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August 9, 2019

Legislative Reference Library  
645 State Office Building  
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St. Paul, MN 55155

RE: Minnesota Pollution Control Agency's Proposed Amendments to Rules Governing Air Quality –  
Incorporation by Reference of Federal Air Emission Standards; Revisor's ID No. 4452

Dear Librarian:

The Minnesota Pollution Control Agency (MPCA) intends to adopt amendments to the state air quality standards to incorporate by reference 31 existing federal air quality standards into state rules, and make minor corrections and clarifications to existing air quality rules. The MPCA plans to publish a Notice of Intent to Adopt Rules in the August 12, 2019, *State Register*.

The MPCA has prepared a Statement of Need and Reasonableness (SONAR). As required by Minn. Stat. §§ 14.131 and 14.23, the MPCA is sending the Legislative Reference Library an electronic copy of the SONAR at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have any questions, please contact me at 651-757-2439 or [mary.lynn@state.mn.us](mailto:mary.lynn@state.mn.us).

Sincerely,

A handwritten signature in black ink that reads 'Mary H. Lynn'.

Mary H. Lynn  
Rule Coordinator  
Agency Rules Unit  
Resource Management & Assistance Division

MHL:mb

Attachment: SONAR



## **STATEMENT OF NEED AND REASONABLENESS**

**In the Matter of Proposed Revisions of  
Minn. R. chs. 7005, 7007, 7011, 7017, and 7019 Amending the Air  
Quality Standards to Incorporate Federal Requirements by Reference  
and Make Minor Corrections and Clarifications to Existing Rules**

**Minnesota Pollution Control Agency  
Environmental Analysis and Outcomes Division  
May 2019**

The *State Register* notice, this Statement of Need and Reasonableness (Statement) and the proposed rule will be available during the public comment period on the MPCA's rulemaking web site:

<https://www.pca.state.mn.us/air/rulemaking-incorporation-reference>

**MPCA contact for information, documents, or alternative formats:**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio.

To make a request, contact Mary Lynn, Rulemaking Coordinator,  
Minnesota Pollution Control Agency,  
520 Lafayette Road North, St. Paul, MN 55155-4194;  
telephone 651-757-2439; 1-800-657-3864;  
email; or  
use your preferred telecommunications relay service.

**Notice Regarding the Excerpted Language in this Statement**

The Minnesota Pollution Control Agency (MPCA) has excerpted language from the draft rules and included those excerpts in this Statement at the point that the reasonableness of each provision of the rules is discussed. This was done to assist the reader in connecting the rule language with its justification. However, there may be slight discrepancies between the excerpted language and the rule amendments as they are proposed. The MPCA intends that the rule language published in the *State Register* at the time the rules are formally proposed is the rule language that is justified in this Statement.

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## Acronyms or abbreviations

Chapter	ch.
Clean Air Act	CAA
Code of Federal Regulations	CFR
Emission Guidelines	EG
Landfill Gas	LFG
Minnesota Management and Budget	MMB
Minnesota Rules	Minn. R.
Minnesota Statutes	Minn. Stat.
Minnesota Pollution Control Agency	MPCA
Municipal Solid Waste	MSW
New Source Performance Standards	NSPS
Notice of Proposed Rulemaking	NPRM
Particulate matter	PM
Section	§
Statement of Need and Reasonableness	SONAR or Statement
United States Environmental Protection Agency	U.S. EPA
New Source Performance Standard	NSPS
National Emission Standard for Hazardous Air Pollutants	NESHAP

# 1. Introduction and overview

## A. Summary

The federal Clean Air Act (CAA) establishes the national baseline for air quality standards and the process to authorize states to implement those standards. The CAA requires the United States Environmental Protection Agency (U.S. EPA) to develop National Emissions Standards for Hazardous Air Pollutants (NESHAP) and technology based standards which apply to specific categories of new or modified stationary sources. These standards are referred to as New Source Performance Standards (NSPS). The U.S. EPA may delegate the authority for the implementation and enforcement of standards promulgated under the CAA to states that demonstrate appropriate mechanisms for implementing and enforcing the standards. The MPCA has received delegation to implement NESHAP and NSPS and the procedures and responsibilities for maintaining the delegation are formalized in agreements between the U.S. EPA and the MPCA. According to those agreements, the MPCA must ensure that the federal standards have the effect of state law, which the MPCA does by amending Minnesota's state rules to incorporate the federal standards. The proposed amendments add 30 federal NSPS/NESHAP to the state rules, in most cases by direct incorporation by reference.

The CAA also authorizes the U.S. EPA to issue emission guidelines (EG) for stationary sources when there is a corresponding NSPS for new sources. States may submit a plan (a "111(d) Plan") to the U.S. EPA addressing how the state will implement and enforce the guidelines within the state. The MPCA prepares and submits a 111(d) Plan when the MPCA believes it is more appropriate for the state to administer the compliance and enforcement of an EG rather than being subject to a federal plan. The state's 111(d) Plan must include emission standards that are equivalent to EG issued by the U.S. EPA. In this rulemaking, the MPCA is proposing to incorporate by reference EG for existing municipal solid waste landfills.

