not in the rule. The MPCA agrees and has modified subpart 8 to clarify when monitor data allows for data substitution for sources subject to this part.
127. Data substitution practices are not allowed for units subject to Minnesota rules for compliance demonstration purposes. The reasons for monitoring for Part 75 are different from other standards including Minnesota rules which require continuous compliance with emission limits. Units subject to Minnesota rules must comply with the part 7017.1002 definitions of "out of control" periods and report downtime accordingly. The proposed rule specifies that if a facility is subject to more than one standard, the facility must meet all applicable requirements. The requirements of *Minn. R. 7019.3040* for emissions inventory purposes remain unchanged.
128. Subpart 8 is modified by deleting "emissions calculations" and adding "compliance demonstration" in order to avoid confusion when monitor data allows for data substitution for emissions inventory purposes.

#### *Part 7017.1170, Subp. 8*

*Subp. 8. **Out of control periods.** Data is not considered valid and may not be used for ~~emissions calculations~~ **compliance demonstration** during out of control periods as defined in part 7017.1002. The out of control period is considered downtime and the owner or operator must follow the requirements of Code of Federal Regulations, title 40, part 60, Appendix F, sections 4.3 .2 and 5 .2.2, as amended. An owner or operator may not apply the data substitution procedures in Code of Federal Regulations, title 40, part 75, as amended, to comply with this part.*

129. The MPCA finds that the modification does not make the rule substantially different. The modification is clearly within the scope of the "Subject of Rules" Chapters 7011 and 7017, as announced in the Notice, and is a logical outgrowth of the Notice and comments submitted in response to the Notice. Finally, the Notice provided fair warning that this rule change could result because the commenters expressed the need for clarification when they commented that the proposed rule appears to imply that the data substitution requirements do not apply at any time.

## 7017.2060 PERFORMANCE TEST PROCEDURES.

### Change to Part 7017.2060, subpart 3, item D

130. The MPCA finds that with the deletion of the proposed definition for “condensable particulate matter,” as described in Finding No. 17, part 7017.2060, subpart 3, item D must be modified to add “organic” to the term “condensable particulate matter.” This modification relates to the same subject matter as the originally proposed rule but further clarifies the exact fractions of particulate matter considered for compliance demonstration purposes (see SONAR page 43). It is reasonable to provide consistent use of terms throughout the rule. Additionally, it has been the MPCA’s practice to amend rules to eliminate these mandatory conditions wherever possible, and redirect the focus of a rule to the subject being regulated; therefore, the rule is modified to remove the condition requiring the commissioner to approve the exclusion.

#### *Part 7017.2060, subp.3D*

*Subp. 3. **Particulate matter determination.** The owner or operator must conduct particulate matter emission tests as required in this subpart.*

*D. When submitting a proposed test plan, an owner or operator may apply to the commissioner to exclude organic condensable particulate matter from a performance test for particulate matter. The ~~commissioner shall approve the exclusion if the owner or operator demonstrates~~ must demonstrate:*

- (1) through previous performance test results that the emissions unit is not a source of organic condensable particulate matter emissions; or*
- (2) that an exception in Method 202, section 1.4(h), as amended, applies.*

131. The MPCA finds that these modifications do not make the rule substantially different. The modifications are clearly within the scope of the “Subject of Rules” Chapters 7011 and 7017 as announced in the Notice, and are a logical outgrowth of the Notice and comments process. The effects of the modification do not differ from the proposed rule; the Notice provided fair warning that the rule would result in further definition related to the forms of particulate matter.

### Change to Part 7017.2060, subpart 4, item D

132. The MPCA finds that with the deletion of the proposed definition for “condensable particulate matter,” as described above in Finding No. 17, part 7017.2060, subpart 4, item D must be modified to add “organic and inorganic” to the term “condensable particulate matter.” This modification relates to the same subject matter as the originally proposed rule but further clarifies the exact fractions of particulate matter considered for compliance demonstration purposes (see SONAR page 43). It is reasonable to provide consistent use of terms throughout the rule. Additionally, it has been the MPCA’s practice to amend rules to eliminate these mandatory conditions wherever possible, and redirect the focus of a rule to the subject being regulated; therefore, the rule is modified to remove the condition requiring the commissioner to approve the exclusion.

