

# 1138 EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

09/11/1999

## 3.0 General Provisions

### 3.1 Applicability.

#### 3.1.1 General.

3.1.1.1 Terms used throughout this regulation are defined in 3.2 of this regulation or in the Clean Air Act Amendments of 1990 (the Act), except that individual subparts of 40 CFR Part 63 or individual sections of this regulation may include specific definitions in addition to or that supersede definitions in 3.2 of this regulation.

3.1.1.2 This regulation contains emission standards for hazardous air pollutants initially established pursuant to Section 112 of the Act as amended November 15, 1990. These standards regulate specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants listed in 40 CFR Part 63 pursuant to Section 112(b) of the Act. This section explains the applicability of such standards to sources affected by them. The standards in 40 CFR Part 63 or this regulation are independent of NESHAP contained in 40 CFR Part 61 or 7 **DE Admin Code** 1121 of the State of Delaware "Regulations Governing the Control of Air Pollution." The NESHAP in Part 61 promulgated by signature of the Administrator before November 15, 1990 (i.e., the date of enactment of the Clean Air Act Amendments of 1990) remain in effect until they are amended, if appropriate, and added to 40 CFR Part 63. The standards in 7 **DE Admin Code** 1121 remain in effect.

3.1.1.3 No emission standard or other requirement established under this regulation shall be interpreted, construed, or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established by the Administrator pursuant to other authority of the Act (Section 111, Part C or D or any other authority of the Act), or a standard or other applicable requirement issued by the Department. The Department may specify in a specific standard under this regulation that facilities subject to other provisions under the Act need only comply with the provisions of that standard.

#### 3.1.1.4 General provisions applicability to relevant standards.

3.1.1.4.1 Each relevant standard in 40 CFR Part 63 or this regulation shall identify explicitly whether each provision in 3.0 of this regulation is or is not included in such relevant standard.

3.1.1.4.2 If a relevant standard in 40 CFR Part 63 or this regulation incorporates the requirements of 40 CFR Part 60, Part 61 or Part 63 standard, the relevant standard shall identify explicitly the applicable general provisions (i.e. Subpart A requirements) of each corresponding Part 60, Part 61, or Part 63 standard or the applicable requirements in 3.0 of this regulation.

3.1.1.4.3 The General Provisions in 3.0 of this regulation do not apply to regulations developed pursuant to Section 112(r) of the Act, unless otherwise specified in those regulations.

3.1.1.5 [Reserved]

3.1.1.6 To obtain the most current list of categories of sources to be regulated under Section 112 of the Act, or to obtain the most recent regulation promulgation schedule established pursuant to Section 112(e) of the Act, contact the Office of the Director, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA (MD-13), Research Triangle Park, North Carolina 27711.

3.1.1.7 [Reserved]

3.1.1.8 [Reserved]

3.1.1.9 [Reserved]

3.1.1.10 For the purposes of this regulation, time periods specified in days shall be measured in calendar days, even if the word “calendar” is absent, unless otherwise specified in an applicable requirement.

3.1.1.11 For the purposes of this regulation, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, test plan, report, or other written communication to the Administrator and the Department, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator and the Department, similar to the postmark provided by the U.S. Postal

Service, or alternative means of delivery agreed to by the Department, is acceptable.

3.1.1.12 Notwithstanding time periods or postmark deadlines specified in 40 CFR Part 63 or this regulation for the submittal of information to the Administrator or the Department by an owner or operator, or the review of such information by the Administrator or the Department, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator or the Department. Procedures governing the implementation of this provision are specified in 3.9.9 of this regulation.

3.1.1.13 [Reserved]

3.1.1.14 [Reserved]

### 3.1.2 Initial applicability determination for this regulation.

3.1.2.1 The provisions of this regulation apply to the owner or operator of any stationary source that-

3.1.2.1.1 Emits or has the potential to emit any hazardous air pollutant listed in or pursuant to Section 112(b) of the Act and

3.1.2.1.2 Is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to 40 CFR Part 63 or this regulation.

3.1.2.2 In addition to complying with the provisions of this regulation, the owner or operator of any such source may be required to obtain, revise or amend permits issued to stationary sources by the Department. For more information about obtaining permits, see **7 DE Admin Codes 1102, 1125 and 1130** of the State of Delaware “Regulations Governing the Control of Air Pollution.”

3.1.2.3 An owner or operator of a stationary source who is in the relevant source category and who determines that the source is not subject to a relevant standard or other requirement established under 40 CFR Part 63 or this regulation shall keep a record as specified in 3.10.2.3 of this regulation.

### 3.1.3 Applicability of this regulation after a relevant standard has been set under 40 CFR Part 63 or this regulation.

3.1.3.1 If a relevant standard has been established under 40 CFR Part 63 or this regulation, the owner or operator of an affected source

shall comply with the provisions of that standard and of 3.0 of this regulation as provided in 3.1.1.4 of this regulation.

3.1.3.2 Except as provided in 3.10.2.3 of this regulation, if a relevant standard has been established under 40 CFR Part 63 or this regulation, the owner or operator of an affected source may be required to obtain a Title V permit from the Department. Emission standards promulgated in 40 CFR Part 63 for area sources pursuant to Section 112(c)(3) of the Act or in this regulation will specify what the permitting requirements will be for area sources affected by such a standard.

3.1.3.3 [Reserved]

3.1.3.4 [Reserved]

3.1.3.5 If an area source that otherwise would be subject to an emission standard or other requirement established under 40 CFR Part 63 or this regulation if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard or other requirement, such source also shall be subject to the notification requirements in 3.0 of this regulation.

3.1.4 [Reserved]

3.1.5 If the Administrator promulgates an emission standard under Section 112(d) or (h) of the Act that is applicable to a source subject to an emission limitation by permit established under Section 112(j) (of the Act) requirements in 4.12 through 4.18 of this regulation, and the requirements under that Section 112(j) emission limitation are substantially as effective as the promulgated emission standard, the owner or operator may request the Department to revise the source's Title V permit to reflect that the emission limitation in the permit satisfies the requirements of the promulgated emission standard. The process by which the Department determines whether the Section 112(j) emission limitation is substantially as effective as the promulgated emission standard shall include, consistent with 7 **DE Admin Code** 1130, the opportunity for full public, EPA, and affected State review (including the opportunity for EPA's objection) prior to the permit revision being finalized. A negative determination by the Department constitutes final action for purposes of review and appeal under 7 **DE Admin Code** 1130.

## 3.2 Definitions.

The terms used in this regulation are defined in the Act or in 3.2 of this regulation as follows:

**“Act”** means the Clean Air Act (42 U.S.C. 7401 et seq.).

**“Actual emissions”**, for the purpose of granting a compliance extension for an early reduction of hazardous air pollutants, mean the actual rate of emissions of a pollutant, but does not include excess emissions from a malfunction, or startups and shutdowns associated with a malfunction. Actual emissions shall be calculated using the source’s actual operating rates, and types of materials processed, stored, or combusted during the selected time period.

**“Administrator”** means the Administrator of the United States Environmental Protection Agency.

**“Affected source”**, for the purposes of this regulation, means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) (of the Act) source category or subcategory for which a Section 112(d) (of the Act) standard or other relevant standard is established pursuant to Section 112 of the Act. Each relevant standard will define the “affected source,” as defined in 3.2 of this regulation unless a different definition is warranted based on a published justification as to why this definition would result in significant administrative, practical, or implementation problems and why the different definition would resolve those problems. The term “affected source,” as used in this regulation, is separate and distinct from any other use of that term in EPA regulations such as those implementing Title IV of the Act. Affected source may be defined differently for 40 CFR Part 63 and this regulation than affected facility and stationary source in 40 CFR Parts 60 and 61 and 7 **DE Admin Codes** 1120 and 1121 of the State of Delaware “Regulation Governing the Control of Air Pollution”, respectively. This definition of “affected source,” and the procedures for adopting an alternative definition of “affected source,” shall apply to each Section 112(d) standard for which the initial proposed rule is signed by the Administrator after June 30, 2002.

**“Alternative emission limitation”** means conditions established pursuant to Sections 112(i)(5) or 112(i)(6) of the Act by the Department.

**“Alternative emission standard”** means an alternative means of emission limitation that, after notice and opportunity for public comment, has been demonstrated by an owner or operator to the Administrator’s satisfaction to achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such pollutant achieved under a relevant design, equipment, work practice, or operational emission standard, or combination thereof, established under 40 CFR Part 63 pursuant to Section 112(h) of the Act.

**“Alternative test method”** means any method of sampling and analyzing for an air pollutant that is not a test method in Chapter I of Title 40 and that has been demonstrated to the Administrator’s satisfaction, using Method 301 in Appendix A of 40 CFR Part 63, to produce results adequate for the Administrator’s determination

that it may be used in place of a test method specified in 40 CFR Part 63 or this regulation.

**“Approved permit program”** means the permit program established under 7 DE Admin Code 1130.

**“Area source”** means any stationary source of hazardous air pollutants that is not a major source as defined in this regulation.

**“Commenced”** means, with respect to construction or reconstruction of an affected source, that an owner or operator has undertaken a continuous program of construction or reconstruction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

**“Compliance date”** means the date by which an affected source is required to be in compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established by the Administrator or the Department pursuant to Section 112 of the Act.

**“Compliance schedule”** means:

- In the case of an affected source that is in compliance with all applicable requirements established under 40 CFR Part 63 or this regulation, a statement that the source will continue to comply with such requirements;
- In the case of an affected source that is required to comply with applicable requirements by a future date, a statement that the source will meet such requirements on a timely basis and, if required by an applicable requirement, a detailed schedule of the dates by which each step toward compliance will be reached; or
- In the case of an affected source not in compliance with all applicable requirements established under 40 CFR Part 63 or this regulation, a schedule of remedial measures, including an enforceable sequence of actions or operations with milestones and a schedule for the submission of certified progress reports, where applicable, leading to compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established pursuant to Section 112 of the Act for which the affected source is not in compliance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

**“Construction”** means the on-site fabrication, erection, or installation of an affected source. Construction does not include the removal of all equipment comprising an affected source from an existing location and reinstallation of such equipment at a new location. The owner or operator of an existing affected source that is relocated may elect not to reinstall minor ancillary equipment including, but not limited to, piping, ductwork, and valves. However, removal and reinstallation of an affected source will be construed as reconstruction if it satisfies the criteria for reconstruction as defined in 3.2 of this regulation. The costs of replacing minor ancillary equipment shall be considered in determining whether the existing affected source is reconstructed.

**“Continuous emission monitoring system”** (CEMS) means the total equipment that may be required to meet the data acquisition and availability requirements of 40 CFR Part 63 or this regulation, used to sample, condition (if applicable), analyze, and provide a record of emissions.

**“Continuous monitoring system”** (CMS) is a comprehensive term that may include, but is not limited to, continuous emission monitoring systems, continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation.

**“Continuous opacity monitoring system”** (COMS) means a continuous monitoring system that measures the opacity of emissions.

**“Continuous parameter monitoring system”** (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of 40 CFR Part 63 or this regulation, used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

**“Department”** means the Department of Natural Resources and Environmental Control as defined in 29 **Del. C.**, Ch 80, as amended.

**“Effective date”** means:

- With regard to an emission standard established under 40 CFR Part 63, the date of promulgation in the Federal Register of such standard;
- With regard to an alternative emission limitation or equivalent emission limitation determined by the Department, the date that the alternative emission limitation or equivalent emission limitation becomes effective according to the provisions of this regulation; or
- With regard to an emission standard established under this regulation, the date specified in the emission standard.

**“Emission standard”** means a national standard, limitation, prohibition, or other regulation promulgated in a subpart of 40 CFR Part 63 pursuant to Sections 112(d), 112(h), or 112(f) of the Act or a standard, limitation, prohibition, or other regulation promulgated in a section of this regulation.

**“Emissions averaging”** is a way to comply with the emission limitations specified in a relevant standard, whereby an affected source, if allowed under a subpart of 40 CFR Part 63 or a section of this regulation, may create emission credits by reducing emissions from specific points to a level below that required by the relevant standard, and those credits are used to offset emissions from points that are not controlled to the level required by the relevant standard.

**“EPA”** means the United States Environmental Protection Agency.

**“Equivalent emission limitation”** means any maximum achievable control technology emission limitation or requirements which are applicable to a major source of hazardous air pollutants and are adopted by the Department on a case-by-case basis, pursuant to Section 112(g) or Section 112(j) (of the Act) requirements in 4.0 of this regulation.

**“Excess emissions and continuous monitoring system performance report”** is a report that must be submitted periodically by an affected source in order to provide data on its compliance with relevant emission limits, operating parameters, and the performance of its CPMS.

**“Existing source”** means any affected source that is not a new source.

**“Federally enforceable”** means all limitations and conditions that are enforceable by the Administrator and citizens under the Act or that are enforceable under other statutes administered by the Administrator. Examples of federally enforceable limitations and conditions include, but are not limited to:

- Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to Section 112 of the Act as amended in 1990;
- New source performance standards established pursuant to Section 111 of the Act and emission standards established pursuant to Section 112 of the Act before it was amended in 1990;
- All terms and conditions in a Title V permit, including any provisions that limit a source’s potential to emit, unless expressly designated as not federally enforceable;
- Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal Implementation Plan (FIP);

- Limitations and conditions that are part of a Federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by the EPA in accordance with 40 CFR Part 51;
- Limitations and conditions that are part of an operating permit where the permit and the permitting program pursuant to which it was issued meet all of the following criteria:
  - The operating permit program has been submitted to and approved by EPA into a SIP under Section 110 of the CAA;
  - The SIP imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA;
  - The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "federally enforceable";
  - The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter; and
  - The permit in question was issued only after adequate and timely notice and opportunity for comment by EPA and the public.
- Limitations and conditions in a Department rule or program that has been approved by the EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing Section 112 of the Act; and
- Individual consent agreements that the EPA has legal authority to create.

**“Fixed capital cost”** means the capital needed to provide all the depreciable components of an existing source.

**“Fugitive emissions”** mean those emissions from a stationary source that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Under Section 112 of the Act, all fugitive emissions are to be considered in determining whether a stationary source is a major source.

**“Hazardous air pollutant”** means any air pollutant listed in or pursuant to Section 112(b) of the Act.

**“Intermediate change to monitoring”** means a modification to federally required monitoring involving “proven technology” (generally accepted by the scientific community as equivalent or better) that is applied on a site-specific basis and that may have the potential to decrease the stringency of the associated emission limitation or standard. Though site-specific, an intermediate change may set a national precedent for a source category and may ultimately result in a revision to the federally required monitoring. Examples of intermediate changes to monitoring include, but are not limited to:

- Use of a CEMS in lieu of a parameter monitoring approach;
- Decreased frequency for non-continuous parameter monitoring or physical inspections;
- Changes to quality control requirements for parameter monitoring; and
- Use of an electronic data reduction system in lieu of manual data reduction.

**“Intermediate change to test method”** means a within-method modification to a federally enforceable test method involving “proven technology” (generally accepted by the scientific community as equivalent or better) that is applied on a site-specific basis and that may have the potential to decrease the stringency of the associated emission limitation or standard. Though site-specific, an intermediate change may set a national precedent for a source category and may ultimately result in a revision to the federally enforceable test method. In order to be approved, an intermediate change shall be validated according to Method 301 in Appendix A of 40 CFR Part 63, to demonstrate that it provides equal or improved accuracy and precision. Examples of intermediate changes to a test method include, but are not limited to:

- Modifications to a test method’s sampling procedure including substitution of sampling equipment that has been demonstrated for a particular sample matrix and use of a different impinger absorbing solution;
- Changes in sample recovery procedures and analytical techniques, such as changes to sample holding times and use of a different analytical finish with proven capability for the analyte of interest; and
- “Combining” a federally required method with another proven method for application to processes emitting multiple pollutants.

**“Issuance of a Title V permit”** will occur in accordance with the requirements of 7 DE Admin Code 1130.

**“Major change to monitoring”** means a modification to federally required monitoring that uses “unproven technology or procedures” (not generally accepted by the scientific community) or is an entirely new method (sometimes necessary when the required monitoring is unsuitable). A major change to monitoring may be site-specific or may apply to one or more source categories and will almost always set a national precedent. Examples of major changes to monitoring include, but are not limited to:

- Use of a new monitoring approach developed to apply to a control technology not contemplated in the applicable regulation;
- Use of a predictive emission monitoring system (PEMS) in place of a required CEMS;
- Use of alternative calibration procedures that do not involve calibration gases or test cells;
- Use of an analytical technology that differs from that specified by a performance specification;
- Decreased monitoring frequency for a CEMS, COMS, PEMS, or CPMS;
- Decreased monitoring frequency for a leak detection and repair program; and
- Use of alternative averaging times for reporting purposes.

**“Major change to test method”** means a modification to a federally enforceable test method that uses “unproven technology or procedures” (not generally accepted by the scientific community) or is an entirely new method (sometimes necessary when the required test method is unsuitable). A major change to a test method may be site-specific, or may apply to one or more sources or source categories, and will almost always set a national precedent. In order to be approved, a major change shall be validated according to Method 301 in Appendix A of 40 CFR Part 63. Examples of major changes to a test method include, but are not limited to:

- Use of an unproven analytical finish;
- Use of a method developed to fill a test method gap;
- Use of a new test method developed to apply to a control technology not contemplated in the applicable regulation; and

- Combining two or more sampling/analytical methods (at least one unproven) into one for application to processes emitting multiple pollutants.

**“Major source”** means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

**“Malfunction”** means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

**“Minor change to monitoring”** means:

- A modification to federally required monitoring that:
  - Does not decrease the stringency of the compliance and enforcement measures for the relevant standard;
  - Has no national significance (e.g., does not affect implementation of the applicable regulation for other affected sources, does not set a national precedent, and individually does not result in a revision to the monitoring requirements); and
  - Is site-specific, made to reflect or accommodate the operational characteristics, physical constraints, or safety concerns of an affected source.
- Examples of minor changes to monitoring include, but are not limited to:
  - Modifications to a sampling procedure, such as use of an improved sample conditioning system to reduce maintenance requirements;
  - Increased monitoring frequency; and
  - Modification of the environmental shelter to moderate temperature fluctuation and thus protect the analytical instrumentation.

**“Minor change to test method”** means:

- A modification to a federally enforceable test method that:

- Does not decrease the stringency of the emission limitation or standard;
  - Has no national significance (e.g., does not affect implementation of the applicable regulation for other affected sources, does not set a national precedent, and individually does not result in a revision to the test method); and
  - Is site-specific, made to reflect or accommodate the operational characteristics, physical constraints, or safety concerns of an affected source.
- Examples of minor changes to a test method include, but are not limited to:
    - Field adjustments in a test method's sampling procedure, such as a modified sampling traverse or location to avoid interference from an obstruction in the stack, increasing the sampling time or volume, use of additional impingers for a high moisture situation, accepting particulate emission results for a test run that was conducted with a lower than specified temperature, substitution of a material in the sampling train that has been demonstrated to be more inert for the sample matrix and
    - Changes in recovery and analytical techniques such as a change in quality control/quality assurance requirements needed to adjust for analysis of a certain sample matrix.

**“Monitoring”** means the collection and use of measurement data or other information to control the operation of a process or pollution control device or to verify a work practice standard relative to assuring compliance with applicable requirements. Monitoring is composed of four elements:

- Indicators of performance--the parameter or parameters you measure or observe for demonstrating proper operation of the pollution control measures or compliance with the applicable emissions limitation or standard. Indicators of performance may include direct or predicted emissions measurements (including opacity), operational parametric values that correspond to process or control device (and capture system) efficiencies or emissions rates, and recorded findings of inspection of work practice activities, materials tracking, or design characteristics. Indicators may be expressed as a single maximum or minimum value, a function of process variables (for example, within a range of pressure drops), a particular operational or work practice status (for example, a damper position, completion of a waste recovery task, materials tracking), or an interdependency between two or among more than two variables.

- Measurement techniques--the means by which you gather and record information of or about the indicators of performance. The components of the measurement technique include the detector type, location and installation specifications, inspection procedures, and quality assurance and quality control measures. Examples of measurement techniques include CEMS, COMS, CPMS, and manual inspections that include making records of process conditions or work practices.
- Monitoring frequency--the number of times you obtain and record monitoring data over a specified time interval. Examples of monitoring frequencies include at least four points equally spaced for each hour for CEMS or CPMS, at least every 10 seconds for COMS, and at least once per operating day (or week, month, etc.) for work practice or design inspections.
- Averaging time--the period over which you average and use data to verify proper operation of the pollution control approach or compliance with the emissions limitation or standard. Examples of averaging time include a 3-hour average in units of the emissions limitation, a 30-day rolling average emissions value, a daily average of a control device operational parametric range, and an instantaneous alarm.

**“New affected source”** means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) (of the Act) source category or subcategory that is subject to a Section 112(d) (of the Act) or other relevant standard for new sources. This definition of “new affected source,” and the criteria to be utilized in implementing it, shall apply to each Section 112(d) standard for which the initial proposed rule is signed by the Administrator after June 30, 2002. Each relevant standard will define the term “new affected source,” which will be the same as the “affected source” unless a different collection is warranted based on consideration of factors including:

- Emission reduction impacts of controlling individual sources versus groups of sources;
- Cost effectiveness of controlling individual equipment;
- Flexibility to accommodate common control strategies;
- Cost/benefits of emissions averaging;
- Incentives for pollution prevention;
- Feasibility and cost of controlling processes that share common equipment (e.g., product recovery devices);
- Feasibility and cost of monitoring; and

- Other relevant factors.

**“New source”** means any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under 40 CFR Part 63 establishing an emission standard applicable to such source.

**“One-hour period”**, unless otherwise defined in an applicable subpart of 40 CFR Part 63 or a section of this regulation, means any 60-minute period commencing on the hour.

**“Opacity”** means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. For COMS, opacity means the fraction of incident light that is attenuated by an optical medium.

**“Owner or operator”** means any person who owns, leases, operates, controls, or supervises a stationary source.

**“Performance audit”** means a procedure to analyze blind samples, the content of which is known by the Administrator or the Department, simultaneously with the analysis of performance test samples in order to provide a measure of test data quality.

**“Performance evaluation”** means the conduct of relative accuracy testing, calibration error testing, and other measurements used in validating the CMS data.

**“Performance test”** means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

**“Permit modification”** means a change to a Title V permit as defined in 7 **DE Admin Code** 1130.

**“Permit program”** means the comprehensive State operating permit system established under 7 **DE Admin Code** 1130.

**“Permit revision”** means any permit modification or administrative permit amendment to a Title V permit as defined in 7 **DE Admin Code** 1130.

**“Permitting authority”** means the Department.

**“Potential to emit”** means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air

pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

**“Reconstruction”**, unless otherwise defined in a relevant standard, means the replacement of components of an affected or a previously nonaffected source to such an extent that:

- The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable new source and
- It is technologically and economically feasible for the reconstructed source to meet the relevant standards established by the Administrator pursuant to Section 112 of the Act or the Department in this regulation. Upon reconstruction, an affected source or a stationary source that becomes an affected source, is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

**“Regulation promulgation schedule”** means the schedule for the promulgation of emission standards under 40 CFR Part 63, established by the Administrator pursuant to Section 112(e) of the Act and published in the Federal Register.

**“Relevant standard”** means:

- An emission standard;
- An alternative emission standard;
- An alternative emission limitation; or
- An equivalent emission limitation established pursuant to Section 112 of the Act that applies to the collection of equipment, activities, or both regulated by such standard or limitation. A relevant standard may include or consist of a design, equipment, work practice, or operational requirement, or other measure, process, method, system, or technique (including prohibition of emissions) that the Administrator or the Department establishes for new or existing sources to which such standard or limitation applies. Every relevant standard established pursuant to Section 112 of the Act or in sections of this regulation includes 3.0 of this regulation, as provided by 3.1.1.4 of this regulation, and all applicable appendices of 40 CFR Part 63 or of other parts of Chapter I of Title 40 that are referenced in that standard or the sections of this regulation.

**“Responsible official”** means one of the following:

- For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities and either:
  - The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars) or
  - The delegation of authority to such representative is approved in advance by the Department.
- For a partnership or sole proprietorship: a general partner or the proprietor, respectively.
- For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this regulation, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA).
- For affected sources (as defined in 3.2 of this regulation) applying for or subject to a Title V permit: “responsible official” shall have the same meaning as defined in 7 **DE Admin Code** 1130.

“**Run**” means one of a series of emission or other measurements needed to determine emissions for a representative operating period or cycle as specified in this regulation.

“**Shutdown**” means the cessation of operation of an affected source or portion of an affected source for any purpose.

“**Six-minute period**” means, with respect to opacity determinations, any one of the 10 equal parts of a one-hour period.

“**Standard conditions**” means a temperature of 293°K (68°F) and a pressure of 101.3 kilopascals (29.92 in. Hg).

“**Startup**” means the setting in operation of an affected source or portion of an affected source for any purpose.

“**State**” shall have its conventional meaning.

**“Stationary source”** means any building, structure, facility, or installation which emits or may emit any air pollutant.

**“Test method”** means the validated procedure for sampling, preparing, and analyzing for an air pollutant specified in a relevant standard as the performance test procedure. The test method may include methods described in an appendix of Chapter I of Title 40, test methods incorporated by reference in 40 CFR Part 63 or this regulation, or methods validated for an application through procedures in Method 301 in Appendix A of 40 CFR Part 63.

**“Title V permit”** means any permit issued, renewed, or revised pursuant to 7 DE Admin Code 1130.

**“Visible emission”** means the observation of an emission of opacity or optical density above the threshold of vision.

**“Working day”** means any day on which State government offices are open for normal business. Saturdays, Sundays, and official State holidays are not working days.

### 3.3 Units and abbreviations.

Used in 40 CFR Part 63 and this regulation are abbreviations and symbols of units of measure. These are defined as follows:

#### 3.3.1 System International (SI) units of measure:

A = ampere  
g = gram  
Hz = hertz  
J = joule  
°K = degree Kelvin  
kg = kilogram  
l = liter  
m = meter  
m<sup>3</sup> = cubic meter  
mg = milligram = 10<sup>-3</sup> gram  
ml = milliliter = 10<sup>-3</sup> liter  
mm = millimeter = 10<sup>-3</sup> meter  
Mg = megagram = 10<sup>6</sup> gram = metric ton  
MJ = megajoule  
mol = mole  
N = Newton  
ng = nanogram = 10<sup>-9</sup> gram  
nm = nanometer = 10<sup>-9</sup> meter  
Pa = pascal

s = second  
V = volt  
W = watt  
 $\Omega$  = ohm  
 $\mu\text{g}$  = microgram =  $10^{-6}$  gram  
 $\mu\text{l}$  = microliter =  $10^{-6}$  liter

### 3.3.2 Other units of measure:

Btu = British thermal unit  
 $^{\circ}\text{C}$  = degree Celsius (centigrade)  
cal = calorie  
cfm = cubic feet per minute  
cc = cubic centimeter  
cu ft = cubic feet  
d = day  
dcf = dry cubic feet  
dcm = dry cubic meter  
dscf = dry cubic feet at standard conditions  
dscm = dry cubic meter at standard conditions  
eq = equivalent  
 $^{\circ}\text{F}$  = degree Fahrenheit  
ft = feet  
 $\text{ft}^2$  = square feet  
 $\text{ft}^3$  = cubic feet  
gal = gallon  
gr = grain  
g-eq = gram equivalent  
g-mole = gram mole  
hr = hour  
in. = inch  
in.  $\text{H}_2\text{O}$  = inches of water  
K = 1,000  
kcal = kilocalorie  
lb = pound  
lpm = liter per minute  
meq = milliequivalent  
min = minute  
MW = molecular weight  
oz = ounces  
ppb = parts per billion  
ppbw = parts per billion by weight  
ppbv = parts per billion by volume  
ppm = parts per million  
ppmw = parts per million by weight  
ppmv = parts per million by volume

psia = pounds per square inch absolute  
psig = pounds per square inch gage  
°R = degree Rankine  
scf = cubic feet at standard conditions  
scfh = cubic feet at standard conditions per hour  
scm = cubic meter at standard conditions  
scmm = cubic meter at standard conditions per minute  
sec = second  
sq ft = square feet  
std = at standard conditions  
v/v = volume per volume  
yd<sup>2</sup> = square yards  
yr = year

### 3.3.3 Miscellaneous:

act = actual  
avg = average  
I.D. = inside diameter  
M = molar  
N = normal  
O.D. = outside diameter  
% = percent

## 3.4 Prohibited activities and circumvention.

### 3.4.1 Prohibited activities.

3.4.1.1 No owner or operator subject to the provisions of this regulation shall operate any affected source in violation of the requirements of 40 CFR Part 63 or this regulation. Affected sources subject to and in compliance with either an extension of compliance or an exemption from compliance are not in violation of the requirements of 40 CFR Part 63 or this regulation. An extension of compliance can be granted by the Administrator under 40 CFR Part 63; by the Department under 3.6.9.1 of this regulation; or by the President under Section 112(i)(4) of the Act.

3.4.1.2 No owner or operator subject to the provisions of this regulation shall fail to keep records, notify, report, or revise reports as required under 40 CFR Part 63 or this regulation.

3.4.1.3 [Reserved]

3.4.1.4 [Reserved]

3.4.1.5 [Reserved]

### 3.4.2 Circumvention.

No owner or operator subject to the provisions of this regulation shall build, erect, install, or use any article, machine, equipment, or process to conceal an emission that would otherwise constitute noncompliance with a relevant standard. Such concealment includes, but is not limited to-

3.4.2.1 The use of diluents to achieve compliance with a relevant standard based on the concentration of a pollutant in the effluent discharged to the atmosphere and

3.4.2.2 The use of gaseous diluents to achieve compliance with a relevant standard for visible emissions.

3.4.2.3 [Reserved]

### 3.4.3 Fragmentation.

Fragmentation after November 15, 1990 which divides ownership of an operation, within the same facility among various owners where there is no real change in control, will not affect applicability. The owner and operator shall not use fragmentation or phasing of reconstruction activities (i.e., intentionally dividing reconstruction into multiple parts for purposes of avoiding new source requirements) to avoid becoming subject to new source requirements.

## 3.5 Preconstruction review and notification requirements.

### 3.5.1 Applicability.

3.5.1.1 The provisions of 3.5 of this regulation implement the preconstruction review requirements of Section 112(i)(1) of the Act. After the effective date of a relevant standard, promulgated pursuant to Section 112(d), (f), or (h) of the Act, under 40 CFR Part 63, the preconstruction review requirements in 3.5 apply to the owner or operator of new affected sources and reconstructed affected sources that are major-emitting as specified in 3.5 of this regulation. New and reconstructed affected sources that commence construction or reconstruction before the effective date of a relevant standard are not subject to the preconstruction review requirements specified in 3.5.2.3, 3.5.4, and 3.5.5 of this regulation.

3.5.1.2 The provisions of 3.5 of this regulation include notification requirements for new affected sources and reconstructed affected sources that are not major-emitting affected sources and that are or

become subject to a relevant promulgated emission standard after the effective date of a relevant standard promulgated under 40 CFR Part 63.

### 3.5.2 Requirements for existing, newly constructed, and reconstructed sources.

3.5.2.1 A new affected source for which construction commences after proposal of a relevant standard is subject to relevant standards for new affected sources, including compliance dates. An affected source for which reconstruction commences after proposal of a relevant standard is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

3.5.2.2 [Reserved]

3.5.2.3 After the effective date of any relevant standard promulgated by the Administrator under 40 CFR Part 63, no person may, without obtaining written approval in advance from the Department in accordance with the procedures specified in 3.5.4 and 3.5.5 of this regulation, do any of the following:

3.5.2.3.1 Construct a new affected source that is major-emitting and subject to such standard;

3.5.2.3.2 Reconstruct an affected source that is major-emitting and subject to such standard; or

3.5.2.3.3 Reconstruct a source such that the source becomes an affected source that is major-emitting and subject to the standard.

3.5.2.4 After the effective date of any relevant standard promulgated by the Administrator under 40 CFR Part 63, an owner or operator who constructs a new affected source that is not major-emitting or reconstructs an affected source that is not major-emitting that is subject to such standard, or reconstructs a source such that the source becomes an affected source subject to the standard, shall notify the Department of the intended construction or reconstruction. The notification shall be submitted in accordance with the procedures in 3.9.2 of this regulation.

3.5.2.5 [Reserved]

3.5.2.6 After the effective date of any relevant standard promulgated by the Administrator under 40 CFR Part 63, equipment added (or a process change) to an affected source that is within the scope of the definition of affected source under the relevant standard shall be

considered part of the affected source and subject to all provisions of the relevant standard established for that affected source.

3.5.3 [Reserved]

3.5.4 Application for approval of construction or reconstruction.

The provisions in 3.5.4 of this regulation implement Section 112(i)(1) of the Act.

3.5.4.1 General application requirements.

3.5.4.1.1 An owner or operator who is subject to the requirements in 3.5.2.3 of this regulation shall submit to the Department an application for approval of the construction or reconstruction. The application shall be submitted as soon as practicable before actual construction or reconstruction begins. The application for approval of construction or reconstruction may be used to fulfill the initial notification requirements in 3.9.2.5 of this regulation. The owner or operator may submit the application for approval well in advance of the date actual construction or reconstruction begins in order to ensure a timely review by the Department and that the planned date to begin will not be delayed.

3.5.4.1.2 A separate application shall be submitted for each construction or reconstruction. Each application for approval of construction or reconstruction shall include at a minimum:

3.5.4.1.2.1 The applicant's name and address;

3.5.4.1.2.2 A notification of intention to construct a new major affected source or make any physical or operational change to a major affected source that may meet or has been determined to meet the criteria for a reconstruction, as defined in 3.2 of this regulation or in the relevant standard;

3.5.4.1.2.3 The address (i.e., physical location) or proposed address of the source;

3.5.4.1.2.4 An identification of the relevant standard that is the basis of the application;

3.5.4.1.2.5 The expected date of the beginning of actual construction or reconstruction;

3.5.4.1.2.6 The expected completion date of the construction or reconstruction;

3.5.4.1.2.7 The anticipated date of (initial) startup of the source;

3.5.4.1.2.8 The type and quantity of hazardous air pollutants emitted by the source, reported in units and averaging times and in accordance with the test methods specified in the relevant standard, or if actual emissions data are not yet available, an estimate of the type and quantity of hazardous air pollutants expected to be emitted by the source reported in units and averaging times specified in the relevant standard. The owner or operator may submit percent reduction information if a relevant standard is established in terms of percent reduction. However, operating parameters, such as flow rate, shall be included in the submission to the extent that they demonstrate performance and compliance; and

3.5.4.1.2.9 [Reserved]

3.5.4.1.2.10 Other information as specified in 3.5.4.2 and 3.5.4.3 of this regulation.

3.5.4.1.3 An owner or operator who submits estimates or preliminary information in place of the actual emissions data and analysis required in 3.5.4.1.2.8 and 3.5.4.2 of this regulation shall submit the actual, measured emissions data and other correct information as soon as available but no later than with the notification of compliance status required in 3.9.8 of this regulation (see 3.9.8.5 of this regulation).

#### 3.5.4.2 Application for approval of construction

Each application for approval of construction shall include, in addition to the information required in 3.5.4.1.2 of this regulation, technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including an identification of each type of emission point for each type of hazardous air pollutant that is emitted (or could reasonably be anticipated to be emitted) and a description of the planned air pollution control system (equipment or method) for each emission point. The description of the equipment to be used for the control of emissions shall include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the

method to be used for the control of emissions shall include an estimated control efficiency (percent) for that method. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations.

#### 3.5.4.3 Application for approval of reconstruction.

Each application for approval of reconstruction shall include, in addition to the information required in 3.5.4.1.2 of this regulation --

3.5.4.3.1 A brief description of the affected source and the components that are to be replaced;

3.5.4.3.2 A description of present and proposed emission control systems (i.e., equipment or methods). The description of the equipment to be used for the control of emissions shall include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions shall include an estimated control efficiency (percent) for that method. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations;

3.5.4.3.3 An estimate of the fixed capital cost of the replacements and of constructing a comparable entirely new source;

3.5.4.3.4 The estimated life of the affected source after the replacements; and

3.5.4.3.5 A discussion of any economic or technical limitations the source may have in complying with relevant standards or other requirements after the proposed replacements. The discussion shall be sufficiently detailed to demonstrate to the Department's satisfaction that the technical or economic limitations affect the source's ability to comply with the relevant standard and how they do so.

3.5.4.3.6 If in the application for approval of reconstruction the owner or operator designates the affected source as a reconstructed source and declares that there are no economic or technical limitations to prevent the source from complying with all relevant standards or other requirements, the owner or operator need not submit the information required in 3.5.4.3.3 through 3.5.4.3.5 of this regulation.

#### 3.5.4.4 Additional information

The Department may request additional relevant information after the submittal of an application for approval of construction or reconstruction.

#### 3.5.5 Approval of construction or reconstruction.

##### 3.5.5.1 Determination

3.5.5.1.1 If the Department determines that, if properly constructed, or reconstructed, and operated, a new or existing source for which an application under 3.5.4 of this regulation was submitted will not cause emissions in violation of the relevant standards and any other federally enforceable requirements, the Department will approve the construction or reconstruction.

3.5.5.1.2 In addition, in the case of reconstruction, the Department's determination under 3.5.5 of this regulation will be based on:

3.5.5.1.2.1 The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new source;

3.5.5.1.2.2 The estimated life of the source after the replacements compared to the life of a comparable entirely new source;

3.5.5.1.2.3 The extent to which the components being replaced cause or contribute to the emissions from the source; and

3.5.5.1.2.4 Any economic or technical limitations on compliance with relevant standards that are inherent in the proposed replacements.

##### 3.5.5.2 Notification

3.5.5.2.1 The Department will notify the owner or operator in writing of approval or intention to deny approval of construction or reconstruction within 60 calendar days after receipt of sufficient information to evaluate an application submitted under 3.5.4 of this regulation. The 60-day approval or denial period will begin after the owner or operator has been notified in writing that the owner or operator's application is complete. The Department will notify the

owner or operator in writing of the status of the owner or operator's application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

3.5.5.2.2 When notifying the owner or operator that the owner or operator's application is not complete, the Department will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after the owner or operator is notified of the incomplete application, additional information or arguments to the Department to enable further action on the application.

3.5.5.3 Before denying any application for approval of construction or reconstruction, the Department will notify the applicant of the Department's intention to issue the denial together with-

3.5.5.3.1 Notice of the information and findings on which the intended denial is based and

3.5.5.3.2 Notice of opportunity for the applicant to present, in writing, within 30 calendar days after the owner or operator is notified of the intended denial, additional information or arguments to the Department to enable further action on the application.

3.5.5.4 A final determination to deny any application for approval will be in writing and will specify the grounds on which the denial is based. The final determination will be made within 60 calendar days of presentation of additional information or arguments (if the application is complete), or within 60 calendar days after the final date specified for presentation if no presentation is made.

3.5.5.5 Neither the submission of an application for approval nor the Department's approval of construction or reconstruction shall--

3.5.5.5.1 Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of 40 CFR Part 63 or this regulation or with any other applicable Federal, State, or local requirement, including, but not limited to the requirement to obtain construction permits under 7 **DE Admin Code** 1102 or 1125, before commencing construction or reconstruction or

3.5.5.5.2 Prevent the Administrator from implementing or enforcing 40 CFR Part 63 or taking any other action under the Act

or the Department from implementing or enforcing this regulation or taking any other action under 7 **Del. C.**, Ch 60.

### 3.5.6 Approval of construction or reconstruction based on prior State preconstruction review.

3.5.6.1 Preconstruction review procedures under 7 **DE Admin Code** 1102 or 1125, may be utilized for purposes of 3.0 of this regulation. The Department will approve an application for construction or reconstruction specified in 3.5.2.3 and 3.5.4 of this regulation if the owner or operator of a new affected source or reconstructed affected source, who is subject to such requirement meets the following condition:

3.5.6.1.1 The owner or operator of the new affected source or reconstructed affected source has undergone a preconstruction review and approval process and has received a federally enforceable construction permit that contains a finding that the source will meet the relevant promulgated emission standard, if the source is properly built and operated.

3.5.6.1.2 [Reserved]

3.5.6.1.3 [Reserved]

3.5.6.1.4 [Reserved]

3.5.6.2 The owner or operator shall submit to the Department the request for approval of construction or reconstruction under 3.5.6.2 of this regulation no later than the application deadline specified in 3.5.4.1 of this regulation (see also 3.9.2.2 of this regulation). The owner or operator shall include in the request information sufficient for the Department's determination. The Department will evaluate the owner or operator's request in accordance with the procedures specified in 3.5.5 of this regulation. The Department may request additional relevant information after the submittal of a request for approval of construction or reconstruction under 3.5.6.2 of this regulation.

## 3.6 Compliance with standards and maintenance requirements

### 3.6.1 Applicability.

3.6.1.1 The requirements in 3.6 of this regulation apply to the owner or operator of affected sources for which any relevant standard has been established pursuant to Section 112 of the Act and the applicability of such requirements is set out in accordance with 3.1.1.4 of this regulation unless--

3.6.1.1.1 The Administrator, under 40 CFR Part 63, or the Department, under 3.6.9 of this regulation, has granted an extension of compliance or

3.6.1.1.2 The President has granted an exemption from compliance with any relevant standard in accordance with Section 112(i)(4) of the Act.

3.6.1.2 If an area source that otherwise would be subject to an emission standard or other requirement established under 40 CFR Part 63 or this regulation if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source, such source shall be subject to the relevant emission standard or other requirement.

### 3.6.2 Compliance dates for new and reconstructed sources

3.6.2.1 Except as specified in 3.6.2.3 and 3.6.2.4 of this regulation, the owner or operator of a new or reconstructed affected source for which construction or reconstruction commences after proposal of a relevant standard that has an initial startup before the effective date of a relevant standard established under 40 CFR Part 63 pursuant to Section 112(d), (f), or (h) of the Act shall comply with such standard not later than the standard's effective date.

3.6.2.2 Except as specified in 3.6.2.3 and 3.6.2.4 of this regulation, the owner or operator of a new or reconstructed affected source that has an initial startup after the effective date of a relevant standard established under 40 CFR Part 63 pursuant to Section 112(d), (f), or (h) of the Act shall comply with such standard upon startup of the source.

3.6.2.3 The owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established under 40 CFR Part 63 pursuant to Section 112(d), 112(f), or 112(h) of the Act but before the effective date (that is, promulgation) of such standard shall comply with the relevant emission standard not later than the date three years after the effective date if:

3.6.2.3.1 The promulgated standard (that is, the relevant standard) is more stringent than the proposed standard; for purposes of 3.6.2 of this regulation, a finding that controls or compliance methods are "more stringent" shall include control technologies or performance criteria and compliance or compliance assurance methods that are different but are

substantially equivalent to those required by the promulgated rule, as determined by the Department and

3.6.2.3.2 The owner or operator complies with the standard as proposed during the three-year period immediately after the effective date.

3.6.2.4 The owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established under 40 CFR Part 63 pursuant to Section 112(d) of the Act but before the proposal date of a relevant standard established pursuant to Section 112(f) of the Act shall not be required to comply with the Section 112(f) emission standard until the date 10 years after the date construction or reconstruction is commenced, except that, if the Section 112(f) standard is promulgated more than 10 years after construction or reconstruction is commenced, the owner or operator shall comply with the standard as provided in 3.6.2.1 and 3.6.2.2 of this regulation.

3.6.2.5 The owner or operator of a new source that is subject to the compliance requirements in 3.6.2.3 or 3.6.2.4 of this regulation shall notify the Department in accordance with 3.9.4 of this regulation.