#### *Part 7017.2060, subp.4D*

*Subp. 4. **PM-10 determination.** The owner or operator must conduct PM-10 emission tests as required in this subpart.*

*D. When submitting a proposed test plan, an owner or operator may apply to the commissioner to exclude organic and inorganic condensable particulate matter from a performance test for PM-10. The ~~commissioner shall approve the exclusion if the owner or operator demonstrates~~ must demonstrate:*

- (1) *through previous performance test results that the emissions unit is not a source of organic or inorganic condensable particulate matter emissions; or*
- (2) *that an exception in Method 202, section 1.4(h), as amended, applies.*

133. The MPCA finds that these modifications do not make the rule substantially different. The modifications are clearly within the scope of the "Subject of Rules" Chapters 7011 and 7017 as announced in the Notice, and are a logical outgrowth of the Notice and comments process. The effects of the modification do not differ from the proposed rule; the Notice provided fair warning that the rule would result in further definition related to the forms of particulate matter.

#### **Change to Part 7017.2060, subpart 4a, item D**

134. The MPCA finds that with the deletion of the proposed definition for "condensable particulate matter," as described above in Finding No. 17, part 7017.2060, subpart 4a, item D must be modified to add "inorganic" and "organic or inorganic" to the term "condensable particulate matter." This modification relates to the same subject matter as the originally proposed rule but further clarifies the exact fractions of particulate matter considered for compliance demonstration purposes (see SONAR page 43). It is reasonable to provide consistent use of terms throughout the rule. Additionally, it has been the MPCA's practice to amend rules to eliminate these mandatory conditions wherever possible, and redirect the focus of a rule to the subject being regulated; therefore, the rule is modified to remove the condition requiring the commissioner to approve the exclusion.

#### *Part 7017.2060, subp.4a.D*

*Subp. 4a. PM-2.5 determination. The owner operator must conduct PM-2.5 emission tests as required in this subpart.*

*D. When submitting a proposed test plan, an owner or operator may apply to the commissioner to exclude organic and inorganic condensable particulate matter from a performance test for PM-2.5. ~~The commissioner shall approve the exclusion if the owner or operator demonstrates~~ must demonstrate:*

- (1) *through previous performance test results that the emissions unit is not a source of organic or inorganic condensable particulate matter emissions; or*
- (2) *that an exception in Method 202, section 1.4(h), as amended, applies.*

135. The MPCA finds that these modifications do not make the rule substantially different. The modifications are clearly within the scope of the "Subject of Rules" Chapters 7011 and 7017 as announced in the Notice, and are a logical outgrowth of the Notice and comments process. The effects of the modification do not differ from the proposed rule; the Notice provided fair warning that the rule would result in further definition related to the forms of particulate matter.

#### **MODIFICATIONS TO THE RULE BASED ON SUGGESTIONS IN THE ALJ's REPORT.**

136. The MPCA adopts ALJ Oxley's Report dated August 25, 2016, and incorporates the Report into this Order Adopting Rules, with all modifications to the proposed rule amendments presented in these Findings.

137. The ALJ determined that there are no negative findings regarding the rules. However, the ALJ offered several suggestions to enhance clarity and readability of a proposed rule amendment. The Report also makes identified three categories of concerns: 1) use of "shall" or "must" and "agency" or "commissioner"; 2) potentially overbroad governmental discretion in existing rules; and 3) clarity and readability. The MPCA made

modifications to the rule based on the ALJ's suggestions and addressed the three categories of concerns. The categories of concerns are discussed first, followed by the rule modifications.