3.6.2.6 [Reserved]

3.6.2.7 When an area source becomes a major source by the addition of equipment or operations that meet the definition of new affected source in the relevant standard, the portion of the existing facility that is a new affected source shall comply with all requirements of that standard applicable to new sources. The source owner or operator shall comply with the relevant standard upon startup.

### 3.6.3 Compliance dates for existing sources.

3.6.3.1 After the effective date of a relevant standard established under 40 CFR Part 63 pursuant to Section 112(d) or 112(h) of the Act, the owner or operator of an existing source shall comply with such standard by the compliance date established by the Administrator in the applicable subparts of 40 CFR Part 63. Except as otherwise provided for in Section 112 of the Act, in no case will the compliance date established for an existing source in an applicable subpart of 40 CFR Part 63 exceed three years after the effective date of such standard.

3.6.3.2 If an existing source is subject to a standard established under 40 CFR Part 63 pursuant to Section 112(f) of the Act, the owner or operator shall comply with the standard by the date 90 days after the

standard's effective date, or by the date specified in an extension granted to the source by the Administrator, under 40 CFR Part 63, or the Department, under 3.6.9.4.2 of this regulation, whichever is later.

3.6.3.3 [Reserved]

3.6.3.4 [Reserved]

3.6.3.5 Except as provided in 3.6.2.7 of this regulation, the owner or operator of an area source that increases its emissions of (or its potential to emit) hazardous air pollutants such that the source becomes a major source shall be subject to relevant standards for existing sources. Such sources shall comply by the date specified in the standards for existing area sources that become major sources. If no such compliance date is specified in the standards, the source shall have a period of time to comply with the relevant emission standard that is equivalent to the compliance period specified in the relevant standard for existing sources in existence at the time the standard becomes effective.

3.6.4 [Reserved]

3.6.5 Operation and maintenance requirements.

3.6.5.1 Operating and maintenance procedures.

3.6.5.1.1 At all times, including periods of startup, shutdown, or malfunction, the owner or operator shall operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. During a period of startup, shutdown, or malfunction, this general duty to minimize emissions requires that the owner or operator reduce emissions from the affected source to the greatest extent which is consistent with safety and good air pollution control practices. The general duty to minimize emissions during a period of startup, shutdown, or malfunction does not require the owner or operator to achieve emission levels that would be required by the applicable standard at other times if this is not consistent with safety and good air pollution control practices, nor does it require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Department which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and

malfunction plan required in 3.6.5.3 of this regulation), review of operation and maintenance records, and inspection of the source.

3.6.5.1.2 Malfunctions shall be corrected as soon as practicable after their occurrence in accordance with the startup, shutdown, and malfunction plan required in 3.6.5.3 of this regulation. To the extent that an unexpected event arises during a startup, shutdown, or malfunction, an owner or operator shall comply by minimizing emissions during such a startup, shutdown, or malfunction event consistent with safety and good air pollution control practices.

3.6.5.1.3 Operation and maintenance requirements established pursuant to Section 112 of the Act or this regulation are enforceable independent of emissions limitations or other requirements in relevant standards.

3.6.5.2 [Reserved]

3.6.5.3 Startup, shutdown, and malfunction plan.

3.6.5.3.1 The owner or operator of an affected source shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, or malfunction, and a program of corrective action for malfunctioning process and air pollution control and monitoring equipment used to comply with the relevant standard. This plan shall be developed by the owner or operator by the source's compliance date for that relevant standard. The purpose of the startup, shutdown, and malfunction plan is to-

3.6.5.3.1.1 Ensure that, at all times, the owner or operator operates and maintains each affected source, including associated air pollution control and monitoring equipment, in a manner which satisfies the general duty to minimize emissions established in 3.6.5.1.1 of this regulation;

3.6.5.3.1.2 Ensure that the owner or operator is prepared to correct malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of hazardous air pollutants; and

3.6.5.3.1.3 Reduce the reporting burden associated with periods of startup, shutdown, or malfunction (including corrective action taken to restore malfunctioning

process and air pollution control and monitoring equipment to its normal or usual manner of operation).

3.6.5.3.2 During periods of startup, shutdown, or malfunction, the owner or operator of an affected source shall operate and maintain such source (including associated air pollution control and monitoring equipment) in accordance with the procedures specified in the startup, shutdown, and malfunction plan developed under 3.6.5.3.1 of this regulation.

3.6.5.3.3 When actions taken by the owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) are consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall keep records for that event which demonstrate that the procedures specified in the plan were followed. These records may take the form of a "checklist," or other effective form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for that event. In addition, the owner or operator shall keep records of these events as specified in 3.10.2 of this regulation, including records of the occurrence and duration of each startup, shutdown, or malfunction of operation and each malfunction of the air pollution control and monitoring equipment. Furthermore, the owner or operator shall confirm that actions taken during the relevant reporting period during periods of startup, shutdown, or malfunction were consistent with the affected source's startup, shutdown and malfunction plan in the semiannual (or more frequent) startup, shutdown, and malfunction report required in 3.10.4.5 of this regulation.

3.6.5.3.4 If an action taken by the owner or operator during a startup, shutdown, or malfunction (including an action taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, and the source exceeds any applicable emission limitation in the relevant emission standard, then the owner or operator shall record the actions taken for that event and shall report such actions within two working days after commencing actions inconsistent with the plan, followed by a letter within seven working days after the end of the event, in accordance with 3.10.4.5 of this regulation (unless the owner or operator makes alternative reporting arrangements, in advance, with the Department).

3.6.5.3.5 The owner or operator shall maintain at the affected source a current startup, shutdown, and malfunction plan and shall make the plan available upon request for inspection and copying by the Department. In addition, if the startup, shutdown, and malfunction plan is subsequently revised as provided in 3.6.5.3.8 of this regulation, the owner or operator shall maintain at the affected source each previous (i.e., superseded) version of the startup, shutdown, and malfunction plan, and shall make each such previous version available for inspection and copying by the Department for a period of five years after revision of the plan. If at any time after adoption of a startup, shutdown, and malfunction plan the affected source ceases operation or is otherwise no longer subject to the provisions of a relevant standard, the owner or operator shall retain a copy of the most recent plan for five years from the date the source ceases operation or is no longer subject to the relevant standard and shall make the plan available upon request for inspection and copying by the Department. The Department may at any time request in writing that the owner or operator submit a copy of any startup, shutdown, and malfunction plan (or a portion thereof) which is maintained at the affected source or in the possession of the owner or operator. Upon receipt of such a request, the owner or operator shall promptly submit a copy of the requested plan (or a portion thereof) to the Department. The Department shall request that the owner or operator submit a particular startup, shutdown, and malfunction plan (or a portion thereof) whenever a member of the public submits a specific and reasonable request to examine or to receive a copy of that plan or portion of a plan. The owner or operator may elect to submit the required copy of any startup, shutdown, and malfunction plan to the Department in an electronic format. If the owner or operator claims that any portion of such a startup, shutdown, and malfunction plan is confidential business information entitled to protection from disclosure under Section 114(c) of the Act, 40 CFR 2.301, 7 **Del. C.**, Ch 60, §6014, or 29 **Del. C.**, Ch 100, §10002(d), the material which is claimed as confidential shall be clearly designated in the submission.

3.6.5.3.6 To satisfy the requirements in 3.6 of this regulation to develop a startup, shutdown, and malfunction plan, the owner or operator may use the affected source's standard operating procedures (SOP) manual, or an Occupational Safety and Health Administration (OSHA) or other plan, provided the alternative plans meet all the requirements in 3.6 of this regulation and are made available for inspection or submitted when requested by the Department.

3.6.5.3.7 Based on the results of a determination made under 3.6.5.1.1 of this regulation, the Department may require that an owner or operator of an affected source make changes to the startup, shutdown, and malfunction plan for that source. The Department shall require appropriate revisions to a startup, shutdown, and malfunction plan, if the Department finds that the plan:

3.6.5.3.7.1 Does not address a startup, shutdown, or malfunction event that has occurred;

3.6.5.3.7.2 Fails to provide for the operation of the source (including associated air pollution control and monitoring equipment) during a startup, shutdown, or malfunction event in a manner consistent with the general duty to minimize emissions established 3.6.5.1.1 of this regulation;

3.6.5.3.7.3 Does not provide adequate procedures for correcting malfunctioning process, air pollution control equipment, or monitoring equipment as quickly as practicable; or

3.6.5.3.7.4 Includes an event that does not meet the definitions of startup, shutdown, or malfunction listed in 3.2 of this regulation.

3.6.5.3.8 The owner or operator may periodically revise the startup, shutdown, and malfunction plan for the affected source as necessary to satisfy the requirements of a relevant standard or to reflect changes in equipment or procedures at the affected source. Unless the Department provides otherwise, the owner or operator may make such revisions to the startup, shutdown, and malfunction plan without prior approval by the Administrator or the Department. However, each such revision to a startup, shutdown, and malfunction plan shall be reported in the semiannual report required in 3.10.4.5 of this regulation. If the startup, shutdown, and malfunction plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the startup, shutdown, and malfunction plan at the time the owner or operator developed the plan, the owner or operator shall revise the startup, shutdown, and malfunction plan within 45 days after the event to include detailed procedures for operating and maintaining the source during similar malfunction events and a program of corrective action for similar malfunctions of process or air pollution control and monitoring equipment. In the event that

the owner or operator makes any revision to the startup, shutdown, and malfunction plan which alters the scope of the activities at the source which are deemed to be a startup, shutdown, or malfunction, or otherwise modifies the applicability of any emission limit, work practice requirement, or other requirement in a standard established under 40 CFR Part 63 or this regulation, the revised plan shall not take effect until after the owner or operator has provided a written notice describing the revision to the Department.

3.6.5.3.9 The Title V permit for an affected source shall require that the owner or operator adopt a startup, shutdown, and malfunction plan which conforms to the provisions of this regulation, and that the owner or operator operate and maintain the source in accordance with the procedures specified in the current startup, shutdown, and malfunction plan. However, any revisions made to the startup, shutdown, and malfunction plan in accordance with the procedures established by this regulation shall not be deemed to constitute permit revisions under 7 **DE Admin Code** 1130. Moreover, none of the procedures specified by the startup, shutdown, and malfunction plan for an affected source shall be deemed to fall within the permit shield provision in Section 504(f) of the Act.

### 3.6.6 Compliance with non-opacity emission standards--

#### 3.6.6.1 Applicability.

The non-opacity emission standards set forth in 40 CFR Part 63 or this regulation shall apply at all times except during periods of startup, shutdown, or malfunction, and as otherwise specified in an applicable subpart of 40 CFR Part 63 or section in this regulation. If a startup, shutdown, or malfunction of one portion of an affected source does not affect the ability of particular emission points within other portions of the affected source to comply with the non-opacity emission standards set forth in 40 CFR Part 63 or this regulation, then that emission point shall still be required to comply with the non-opacity emission standards and other applicable requirements.

#### 3.6.6.2 Methods for determining compliance.

3.6.6.2.1 The Department will determine compliance with non-opacity emission standards in 40 CFR Part 63 or this regulation based on the results of performance tests conducted according to the procedures in 3.7 of this regulation, unless otherwise specified

in an applicable subpart of 40 CFR Part 63 or section in this regulation.

3.6.6.2.2 The Department will determine compliance with non-opacity emission standards in 40 CFR Part 63 or this regulation by evaluation of an owner or operator's conformance with operation and maintenance requirements, including the evaluation of monitoring data, as specified in 3.6.5 of this regulation and applicable subparts of 40 CFR Part 63 or sections in this regulation.

3.6.6.2.3 If an affected source conducts performance testing at startup to obtain an approved operating permit under 7 **DE Admin Codes** 1102, 1125 or 1130 , the results of such testing may be used to demonstrate compliance with a relevant standard if--

3.6.6.2.3.1 The performance test was conducted within a reasonable amount of time before an initial performance test is required to be conducted under the relevant standard;

3.6.6.2.3.2 The performance test was conducted under representative operating conditions for the source;

3.6.6.2.3.3 The performance test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in 3.7.5 of this regulation; and

3.6.6.2.3.4 The performance test was appropriately quality-assured, as specified in 3.7.3 of this regulation.

3.6.6.2.4 The Department will determine compliance with design, equipment, work practice, or operational emission standards in 40 CFR Part 63 or this regulation by review of records, inspection of the source, and other procedures specified in applicable subparts of 40 CFR Part 63 or sections in this regulation.

3.6.6.2.5 The Department will determine compliance with design, equipment, work practice, or operational emission standards in 40 CFR Part 63 or this regulation by evaluation of an owner or operator's conformance with operation and maintenance requirements, as specified in 3.6.5 of this regulation and applicable subparts of 40 CFR Part 63 or sections in this regulation.

### 3.6.6.3 Finding of compliance.

The Department will make a finding concerning an affected source's compliance with a non-opacity emission standard, as specified in 3.6.6.1 and 3.6.6.2 of this regulation, upon obtaining all the compliance information required by the relevant standard (including the written reports of performance test results, monitoring results, and other information, if applicable), and information available to the Department pursuant to 3.6.5.1.1 of this regulation.

### 3.6.7 Use of an alternative non-opacity emission standard.

3.6.7.1 If, in the Administrator's judgment, an owner or operator of an affected source has established that an alternative means of emission limitation will achieve a reduction in emissions of a hazardous air pollutant from an affected source at least equivalent to the reduction in emissions of that pollutant from that source achieved under any design, equipment, work practice, or operational emission standard, or combination thereof, established under 40 CFR Part 63 pursuant to Section 112(h) of the Act, the Administrator will publish in the Federal Register a notice permitting the use of the alternative emission standard for purposes of compliance with the promulgated standard. That Federal Register notice shall be published only after the public is notified and given the opportunity to comment. Such notice will restrict the permission to the stationary sources or categories of sources from which the alternative emission standard will achieve equivalent emission reductions. The Administrator will condition permission in such notice on requirements to assure the proper operation and maintenance of equipment and practices required for compliance with the alternative emission standard and other requirements, including appropriate quality assurance and quality control requirements, that are deemed necessary.

3.6.7.2 An owner or operator requesting permission under 3.6.7 of this regulation shall, unless otherwise specified in an applicable subpart, submit to the Administrator (with copy to the Department) a proposed test plan or the results of testing and monitoring in accordance with 3.7 and 3.8 of this regulation, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring. Any testing or monitoring conducted to request permission to use an alternative non-opacity emission standard shall be appropriately quality assured and quality controlled, as specified in 3.7 and 3.8 of this regulation.

3.6.7.3 The Administrator may establish general procedures in an applicable subpart that accomplish the requirements 3.6.7.1 and 3.6.7.2 of this regulation.

### 3.6.8 Compliance with opacity and visible emission standards--

#### 3.6.8.1 Applicability.

The opacity and visible emission standards set forth in this regulation shall apply at all times except during periods of startup, shutdown, or malfunction, and as otherwise specified in an applicable subpart of 40 CFR Part 63 or section in this regulation. If a startup, shutdown, or malfunction of one portion of an affected source does not affect the ability of particular emission points within other portions of the affected source to comply with the opacity and visible emission standards set forth in 40 CFR Part 63 or this regulation, then that emission point shall still be required to comply with the opacity and visible emission standards and other applicable requirements.

#### 3.6.8.2 Methods for determining compliance.

3.6.8.2.1 The Department will determine compliance with opacity and visible emission standards in 40 CFR Part 63 or this regulation based on the results of the test method specified in an applicable subpart of 40 CFR Part 63 or section in this regulation. Whenever a COMS is required to be installed to determine compliance with numerical opacity emission standards in 40 CFR Part 63 or this regulation, compliance with opacity emission standards shall be determined by using the results from the COMS. Whenever an opacity emission test method is not specified, compliance with opacity emission standards shall be determined by conducting observations in accordance with Method 9 in Appendix A of 40 CFR Part 60 or the method specified in 3.6.8.7.2 of this regulation. Whenever a visible emission test method is not specified, compliance with visible emission standards in 40 CFR Part 63 or this regulation shall be determined by conducting observations in accordance with Method 22 in Appendix A of 40 CFR Part 60.

#### 3.6.8.2.2 [Reserved]

3.6.8.2.3 If an affected source undergoes opacity or visible emission testing at startup to obtain an operating permit, the results of such testing may be used to demonstrate compliance with a relevant standard if-

3.6.8.2.3.1 The opacity or visible emission test was conducted within a reasonable amount of time before a performance test is required to be conducted under the relevant standard;

3.6.8.2.3.2 The opacity or visible emission test was conducted under representative operating conditions for the source;

3.6.8.2.3.3 The opacity or visible emission test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in 3.7.5 of this regulation; and

3.6.8.2.3.4 The opacity or visible emission test was appropriately quality-assured, as specified in 3.7.3 of this regulation.

3.6.8.3 [Reserved]

3.6.8.4 Notification of opacity or visible emission observations.

The owner or operator of an affected source shall notify the Department in writing of the anticipated date for conducting opacity or visible emission observations in accordance with 3.9.6 of this regulation, if such observations are required for the source by a relevant standard.

3.6.8.5 Conduct of opacity or visible emission observations.

When a relevant standard under 40 CFR Part 63 or this regulation includes an opacity or visible emission standard, the owner or operator of an affected source shall comply with the following:

3.6.8.5.1 For the purpose of demonstrating initial compliance, opacity or visible emission observations shall be conducted concurrently with the initial performance test required in 3.7 of this regulation unless one of the following conditions applies:

3.6.8.5.1.1 If no performance test under 3.7 of this regulation is required, opacity or visible emission observations shall be conducted within 60 days after achieving the maximum production rate at which a new or reconstructed source will be operated, but not later than 120 days after initial startup of the source, or within 120 days after the effective date of the relevant standard in the case of new sources that start up before the standard's

effective date. If no performance test under 3.7 of this regulation is required, opacity or visible emission observations shall be conducted within 120 days after the compliance date for an existing or modified source or

3.6.8.5.1.2 If visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the initial performance test required under 3.7 of this regulation, or within the time period specified in 3.6.8.5.1.1 of this regulation, the source's owner or operator shall reschedule the opacity or visible emission observations as soon after the initial performance test, or time period, as possible, but not later than 30 days thereafter, and shall advise the Department of the rescheduled date. The rescheduled opacity or visible emission observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test conducted under 3.7 of this regulation. The visible emissions observer shall determine whether visibility or other conditions prevent the opacity or visible emission observations from being made concurrently with the initial performance test in accordance with procedures contained in Method 9 or Method 22 in Appendix A of 40 CFR Part 60.

3.6.8.5.2 For the purpose of demonstrating initial compliance, the minimum total time of opacity observations shall be three hours (30 six-minute averages) for the performance test or other required set of observations (e.g., for fugitive-type emission sources subject only to an opacity emission standard).

3.6.8.5.3 The owner or operator of an affected source to which an opacity or visible emission standard in 40 CFR Part 63 or this regulation applies shall conduct opacity or visible emission observations in accordance with the provisions in 3.6 of this regulation, record the results of the evaluation of emissions, and report to the Department the opacity or visible emission results in accordance with the provisions in 3.10.4 of this regulation.

3.6.8.5.4 [Reserved]

3.6.8.5.5 Opacity readings of portions of plumes that contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity emission standards.

#### 3.6.8.6 Availability of records

The owner or operator of an affected source shall make available, upon request by the Department, such records that the Department deems necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification.

#### 3.6.8.7 Use of a COMS

3.6.8.7.1 The owner or operator of an affected source required to use a COMS shall record the monitoring data produced during a performance test required under 3.7 of this regulation and shall furnish the Department a written report of the monitoring results in accordance with the provisions in 3.10.5.4 of this regulation.

3.6.8.7.2 Whenever an opacity emission test method has not been specified in an applicable subpart of 40 CFR Part 63 or section in this regulation, or an owner or operator of an affected source is required to conduct Method 9 observations (see Appendix A of 40 CFR Part 60), the owner or operator may submit, for compliance purposes, COMS data results produced during any performance test required under 3.7 of this regulation in lieu of Method 9 data. If the owner or operator elects to submit COMS data for compliance with the opacity emission standard, the owner or operator shall notify the Department of that decision, in writing, simultaneously with the notification under 3.7.2 of this regulation of the date the performance test is scheduled to begin. Once the owner or operator of an affected source has notified the Department to that effect, the COMS data results will be used to determine opacity compliance during subsequent performance tests required under 3.7 of this regulation, unless the owner or operator notifies the Department in writing to the contrary not later than with the notification under 3.7.2 of this regulation of the date the subsequent performance test is scheduled to begin.

3.6.8.7.3 For the purposes of determining compliance with the opacity emission standard during a performance test required under 3.7 of this regulation using COMS data, the COMS data shall be reduced to six-minute averages over the duration of the mass emission performance test.

3.6.8.7.4 The owner or operator of an affected source using a COMS for compliance purposes is responsible for demonstrating that the owner or operator has complied with the performance

evaluation requirements 3.8.5 of this regulation that the COMS has been properly maintained, operated, and data quality-assured, as specified in 3.8.3 and 3.8.4 of this regulation, and that the resulting data have not been altered in any way.

3.6.8.7.5 Except as provided in 3.6.8.7.2 of this regulation, the results of continuous monitoring by a COMS that indicate that the opacity at the time visual observations were made was not in excess of the emission standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the affected source proves that, at the time of the alleged violation, the instrument used was properly maintained, as specified in 3.8.3 of this regulation, and met Performance Specification 1 in Appendix B of 40 CFR Part 60, and that the resulting data have not been altered in any way.

#### 3.6.8.8 Finding of compliance

The Department will make a finding concerning an affected source's compliance with an opacity or visible emission standard upon obtaining all the compliance information required by the relevant standard (including the written reports of the results of the performance tests required in 3.7 of this regulation, the results of Method 9 or another required opacity or visible emission test method, the observer certification required in 3.6.8.6 of this regulation, and the COMS results, whichever is/are applicable) and any information available to the Department needed to determine whether proper operation and maintenance practices are being used.