#### **ALJ Report, Use of "Shall" or "Must" and "Agency" or "Commissioner"**

138. The ALJ commented in the Report that there are a number of instances in which "shall" has not been changed to "must" but could be to conform to the Minnesota Rules Drafting Manual published by the Office of the Revisor. However, the Report states "Failure to make a change does not constitute a defect in the rule, but because the Agency's goal is to achieve consistency, instances where this change could be made without substantially modifying the proposed rule amendment are noted for the Agency's consideration."
139. The MPCA proposed numerous rule amendments to implement the Revisor's guidance on the use of "shall" and "must" though acknowledges that it was inconsistent in replacing "shall" with "must" throughout the proposed rule amendments, and in rule parts not proposed for amendment. However, the MPCA is not, at this time, replacing "shall" with "must" throughout the rules being amended in this rulemaking nor in the rule parts not proposed for amendment. The MPCA finds that even if it were to replace "shall" with "must" in every instance in which the term "shall" is used, these rule amendments would not be consistent with other air quality rules that are not part of this rulemaking, or potentially throughout all of the MPCA's rules (chapters 4760 to 9220).
140. The MPCA will strive to be more consistent with the Revisor's Rules Drafting Manual in its use of "shall" and "must" in future rulemakings.
141. The ALJ also commented in the Report that the MPCA replaces "agency" with "commissioner" in certain rule parts. In new provisions, the MPCA consistently uses "commissioner" rather than "agency" with reference to a decision, action or determination discussed in the rule. However, the Report notes several instances in the proposed amended rules where the substitution of "commissioner" for "agency" was not made in an existing rule part.
142. The MPCA acknowledges that it was inconsistent in replacing "agency" with "commissioner" throughout the proposed rule amendments, and in parts not proposed for amendment. However, the MPCA is not, at this time, replacing "agency" with "commissioner" throughout the rules being amended in this rulemaking nor in the rule parts not proposed for amendment. The MPCA finds that even if it were to replace "agency" with "commissioner" these rule amendments would not be consistent with other air quality rules that are not part of this rulemaking, or potentially throughout all of the MPCA's rules (chapters 4760 to 9220).
143. *Minn. R. 7000.0100*, subpart 2 defines "Agency" or "agency members" to mean the "MPCA in general and is used to refer to actions or functions of the MPCA that are not necessarily those of the commissioner or board members as individuals." Board means the commissioner and eight members appointed by the governor. *Minn. R. 7000.0100*, subpart 2a. On June 13, 2015, the Minnesota Legislature during special session voted to disband the MPCA Citizens Board (Board) effective July 1, 2015.
144. Because reference to "agency" is far reaching throughout all of the MPCA's rules, replacing "agency" with "commissioner" throughout the MPCA's rules requires a larger undertaking that could be addressed more efficiently by the Office of the Revisor. The MPCA worked with the Office of the Revisor to prepare proposed legislation which would repeal obsolete rule provisions related to the MPCA Citizen's Board. This item was identified in the MPCA's 2015 Obsolete Rules Report to the Legislature, available at: <https://www.pca.state.mn.us/sites/default/files/lrp-gen-1sy15.pdf>

## ALJ Report, Potentially Overbroad Governmental Discretion in Existing Rules

145. The ALJ commented in the Report that there are instances in which the existing rule grants the Agency or Commissioner discretionary authority and suggests the MPCA might wish to consider whether the discretion granted is impermissibly broad. The Report identified the use of the word “may” in the following parts: 7007.0700, item D; 7007.1100, subpart 1; 7007.1142, subpart 1, item C; 7007.1400, subparts 1 and 2; 7011.1280, subpart 7, item B; and 7017.2025, subpart 4, item B. The Report is clear that the MPCA has no obligation to demonstrate the need for and reasonableness of the degree of discretion that may exist in current rule provisions, and does not find any instances in which the amended rule language introduces impermissibly broad discretion.
146. The MPCA finds that it opened for amendment the rule parts referenced above in Finding No. 145 for reasons other than to reconsider use of the word “may” in the rule. Therefore, the MPCA proposes no change at this time in the use of the term “may” in the above referenced rule parts.

## ALJ Report, Clarity and Readability

147. The Report provides recommendations to clarify or improve the readability of a rule part. The MPCA has made many of the changes recommended by the ALJ, as described below in Findings No. 148 through 186. For those rule parts where the MPCA did not make a recommended change, an explanation is also provided.

### 7007.0500 CONTENT OF PERMIT APPLICATION.

#### Change to Part 7007.0500, subpart 3

148. Part 7007.0500, subpart 3 contains a list of a number of rule parts with certification requirements. The MPCA modified the proposed amendment to this part, as described above in Findings No. 36 through 40, to add the specific rule parts that allow for notices to which this part applies.
149. **ALJ Report, Minnesota Rules, part 7007.0500.** The ALJ stated it is more convenient for persons unfamiliar with these parts if they are listed in numerical order, i.e. subparts 7007.0800 and 7007.1100 would begin the list and come before 7007.1150 instead of appearing at the end of the list.
150. The MPCA accepts the ALJ’s suggestion and has modified the list in subpart 3 so that the rule parts are listed in numerical order. This change is reasonable because it will provide convenience and ease of reading.