#### 3.6.8.9 Adjustment to an opacity emission standard.

3.6.8.9.1 If the Department finds under 3.6.8.8 of this regulation that an affected source is in compliance with all relevant standards for which initial performance tests were conducted under 3.7 of this regulation, but during the time such performance tests were conducted fails to meet any relevant opacity emission standard, the owner or operator of such source may petition the Administrator (with copy to the Department) to make appropriate adjustment to the opacity emission standard for the affected source. Until the Administrator notifies the owner or operator of the appropriate adjustment, the relevant opacity emission standard remains applicable.

3.6.8.9.2 The Administrator may grant such a petition upon a demonstration by the owner or operator that--

3.6.8.9.2.1 The affected source and its associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests;

3.6.8.9.2.2 The performance tests were performed under the conditions established by the Administrator or the Department; and

3.6.8.9.2.3 The affected source and its associated air pollution control equipment were incapable of being adjusted or operated to meet the relevant opacity emission standard.

3.6.8.9.3 The Administrator will establish an adjusted opacity emission standard for the affected source meeting the above requirements at a level at which the source will be able, as indicated by the performance and opacity tests, to meet the opacity emission standard at all times during which the source is meeting the mass or concentration emission standard. The Administrator will promulgate the new opacity emission standard in the Federal Register.

3.6.8.9.4 After the Administrator promulgates an adjusted opacity emission standard for an affected source, the owner or operator of such source shall be subject to the new opacity emission standard, and the new opacity emission standard shall apply to such source during any subsequent performance tests.

### 3.6.9 Extension of compliance with emission standards

3.6.9.1 Until an extension of compliance has been granted by the Department under 3.6.9 of this regulation, the owner or operator of an affected source subject to the requirements in 3.6 of this regulation shall comply with all applicable requirements of 40 CFR Part 63 or this regulation.

3.6.9.2 Extension of compliance for early reductions and other reductions--

#### 3.6.9.2.1 Early reductions

Pursuant to Section 112(i)(5) of the Act, if the owner or operator of an existing source demonstrates that the source has achieved a reduction in emissions of hazardous air pollutants in accordance with the provisions of Subpart D of 40 CFR Part 63, the

Department will grant the owner or operator an extension of compliance with specific requirements of 40 CFR Part 63 or this regulation, as specified in Subpart D.

#### 3.6.9.2.2 Other reductions.

Pursuant to Section 112(i)(6) of the Act, if the owner or operator of an existing source has installed best available control technology (BACT) (as defined in Section 169(3) of the Act) or technology required to meet a lowest achievable emission rate (LAER) (as defined in Section 171 of the Act) prior to the promulgation of an emission standard in 40 CFR Part 63 applicable to such source and the same pollutant (or stream of pollutants) controlled pursuant to the BACT or LAER installation, the Department will grant the owner or operator an extension of compliance with such emission standard that will apply until the date five years after the date on which such installation was achieved, as determined by the Department.

#### 3.6.9.3 Request for extension of compliance.

The requirements for requests for an extension of compliance with a relevant standard under 40 CFR Part 63 or this regulation are provided in 3.6.9.4 through 3.6.9.7 of this regulation (except requests for an extension of compliance under 3.6.9.2.1 of this regulation will be handled through procedures specified in Subpart D of 40 CFR Part 63).

#### 3.6.9.4 Request for extension procedures.

##### 3.6.9.4.1 Request for standards established under Section 112(d).

3.6.9.4.1.1 The owner or operator of an existing source who is unable to comply with a relevant standard established under 40 CFR Part 63 pursuant to Section 112(d) of the Act may request that the Department grant an extension allowing the source up to one additional year to comply with the standard, if such additional period is necessary for the installation of controls. An additional extension of up to three years may be added for mining waste operations, if the one extension of compliance is insufficient to dry and cover mining waste in order to reduce emissions of any hazardous air pollutant. The owner or operator of an affected source who has requested an extension of compliance under 3.6.9.4 of this regulation and who is otherwise required to obtain a

Title V permit shall apply for such permit or apply to have the source's Title V permit revised to incorporate the conditions of the extension of compliance. The conditions of an extension of compliance granted under 3.6.9.4 will be incorporated into the affected source's Title V permit according to the provisions of 7 **DE Admin Code** 1130.

3.6.9.4.1.2 Any request under 3.6.9.4 of this regulation for an extension of compliance with a relevant standard shall be submitted in writing to the Department no later than 120 days prior to the affected source's compliance date (as specified in 3.6.2 and 3.6.3 of this regulation), except as provided for in 3.6.9.4.1.3 of this regulation. Nonfrivolous requests submitted under 3.6.9.4 of this regulation will stay the applicability of the rule as to the emission points in question until such time as the request is granted or denied. A denial will be effective as of the date of denial. Emission standards established under 40 CFR Part 63 or this regulation may specify alternative dates for the submittal of requests for an extension of compliance if alternatives are appropriate for the source categories affected by those standards.

3.6.9.4.1.3 An owner or operator may submit a compliance extension request after the date specified in 3.6.9.4.1.2 of this regulation provided the need for the compliance extension arose after that date, and before the otherwise applicable compliance date and the need arose due to circumstances beyond reasonable control of the owner or operator. This request shall include, in addition to the information required in 3.6.9.6.1 of this regulation, a statement of the reasons additional time is needed and the date when the owner or operator first learned of the problems. Nonfrivolous requests submitted under 3.6.9.4 of this regulation will stay the applicability of the rule as to the emission points in question until such time as the request is granted or denied. A denial will be effective as of the original compliance date.

3.6.9.4.2 The owner or operator of an existing source unable to comply with a relevant standard established under 40 CFR Part 63 pursuant to Section 112(f) of the Act may request that the Department grant an extension allowing the source up to two years after the standard's effective date to comply with the standard. The Department may grant such an extension if it finds that such additional period is necessary for the installation of

controls and that steps will be taken during the period of the extension to assure that the health of persons will be protected from imminent endangerment. Any request for an extension of compliance with a relevant standard under 3.6.9.4.2 of this regulation shall be submitted in writing to the Department not later than 90 calendar days after the effective date of the relevant standard.

3.6.9.5 The owner or operator of an existing source that has installed BACT or technology required to meet LAER (as specified in 3.6.9.2.2 of this regulation) prior to the promulgation of a relevant emission standard in 40 CFR Part 63 may request that the Department grant an extension allowing the source five years from the date on which such installation was achieved, as determined by the Department, to comply with the standard. Any request for an extension of compliance with a relevant standard under 3.6.9.5 of this regulation shall be submitted in writing to the Department not later than 120 days after the promulgation date of the standard. The Department may grant such an extension if it finds that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

3.6.9.6 Request information requirements.

3.6.9.6.1 The request for a compliance extension under 3.6.9.4 of this regulation shall include the following information:

3.6.9.6.1.1 A description of the controls to be installed to comply with the standard;

3.6.9.6.1.2 A compliance schedule, including the date by which each step toward compliance will be reached. At a minimum, the list of dates shall include:

3.6.9.6.1.2.1 The date by which on-site construction, installation of emission control equipment, or a process change is planned to be initiated;

3.6.9.6.1.2.2 [Reserved]

3.6.9.6.1.2.3 The date by which on-site construction, installation of emission control equipment, or a process change is to be completed; and

3.6.9.6.1.2.4 The date by which final compliance is to be achieved.

3.6.9.6.1.3 [Reserved]

3.6.9.6.1.4 [Reserved]

3.6.9.6.2 The request for a compliance extension under 3.6.9.5 of this regulation shall include all information needed to demonstrate to the Department's satisfaction that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

3.6.9.7 Advice on requesting an extension of compliance may be obtained from the Department.

3.6.9.8 Approval of request for extension of compliance.

The provisions for approval of an extension of compliance requested under 3.6.9.4 through 3.6.9.6 of this regulation are provided in 3.6.9.9 through 3.6.9.14 of this regulation.

3.6.9.9 Based on the information provided in any request made under 3.6.9.4 through 3.6.9.6 of this regulation, or other information, the Department may grant an extension of compliance with an emission standard, as specified in 3.6.9.4 and 3.6.9.5 of this regulation.

3.6.9.10 The extension will be in writing and will--

3.6.9.10.1 Identify each affected source covered by the extension;

3.6.9.10.2 Specify the termination date of the extension;

3.6.9.10.3 Specify the dates by which steps toward compliance are to be taken, if appropriate;

3.6.9.10.4 Specify other applicable requirements to which the compliance extension applies (e.g., performance tests); and

3.6.9.10.5 Other conditions.

3.6.9.10.5.1 Under 3.6.9.4 of this regulation, specify any additional conditions that the Department deems necessary to assure installation of the necessary

controls and protection of the health of persons during the extension period or

3.6.9.10.5.2 Under 3.6.9.5 of this regulation, specify any additional conditions that the Department deems necessary to assure the proper operation and maintenance of the installed controls during the extension period.

3.6.9.11 The owner or operator of an existing source that has been granted an extension of compliance under 3.6.9.10 of this regulation may be required to submit to the Department progress reports indicating whether the steps toward compliance outlined in the compliance schedule have been reached. The contents of the progress reports and the dates by which they shall be submitted will be specified in the written extension of compliance granted under 3.6.9.10 of this regulation.

3.6.9.12 Notifications for requests under 3.6.9.4.1 or 3.6.9.5 of this regulation.

3.6.9.12.1 The Department will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under 3.6.9.4.1 or 3.6.9.5 of this regulation. The Department will notify the owner or operator in writing of the status of the owner or operator's application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that the owner or operator's application is complete.

3.6.9.12.2 When notifying the owner or operator that the owner or operator's application is not complete, the Department will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after the owner or operator is notified of the incomplete application, additional information or arguments to the Department to enable further action on the application.

3.6.9.12.3 Before denying any request for an extension of compliance, the Department will notify the owner or operator in

writing of the Department's intention to issue the denial, together with--

3.6.9.12.3.1 Notice of the information and findings on which the intended denial is based and

3.6.9.12.3.2 Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after the owner or operator is notified of the intended denial, additional information or arguments to the Department before further action on the request.

3.6.9.12.4 The Department's final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

#### 3.6.9.13 Notifications for requests under 3.6.9.4.2 of this regulation

3.6.9.13.1 The Department will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under 3.6.9.4.2 of this regulation. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that the owner or operator's application is complete. The Department will notify the owner or operator in writing of the status of the owner or operator's application, that is, whether the application contains sufficient information to make a determination, within 15 calendar days after receipt of the original application and within 15 calendar days after receipt of any supplementary information that is submitted.

3.6.9.13.2 When notifying the owner or operator that the owner or operator's application is not complete, the Department will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 15 calendar days after the owner or operator is notified of the incomplete application, additional information or arguments to the Department to enable further action on the application.

3.6.9.13.3 Before denying any request for an extension of compliance, the Department will notify the owner or operator in writing of the Department's intention to issue the denial, together with--

3.6.9.13.3.1 Notice of the information and findings on which the intended denial is based and

3.6.9.13.3.2 Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after the owner or operator is notified of the intended denial, additional information or arguments to the Department before further action on the request.

3.6.9.13.4 A final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

3.6.9.14 The Department may terminate an extension of compliance at an earlier date than specified if any specification under 3.6.9.10.3 or 3.6.9.10.4 of this regulation is not met. Upon a determination to terminate, the Department will notify, in writing, the owner or operator of the Department's determination to terminate, together with:

3.6.9.14.1 Notice of the reason for termination and

3.6.9.14.2 Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after the owner or operator is notified of the determination to terminate, additional information or arguments to the Department before further action on the termination.

3.6.9.14.3 A final determination to terminate an extension of compliance will be in writing and will set forth the specific grounds on which the termination is based. The final determination will be made within 30 calendar days after presentation of additional information or arguments, or within 30 calendar days after the final date specified for the presentation if no presentation is made.

3.6.9.15 [Reserved]

3.6.9.16 The granting of an extension under 3.6.9 of this regulation shall not abrogate the Administrator's authority under Section 114 of the Act or the Department's authority under 7 **Del. C.**, Ch 60.

### 3.6.10 Exemption from compliance with emission standards

The President may exempt any stationary source from compliance with any relevant standard established pursuant to Section 112 of the Act for a period of not more than two years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so. An exemption under 3.6.10 of this regulation may be extended for one or more additional periods, each period not to exceed two years.

## 3.7 Performance testing requirements

### 3.7.1 Applicability and performance test dates.

3.7.1.1 The applicability of 3.7 of this regulation is set out in 3.1.1.4 of this regulation.

3.7.1.2 If required to do performance testing by a relevant standard, and unless a waiver of performance testing is obtained under 3.7 of this regulation or the conditions in 3.7.3.3.2.2 of this regulation apply, the owner or operator of the affected source shall perform such tests within 180 days of the compliance date for such source.

3.7.1.2.1 [Reserved]

3.7.1.2.2 [Reserved]

3.7.1.2.3 [Reserved]

3.7.1.2.4 [Reserved]

3.7.1.2.5 [Reserved]

3.7.1.2.6 [Reserved]

3.7.1.2.7 [Reserved]

3.7.1.2.8 When an emission standard promulgated under 40 CFR Part 63 is more stringent than the standard proposed (see 3.6.2.3 of this regulation), the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the

proposal and promulgation dates of the standard shall comply with performance testing requirements within 180 days after the standard's effective date, or within 180 days after startup of the source, whichever is later. If the promulgated standard is more stringent than the proposed standard, the owner or operator may choose to demonstrate compliance with either the proposed or the promulgated standard. If the owner or operator chooses to comply with the proposed standard initially, the owner or operator shall conduct a second performance test within three years and 180 days after the effective date of the standard, or after startup of the source, whichever is later, to demonstrate compliance with the promulgated standard.

3.7.1.3 The Administrator or the Department may require an owner or operator to conduct performance tests at the affected source at any other time when the action is authorized by Section 114 of the Act or by 7 **DE Admin Code** 1117 of the State of Delaware "Regulations Governing the Control of Air Pollutants", respectively.

### 3.7.2 Notification of performance test.

3.7.2.1 The owner or operator of an affected source shall notify the Department in writing of the owner or operator's intention to conduct a performance test at least 60 calendar days before the performance test is initially scheduled to begin to allow the Department, upon request, to review and approve the site-specific test plan required under 3.7.3 of this regulation and to have an observer present during the test.

3.7.2.2 In the event the owner or operator is unable to conduct the performance test on the date specified in the notification requirement specified in 3.7.2.1 of this regulation due to unforeseeable circumstances beyond the owner or operator's control, the owner or operator shall notify the Department as soon as practicable and without delay prior to the scheduled performance test date and specify the date when the performance test is rescheduled. This notification of delay in conducting the performance test shall not relieve the owner or operator of legal responsibility for compliance with any other applicable provisions of 40 CFR Part 63 or this regulation or with any other applicable Federal, State, or local requirement, nor will it prevent the Administrator from implementing or enforcing 40 CFR Part 63 or taking any other action under the Act or the Department from implementing or enforcing this regulation or taking any other action under 7 **Del. C.**, Ch 60.

### 3.7.3 Quality assurance program.

3.7.3.1 The results of the quality assurance program required in 3.7.3 of this regulation will be considered by the Department when it determines the validity of a performance test.

3.7.3.2 Site-specific test plan.

3.7.3.2.1 Submission of site-specific test plan.

Before conducting a required performance test, the owner or operator of an affected source shall develop and, if requested by the Department, shall submit a site-specific test plan to the Department for approval. The test plan shall include a test program summary, the test schedule, data quality objectives, and both an internal and external quality assurance (QA) program. Data quality objectives are the pretest expectations of precision, accuracy, and completeness of data.

3.7.3.2.2 The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of test data precision; an example of internal QA is the sampling and analysis of replicate samples.

3.7.3.2.3 The external QA program shall include, at a minimum, application of plans for a test method performance audit (PA) during the performance test. The PA's consist of blind audit samples provided by the Administrator or the Department and analyzed during the performance test in order to provide a measure of test data bias. The external QA program may also include systems audits that include the opportunity for on-site evaluation by the Department of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

3.7.3.2.4 The owner or operator of an affected source shall submit the site-specific test plan to the Department upon the Department's request at least 60 calendar days before the performance test is scheduled to take place, that is, simultaneously with the notification of intention to conduct a performance test required under 3.7.2 of this regulation, or on a mutually agreed upon date. Notwithstanding the requirements in the previous sentence, the owner or operator shall submit the site-specific test plan to the Department at least 60 calendar days before the performance test is scheduled to take place, if the owner or operator intends to demonstrate compliance using an alternative or changed test method in accordance with 3.7.6 of this regulation. The owner or operator may submit the information

required in 3.7.3 of this regulation well in advance of the deadline specified in 3.7.2.1 of this regulation to ensure a timely review by the Department in order to meet the performance test date specified in 3.7 of this regulation or the relevant standard.

3.7.3.2.5 The Department may request additional relevant information after the submittal of a site-specific test plan.

### 3.7.3.3 Approval of site-specific test plan.

3.7.3.3.1 The Department will notify the owner or operator of approval or intention to deny approval of the site-specific test plan (if review of the site-specific test plan is requested) within 30 calendar days after receipt of the original plan and within 30 calendar days after receipt of any supplementary information that is submitted under 3.7.3.3.1.2 of this regulation. Before disapproving any site-specific test plan, the Department will notify the applicant of the Department's intention to disapprove the plan together with-

3.7.3.3.1.1 Notice of the information and findings on which the intended disapproval is based and

3.7.3.3.1.2 Notice of opportunity for the owner or operator to present, within 30 calendar days after the owner or operator is notified of the intended disapproval, additional information to the Department before final action on the plan.

3.7.3.3.2 In the event that the Department fails to approve or disapprove the site-specific test plan within the time period specified in 3.7.3.3.1 of this regulation, the following conditions shall apply:

3.7.3.3.2.1 If the owner or operator intends to demonstrate compliance using the test methods specified in the relevant standard, the owner or operator shall conduct the performance test within the time specified in 3.7 of this regulation using the specified methods;

3.7.3.3.2.2 If the owner or operator intends to demonstrate compliance by using an alternative to any test method specified in the relevant standard or with a major change to the test method specified in the relevant standard (see 3.7.5.2.2 of this regulation), the owner or operator is authorized to conduct the performance test

using an alternative or changed test method after the Department approves the site-specific test plan (if review of the site-specific test plan is requested or required) following the Administrator's approval of the use of the alternative test method or use of the test method with major changes. The owner or operator is authorized to conduct the performance test within 60 calendar days after the Department approves the site-specific test plan. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance test as required in 3.7 of this regulation (without the Department's prior approval of the site-specific test plan) if the owner or operator subsequently chooses to use the testing and monitoring methods specified in the relevant standard.

3.7.3.3.2.3 If the owner or operator intends to demonstrate compliance with a minor or intermediate change to the test method specified in the relevant standard (see 3.7.5.2.1.1 and 3.7.5.2.1.2 of this regulation), the owner or operator is authorized to conduct the performance test within 60 calendar days using the changed test method after the Department approves the site-specific test plan (if review of the site-specific test plan is requested or required). Notwithstanding the requirements in the preceding sentence, the owner or operator may proceed to conduct the performance test as required in 3.0 of regulation (without the Department's prior approval of the site-specific test plan) if the owner or operator subsequently chooses to use the testing and monitoring methods specified in the relevant standard.

3.7.3.3.3 Neither the submission of a site-specific test plan for approval, nor the Department's approval or disapproval of a plan, nor the Department's failure to approve or disapprove a plan in a timely manner shall--

3.7.3.3.3.1 Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of 40 CFR Part 63 or this regulation or with any other applicable Federal, State, or local requirement or

3.7.3.3.3.2 Prevent the Administrator from implementing or enforcing 40 CFR Part 63 or taking any other action under the Act or the Department from implementing or

enforcing this regulation or taking any other action under 7 Del. C., Ch 60.

#### 3.7.3.4 Performance test method audit.

##### 3.7.3.4.1 Performance test method audit program.

The owner or operator shall analyze performance audit (PA) samples during each performance test. The owner or operator shall request performance audit materials 45 days prior to the test date. Audit materials including cylinder audit gases may be obtained by contacting the appropriate EPA Regional Office or the Department.

3.7.3.4.2 The Department will have sole discretion to require any subsequent remedial actions of the owner or operator based on the PA results.

3.7.3.4.3 If the Administrator or the Department fails to provide required PA materials to an owner or operator of an affected source in time to analyze the PA samples during a performance test, the requirement to conduct a PA under 3.7.3 of this regulation shall be waived for such source for that performance test. Waiver under 3.7.3 requirement of this regulation to conduct a PA for a particular performance test does not constitute a waiver of the requirement to conduct a PA for future required performance tests.

#### 3.7.4 Performance testing facilities.

If required to do performance testing, the owner or operator of each new source and, at the request of the Department, the owner or operator of each existing source, shall provide performance testing facilities as follows:

##### 3.7.4.1 Sampling ports adequate for test methods applicable to such source. This includes:

3.7.4.1.1 Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures and

3.7.4.1.2 Providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

##### 3.7.4.2 Safe sampling platforms;

3.7.4.3 Safe access to sampling platforms;

3.7.4.4 Utilities for sampling and testing equipment; and

3.7.4.5 Any other facilities that the Department deems necessary for safe and adequate testing of a source.

3.7.5 Conduct of performance tests.

3.7.5.1 Performance tests shall be conducted under such conditions as the Department specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Operations during periods of startup, shutdown, or malfunction shall not constitute representative conditions for the purpose of a performance test, nor shall emissions in excess of the level of the relevant standard during periods of startup, shutdown, or malfunction be considered a violation of the relevant standard unless otherwise specified in the relevant standard or a determination of noncompliance is made under 3.6.5 of this regulation. Upon request, the owner or operator shall make available to the Department such records as may be necessary to determine the conditions of performance tests.