#### *Part 7007.0500, subp. 3*

*Subp. 3. **Application certification.** A responsible official, as defined in part 7007.0100, subpart 21, ~~shall~~ must sign and certify any application, ~~notice~~, report, or compliance certification submitted pursuant to parts 7007.0100 to 7007.1850 or notice submitted pursuant to part 7007.0800, subpart 10, item B; 7007.1110, subpart 10, 11, or 15a; 7007.1150, item C; 7007.1250, subpart 4; or 7007.1350, subpart 2, with regard to truth, accuracy, and completeness. This certification and any other certification required by parts 7007.0100 to 7007.1850 shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. This subpart shall be complied with by both the owner and the operator of the stationary source if they are not the same.*

151. The MPCA finds that this modification does not make the proposed rule substantially different because the modification is a clarification that the ALJ suggested. The modification is clearly within the scope of the "Subject of Rules" Chapter 7007, as announced in the Notice and is the MPCA's response to the comment submitted regarding the content of a permit application. The modification is a logical outgrowth of the Notice and comments submitted in response to the Notice, the Notice provided fair warning that this rule change could result.

#### 7007.0650 APPLICATION SUBMITTAL.

##### Change to Part 7007.0650, subpart 1

152. Part 7007.0650, subpart 1 establishes who receives the permit application and where the application must be submitted. The MPCA's proposed amendment to subpart 1 specifies that the applicant submit the complete application to the Commissioner at the MPCA's current address at 520 Lafayette Road North, St. Paul, Minnesota.

153. **ALJ Report, Minnesota Rules, part 7007.0650.** The ALJ stated that if the proposed amendment is made, the address can only be changed in the future by a rulemaking which is not something that can be easily done as needed. Further, the ALJ notes that the SONAR states "The outdated address for application submittal is deleted and replaced with "address specified by the Commissioner.""

154. The MPCA accepts the ALJ's suggestion to require applicants to submit the copies as directed by the MPCA.

155. Subpart 1 is modified to require that the application be submitted to the "address specified by the commissioner." It is reasonable to provide that the Commissioner specifies the address the permit application should be sent to, as the address can then be easily updated as needed.

##### *Part 7007.0650, subp. 1*

*Subpart 1. **Who receives application.** Permit applicants shall submit two printed copies of the complete application and all supplemental information requested by the commissioner to the ~~Minnesota Pollution Control Agency at 520 Lafayette Road North, Saint Paul, Minnesota 55155~~ address specified by the commissioner. Upon request of the commissioner, the applicant shall submit additional copies of the application directly to the administrator, affected states, and other governmental entities with the legal right to review the application, or submit additional copies to the agency to be forwarded to these parties.*

156. The MPCA finds that this modification does not make the proposed rule substantially different because the modification is a clarification that the ALJ suggested and one that the MPCA intended as identified in the SONAR. The modification is clearly within the scope of the "Subject of Rules" Chapter 7007, as announced in the Notice, and the modification is a logical outgrowth of the Notice and comments submitted in response to the Notice.

157. The ALJ Report at part 7007.0650 also notes that the same issue arises with the amendment to part 7030.0010 replacing an old address for the MPCA with its current address of 520 Lafayette Road North in St. Paul. The MPCA is not changing part 7030.0010 as suggested. The States' noise rules at part 7030.0010 incorporates by reference, American National Standards Institute, Specification for Sound Level Meters, S1.4-1983. The MPCA interprets the Revisor's Rules Drafting Manual (page 68) to mean when a publication is incorporated by reference in rule, the location where the publication is available must be identified in the rule.  
[https://www.revisor.mn.gov/office/1997\\_RuleDraftManual.pdf](https://www.revisor.mn.gov/office/1997_RuleDraftManual.pdf)