3.7.5.2 Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in 3.7 of this regulation, in each relevant standard, and, if required, in applicable appendices of 40 CFR Parts 51, 60, 61, and 63 unless-

3.7.5.2.1 Approval of changes.

3.7.5.2.1.1 The Department specifies or approves, in specific cases, the use of a test method with minor changes in methodology, as defined in 3.2 of this regulation. Such changes may be approved in conjunction with approval of the site-specific test plan (see 3.7.5 of this regulation) or

3.7.5.2.1.2 The Department approves the use of an intermediate change to a test method, as defined in 3.2 of this regulation, the results of which the Department has determined to be adequate for indicating whether a specific affected source is in compliance;

3.7.5.2.2 The Administrator approves the use of a major change or alternative to a test method, as defined in 3.2 of this regulation, the results of which the Administrator has determined to be

adequate for indicating whether a specific affected source is in compliance;

3.7.5.2.3 The Department approves shorter sampling times or smaller sample volumes when necessitated by process variables or other factors; or

3.7.5.2.4 The Department waives the requirement for performance tests because the owner or operator of an affected source has demonstrated by other means to the Department's satisfaction that the affected source is in compliance with the relevant standard.

3.7.5.3 Unless otherwise specified in a relevant standard or test method, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the relevant standard. For the purpose of determining compliance with a relevant standard, the arithmetic mean of the results of the three runs shall apply. Upon receiving approval from the Department, results of a test run may be replaced with results of an additional test run in the event that-

3.7.5.3.1 A sample is accidentally lost after the testing team leaves the site;

3.7.5.3.2 Conditions occur in which one of the three runs must be discontinued because of forced shutdown;

3.7.5.3.3 Extreme meteorological conditions occur; or

3.7.5.3.4 Other circumstances occur that are beyond the owner or operator's control.

3.7.5.4 Nothing in 3.7.5.1 through 3.7.5.3 of this regulation shall be construed to abrogate the Administrator's authority to require testing under Section 114 of the Act or the Department's authority under 7 **DE Admin Code** 1117.

### 3.7.6 Use of an alternative test method-

#### 3.7.6.1 General.

Until permission to use a major change or alternative to a test method has been granted by the Administrator or permission to use a minor or intermediate change to a test method has been granted by the Department under 3.7.6.1 of this regulation, the owner or operator of an affected

source remains subject to the requirements in 3.7 of this regulation and the relevant standard.

3.7.6.2 The owner or operator of an affected source required to do performance testing by a relevant standard may use an alternative or changed test method from that specified in the standard provided that the owner or operator-

3.7.6.2.1 Notifications.

3.7.6.2.1.1 Notifies the Administrator and the Department of the owner or operator's intention to use an alternative test method or to make a major change to a test method and submits the site-specific test plan to the Department at least 60 days before the performance test is scheduled to begin;

3.7.6.2.1.2 Notifies the Department of the owner or operator's intention to make a minor or intermediate change to a test method and submits the site-specific test plan to the Department at least 60 days before the performance test is scheduled to begin;

3.7.6.2.2 Uses Method 301 in Appendix A of 40 CFR Part 63 to validate the alternative test method or the intermediate or major changes to the test method. This may include the use of specific procedures of Method 301 if use of such procedures are sufficient to validate the alternative test method; and

3.7.6.2.3 Submits the results of the Method 301 validation process to the Administrator (with copy to the Department) or to the Department, whichever is applicable (see 3.7.5.2 of this regulation), along with the notification of intention and the justification for not using the specified test method. The owner or operator may submit the information required in 3.7.6 of this regulation well in advance of the deadline specified in 3.7.6.2.1 of this regulation to ensure a timely review by the Administrator in order to meet the performance test date specified in 3.7 of this regulation or the relevant standard.

3.7.6.3 The Administrator or the Department, whichever is applicable, will determine whether the owner or operator's validation of the proposed alternative or changed test method is adequate and issue an approval or disapproval of the alternative or changed test method. If the owner or operator intends to demonstrate compliance by using an alternative or change to any test method specified in the relevant standard, the owner

or operator is authorized to conduct the performance test using an alternative or changed test method after the Administrator or the Department approves the use of the alternative or changed test method and the Department approves the site-specific test plan. The owner or operator is authorized to conduct the performance test within 60 calendar days after the owner or operator is authorized to demonstrate compliance using an alternative or changed test method and the Department approves the site-specific test plan. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance test as required in 3.7 of this regulation (without the Department's prior approval of the site-specific test plan) if the owner or operator subsequently chooses to use the testing and monitoring methods specified in the relevant standard.

3.7.6.4 If the Administrator or the Department, whichever is applicable, finds reasonable grounds to dispute the results obtained by an alternative or changed test method for the purposes of demonstrating compliance with a relevant standard, the Administrator or the Department may require the use of a test method specified in a relevant standard.

3.7.6.5 If the owner or operator uses an alternative or changed test method for an affected source during a required performance test, the owner or operator of such source shall continue to use the alternative or changed test method for subsequent performance tests at that affected source until the owner or operator receives approval from the Administrator or the Department, whichever is applicable, to use another test method as allowed under 3.7.6 of this regulation.

3.7.6.6 Neither the validation and approval process nor the failure to validate an alternative or changed test method shall abrogate the owner or operator's responsibility to comply with the requirements of 40 CFR Part 63 or this regulation.

### 3.7.7 Data analysis, recordkeeping, and reporting.

3.7.7.1 Unless otherwise specified in a relevant standard or test method, or as otherwise approved by the Department in writing, results of a performance test shall include the analysis of samples, determination of emissions, and raw data. A performance test is "completed" when field sample collection is terminated. The owner or operator of an affected source shall report the results of the performance test to the Department before the close of business on the 60<sup>th</sup> day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Department (see 3.9.9 of this regulation). The results of the performance test shall be submitted as part of the notification of compliance status required under 3.9.8 of this

regulation. Before a Title V permit has been issued to the owner or operator of an affected source, the owner or operator shall send the results of the performance test to the Department. After a Title V permit has been issued to the owner or operator of an affected source, the owner or operator shall send the results of the performance test to the Department.

3.7.7.2 [Reserved]

3.7.7.3 For a minimum of five years after a performance test is conducted, the owner or operator shall retain and make available, upon request, for inspection by the Department the records or results of such performance test and other data needed to determine emissions from an affected source.

3.7.8 Waiver of performance tests.

3.7.8.1 Until a waiver of a performance testing requirement has been granted by the Department under 3.7.8 of this regulation, the owner or operator of an affected source remains subject to the requirements in 3.7 of this regulation.

3.7.8.2 Individual performance tests may be waived upon written application to the Department if, in the Department's judgment, the source is meeting the relevant standards on a continuous basis, or the source is being operated under an extension of compliance, or the owner or operator has requested an extension of compliance and the Department is still considering that request.

3.7.8.3 Request to waive a performance test.

3.7.8.3.1 If a request is made for an extension of compliance under 3.6.9 of this regulation, the application for a waiver of an initial performance test shall accompany the information required for the request for an extension of compliance. If no extension of compliance is requested or if the owner or operator has requested an extension of compliance and the Department is still considering that request, the application for a waiver of an initial performance test shall be submitted at least 60 days before the performance test if the site-specific test plan under 3.7.3 of this regulation is not submitted.

3.7.8.3.2 If an application for a waiver of a subsequent performance test is made, the application may accompany any required compliance progress report, compliance status report, or excess emissions and continuous monitoring system performance

report (such as those required under 3.6.9, 3.9.8, and 3.10.5 of this regulation or specified in a relevant standard or in the source's Title V permit), but it shall be submitted at least 60 days before the performance test if the site-specific test plan required under 3.7.3 of this regulation is not submitted.

3.7.8.3.3 Any application for a waiver of a performance test shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected source performing the required test.

3.7.8.4 Approval of request to waive performance test.

The Department will approve or deny a request for a waiver of a performance test made under 3.7.8.3 of this regulation when it-

3.7.8.4.1 Approves or denies an extension of compliance under 3.6.9.8 of this regulation;

3.7.8.4.2 Approves or disapproves a site-specific test plan under 3.7.3.3 of this regulation;

3.7.8.4.3 Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

3.7.8.4.4 Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

3.7.8.5 Approval of any waiver granted under 3.0 of this regulation shall not abrogate the Administrator's authority under the Act, or the Department's authority under 7 **Del. C.**, Ch 60, or in any way prohibit the Department from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

3.8 Monitoring requirements.

3.8.1 Applicability.

3.8.1.1 The applicability of 3.8 of this regulation is set out in 3.1.1.4 of this regulation.

3.8.1.2 For the purposes of this regulation, all CMS required under relevant standards shall be subject to the provisions of 3.8 of this regulation upon promulgation of performance specifications for CMS as specified in the relevant standard or otherwise by the Administrator.

3.8.1.3 [Reserved]

3.8.1.4 Additional monitoring requirements for control devices used to comply with provisions in relevant standards of 40 CFR Part 63 or this regulation are specified in 3.11 of this regulation.

### 3.8.2 Conduct of monitoring.

3.8.2.1 Monitoring shall be conducted as set forth in 3.8 of this regulation and the relevant standards unless--

#### 3.8.2.1.1 Exceptions.

3.8.2.1.1.1 The Department specifies or approves the use of minor changes in methodology for the specified monitoring requirements, as defined in 3.2 of this regulation or

3.8.2.1.1.2 The Department approves the use of an intermediate change to any monitoring requirements, as defined in 3.2 of this regulation or

3.8.2.1.2 The Administrator approves the use of a major change or alternative to any monitoring requirements, as defined in 3.2 of this regulation.

3.8.2.1.3 Owners or operators with flares subject to 3.11.2 of this regulation are not subject to the requirements in 3.8 of this regulation unless otherwise specified in the relevant standard.

#### 3.8.2.2 Multiple affected sources or emission points.

3.8.2.2.1 When the emissions from two or more affected sources are combined before being released to the atmosphere, the owner or operator may install an applicable CMS for each emission stream or for the combined emission streams, provided the monitoring is sufficient to demonstrate compliance with the relevant standard.

3.8.2.2.2 If the relevant standard is a mass emission standard and the emissions from one affected source are released to the

atmosphere through more than one point, the owner or operator shall install an applicable CMS at each emission point unless the installation of fewer systems is-

3.8.2.2.2.1 Approved by the Department or

3.8.2.2.2.2 Provided for in a relevant standard (e.g., instead of requiring that a CMS be installed at each emission point before the effluents from those points are channeled to a common control device, the standard specifies that only one CMS is required to be installed at the vent of the control device).

3.8.2.3 When more than one CMS is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required for each CMS. However, when one CMS is used as a backup to another CMS, the owner or operator shall report the results from the CMS used to meet the monitoring requirements of 40 CFR Part 63 or this regulation. If both such CMS are used during a particular reporting period to meet the monitoring requirements of 40 CFR Part 63 or this regulation, then the owner or operator shall report the results from each CMS for the relevant compliance period.

### 3.8.3 Operation and maintenance of CMS.

3.8.3.1 The owner or operator of an affected source shall maintain and operate each CMS as specified in 3.8 of this regulation, or in a relevant standard, and in a manner consistent with good air pollution control practices.

3.8.3.1.1 The owner or operator of an affected source shall maintain and operate each CMS as specified in 3.6.5.1 of this regulation.

3.8.3.1.2 The owner or operator shall keep the necessary parts for routine repairs of the affected CMS equipment readily available.

3.8.3.1.3 The owner or operator of an affected source shall develop and implement a written startup, shutdown, and malfunction plan for CMS as specified in 3.6.5.3 of this regulation.

### 3.8.3.2 Installation of CMS.

3.8.3.2.1 All CMS shall be installed such that representative measures of emissions or process parameters from the affected source are obtained. In addition, CEMS shall be located according to procedures contained in the applicable performance specifications.

3.8.3.2.2 Unless the relevant standard states otherwise, the owner or operator shall ensure the read out (that portion of the CMS that provides a visual display or record), or other indication of operation, from any CMS required for compliance with the emission standard is readily accessible on site for operational control or inspection by the operator of the equipment.

3.8.3.3 All CMS shall be installed, operational, and the data verified as specified in the relevant standard either prior to or in conjunction with conducting performance tests under 3.7 of this regulation. Verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system.

3.8.3.4 Except for system breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high-level calibration drift adjustments, all CMS, including COMS and CEMS, shall be in continuous operation and shall meet minimum frequency of operation requirements as follows:

3.8.3.4.1 All COMS shall complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive six-minute period.

3.8.3.4.2 All CEMS for measuring emissions other than opacity shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

3.8.3.5 Unless otherwise approved by the Department, minimum procedures for COMS shall include a method for producing a simulated zero opacity condition and an upscale (high-level) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. Such procedures shall provide a system check of all the analyzer's internal optical surfaces and all electronic circuitry, including the lamp and photodetector assembly normally used in the measurement of opacity.

3.8.3.6 The owner or operator of a CMS that is not a CPMS, which is installed in accordance with the provisions of 40 CFR Part 63 or this

regulation and the applicable CMS performance specifications, shall check the zero (low-level) and high-level calibration drifts at least once daily in accordance with the written procedure specified in the site-specific performance evaluation test plan developed under 3.8.5.3.1 and 3.8.5.3.2 of this regulation. The zero (low-level) and high-level calibration drifts shall be adjusted, at a minimum, whenever the 24-hour zero (low-level) drift exceeds two times the limits of the applicable performance specifications specified in the relevant standard. The system shall allow the amount of excess zero (low-level) and high-level drift measured at the 24-hour interval checks to be recorded and quantified whenever specified. For COMS, all optical and instrumental surfaces exposed to the effluent gases shall be cleaned prior to performing the zero (low-level) and high-level drift adjustments; the optical surfaces and instrumental surfaces shall be cleaned when the cumulative automatic zero compensation, if applicable, exceeds 4% opacity. The CPMS shall be calibrated prior to use for the purposes of complying with 3.0 of this regulation. The CPMS shall be checked daily for indication that the system is responding. If the CPMS system includes an internal system check, results shall be recorded and checked daily for proper operation.

#### 3.8.3.7 Out-of-control.

##### 3.8.3.7.1 A CMS is out-of-control if--

3.8.3.7.1.1 The zero (low-level), mid-level (if applicable), or high-level calibration drift (CD) exceeds two times the applicable CD specification in the applicable performance specification or in the relevant standard;

3.8.3.7.1.2 The CMS fails a performance test audit (e.g., cylinder gas audit), relative accuracy audit, relative accuracy test audit, or linearity test audit; or

3.8.3.7.1.3 The COMS CD exceeds two times the limit in the applicable performance specification in the relevant standard.

3.8.3.7.2 When the CMS is out-of-control, the owner or operator of the affected source shall take the necessary corrective action and shall repeat all necessary tests which indicate that the system is out-of-control. The owner or operator shall take corrective action and conduct retesting until the performance requirements are below the applicable limits. The beginning of the out-of-control period is the hour the owner or operator conducts a performance check (e.g., calibration drift) that indicates an exceedance of the performance requirements established under 40 CFR Part 63 or

this regulation. The end of the out-of-control period is the hour following the completion of corrective action and successful demonstration that the system is within the allowable limits. During the period the CMS is out-of-control, recorded data shall not be used in data averages and calculations, or to meet any data availability requirement established under 40 CFR Part 63 or this regulation.

3.8.3.8 The owner or operator of a CMS that is out-of-control as defined in 3.8.3.7 of this regulation shall submit all information concerning out-of-control periods, including start and end dates and hours and descriptions of corrective actions taken, in the excess emissions and continuous monitoring system performance report required in 3.10.5.3 of this regulation.

#### 3.8.4 Quality control program.

3.8.4.1 The results of the quality control program required in 3.8.4 of this regulation will be considered by the Department when it determines the validity of monitoring data.

3.8.4.2 The owner or operator of an affected source that is required to use a CMS and is subject to the monitoring requirements of 3.8 this regulation and a relevant standard shall develop and implement a CMS quality control program. As part of the quality control program, the owner or operator shall develop and submit to the Department for approval upon request a site-specific performance evaluation test plan for the CMS performance evaluation required in 3.8.5.3.1 of this regulation, according to the procedures specified in 3.8.5 of this regulation. In addition, each quality control program shall include, at a minimum, a written protocol that describes procedures for each of the following operations:

3.8.4.2.1 Initial and any subsequent calibration of the CMS;

3.8.4.2.2 Determination and adjustment of the calibration drift of the CMS;

3.8.4.2.3 Preventive maintenance of the CMS, including spare parts inventory;

3.8.4.2.4 Data recording, calculations, and reporting;

3.8.4.2.5 Accuracy audit procedures, including sampling and analysis methods; and

3.8.4.2.6 Program of corrective action for a malfunctioning CMS.

3.8.4.3 The owner or operator shall keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this regulation, to be made available for inspection, upon request, by the Department. If the site-specific performance evaluation test plan is revised, the owner or operator shall keep previous (i.e., superseded) versions of the site-specific performance evaluation test plan on record to be made available for inspection, upon request, by the Department, for a period of five years after each revision to the plan. Where relevant, e.g., program of corrective action for a malfunctioning CMS, these written procedures may be incorporated as part of the affected source's startup, shutdown, and malfunction plan to avoid duplication of planning and recordkeeping efforts.

### 3.8.5 Performance evaluation of CMS--

#### 3.8.5.1 General.

When required by a relevant standard, and at any other time the Administrator may require under Section 114 of the Act or the Department may require under 7 **DE Admin Code** 1117, the owner or operator of an affected source being monitored shall conduct a performance evaluation of the CMS. Such performance evaluation shall be conducted according to the applicable specifications and procedures described in 3.8 of this regulation or in the relevant standard.

#### 3.8.5.2 Notification of performance evaluation.

The owner or operator shall notify the Department in writing of the date of the performance evaluation simultaneously with the notification of the performance test date required under 3.7.2 of this regulation or at least 60 days prior to the date the performance evaluation is scheduled to begin if no performance test is required.

#### 3.8.5.3 Site-specific performance evaluation test plan.

##### 3.8.5.3.1 Submission of site-specific performance evaluation test plan.

Before conducting a required CMS performance evaluation, the owner or operator of an affected source shall develop and submit a site-specific performance evaluation test plan to the Department for approval upon request. The performance evaluation test plan shall include the evaluation program objectives, an evaluation program summary, the performance evaluation schedule, data quality objectives, and both an internal and external QA program.

Data quality objectives are the pre-evaluation expectations of precision, accuracy, and completeness of data.

3.8.5.3.2 The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of CMS performance. The external QA program shall include, at a minimum, systems audits that include the opportunity for on-site evaluation by the Department of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

3.8.5.3.3 The owner or operator of an affected source shall submit the site-specific performance evaluation test plan to the Department upon the Department's request at least 60 days before the performance test or performance evaluation is scheduled to begin, or on a mutually agreed upon date, and review and approval of the performance evaluation test plan by the Department will occur with the review and approval of the site-specific test plan (if review of the site-specific test plan is requested or required). Notwithstanding the requirements in the previous sentence, the owner or operator shall submit the site-specific performance evaluation test plan to the Department at least 60 calendar days before the performance test or performance evaluation is scheduled to take place, if the owner or operator intends to demonstrate compliance using an alternative or changes to the monitoring requirements. The owner or operator may submit the information required in 3.8.5.3 of this regulation well in advance of the deadline specified in 3.8.5.2 of this regulation to ensure a timely review by the Department in order to meet the performance test or performance evaluation date specified in 3.8 this regulation or the relevant standard.

3.8.5.3.4 The Department may request additional relevant information after the submittal of a site-specific performance evaluation test plan.

3.8.5.3.5 In the event that the Department fails to approve or disapprove the site-specific performance evaluation test plan within the time period specified in 3.7.3.3 of this regulation, the following conditions shall apply:

3.8.5.3.5.1 If the owner or operator intends to demonstrate compliance using the monitoring requirements specified in the relevant standard, the owner or operator shall conduct the performance evaluation

within the time specified in 3.0 of this regulation using the specified methods.

3.8.5.3.5.2 If the owner or operator intends to demonstrate compliance by using an alternative to the monitoring requirements specified in the relevant standard or with a major change to the monitoring requirements specified in the relevant standard (see 3.8.2.1.2 of this regulation), the owner or operator shall refrain from conducting the performance evaluation until the Department approves the site-specific performance evaluation test plan following the Administrator's approval of the use of the alternative requirements or use of the monitoring requirements with major change. If the Administrator does not approve the use of the alternative or changed requirements within 30 days before the performance evaluation is scheduled to take place, the performance evaluation deadlines specified in 3.8.5.4 of this regulation may be extended such that the owner or operator shall conduct the performance evaluation within 60 calendar days after the Department approves the site-specific performance evaluation test plan. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance evaluation as required in 3.0 of this regulation (without the Department's prior approval of the site-specific performance evaluation test plan) if the owner or operator subsequently chooses to use the monitoring requirements specified in the relevant standard.

3.8.5.3.5.3 If the owner or operator intends to demonstrate compliance with a minor or intermediate change to the monitoring requirements specified in the relevant standard (see 3.8.2.1.1.1 and 3.8.2.1.1.2 of this regulation), the owner or operator shall conduct the performance evaluation within 60 calendar days using the changed monitoring requirements after the Department approves the site-specific performance evaluation test plan (if review of the site-specific performance evaluation test plan is requested or required). Notwithstanding the requirements in the preceding sentence, the owner or operator may proceed to conduct the performance evaluation as required in 3.8 of this regulation (without the Department's prior approval of the site-specific performance evaluation test plan) if the owner or operator

subsequently chooses to use the monitoring requirements specified in the relevant standard.

3.8.5.3.6 Neither the submission of a site-specific performance evaluation test plan for approval, nor the Department's approval or disapproval of a plan, nor the Department's failure to approve or disapprove a plan in a timely manner shall--

3.8.5.3.6.1 Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of 40 CFR Part 63 or this regulation or with any other applicable Federal, State, or local requirement or

3.8.5.3.6.2 Prevent the Administrator from implementing or enforcing 40 CFR Part 63 or taking any other action under the Act or the Department from implementing or enforcing this regulation or taking any other action under 7 **Del. C.**, Ch 60.

3.8.5.4 Conduct of performance evaluation and performance evaluation dates.

The owner or operator of an affected source shall conduct a performance evaluation of a required CMS during any performance test required under 3.7 of this regulation in accordance with the applicable performance specification as specified in the relevant standard. Notwithstanding the requirement in the previous sentence, if the owner or operator of an affected source elects to submit COMS data for compliance with a relevant opacity emission standard as provided under 3.6.8.7 of this regulation, the owner or operator shall conduct a performance evaluation of the COMS as specified in the relevant standard, before the performance test required under 3.7 of this regulation is conducted in time to submit the results of the performance evaluation as specified in 3.8.5.5.2 of this regulation. If a performance test is not required, or the requirement for a performance test has been waived under 3.7.8 of this regulation, the owner or operator of an affected source shall conduct the performance evaluation not later than 180 days after the appropriate compliance date for the affected source, as specified in 3.7.1 of this regulation, or as otherwise specified in the relevant standard.

3.8.5.5 Reporting performance evaluation results.

3.8.5.5.1 The owner or operator shall furnish the Department a copy of a written report of the results of the performance evaluation simultaneously with the results of the performance test required under 3.7 of this regulation or within 60 days of

completion of the performance evaluation if no performance test is required, unless otherwise specified in a relevant standard. The Department may request that the owner or operator submit the raw data from a performance evaluation in the report of the performance evaluation results.

3.8.5.5.2 The owner or operator of an affected source using a COMS to determine opacity compliance during any performance test required under 3.7 of this regulation shall furnish the Department two or, upon request, three copies of a written report of the results of the COMS performance evaluation under 3.8.5 of this regulation. The copies shall be provided at least 15 calendar days before the performance test required under 3.7 of this regulation is conducted.

### 3.8.6 Use of an alternative monitoring requirement

#### 3.8.6.1 General.

Until permission to use a major change or alternative to a monitoring requirement has been granted by the Administrator or permission to use a minor or intermediate change to a monitoring requirement has been granted by the Department under 3.8.6.1 of this regulation, the owner or operator of an affected source remains subject to the requirements in 3.8 of this regulation and the relevant standard.

3.8.6.2 After receipt and consideration of written application, the Department may approve minor or intermediate change or the Administrator may approve major change or an alternative to any monitoring requirement of 40 CFR Part 63 or this regulation including, but not limited to, the following:

3.8.6.2.1 Alternative monitoring requirements when installation of a CMS specified by a relevant standard would not provide accurate measurements due to liquid water or other interferences caused by substances within the effluent gases;

3.8.6.2.2 Alternative monitoring requirements when the affected source is infrequently operated;

3.8.6.2.3 Alternative monitoring requirements to accommodate CEMS that require additional measurements to correct for stack moisture conditions;

3.8.6.2.4 Alternative locations for installing CMS when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements;

3.8.6.2.5 Alternate methods for converting pollutant concentration measurements to units of the relevant standard;

3.8.6.2.6 Alternate procedures for performing daily checks of zero (low-level) and high-level drift that do not involve use of high-level gases or test cells;

3.8.6.2.7 Alternatives to the American Society for Testing and Materials (ASTM) test methods or sampling procedures specified by any relevant standard;

3.8.6.2.8 Alternative CMS that do not meet the design or performance requirements in 40 CFR Part 63 or this regulation, but adequately demonstrate a definite and consistent relationship between their measurements and the measurements of opacity by a system complying with the requirements as specified in the relevant standard. The Administrator or the Department, whichever is applicable, may require that such demonstration be performed for each affected source; or

3.8.6.2.9 Alternative monitoring requirements when the effluent from a single affected source or the combined effluent from two or more affected sources is released to the atmosphere through more than one point.

3.8.6.3 If the Administrator or the Department, whichever is applicable, finds reasonable grounds to dispute the results obtained by an alternative or changed monitoring requirement, the Administrator or the Department may require the use of a requirement specified in 3.8 of this regulation or in the relevant standard. If the results of the specified and alternative or changed requirement do not agree, the results obtained by the specified requirement shall prevail.

3.8.6.4 Request process.

3.8.6.4.1 Request to use alternative monitoring requirement.

An owner or operator who wishes to use a change or alternative to a monitoring requirement shall submit an application to the Administrator (with copy to the Department) or to the Department, whichever is applicable, as described in 3.8.6.4.2 of this regulation. The application may be submitted at any time provided

that the monitoring requirement is not the performance test method used to demonstrate compliance with a relevant standard or other requirement. If the changed or alternative monitoring requirement will serve as the performance test method that is to be used to demonstrate compliance with a relevant standard, the application shall be submitted at least 60 days before the performance evaluation is scheduled to take place and shall meet the requirements for an alternative test method under 3.7.6 of this regulation.

3.8.6.4.2 The application shall contain a description of the proposed changed or alternative monitoring system which addresses the four elements contained in the definition of monitoring in 3.2 of this regulation and a site-specific performance evaluation test plan, if required, as specified in 3.8.5.3 of this regulation. In addition, the application shall include information justifying the owner or operator's request for a changed or alternative monitoring requirement, such as the technical or economic infeasibility, or the impracticality, of the affected source using the required requirement.

3.8.6.4.3 The owner or operator may submit the information required in 3.8.6.4 of this regulation well in advance of the submittal dates specified in 3.8.6.4.1 of this regulation above to ensure a timely review by the Administrator or the Department, whichever is applicable, in order to meet the compliance demonstration date specified in 3.0 of this regulation or the relevant standard.

3.8.6.4.4 Application to the Department for minor or intermediate changes to monitoring requirements, as specified in 3.8.2.1 of this regulation, may be made in the site-specific performance evaluation test plan.

### 3.8.6.5 Approval of request to use alternative monitoring requirement.

3.8.6.5.1 The Administrator or the Department will notify the owner or operator of approval or intention to deny approval of the request to use an alternative or changed monitoring requirement within 30 calendar days after receipt of the original request and within 30 calendar days after receipt of any supplementary information that is submitted. If a request for a minor or intermediate change is made in conjunction with site-specific performance evaluation test plan, then approval of the plan will constitute approval of the minor or intermediate change. Before disapproving any request to use an alternative or changed

monitoring requirement, the Administrator or the Department will notify the applicant of the Administrator or the Department's intention to disapprove the request together with-

3.8.6.5.1.1 Notice of the information and findings on which the intended disapproval is based and

3.8.6.5.1.2 Notice of opportunity for the owner or operator to present additional information to the Administrator or the Department before final action on the request. At the time the Administrator or the Department notifies the applicant of its intention to disapprove the request, the Administrator or the Department will specify how much time the owner or operator will have after being notified of the intended disapproval to submit the additional information.

3.8.6.5.2 The Administrator may establish general procedures and criteria in a relevant standard to accomplish the requirements in 3.8.6.5.1 of this regulation.

3.8.6.5.3 If the Administrator or the Department approves the use of an alternative or changed monitoring requirement for an affected source under in 3.8.6.5.1 of this regulation, the owner or operator of such source shall continue to use the alternative or changed monitoring requirement until the owner or operator receives approval from the Administrator or the Department to use another monitoring requirement as allowed in 3.8.6 of this regulation.

3.8.6.6 Alternative to the relative accuracy test.

An alternative to the relative accuracy test for CEMS specified in a relevant standard may be requested as follows:

3.8.6.6.1 Criteria for approval of alternative procedures.

An alternative to the test method for determining relative accuracy is available for affected sources with emission rates demonstrated to be less than 50% of the relevant standard. The owner or operator of an affected source may petition the Department under 3.8.6.6.2 of this regulation to substitute the relative accuracy test in Section 7 of Performance Specification 2 in Appendix B of 40 CFR Part 60 with the procedures in Section 10 of Performance Specification 2 if the results of a performance test conducted according to the requirements in 3.7 of this regulation, or other

tests performed following the criteria in 3.7 of this regulation, demonstrate that the emission rate of the pollutant of interest in the units of the relevant standard is less than 50% of the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the owner or operator may petition the Department to substitute the relative accuracy test with the procedures in Section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50% of the level needed to meet the control efficiency requirement. The alternative procedures do not apply if the CEMS is used continuously to determine compliance with the relevant standard.

#### 3.8.6.6.2 Petition to use alternative to relative accuracy test.

The petition to use an alternative to the relative accuracy test shall include a detailed description of the procedures to be applied, the location and the procedure for conducting the alternative, the concentration or response levels of the alternative relative accuracy materials, and the other equipment checks included in the alternative procedures. The Department will review the petition for completeness and applicability. The Department's determination to approve an alternative will depend on the intended use of the CEMS data and may require specifications more stringent than in Performance Specification 2 in Appendix B of 40 CFR Part 60.

#### 3.8.6.6.3 Rescission of approval to use alternative to relative accuracy test.

The Department will review the permission to use an alternative to the CEMS relative accuracy test and may rescind such permission if the CEMS data from a successful completion of the alternative relative accuracy procedure indicate that the affected source's emissions are approaching the level of the relevant standard. The criterion for reviewing the permission is that the collection of CEMS data shows that emissions have exceeded 70% of the relevant standard for any averaging period, as specified in the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the criterion for reviewing the permission is that the collection of CEMS data shows that exhaust emissions have exceeded 70% of the level needed to meet the control efficiency requirement for any averaging period, as specified in the relevant standard. The owner or operator of the affected source shall maintain records and determine the level of emissions relative to the criterion for permission to use an alternative for relative accuracy testing. If this

criterion is exceeded, the owner or operator shall notify the Department within 10 days of such occurrence and include a description of the nature and cause of the increased emissions. The Department will review the notification and may rescind permission to use an alternative and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in Section 7 of Performance Specification 2 in Appendix B of 40 CFR Part 60.

### 3.8.7 Reduction of monitoring data.

3.8.7.1 The owner or operator of each CMS shall reduce the monitoring data as specified in 3.8.7.1 through 3.8.7.5 of this regulation.

3.8.7.2 The owner or operator of each COMS shall reduce all data to six-minute averages calculated from 36 or more data points equally spaced over each six-minute period. Data from CEMS for measurement other than opacity, unless otherwise specified in the relevant standard, shall be reduced to one-hour averages computed from four or more data points equally spaced over each one-hour period, except during periods when calibration, quality assurance, or maintenance activities pursuant to provisions of 40 CFR Part 63 or this regulation are being performed. During these periods, a valid hourly average shall consist of at least two data points with each representing a 15-minute period. Alternatively, an arithmetic or integrated one-hour average of CEMS data may be used. Time periods for averaging are defined in 3.2 of this regulation.

3.8.7.3 The data may be recorded in reduced or nonreduced form (e.g., ppm pollutant and percent O<sub>2</sub> or ng/J of pollutant).

3.8.7.4 All emission data shall be converted into units of the relevant standard for reporting purposes using the conversion procedures specified in that standard. After conversion into units of the relevant standard, the data may be rounded to the same number of significant digits as used in that standard to specify the emission limit (e.g., rounded to the nearest 1% opacity).

3.8.7.5 Monitoring data recorded during periods of unavoidable CMS breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high-level adjustments shall not be included in any data average computed under 40 CFR Part 63 or this regulation. For the owner or operator complying with the requirements in 3.10.2.2.7.1 or 3.10.2.2.7.2 of this regulation, data averages shall include any data recorded during periods of monitor breakdown or malfunction.

### 3.9 Notification requirements.

#### 3.9.1 Applicability and general information.

3.9.1.1 The applicability of 3.9 of this regulation is set out in 3.1.1.4 of this regulation.

3.9.1.2 For affected sources that have been granted an extension of compliance under Subpart D of 40 CFR Part 63, the requirements in 3.9 of this regulation do not apply to those sources while they are operating under such compliance extensions.

3.9.1.3 The owner or operator may send the Administrator a copy of the notice sent to the Department to satisfy the requirements in 3.9 of this regulation for that notification.

3.9.1.4 Submittal of notifications.

3.9.1.4.1 [Reserved]

3.9.1.4.2 The owner or operator of an affected source subject to notification requirements established under 40 CFR Part 63 or this regulation shall submit notifications to the Department (to the attention of the Program Administrator of Air Quality Management at the address indicated in 3.13 of this regulation). In addition, the owner or operator shall send a copy of each notification submitted to the Department to the EPA Region III Office (to the attention of the Director of Air Protection at the address indicated in 3.13 of this regulation). The Regional Office may waive this requirement for any notifications at its discretion.

#### 3.9.2 Initial notifications.

3.9.2.1 Applicability.

3.9.2.1.1 The requirements in 3.9.2 of this regulation apply to the owner or operator of an affected source when such source becomes subject to a relevant standard.

3.9.2.1.2 If an area source that otherwise would be subject to an emission standard or other requirement established under 40 CFR Part 63 or this regulation if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard or other requirement, such source shall be subject to the notification requirements in 3.9 of this regulation.

3.9.2.1.3 Affected sources that are required in 3.9.2 of this regulation to submit an initial notification may use the application for approval of construction or reconstruction under 3.5.4 of this regulation, if relevant, to fulfill the initial notification requirements in 3.9.2 of this regulation.

3.9.2.2 The owner or operator of an affected source that has an initial startup before the effective date of a relevant standard under 40 CFR Part 63 shall notify the Department in writing that the source is subject to the relevant standard. The notification, which shall be submitted not later than 120 calendar days after the effective date of the relevant standard (or within 120 calendar days after the source becomes subject to the relevant standard), shall provide the following information:

3.9.2.2.1 The name and address of the owner or operator;

3.9.2.2.2 The address (i.e., physical location) of the affected source;

3.9.2.2.3 An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date;

3.9.2.2.4 A brief description of the nature, size, design, and method of operation of the source and an identification of the types of emission points within the affected source subject to the relevant standard and types of hazardous air pollutants emitted; and

3.9.2.2.5 A statement of whether the affected source is a major source or an area source.

3.9.2.3 [Reserved]

3.9.2.4 The owner or operator of a new or reconstructed major affected source, or of a source that has been reconstructed such that the source becomes a major affected source, for which an application for approval of construction or reconstruction is required under 3.5.4 of this regulation shall provide the following information in writing to the Department:

3.9.2.4.1 A notification of intention to construct a new major-emitting affected source, reconstruct a major-emitting affected source, or reconstruct a source such that the source becomes a major-emitting affected source with the application for approval of

construction or reconstruction as specified in 3.5.4.1.1 of this regulation and

3.9.2.4.2 [Reserved]

3.9.2.4.3 [Reserved]

3.9.2.4.4 [Reserved]

3.9.2.4.5 A notification of the actual date of startup of the source, delivered or postmarked within 15 calendar days after that date.

3.9.2.5 The owner or operator of a new or reconstructed affected source for which an application for approval of construction or reconstruction is not required under 3.5.4 of this regulation shall provide the following information in writing to the Department:

3.9.2.5.1 A notification of intention to construct a new affected source, reconstruct an affected source, or reconstruct a source such that the source becomes an affected source and

3.9.2.5.2 A notification of the actual date of startup of the source, delivered or postmarked within 15 calendar days after that date.

3.9.2.5.3 Unless the owner or operator has requested and received prior permission from the Department to submit less than the information in 3.5.4 of this regulation, the notification shall include the information required on the application for approval of construction or reconstruction as specified in 3.5.4.1.1 of this regulation.

### 3.9.3 Request for extension of compliance.

If the owner or operator of an affected source cannot comply with a relevant standard by the applicable compliance date for that source, or if the owner or operator has installed BACT or technology to meet LAER consistent with 3.6.9.5 of this regulation, the owner or operator may submit to the Department a request for an extension of compliance as specified in 3.6.9.4 through 3.6.9.6 of this regulation.

### 3.9.4 Notification that source is subject to special compliance requirements.

An owner or operator of a new source that is subject to special compliance requirements as specified in 3.6.2.3 and 3.6.2.4 of this regulation shall notify

the Department of the owner or operator's compliance obligations not later than the notification dates established in 3.9.2 of this regulation for new sources that are not subject to the special provisions.

#### 3.9.5 Notification of performance test.

The owner or operator of an affected source shall notify the Department in writing of the owner or operator's intention to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin to allow the Department to review and approve the site-specific test plan required under 3.7.3 of this regulation, if requested by the Department, and to have an observer present during the test.

#### 3.9.6 Notification of opacity and visible emission observations.

The owner or operator of an affected source shall notify the Department in writing of the anticipated date for conducting the opacity or visible emission observations specified in 3.6.8.5 of this regulation, if such observations are required for the source by a relevant standard. The notification shall be submitted with the notification of the performance test date, as specified in 3.9.5 of this regulation, or if no performance test is required or visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the initial performance test required under 3.7 of this regulation, the owner or operator shall deliver or postmark the notification not less than 30 days before the opacity or visible emission observations are scheduled to take place.

#### 3.9.7 Additional notification requirements for sources with CMS.

The owner or operator of an affected source required to use a CMS by a relevant standard shall furnish the Department written notification as follows:

3.9.7.1 A notification of the date the CMS performance evaluation under 3.8.5 of this regulation is scheduled to begin, submitted simultaneously with the notification of the performance test date required under 3.7.2 of this regulation. If no performance test is required, or if the requirement to conduct a performance test has been waived for an affected source under 3.7.8 of this regulation, the owner or operator shall notify the Department in writing of the date of the performance evaluation at least 60 calendar days before the evaluation is scheduled to begin;

3.9.7.2 A notification that COMS data results will be used to determine compliance with the applicable opacity emission standard during a performance test required in 3.7 of this regulation in lieu of Method 9 or other opacity emissions test method data, as allowed in 3.6.8.7.2 of this regulation, if compliance with an opacity emission standard is required for

the source by a relevant standard. The notification shall be submitted at least 60 calendar days before the performance test is scheduled to begin; and

3.9.7.3 A notification that the criterion necessary to continue use of an alternative to relative accuracy testing, as provided in 3.8.6.6 of this regulation, has been exceeded. The notification shall be delivered or postmarked not later than 10 days after the occurrence of such exceedance, and it shall include a description of the nature and cause of the increased emissions.

### 3.9.8 Notification of compliance status.

3.9.8.1 The requirements in 3.8.2 through 3.8.4 of this regulation apply when an affected source becomes subject to a relevant standard.

3.9.8.2 Prior to issuance of a Title V permit.

3.9.8.2.1 Before a Title V permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under 40 CFR Part 63 or this regulation, the owner or operator of such source shall submit to the Department a notification of compliance status, signed by the responsible official who shall certify its accuracy, attesting to whether the source has complied with the relevant standard. The notification shall list-

3.9.8.2.1.1 The methods that were used to determine compliance;

3.9.8.2.1.2 The results of any performance tests, opacity or visible emission observations, CMS performance evaluations, or other monitoring procedures or methods that were conducted;

3.9.8.2.1.3 The methods that will be used for determining continuing compliance, including a description of monitoring and reporting requirements and test methods;

3.9.8.2.1.4 The type and quantity of hazardous air pollutants emitted by the source (or surrogate pollutants if specified in the relevant standard), reported in units and averaging times and in accordance with the test methods specified in the relevant standard;

3.9.8.2.1.5 If the relevant standard applies to both major and area sources, an analysis demonstrating whether the affected source is a major source (using the emissions data generated for this notification);

3.9.8.2.1.6 A description of the air pollution control equipment (or method) for each emission point, including each control device (or method) for each hazardous air pollutant and the control efficiency (percent) for each control device (or method); and

3.9.8.2.1.7 A statement by the owner or operator of the affected existing, new, or reconstructed source as to whether the source has complied with the relevant standard or other requirements.

3.9.8.2.2 The notification shall be sent before the close of business on the 60<sup>th</sup> day following the completion of the relevant compliance demonstration activity specified in the relevant standard (unless a different reporting period is specified in the standard, in which case the letter shall be sent before the close of business on the day the report of the relevant testing or monitoring results is required to be delivered or postmarked). For example, the notification shall be sent before close of business on the 60<sup>th</sup> (or other required) day following completion of the initial performance test and again before the close of business on the 60<sup>th</sup> (or other required) day following the completion of any subsequent required performance test. If no performance test is required but opacity or visible emission observations are required to demonstrate compliance with an opacity or visible emission standard under 40 CFR Part 63 or this regulation, the notification of compliance status shall be sent before close of business on the 30<sup>th</sup> day following the completion of opacity or visible emission observations. Notification may be combined as long as the due date requirement for each notification is met.

3.9.8.3 After a Title V permit has been issued to the owner or operator of an affected source, the owner or operator of such source shall comply with all requirements for compliance status reports contained in the source's Title V permit, including reports required under 40 CFR Part 63 or this regulation. After a Title V permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under 40 CFR Part 63 or this regulation, the owner or operator of such source shall submit the notification of compliance status to the Department following completion of the relevant compliance demonstration activity specified in the relevant standard.

3.9.8.4 [Reserved]

3.9.8.5 If an owner or operator of an affected source submits estimates or preliminary information in the application for approval of construction or reconstruction required in 3.5.4 of this regulation in place of the actual emissions data or control efficiencies required in 3.5.4.1.2.8 and 3.5.4.2 of this regulation, the owner or operator shall submit the actual emissions data and other correct information as soon as available but no later than with the initial notification of compliance status required in 3.9 of this regulation.

3.9.8.6 Advice on a notification of compliance status may be obtained from the Department.

3.9.9 Adjustment to time periods or postmark deadlines for submittal and review of required communications.

3.9.9.1 Applicable requirements.

3.9.9.1.1 Until an adjustment of a time period or postmark deadline has been approved by the Department under 3.9.9.2 and 3.9.9.3 of this regulation, the owner or operator of an affected source remains strictly subject to the requirements of 40 CFR Part 63 or this regulation.

3.9.9.1.2 An owner or operator shall request the adjustment provided for in 3.9.9.2 and 3.9.9.3 of this regulation each time the owner or operator wishes to change an applicable time period or postmark deadline specified in 40 CFR Part 63 or this regulation.

3.9.9.2 Notwithstanding time periods or postmark deadlines specified in 40 CFR Part 63 or this regulation for the submittal of information to the Department by an owner or operator, or the review of such information by the Department, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Department. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information the owner or operator considers useful to convince the Department that an adjustment is warranted.