## Change to Part 7007.0650, subpart 2

158. Part 7007.0650, subpart 2 provides for electronic application submittal in a format specified by the Commissioner. Items A and B establish the signature requirements for certification when a paper certification is submitted and when an approved electronic signature is used.
159. **ALJ Report, Minnesota Rules, part 7007.0650.** Subpart 2 allows applicants to submit applications in an electronic format specified by the Commissioner. The ALJ stated that because subpart 1 refers to the “complete application” and to “all supplemental information” it is unclear whether the supplemental information may also be submitted electronically.
160. The ALJ also stated that in subpart 2, item A, submitting “fewer printed copies” could be interpreted as “at least one printed copy must be submitted.” If the Agency intends that every application submitted in electronic form must be accompanied by a printed copy, it could say so more clearly.
161. Subpart 2 is hereby modified to clarify that supplemental information, as well as the application, may be submitted in an electronic format. The MPCA is moving to accepting electronic applications where all application information is entered by the applicant through an online service, and there will no longer be a paper application submitted. This online service is being developed at this time. Because an application may include supplemental information and the application may be submitted electronically, it is reasonable that any supplemental information be submitted electronically as well.
162. The reference in the existing rule to “fewer printed copies than required in subpart 1” has not, to date, resulted in confusion or been problematic for applicants or MPCA staff. However, the MPCA accepts the ALJ’s suggestion that subpart 2, item A could be more clear and has modified the rule to delete the phrase “fewer printed copies” and add the requirement to submit a printed copy if requested by the Commissioner. This change is reasonable because it clarifies for the applicant that not every application submitted electronically requires a paper copy.

### *Part 7007.0650, subp.2*

*Subp. 2. **Electronic application submittal.** Applicants may submit applications and supplemental information in an electronic format specified by the commissioner. If the information is submitted in an electronic format:*

*A. the applicant must submit a printed copy of the complete application and supplemental information if requested by the commissioner ~~may allow the applicant to submit fewer printed copies than required in subpart 1;~~ and*

*B. ~~the application must include the application certification required by part 7007.0500, subpart 3;~~ must either:*

*(1) be on paper with an original signature; or*

*(2) ~~with~~ have an electronic signature, if such method of signature has been approved by the commissioner.*

163. The MPCA finds that the modifications do not make the proposed rule substantially different because the modification is a clarification that the ALJ suggested and the MPCA intended when it proposed the rule amendment. The modification is clearly within the scope of the “Subject of Rules” Chapter 7007, as announced in the Notice, and the modification is a logical outgrowth of the Notice and comments submitted in response to the Notice.

## 7007.1142 CAPPED PERMIT ISSUANCE AND CHANGE OF PERMIT STATUS.

### Change to Part 7007.1142, subpart 1, item A

164. Part 7007.1142, subpart 1 establishes the conditions for eligibility for a capped permit. Subpart 1 makes clear that the rule is a recitation of preconditions to permit issuance and not a mandate to issue permits.
165. **ALJ Report, Minnesota Rules, part 7007.1142.** The ALJ suggests alternative language to better inform readers that these conditions are necessary but not sufficient for the Commissioner to issue a permit.
166. The MPCA accepts the ALJs suggested clarifying language and has modified subpart 1, item A to better realize the result sought in the SONAR (page 22). That is, the MPCA has intended and interpreted the rule to specify applicant eligibility for capped permits. It is reasonable to clarify that certain conditions must be met in order to be eligible for a capped permit.

#### *Part 7007.1142, subp. 1A*

##### ***Subpart 1. Capped permit issuance, denial, and revocation.***

A. ~~The following conditions must be satisfied~~ To be eligible to receive a capped permit and for the commissioner to issue a capped permit to the owners and operators of a stationary source must meet the following conditions:

- (1) the owners and operators have submitted a complete application for a capped permit;*
- (2) the commissioner determines that the stationary source qualifies for the capped permit option under parts 7007.1140 to 7007.1148 for which the application was submitted; and*
- (3) the commissioner has reason to believe that the stationary source will comply with the capped permit.*

167. The MPCA finds that this modification does not make the proposed rule substantially different because the modification is a clarification that the ALJ suggested and one that the MPCA intended as identified in the SONAR. The modification is clearly within the scope of the "Subject of Rules" Chapter 7007, as announced in the Notice, and the modification is a logical outgrowth of the Notice and comments submitted in response to the Notice.

## 7007.1150 WHEN A PERMIT AMENDMENT IS REQUIRED.

### Change to Part 7007.1150, item C, subitem (3)

168. Part 7007.1150, item C identifies the changes that qualify under subitem (3) for replacing existing control equipment with listed control equipment. The MPCA amended item C to help reduce confusion and ensure permittees are correctly applying the rule. As identified in the SONAR (page 23), 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 equipment must have the efficiency listed in Table 1 at *Minn. R. 7007.0070*, subpart 1a.
169. **ALJ Report, Minnesota Rules, part 7007.1150.** The ALJ states that the phrase in subitem (3) "has an equivalent or better control efficiency of regulated pollutants previously controlled with the control equipment being replaced" lacks clarity. It is unclear if a comparison is being required between the quantities of regulated

pollutants that were produced by the equipment being replaced when it was replaced or when it was operating normally.