3.9.9.3 If, in the Department's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Department will approve the adjustment. The

Department will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

3.9.9.4 If the Department is unable to meet a specified deadline, the owner or operator will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

### 3.9.10 Change in information already provided.

Any change in the information already provided under 3.0 of this regulation shall be provided to the Department in writing within 15 calendar days after the change.

## 3.10 Recordkeeping and reporting requirements.

### 3.10.1 Applicability and general information.

3.10.1.1 The applicability of 3.10 of this regulation is set out in 3.1.1.4 of this regulation.

3.10.1.2 For affected sources that have been granted an extension of compliance under Subpart D of 40 CFR Part 63, the requirements in 3.10 of this regulation do not apply to those sources while they are operating under such compliance extensions.

3.10.1.3 The owner or operator may send the Administrator a copy of the report sent to the Department to satisfy the requirements 3.10 of this regulation for that report.

### 3.10.1.4 Submittal of reports.

#### 3.10.1.4.1 [Reserved]

3.10.1.4.2 The owner or operator of an affected source subject to recordkeeping and reporting requirements established under 40 CFR Part 63 or this regulation shall submit reports to the Department (to the attention of the Program Administrator of Air Quality Management at the address indicated in 3.13 of this regulation). In addition, the owner or operator shall send a copy of each report submitted to the Department to the EPA Region III Office (to the attention of the Director of Air Protection at the address indicated in 3.13 of this regulation). The Regional Office may waive this requirement for any reports at its discretion.

3.10.1.5 The owner or operator may change the dates by which periodic reports under 40 CFR Part 63 or this regulation shall be submitted (without changing the frequency of reporting) by mutual agreement between the owner or operator and the Department. For each relevant standard established pursuant to Section 112 of the Act, the allowance in the previous sentence applies beginning one year after the affected source's compliance date for that standard. Procedures governing the implementation of this provision are specified in 3.9.9 of this regulation.

3.10.1.6 If an owner or operator supervises one or more stationary sources affected by more than one standard established pursuant to Section 112 of the Act, the owner or operator may arrange by mutual agreement between the owner or operator and the Department a common schedule on which periodic reports required for each source shall be submitted throughout the year. The allowance in the previous sentence applies beginning one year after the latest compliance date for any relevant standard established pursuant to Section 112 of the Act for any such affected sources. Procedures governing the implementation of this provision are specified in 3.9.9 of this regulation.

3.10.1.7 If an owner or operator supervises one or more stationary sources affected by standards established pursuant to Section 112 of the Act (as amended November 15, 1990) and standards set under 40 CFR Part 60, 40 CFR Part 61, or both such parts, the owner or operator may arrange by mutual agreement between the owner or operator and the Department a common schedule on which periodic reports required by each relevant (i.e., applicable) standard shall be submitted throughout the year. The allowance in the previous sentence applies beginning one year after the stationary source is required to be in compliance with the relevant Section 112 standard of the Act, or one year after the stationary source is required to be in compliance with the applicable 40 CFR Part 60 or 40 CFR Part 61 standard, whichever is latest. Procedures governing the implementation of this provision are specified in 3.9.9 of this regulation.

### 3.10.2 General recordkeeping requirements.

3.10.2.1 The owner or operator of an affected source subject to the provisions of 40 CFR Part 63 or this regulation shall maintain files of all information (including all reports and notifications) required by 40 CFR Part 63 or this regulation recorded in a form suitable and readily available for expeditious inspection and review. The files shall be retained for at least five years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a

minimum, the most recent two years of data shall be retained on site. The remaining three years of data may be retained off site. Such files may be maintained on microfilm, on a computer, on computer floppy disks, on magnetic tape disks, or on microfiche.

3.10.2.2 The owner or operator of an affected source subject to the provisions of 40 CFR Part 63 or this regulation shall maintain relevant records for such source of-

3.10.2.2.1 The occurrence and duration of each startup, shutdown, or malfunction of operation (i.e., process equipment);

3.10.2.2.2 The occurrence and duration of each malfunction of the required air pollution control and monitoring equipment;

3.10.2.2.3 All required maintenance performed on the air pollution control and monitoring equipment;

3.10.2.2.4 Actions taken during periods of startup, shutdown, or malfunction (including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation) when such actions are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan (see 3.6.5.3 of this regulation);

3.10.2.2.5 All information necessary to demonstrate conformance with the affected source's startup, shutdown, and malfunction plan (see 3.6.5.3 of this regulation) when all actions taken during periods of startup, shutdown, or malfunction (including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation) are consistent with the procedures specified in such plan. (The information needed to demonstrate conformance with the startup, shutdown, and malfunction plan may be recorded using a "checklist," or some other effective form of recordkeeping, in order to minimize the recordkeeping burden for conforming events);

3.10.2.2.6 Each period during which a CMS is malfunctioning or inoperative (including out-of-control periods);

3.10.2.2.7 All required measurements needed to demonstrate compliance with a relevant standard (including,

but not limited to, 15-minute averages of CMS data, raw performance testing measurements, and raw performance evaluation measurements, that support data that the source is required to report);

3.10.2.2.7.1 If the owner or operator is required to install a CEMS where the CEMS installed is automated, and where the calculated data averages do not exclude periods of CEMS breakdown or malfunction, an automated CEMS records and reduces the measured data to the form of the pollutant emission standard through the use of a computerized data acquisition system. In lieu of maintaining a file of all CEMS subhourly measurements as required under 3.10.2.2.7 of this regulation, the owner or operator shall retain the most recent consecutive three averaging periods of subhourly measurements and a file that contains a hard copy of the data acquisition system algorithm used to reduce the measured data into the reportable form of the standard.

3.10.2.2.7.2 If the owner or operator is required to install a CEMS where the measured data is manually reduced to obtain the reportable form of the standard, and where the calculated data averages do not exclude periods of CEMS breakdown or malfunction, in lieu of maintaining a file of all CEMS subhourly measurements as required under 3.10.2.2.7 of this regulation, the owner or operator shall retain all subhourly measurements for the most recent reporting period. The subhourly measurements shall be retained for 120 days from the date of the most recent summary or excess emission report submitted to the Department.

3.10.2.2.7.3 The Department, upon notification to the source, may require the owner or operator to maintain all measurements as required by in 3.10.2.2.7 of this regulation, if the Department determines these records are required to more accurately assess the compliance status of the affected source.

3.10.2.2.8 All results of performance tests, CMS performance evaluations, and opacity and visible emission observations;

3.10.2.2.9 All measurements as may be necessary to determine the conditions of performance tests and performance evaluations;

3.10.2.2.10 All CMS calibration checks;

3.10.2.2.11 All adjustments and maintenance performed on CMS;

3.10.2.2.12 Any information demonstrating whether a source is meeting the requirements for a waiver of recordkeeping or reporting requirements under this regulation, if the source has been granted a waiver under 3.10.6 of this regulation;

3.10.2.2.13 All emission levels relative to the criterion for obtaining permission to use an alternative to the relative accuracy test, if the source has been granted such permission under 3.8.6.6 of this regulation; and

3.10.2.2.14 All documentation supporting initial notifications and notifications of compliance status under 3.9 of this regulation.

### 3.10.2.3 Recordkeeping requirement for applicability determinations.

If an owner or operator determines that the owner or operator's stationary source that emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants regulated by any standard established pursuant to Section 112(d) or (f) of the Act, and that stationary source is in the source category regulated by the relevant standard, but that source is not subject to the relevant standard (or other requirement established under 40 CFR Part 63 or this regulation) because of limitations on the source's potential to emit or an exclusion, the owner or operator shall keep a record of the applicability determination on site at the source for the life of the source or until the source changes its operations to become an affected source, whichever comes first. The record of the applicability determination shall be signed by the person making the determination and include an analysis (or other information) that demonstrates why the owner or operator believes the source is unaffected (e.g., because the source is an area source). The analysis (or other information) shall be sufficiently detailed to allow the Department to make a finding about the source's

applicability status with regard to the relevant standard or other requirement. If relevant, the analysis shall be performed in accordance with requirements established in relevant subparts of 40 CFR Part 63 or sections in this regulation for this purpose for particular categories of stationary sources. If relevant, the analysis should be performed in accordance with EPA guidance materials published to assist sources in making applicability determinations under Section 112 of the Act, if any. The requirements to determine applicability of a standard under 3.1.2.3 of this regulation and to record the results of that determination under 3.10.2.3 of this regulation shall not by themselves create an obligation for the owner or operator to obtain a Title V permit.

### 3.10.3 Additional recordkeeping requirements for sources with CMS.

In addition to complying with the requirements specified in 3.10.2.1 and 3.10.2.2 of this regulation, the owner or operator of an affected source required to install a CMS by a relevant standard shall maintain records for such source of-

3.10.3.1 All required CMS measurements (including monitoring data recorded during unavoidable CMS breakdowns and out-of-control periods);

3.10.3.2 [Reserved]

3.10.3.3 [Reserved]

3.10.3.4 [Reserved]

3.10.3.5 The date and time identifying each period during which the CMS was inoperative except for zero (low-level) and high-level checks;

3.10.3.6 The date and time identifying each period during which the CMS was out-of-control, as defined in 3.8.3.7 of this regulation;

3.10.3.7 The specific identification (i.e., the date and time of commencement and completion) of each time period of excess emissions and parameter monitoring exceedances, as defined in the relevant standards, that occurs during startups, shutdowns, or malfunctions of the affected source;

3.10.3.8 The specific identification (i.e., the date and time of commencement and completion) of each time period of excess emissions and parameter monitoring exceedances, as defined in the relevant standards, that occurs during periods other than startups, shutdowns, or malfunctions of the affected source;

3.10.3.9 [Reserved]

3.10.3.10 The nature and cause of any malfunction (if known);

3.10.3.11 The corrective action taken or preventive measures adopted;

3.10.3.12 The nature of the repairs or adjustments to the CMS that was inoperative or out-of-control;

3.10.3.13 The total process operating time during the reporting period; and

3.10.3.14 All procedures that are part of a quality control program developed and implemented for CMS under 3.8.4 of this regulation.

3.10.3.15 In order to satisfy the requirements in 3.10.3.10 through 3.10.3.12 of this regulation and to avoid duplicative recordkeeping efforts, the owner or operator may use the affected source's startup, shutdown, and malfunction plan or records kept to satisfy the recordkeeping requirements of the startup, shutdown, and malfunction plan specified in 3.6.5 of this regulation, provided that such plan and records adequately address the requirements in 3.10.3.10 through 3.10.3.12 of this regulation.

#### 3.10.4 General reporting requirements.

3.10.4.1 Notwithstanding the requirements in 3.10.4 or 3.10.5 of this regulation, the owner or operator of an affected source subject to reporting requirements under 40 CFR Part 63 or this regulation shall submit reports to the Department in accordance with the reporting requirements in the relevant standards.

#### 3.10.4.2 Reporting results of performance tests.

Before a Title V permit has been issued to the owner or operator of an affected source, the owner or operator shall report the results of any performance test under 3.7 of this regulation to the Department. After a Title V permit has been issued to the owner or operator of an affected source, the owner or operator shall report the results of a required performance test to the Department. The owner or operator of an affected source shall report the results of the performance test to the Department before the close of business on the 60<sup>th</sup> day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the

Department. The results of the performance test shall be submitted as part of the notification of compliance status required under 3.9.8 of this regulation.

#### 3.10.4.3 Reporting results of opacity or visible emission observations.

The owner or operator of an affected source required to conduct opacity or visible emission observations by a relevant standard shall report the opacity or visible emission results (produced using Method 9 or Method 22 in Appendix A of 40 CFR Part 60, or an approved alternative to these test methods) along with the results of the performance test required under 3.7 of this regulation. If no performance test is required, or if visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the performance test required under 3.7 of this regulation, the owner or operator shall report the opacity or visible emission results before the close of business on the 30<sup>th</sup> day following the completion of the opacity or visible emission observations.

#### 3.10.4.4 Progress reports.

The owner or operator of an affected source who is required to submit progress reports as a condition of receiving an extension of compliance under 3.6.9 of this regulation shall submit such reports to the Department by the dates specified in the written extension of compliance.

#### 3.10.4.5 Startup, shutdown, and malfunction reports.

##### 3.10.4.5.1 Periodic startup, shutdown, and malfunction reports.

If actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan (see 3.6.5.3 of this regulation), the owner or operator shall state such information in a startup, shutdown, and malfunction report. Such a report shall identify any instance where any action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) is not consistent with the affected source's startup, shutdown, and malfunction plan, but the source does not exceed any applicable emission limitation in the relevant emission standard. Such a report shall also include the number, duration, and a brief description for each

type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period. The startup, shutdown, and malfunction report shall consist of a letter, containing the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, that shall be submitted to the Department semiannually (or on a more frequent basis if specified otherwise in a relevant standard or as established otherwise by the Department in the source's Title V permit). The startup, shutdown, and malfunction report shall be delivered or postmarked by the 30<sup>th</sup> day following the end of each calendar half (or other calendar reporting period, as appropriate). If the owner or operator is required to submit excess emissions and continuous monitoring system performance (or other periodic) reports under 40 CFR Part 63 or this regulation, the startup, shutdown, and malfunction reports required under this paragraph may be submitted simultaneously with the excess emissions and continuous monitoring system performance (or other) reports. If startup, shutdown, and malfunction reports are submitted with excess emissions and continuous monitoring system performance (or other periodic) reports, and the owner or operator receives approval to reduce the frequency of reporting for the latter under 3.10.5 of this regulation, the frequency of reporting for the startup, shutdown, and malfunction reports also may be reduced if the Department does not object to the intended change. The procedures to implement the allowance in the preceding sentence shall be the same as the procedures specified in 3.10.5.3 of this regulation.

#### 3.10.4.5.2 Immediate startup, shutdown, and malfunction reports.

Notwithstanding the allowance to reduce the frequency of reporting for periodic startup, shutdown, and malfunction reports under 3.10.4.5.1 of this regulation, any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, and the source exceeds any applicable emission limitation in the relevant emission standard, the owner or operator shall report the actions taken for that event within two working days after commencing actions inconsistent with the plan followed by a

letter within seven working days after the end of the event. The immediate report required in 3.10.4.5.2 of this regulation shall consist of a telephone call (or facsimile (FAX) transmission) to the Department within two working days after commencing actions inconsistent with the plan, and it shall be followed by a letter, delivered or postmarked within seven working days after the end of the event, that contains the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and describing all excess emissions, parameter monitoring exceedances, or both which are believed to have occurred. Notwithstanding the requirements of the previous sentence, the owner or operator may make alternative reporting arrangements, in advance, with the Department. Procedures governing the arrangement of alternative reporting requirements under 3.10.4.5.2 of this regulation are specified in 3.9.9 of this regulation.

### 3.10.5 Additional reporting requirements for sources with CMS.

#### 3.10.5.1 General.

When more than one CEMS is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required for each CEMS.

#### 3.10.5.2 Reporting results of CMS performance evaluations.

3.10.5.2.1 The owner or operator of an affected source required to install a CMS by a relevant standard shall furnish the Department a copy of a written report of the results of the CMS performance evaluation, as required under 3.8.5 of this regulation, simultaneously with the results of the performance test required under 3.7 of this regulation, unless otherwise specified in the relevant standard.

3.10.5.2.2 The owner or operator of an affected source using a COMS to determine opacity compliance during any performance test required under 3.7 of this regulation shall furnish the Department two or, upon request, three copies of a written report of the results of the COMS performance evaluation conducted under 3.8.5 of this regulation. The copies shall be furnished at least 15 calendar days before the performance test required under 3.7 of this regulation is conducted.

3.10.5.3 Excess emissions and continuous monitoring system performance report and summary report.

3.10.5.3.1 Excess emissions and parameter monitoring exceedances are defined in relevant standards. The owner or operator of an affected source required to install a CMS by a relevant standard shall submit an excess emissions and continuous monitoring system performance report, a summary report, or both to the Department semiannually, except when--

3.10.5.3.1.1 More frequent reporting is specifically required by a relevant standard or

3.10.5.3.1.2 The Department determines on a case-by-case basis that more frequent reporting is necessary to accurately assess the compliance status of the source.

3.10.5.3.1.3 [Reserved]

3.10.5.3.2 Request to reduce frequency of excess emissions and continuous monitoring system performance reports.

Notwithstanding the frequency of reporting requirements specified in 3.10.5.3.1 of this regulation, an owner or operator who is required by a relevant standard to submit excess emissions and continuous monitoring system performance (and summary) reports on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

3.10.5.3.2.1 For one full year (e.g., four quarterly or 12 monthly reporting periods) the affected source's excess emissions and continuous monitoring system performance reports continually demonstrate that the source is in compliance with the relevant standard;

3.10.5.3.2.2 The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in 3.0 of this regulation and the relevant standard; and

3.10.5.3.2.3 The Department does not object to a reduced frequency of reporting for the affected source, as provided in 3.10.5.3.3 of this regulation.

3.10.5.3.3 The frequency of reporting of excess emissions and continuous monitoring system performance (and summary) reports required to comply with a relevant standard may be reduced only after the owner or operator notifies the Department in writing of the owner or operator's intention to make such a change and the Department does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Department may review information concerning the source's entire previous performance history during the five-year recordkeeping period prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements. Such information may be used by the Department to make a judgment about the source's potential for noncompliance in the future. If the Department disapproves the owner or operator's request to reduce the frequency of reporting, the Department will notify the owner or operator in writing within 45 days after receiving notice of the owner or operator's intention. The notification from the Department to the owner or operator will specify the grounds on which the disapproval is based. In the absence of a notice of disapproval within 45 days, approval is automatically granted.

3.10.5.3.4 As soon as CMS data indicate that the source is not in compliance with any emission limitation or operating parameter specified in the relevant standard, the frequency of reporting shall revert to the frequency specified in the relevant standard, and the owner or operator shall submit an excess emissions and continuous monitoring system performance (and summary) report for the noncomplying emission points at the next appropriate reporting period following the noncomplying event. After demonstrating ongoing compliance with the relevant standard for another full year, the owner or operator may again request approval from the Department to reduce the frequency of reporting for that standard, as provided for in 3.10.5.3.2 and 3.10.5.3.3 of this regulation.

3.10.5.3.5 Content and submittal dates for excess emissions and monitoring system performance reports.

All excess emissions and monitoring system performance reports and all summary reports, if required, shall be delivered or postmarked by the 30<sup>th</sup> day following the end of each calendar half or quarter, as appropriate. Written reports of excess emissions or exceedances of process or control system parameters shall include all the information required in 3.10.3.5 through 3.10.3.13 of this regulation, in 3.8.3.7 and 3.8.3.8 of this regulation, and in the relevant standard, and they shall contain the name, title, and signature of the responsible official who is certifying the accuracy of the report. When no excess emissions or exceedances of a parameter have occurred, or a CMS has not been inoperative, out-of-control, repaired, or adjusted, such information shall be stated in the report.

#### 3.10.5.3.6 Summary report.

As required under 3.10.5.3.7 and 3.10.5.3.8 of this regulation, one summary report shall be submitted for the hazardous air pollutants monitored at each affected source (unless the relevant standard specifies that more than one summary report is required, e.g., one summary report for each hazardous air pollutant monitored). The summary report shall be entitled "Summary Report--Gaseous and Opacity Excess Emission and Continuous Monitoring System Performance" and shall contain the following information:

3.10.5.3.6.1 The company name and address of the affected source;

3.10.5.3.6.2 An identification of each hazardous air pollutant monitored at the affected source;

3.10.5.3.6.3 The beginning and ending dates of the reporting period;

3.10.5.3.6.4 A brief description of the process units;

3.10.5.3.6.5 The emission and operating parameter limitations specified in the relevant standards;

3.10.5.3.6.6 The monitoring equipment manufacturers and model numbers;

3.10.5.3.6.7 The date of the latest CMS certification or audit;

3.10.5.3.6.8 The total operating time of the affected source during the reporting period;

3.10.5.3.6.9 An emission data summary (or similar summary if the owner or operator monitors control system parameters), including the total duration of excess emissions during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of excess emissions expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total duration of excess emissions during the reporting period into those that are due to startup/shutdown, control equipment problems, process problems, other known causes, and other unknown causes;

3.10.5.3.6.10 A CMS performance summary (or similar summary if the owner or operator monitors control system parameters), including the total CMS downtime during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of CMS downtime expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total CMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, nonmonitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes;

3.10.5.3.6.11 A description of any changes in CMS, processes, or controls since the last reporting period;

3.10.5.3.6.12 The name, title, and signature of the responsible official who is certifying the accuracy of the report; and

3.10.5.3.6.13 The date of the report.

3.10.5.3.7 If the total duration of excess emissions or process or control system parameter exceedances for the reporting period is less than 1% of the total operating time for

the reporting period, and CMS downtime for the reporting period is less than 5% of the total operating time for the reporting period, only the summary report shall be submitted, and the full excess emissions and continuous monitoring system performance report need not be submitted unless required by the Department.

3.10.5.3.8 If the total duration of excess emissions or process or control system parameter exceedances for the reporting period is 1% or greater of the total operating time for the reporting period, or the total CMS downtime for the reporting period is 5% or greater of the total operating time for the reporting period, both the summary report and the excess emissions and continuous monitoring system performance report shall be submitted.

#### 3.10.5.4 Reporting COMS data produced during a performance test.

The owner or operator of an affected source required to use a COMS shall record the monitoring data produced during a performance test required under 3.7 of this regulation and shall furnish the Department a written report of the monitoring results. The report of COMS data shall be submitted simultaneously with the report of the performance test results required in 3.10.4.2 of this regulation.

#### 3.10.6 Waiver of recordkeeping or reporting requirements.

3.10.6.1 Until a waiver of a recordkeeping or reporting requirement has been granted by the Department under 3.10.6 of this regulation, the owner or operator of an affected source remains subject to the requirements in 3.10 of this regulation.

3.10.6.2 Recordkeeping or reporting requirements may be waived upon written application to the Department if, in the Department's judgment, the affected source is achieving the relevant standards, or the source is operating under an extension of compliance, or the owner or operator has requested an extension of compliance and the Department is still considering that request.

3.10.6.3 If an application for a waiver of recordkeeping or reporting is made, the application shall accompany the request for an extension of compliance under 3.6.9 of this regulation, any required compliance progress report or compliance status report required under 40 CFR Part 63 or this regulation (such as under 3.6.9 and 3.9.8 of this regulation) or in the source's Title V permit, or an excess emissions and continuous monitoring system performance report required under 3.10.5 of this

regulation, whichever is applicable. The application shall include whatever information the owner or operator considers useful to convince the Department that a waiver of recordkeeping or reporting is warranted.

3.10.6.4 The Department will approve or deny a request for a waiver of recordkeeping or reporting requirements under 3.10.6 of this regulation when it--

3.10.6.4.1 Approves or denies an extension of compliance;

3.10.6.4.2 Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

3.10.6.4.3 Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

3.10.6.5 A waiver of any recordkeeping or reporting requirement granted under 3.10.6 of this regulation may be conditioned on other recordkeeping or reporting requirements deemed necessary by the Department.

3.10.6.6 Approval of any waiver granted under 3.10.6 of this regulation shall not abrogate the Administrator's authority under the Act or the Department's authority under 7 **Del. C.**, Ch 60 or in any way prohibit the Department from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

### 3.11 Control device requirements.

#### 3.11.1 Applicability.

The applicability of 3.11 of this regulation is set out in 3.1.1.4 of this regulation.

#### 3.11.2 Flares.

3.11.2.1 Owners or operators using flares to comply with the provisions of 40 CFR Part 63 or this regulation shall monitor these control devices to assure that they are operated and maintained in conformance with their designs. Applicable emission standards will

provide provisions stating how owners or operators using flares shall monitor these control devices.

3.11.2.2 Flares shall be steam-assisted, air-assisted, or non-assisted.

3.11.2.3 Flares shall be operated at all times when emissions may be vented to them.

3.11.2.4 Flares shall be designed for and operated with no visible emissions, except for periods not to exceed a total of five minutes during any two consecutive hours. Method 22 in Appendix A of 40 CFR Part 60 shall be used to determine the compliance of flares with the visible emission provisions of this regulation. The observation period is two hours and shall be used according to Method 22.

3.11.2.5 Flares shall be operated with a flame present at all times. The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

3.11.2.6 An owner or operator has the choice of adhering to the heat content specifications in 3.11.2.6.2 of this regulation, and the maximum tip velocity specifications in 3.11.2.7 or 3.11.2.8 of this regulation, or adhering to the requirements in 3.11.2.6.1 of this regulation.

#### 3.11.2.6.1 Alternative flare requirements.

3.11.2.6.1.1 Flares shall be used that have a diameter of three inches or greater, are nonassisted, have a hydrogen content of 8.0% (by volume) or greater, and are designed for and operated with an exit velocity less than 37.2 m/sec (122 ft/sec) and less than the maximum permitted velocity ( $V_{max}$ ) as determined by the following equation:

$$V_{max} = (XH_2 - K_1) * K_2 \quad (3-1)$$

where:

$V_{max}$  = Maximum permitted velocity, m/sec.

$K_1$  = Constant, 6.0 volume-percent hydrogen.

$K_2$  = Constant, 3.9 (m/sec)/volume-percent hydrogen.

$XH_2$  = The volume-percent of hydrogen, on a wet basis, as calculated by using the American Society for Testing and Materials (ASTM)

Method D1946-77. (Incorporated by reference as specified in 3.14 of this regulation).

3.11.2.6.1.2 The actual exit velocity of a flare shall be determined by the method specified in 3.11.2.7.1 of this regulation.

3.11.2.6.2 Flares shall be used only with the net heating value of the gas being combusted at 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted at 7.46 MJ/scm (200 Btu/scf) or greater if the flare is non-assisted. The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_t = K * \sum_{n=1}^n (C_i * H_i) \quad (3-2)$$

where:

H<sub>t</sub> = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of off-gas is based on combustion at 25°C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20°C.

K = Constant = 1.740x10<sup>-7</sup> (1/ppmv) (g-mole/scm) (MJ/kcal) where the standard temperature for (g-mole/scm) is 20 °C.

C<sub>i</sub> = Concentration of sample component i in ppmv on a wet basis, as measured for organics by Method 18 in Appendix A of 40 CFR Part 60 and measured for hydrogen and carbon monoxide by American Society for Testing and Materials (ASTM) D1946-77 or 90 (Reapproved 1994) (incorporated by reference as specified in 3.14 of this regulation).

H<sub>i</sub> = Net heat of combustion of sample component i, kcal/g-mole at 25°C and 760 mm Hg. The heats of combustion may be determined using ASTM D2382-76 or 88 or D4809-95 (incorporated by reference as specified in 3.14 of this regulation) if published values are not available or cannot be calculated.

n = Number of sample components.

3.11.2.7 Steam-assisted and nonassisted flare design.

3.11.2.7.1 Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity less than 18.3

m/sec (60 ft/sec), except as provided in 3.11.2.7.2 and 3.11.2.7.3 of this regulation. The actual exit velocity of a flare shall be determined by dividing by the volumetric flow rate of gas being combusted (in units of emission standard temperature and pressure), as determined by Method 2, 2A, 2C, or 2D in Appendix A of 40 CFR Part 60, as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

3.11.2.7.2 Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the method specified in 3.11.2.7.1 of this regulation, equal to or greater than 18.3 m/sec (60 ft/sec) but less than 122 m/sec (400 ft/sec), are allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

3.11.2.7.3 Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the method specified in 3.11.2.7.1 of this regulation, less than the maximum permitted velocity ( $V_{max}$ ), as determined by the method specified in 3.11.2.7.3 of this regulation, but less than 122 m/sec (400 ft/sec) are allowed. The maximum permitted velocity ( $V_{max}$ ) for flares complying with 3.11.2.7.3 of this regulation shall be determined by the following equation:

$$\text{Log}_{10} (V_{max}) = (Ht + 28.8)/31.7 \quad (3-3)$$

where:

$V_{max}$  = Maximum permitted velocity, m/sec.

28.8 = Constant.

31.7 = Constant.

Ht = The net heating value as determined in 3.11.2.6 of this regulation.

3.11.2.8 Air-assisted flares shall be designed and operated with an exit velocity less than the maximum permitted velocity ( $V_{max}$ ). The maximum permitted velocity ( $V_{max}$ ) for air-assisted flares shall be determined by the following equation:

$$V_{max} = 8.71 + 0.708 * Ht \quad (3-4)$$

where:

$V_{max}$  = Maximum permitted velocity, m/sec.

8.71 = Constant.

0.708 = Constant.

Ht = The net heating value as determined in 3.11.2.6.2 of this regulation.

### 3.12 State authority and delegations.

3.12.1 The provisions of 40 CFR Part 63 shall not be construed in any manner to preclude the Department from-

3.12.1.1 Adopting and enforcing any standard, limitation, prohibition, or other regulation applicable to an affected source subject to the requirements of this regulation, provided that such standard, limitation, prohibition, or regulation is not less stringent than any requirement applicable to such source established under 40 CFR Part 63;

3.12.1.2 Requiring the owner or operator of an affected source to obtain permits, licenses, or approvals prior to initiating construction, reconstruction, modification, or operation of such source; or

3.12.1.3 Requiring emission reductions in excess of those specified in Subpart D of 40 CFR Part 63 as a condition for granting the extension of compliance authorized by Section 112(i)(5) of the Act.

### 3.12.2 Delegation.

3.12.2.1 Section 112(l) of the Act directs the Administrator to delegate to each State, when appropriate, the authority to implement and enforce standards and other requirements pursuant to Section 112 of the Act for stationary sources located in that State. Because of the unique nature of radioactive material, delegation of authority to implement and enforce standards that control radionuclides may require separate approval.

3.12.2.2 Subpart E of 40 CFR Part 63 establishes procedures consistent with Section 112(l) of the Act for the approval of State rules or programs to implement and enforce applicable Federal rules promulgated under the authority of Section 112 of the Act. Subpart E of 40 CFR Part 63 also establishes procedures for the review and withdrawal of Section 112 implementation and enforcement authorities granted through a Section 112(l) approval.

3.12.3 All information required to be submitted to the EPA under 40 CFR Part 63 also shall be submitted to the Department, provided that each specific delegation may exempt sources from a certain Federal or State reporting requirement. The Administrator may permit all or some of the information to be submitted to the Department only, instead of to the EPA and the Department.

3.13 Addresses of State air pollution control agencies and EPA Regional Offices.

3.13.1 All requests, reports, applications, submittals, and other communications to the Administrator pursuant to 40 CFR Part 63 or this regulation shall be submitted to the following address.

EPA Region III  
Director, Air Protection Division  
1650 Arch Street  
Philadelphia, PA 19103

3.13.2 All information required to be submitted to the Department under 40 CFR Part 63 or this regulation shall be submitted to the Department at the following address.

Delaware Department of Natural Resources and Environmental Control  
Program Administrator, Air Quality Management Section  
Division of Air and Waste Management  
156 S. State Street  
Dover, DE 19901

3.13.3 An owner or operator may send the EPA Region III Office a copy of any application, notification, request, report, statement, or other communication required by the Department in this regulation to satisfy the requirements of 40 CFR Part 63 for that communication.

3.14 Incorporations by reference.

3.14.1 The materials listed in 3.14 of this regulation are incorporated by reference. These materials are incorporated as they exist on the date of the approval by the Director of the Federal Register, and notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the National Archives and Records Administration (NARA), at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M St., SW., Washington, DC, and at the EPA Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina. For information on the availability of this material at NARA, call 202-741-6030, or go to:

[http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

3.14.2 The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials

(ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.

3.14.2.1 ASTM D523-89, Standard Test Method for Specular Gloss, IBR approved for Sec. 63.782.

3.14.2.2 ASTM D1193-77, 91, Standard Specification for Reagent Water, IBR approved for Appendix A: Method 306, Sections 7.1.1 and 7.4.2.

3.14.2.3 ASTM D1331-89, Standard Test Methods for Surface and Interfacial Tension of Solutions of Surface Active Agents, IBR approved for Appendix A: Method 306B, Sections 6.2, 11.1, and 12.2.2.

3.14.2.4 ASTM D1475-90, Standard Test Method for Density of Paint, Varnish Lacquer, and Related Products, IBR approved for Sec. 63.788, Appendix A.

3.14.2.5 ASTM D1946-77, 90, 94, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for 3.11.2.6 of this regulation.

3.14.2.6 ASTM D2369-93, 95, Standard Test Method for Volatile Content of Coatings, IBR approved for Sec. 63.788, Appendix A.

3.14.2.7 ASTM D2382-76, 88, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), IBR approved for 3.11.2.6 of this regulation.

3.14.2.8 ASTM D2879-83, 96, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved for Sec. 63.111 of Subpart G.

3.14.2.9 ASTM D3257-93, Standard Test Methods for Aromatics in Mineral Spirits by Gas Chromatography, IBR approved for Sec. 63.786(b).

3.14.2.10 ASTM 3695-88, Standard Test Method for Volatile Alcohols in Water by Direct Aqueous-Injection Gas Chromatography, IBR approved for Sec. 63.365(e)(1) of Subpart O.

3.14.2.11 ASTM D3792-91, Standard Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph, IBR approved for Sec. 63.788, Appendix A.

3.14.2.12 ASTM D3912-80, Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants, IBR approved for Sec. 63.782.

3.14.2.13 ASTM D4017-90, 96a, Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Titration Method, IBR approved for Sec. 63.788, Appendix A.

3.14.2.14 ASTM D4082-89, Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants, IBR approved for Sec. 63.782.

3.14.2.15 ASTM D4256-89, 94, Standard Test Method for Determination of the Decontaminability of Coatings Used in Light-Water Nuclear Power Plants, IBR approved for Sec. 63.782.

3.14.2.16 ASTM D4809-95, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), IBR approved for 3.11.2.6 of this regulation.

3.14.2.17 ASTM E180-93, Standard Practice for Determining the Precision of ASTM Methods for Analysis and Testing of Industrial Chemicals, IBR approved for Sec. 63.786(b).

3.14.2.18 ASTM E260-91, 96, General Practice for Packed Column Gas Chromatography, IBR approved for Sec. 63.750(b)(2) and Sec. 63.786(b)(5).

3.14.2.19 [Reserved]

3.14.2.20 [Reserved]

3.14.2.21 ASTM D2099-00, Standard Test Method for Dynamic Water Resistance of Shoe Upper Leather by the Maeser Water Penetration Tester, IBR approved for Sec. 63.5350.

3.14.2.22 [Reserved]

3.14.2.23 [Reserved]

3.14.2.24 ASTM D2697-86(1998) (Reapproved 1998), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, IBR approved for Sec. 63.5160(c).

3.14.2.25 ASTM D6093-97, Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, IBR approved for Sec. 63.5160(c).

3.14.3 The materials listed below are available for purchase from the American Petroleum Institute (API), 1220 L Street, NW., Washington, DC 20005.

3.14.3.1 API Publication 2517, Evaporative Loss from External Floating-Roof Tanks, Third Edition, February 1989, IBR approved for Sec. 63.111 of Subpart G of 40 CFR Part 63.

3.14.3.2 API Publication 2518, Evaporative Loss from Fixed-roof Tanks, Second Edition, October 1991, IBR approved for Sec. 63.150(g)(3)(i)(C) of Subpart G of 40 CFR Part 63.

3.14.3.3 API Manual of Petroleum Measurement Specifications (MPMS) Chapter 19.2, Evaporative Loss From Floating-Roof Tanks (formerly API Publications 2517 and 2519), First Edition, April 1997, IBR approved for Sec. 63.1251 of Subpart GGG of 40 CFR Part 63.

3.14.4 State and Local Requirements.

The materials listed below are available at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M St., SW., Washington, DC. Additionally, the California South Coast Air Quality Management District materials are available at <http://www.aqmd.gov/permit/spraytransferefficiency.html>.

3.14.4.1 California Regulatory Requirements Applicable to the Air Toxics Program, January 5, 1999, IBR approved for Sec. 63.99(a)(5)(ii) of Subpart E of 40 CFR Part 63.

3.14.4.2 New Jersey's Toxic Catastrophe Prevention Act Program, (July 20, 1998), Incorporation By Reference approved for Sec. 63.99(a)(30)(i) of Subpart E of 40 CFR Part 63.

3.14.4.3 Delaware.

3.14.4.3.1 Letter of June 7, 1999 to the U.S. Environmental Protection Agency Region 3 from the Delaware Department of Natural Resources and Environmental Control requesting formal full delegation to take over primary responsibility for implementation and enforcement of the Chemical Accident Prevention Program under Section 112(r) of the Clean Air Act Amendments of 1990.

3.14.4.3.2 Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management, Accidental Release Prevention Regulation, Sections 1 through 5 and Sections 7 through 14, effective January 11, 1999, IBR approved for Sec. 63.99(a)(8)(i) of Subpart E of 40 CFR Part 63.

3.14.4.3.3 State of Delaware Regulations Governing the Control of Air Pollution (October 2000), IBR approved for Sec. 63.99(a)(8)(ii)-(v) of Subpart E of 40 CFR Part 63.

3.14.5 The materials listed below are available for purchase from the National Institute of Standards and Technology, Springfield, VA 22161, (800) 553-6847.

3.14.5.1 Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices 1998, IBR approved for Sec. 63.1303(e)(3).

3.14.5.2 [Reserved]

3.14.6 The following material is available from the National Council of the Paper Industry for Air and Stream Improvement, Inc. (NCASI), P. O. Box 133318, Research Triangle Park, NC 27709-3318 or at <http://www.ncasi.org>: NCASI Method DI/MEOH-94.02, Methanol in Process Liquids GC/FID (Gas Chromatography/Flame Ionization Detection), August 1998, Methods Manual, NCASI, Research Triangle Park, NC, IBR approved for Sec. 63.457(c)(3)(ii) of Subpart S of 40 CFR Part 63.

3.14.7 The materials listed below are available for purchase from AOAC International, Customer Services, Suite 400, 2200 Wilson Boulevard, Arlington, Virginia, 22201-3301, Telephone (703) 522-3032, Fax (703) 522-5468.

3.14.7.1 AOAC Official Method 978.01 Phosphorus (Total) in Fertilizers, Automated Method, Sixteenth edition, 1995, IBR approved for Sec. 63.626(d)(3)(vi).

3.14.7.2 AOAC Official Method 969.02 Phosphorus (Total) in Fertilizers, Alkalimetric Quinolinium Molybdophosphate Method, Sixteenth edition, 1995, IBR approved for Sec. 63.626(d)(3)(vi).

3.14.7.3 AOAC Official Method 962.02 Phosphorus (Total) in Fertilizers, Gravimetric Quinolinium Molybdophosphate Method, Sixteenth edition, 1995, IBR approved for Sec. 63.626(d)(3)(vi).

3.14.7.4 AOAC Official Method 957.02 Phosphorus (Total) in Fertilizers, Preparation of Sample Solution, Sixteenth edition, 1995, IBR approved for Sec. 63.626(d)(3)(vi).

3.14.7.5 AOAC Official Method 929.01 Sampling of Solid Fertilizers, Sixteenth edition, 1995, IBR approved for Sec. 63.626(d)(3)(vi).

3.14.7.6 AOAC Official Method 929.02 Preparation of Fertilizer Sample, Sixteenth edition, 1995, IBR approved for Sec. 63.626(d)(3)(vi).

3.14.7.7 AOAC Official Method 958.01 Phosphorus (Total) in Fertilizers, Spectrophotometric Molybdovanadophosphate Method, Sixteenth edition, 1995, IBR approved for Sec. 63.626(d)(3)(vi).

3.14.8 The materials listed below are available for purchase from The Association of Florida Phosphate Chemists, P.O. Box 1645, Bartow, Florida, 33830, Book of Methods Used and Adopted By The Association of Florida Phosphate Chemists, Seventh Edition 1991, IBR.

3.14.8.1 Section IX, Methods of Analysis for Phosphate Rock, No. 1 Preparation of Sample, IBR approved for Sec. 63.606(c)(3)(ii) and Sec. 63.626(c)(3)(ii).

3.14.8.2 Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus-- $P_2O_5$  or  $Ca_3(PO_4)_2$ , Method A-Volumetric Method, IBR approved for Sec. 63.606(c)(3)(ii) and Sec. 63.626(c)(3)(ii).

3.14.8.3 Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus-  $P_2O_5$  or  $Ca_3(PO_4)_2$ , Method B--Gravimetric Quimociac Method, IBR approved for Sec. 63.606(c)(3)(ii) and Sec. 63.626(c)(3)(ii).

3.14.8.4 Section IX, Methods of Analysis For Phosphate Rock, No. 3 Phosphorus-  $P_2O_5$  or  $Ca_3(PO_4)_2$ , Method C--Spectrophotometric Method, IBR approved for Sec. 63.606(c)(3)(ii) and Sec. 63.626(c)(3)(ii).

3.14.8.5 Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-  $P_2O_5$ , Method A--Volumetric Method, IBR approved for Sec. 63.606(c)(3)(ii), Sec. 63.626(c)(3)(ii), and Sec. 63.626(d)(3)(v).

3.14.8.6 Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates,

No. 3 Total Phosphorus- P<sub>2</sub>O<sub>5</sub>, Method B--Gravimetric Quimociac Method, IBR approved for Sec. 63.606(c)(3)(ii), Sec. 63.626(c)(3)(ii), and Sec. 63.626(d)(3)(v).

3.14.8.7 Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus- P<sub>2</sub>O<sub>5</sub>, Method C--Spectrophotometric Method, IBR approved for Sec. 63.606(c)(3)(ii), Sec. 63.626(c)(3)(ii), and Sec. 63.626(d)(3)(v).

3.14.9 ASME standard number QHO-1-1994 and QHO-1a-1996 Addenda. This standard is titled as "Standard for the Qualification and Certification of Hazardous Waste Incinerator Operators." You may obtain a copy of this document from the American Society of Mechanical Engineers, 345 East 47th Street, New York, N.Y. 10017. You may inspect a copy at the RCRA Information Center, Crystal Gateway One, 1235 Jefferson Davis Highway, Arlington, VA 22202, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

3.14.10 The following material is available for purchase from at least one of the following addresses: ASME International, Orders/Inquiries, P.O. Box 2300, Fairfield, NJ 07007-2300; or Global Engineering Documents, Sales Department, 15 Inverness Way East, Englewood, CO 80112; ANSI/ASME PTC 19.10-1981, Flue and Exhaust Gas Analyses, IBR approved for Sec. 63.5160(d)(1)(iii).

### 3.15 Availability of information and confidentiality.

#### 3.15.1 Availability of information.

3.15.1.1 With the exception of information protected through Part 2 of Chapter I of Title 40, all reports, records, and other information collected by the Administrator under 40 CFR Part 63 are available to the public. In addition, a copy of each permit application, compliance plan (including the schedule of compliance), notification of compliance status, excess emissions and continuous monitoring systems performance report, and Title V permit is available to the public, consistent with protections recognized in Section 503(e) of the Act.

3.15.1.2 The availability to the public of information provided to or otherwise obtained by the Administrator under 40 CFR Part 63 shall be governed by Part 2 of Chapter I of Title 40.

#### 3.15.2 Confidentiality.

3.15.2.1 If an owner or operator is required to submit information entitled to protection from disclosure under Section 114(c) of the Act, the owner or operator may submit such information separately. The requirements of Section 114(c) of the Act shall apply to such information.

3.15.2.2 The contents of a Title V permit shall not be entitled to protection under Section 114(c) of the Act; however, information submitted as part of an application for a Title V permit may be entitled to protection from disclosure.

3.15.2.3 Any information provided to or otherwise obtained by the Department shall be made available to the public unless it is determined to be confidential under 7 **Del. C.**, Ch 60, §6014 or 29 **Del. C.**, Ch 100, §10002(d).