170. The intent of this rule is to allow a permittee to make a certain type of change at the stationary source using a notification process rather than an amendment process. This rule is not about the quantities of pollutants being emitted or produced. The comparison being required is between the efficiency of the control equipment being replaced and the efficiency of the replacement control equipment. The MPCA has modified item C, subitem (3) to make this clarification. Item C, subitem 3 specifically and only allows a permittee to replace existing air pollution control equipment that is permitted at their source with listed control equipment that is defined in part 7011.0060, subpart 4, provided certain criteria are met.

*Part 7007.1150, item C(3)*

*C. A written notice to the agency shall be sent by any person who, at a permitted stationary source, makes a change that: (i) does not increase emissions of any regulated air pollutant; (ii) does not constitute a title I modification; and (iii) does not constitute any other type of modification, if the change is one of the following:*

- (1) installing air pollution control equipment;*
- (2) replacing a unit identified in the permit; or*
- (3) replacing existing air pollution control equipment with listed control equipment, as defined in part 7011.0060, subpart 4, ~~that meets the control equipment efficiencies for listed control equipment in part 7011.0070 and has an equivalent or better control efficiency of regulated pollutants previously controlled with the control equipment being replaced.~~ provided that the replacement air pollution control equipment:
  - (a) attains at least the control equipment efficiency in part 7011.0070 for each applicable pollutant; and*
  - (b) has a listed control efficiency in part 7011.0070 that is equivalent to or better than the control efficiency of the control equipment being replaced for each applicable pollutant.**

171. The MPCA finds that this modification does not make the proposed rule substantially different because the modification is a clarification that the ALJ suggested and the MPCA intended when it proposed the rule amendment. The modification is clearly within the scope of the "Subject of Rules" Chapter 7007, as announced in the Notice, and the modification is a logical outgrowth of the Notice and comments submitted in response to the Notice.

**7008.0100 DEFINITIONS.**

**Change to Part 7008.0100, subpart 5**

172. Part 7008.0100, subpart 5 defines the term "transfer efficiency" which a regulated party may apply in the calculation of particulate matter, PM-10, and PM-2.5 emissions to verify that a stationary source qualifies for the conditionally insignificant material usage activity at part 7008.4100.
173. **ALJ Report, Minnesota Rules, part 7008.0100.** The ALJ questions whether the definition of "transfer efficiency" contemplates any other type of application other than "coating" because the definition of "material usage" at subpart 2a refers to the use of ink, adhesive and solvent which do not necessarily "coat" an object when applied. If so, without further clarification, subpart 5 is confusing.

174. The MPCA agrees with the ALJ that the definition of “transfer efficiency” could be confusing and has modified subpart 5 to make it more clear. It is reasonable to delete the term “coating” in the definition because specifically identifying “coating” as a type of application may be unnecessarily limiting.

*Part 7008.0100, subp. 5*

*Subp. 5. Transfer efficiency. “Transfer efficiency” means the ratio of the weight of ~~coating~~ solids in the material that adheres ~~adhering to an object being coated~~ to the total weight of ~~coating~~ solids in the material used in the application process. Transfer efficiency varies with the type of application method and is obtained from the application equipment manufacturer. If the manufacturer provides a range for the transfer efficiency, the transfer efficiency for calculating particulate matter, PM-10, and PM-2.5 emissions is the minimum specified in the range.*

175. The MPCA finds that this modification does not make the proposed rule substantially different because the modification is a clarification that the ALJ suggested. The modification is clearly within the scope of the “Subject of Rules” Chapter 7008, as announced in the Notice, and the modification is a logical outgrowth of the Notice and comments submitted in response to the Notice.

#### **7011.1265 REQUIRED PERFORMANCE TESTS, METHODS, AND PROCEDURES.**

##### **Change to Part 7011.1265, subpart 2, item A, subitem (2)**

176. Subpart 2 identifies the performance test methods for criteria pollutants.
177. **ALJ Report, Minnesota Rules, part 7011.1265.** The ALJ provides suggested rule language for improving readability in subpart 2, item A, subitem (2). The MPCA agrees and has modified subpart 2, item A, subitem (2) as suggested by the ALJ. It is reasonable to modify rule language to improve readability.

*Part 7011.1265, subp. 2A(2)*

*(2) The sum of filterable and organic condensable particulate matter is the concentration of particulate matter as described in part 7017.2060, subpart 3, item B.*

*For each sample run employing Method 5 as provided in Appendix A-3 of Code of Federal Regulations, title 40, part 60, Appendix A-3, Method 5, as amended, run, the emission rate ~~shall~~ must be determined using:*

- (a) oxygen or carbon dioxide measurements;*
- (b) dry basis F factor; and*
- (c) dry basis emission rate calculation procedures in Code of Federal Regulations, title 40, part 60, Appendix A-7, Method 19, as amended.*

178. The MPCA finds that this modification does not make the proposed rule substantially different because the modification is a clarification that the ALJ suggested. The modification is clearly within the scope of the “Subject of Rules” Chapter 7011, as announced in the Notice.

#### **7011.1280 OPERATOR CERTIFICATION.**

##### **Change to Part 7011.1280, subpart 7, item A**

179. Subpart 7 establishes the requirements for renewing waste combustor operator certifications.

180. **ALJ Report, Minnesota Rules, part 7011.1280.** The ALJ provides suggested rule language to clarify the requirement for certificate expiration in subpart 7, item A. The MPCA agrees and has modified the last sentence in subpart 7, item A as suggested by the ALJ. The change is reasonable because it clarifies what is required for an individual to renew an expired certificate.

*Part 7011.1280, subp. 7A*

Subp. 7. **Renewal.**

*A. A certified individual shall apply for certificate renewal no later than 30 days prior to certificate expiration. The application for renewal must include evidence that the person has, during the preceding three years, earned credit for attending training courses in the direct operation and maintenance of and environmental compliance for a waste combustor, including personnel training described in part 7011.1275, for the number of hours as identified as follows:*

- (1) Class I, II, III, A, or C, ~~or D~~, 24 hours; and*
- (2) Class IV, eight hours.*

*An individual whose certificate has expired must comply with item B or C to renew the certificate.*

181. The MPCA finds that this modification does not make the proposed rule substantially different because the modification is a clarification that the ALJ suggested. The modification is clearly within the scope of the "Subject of Rules" Chapter 7011, as announced in the Notice.

#### **Change to Part 7011.1280, subpart 7, item B**

182. **ALJ Report, Minnesota Rules, part 7011.1280.** The ALJ stated that subpart 7, item B could be written more clearly while eliminating undue discretion in the renewal decision and provided suggested rule language. The MPCA agrees and has modified subpart 7, item B as suggested by the ALJ. The change is reasonable because it clarifies the training requirements needed for an individual applying for certificate renewal.

*Part 7011.1280, subp. 7B*

*B. If an individual applies for certificate renewal within one year following the expiration of the certificate, ~~the commissioner may renew the certificate without examination. To be recertified without an examination,~~ the individual must meet the training requirements of item A or subpart 3 at the time of application for renewal before the certificate will be renewed without an examination. ~~If the individual does not have training to meet the requirements of item A, the individual must comply with subpart 3.~~*

183. The MPCA finds that this modification does not make the proposed rule substantially different because the modification is a clarification that the ALJ suggested and one that the MPCA intended as identified in the SONAR (page 49). The modification is clearly within the scope of the "Subject of Rules" Chapter 7011, as announced in the Notice, and the modification is a logical outgrowth of the Notice and comments submitted in response to the Notice.

#### **7017.1170 QUALITY ASSURANCE AND CONTROL REQUIREMENTS FOR CEMS.**

##### **Change to Part 7017.1170, subpart 4a, item A**

184. Subpart 4a establishes the requirements for cylinder gas audits for continuous emission monitoring systems.

185. **ALJ Report, Minnesota Rules, part 7017.1170.** The ALJ stated though it can be fairly inferred from subpart 2 (should be subpart 4a) that notifications of exceptions must be sent to the Agency, any doubt can be removed by revising subpart 2 (subpart 4a). The ALJ provides suggested rule language.
186. The MPCA is not changing part 7017.1170, subpart 4a, item A as suggested because we believe we have the correct rule language.

**ORDER**

**IT IS ORDERED** that the above captioned rules, in the form published in the *State Register* on February 29, 2016, with the modifications as indicated in the Revisor of Statutes draft, file number RD 4097, dated September 28, 2016, are hereby adopted.

10/25/16  
Date

  
\_\_\_\_\_  
John Linc Stine, Commissioner  
Minnesota Pollution Control Agency