In addition to the federal standards and EG being incorporated by reference, the MPCA is proposing the following amendments to state-only requirements:

- In addition to incorporating the federal NSPS for residential hydronic heaters and forced-air furnaces ([40 CFR part 60, subpart QQQQ](#)), the MPCA is proposing an exemption from state rules that require owners or operators to obtain a permit for those units when the NSPS applies.
- Eliminating the requirement to provide annual permit compliance certifications to both U.S. EPA and the MPCA and instead only requiring that they be provided to the MPCA.
- The MPCA intends to incorporate most of the federal standards addressed in this rulemaking "as amended" so that future amendments to the federal standards automatically become state rules. However, for the following seven standards, the MPCA is incorporating the version of the standard in effect as of July 1, 2018, and does not proposed to incorporate future amendments to the federal standard. Additional discussion of each of these changes is provided in Part 4. E of this Statement:
  - [40 CFR part 60, subpart QQQQ](#) (NSPS for New Residential Hydronic Heaters and Forced-Air Furnaces), proposed at 7011.2960
  - [40 CFR part 60, subpart TTTT](#) (NSPS for Greenhouse Gas Emissions for Electric Generating Units), proposed at 7011.0562

- [40 CFR part 60, subpart OOOO](#) (NSPS for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced after August 23, 2011 and on or before September 18, 2015), proposed at 7011.3325, and [40 CFR part 60, subpart OOOOa](#) (NSPS for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015), proposed at 7011.3325
- [40 CFR part 60, subpart XXX](#) (NSPS for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014), proposed at 7011.3515
- The MPCA is amending two existing incorporations by reference- [40 CFR part 60, subpart AAA](#) (NSPS for New Residential Wood Heaters), incorporated at 7011.2950, and [40 CFR part 63, subpart UUUUU](#) (NESHAP for Coal-and Oil-Fired Electric Utility Steam Generating Units) incorporated at 7011.0563, to incorporate the federal standards in effect as of July 1, 2018, and not “as amended.”
- Minor clarifying changes and corrections to existing rules. These amendments correct inconsistencies in the titles of previously adopted rules, update referenced materials, make consistency changes in how the rules describe incorporated federal requirements, and make non-substantive adjustments and modifications to clarify existing rule requirements.

## B. Statement of general need

The general areas of need for the proposed amendments are:

- To maintain an effective air pollution program in Minnesota by adopting standards that are tailored to specific emissions and activities;
- To maintain the delegation from U.S. EPA to implement and enforce certain provisions of the CAA in Minnesota;
- To maintain a level of regulation that is protective of Minnesota’s air quality and consistent with Minnesota’s environmental priorities; and
- To ensure that the rules are clear, consistent, and current.

The need to maintain an effective air pollution program in Minnesota by adopting standards for specific emissions and activities. The state’s air pollution control program is based on a foundation of state rules implemented by the MPCA. Numerous federal NSPS/NESHAP/EG<sup>1</sup> have already been adopted into the state rules, and the MPCA has already been delegated the authority to implement those requirements. In this rulemaking the MPCA is proposing to update the existing rules by incorporating additional NSPS/NESHAP/EG. The proposed amendments address the need to maintain an effective air pollution program by providing a clear, current, and complete regulatory program that the regulatory community can understand and comply with, and that the MPCA can effectively implement and enforce. The federal NSPS/NESHAP/EG apply to facilities regardless of whether the MPCA incorporates the standard into state rule; however, adopting them into rules gives them the effect of state law, which establishes the enforcement capability needed to maintain the delegation by the U.S. EPA for implementing these standards.

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<sup>1</sup> NESHAP address “hazardous air pollutants” that include (currently) 188 pollutants as defined in CAA Section 112.

The need to maintain the delegation from U.S. EPA to administer federal performance standards in Minnesota. The proposed amendments are required to maintain the MPCA's delegation agreements related to the NSPS/NESHAP. The most recent delegation agreement between U.S. EPA and the State of Minnesota requires that delegated standards must have the force of law in Minnesota. To achieve that, the MPCA needs to adopt federal NSPS/NESHAP/EG into state rule.

Section 111(c) allows a state to develop procedures for implementing and enforcing standards in the state, and if the procedures are adequate, U.S. EPA must delegate the program to the state. A delegated program must include standards that are at least as stringent as the federal standards. Operating a delegated state program:

- Assures a higher degree of consistency between the state and federal regulations;
- Provides access to additional federal resources to support implementation and enforcement of the standards;
- Allows for the MPCA to manage federal requirements if they affect unique state environmental issues; and
- Reduces the need for regulated parties to understand and comply with different federal and state regulations.

The NSPS and NESHAP are important parts of the federal air quality program, and by extension, Minnesota's program for protecting human health and the environment.

Maintaining the federal delegation is a benefit to the regulated community in Minnesota. As a delegated state, the MPCA, rather than the U.S. EPA, is the primary enforcement agency for the standards. Therefore, once the MPCA has received delegation, regulated facilities need only communicate and report to the MPCA instead of to both agencies.<sup>2</sup> Maintaining the MPCA's delegation avoids duplicative reporting requirements and confusion regarding enforcement of the rules. If the MPCA did not maintain the delegation of the program, affected facilities would encounter more duplication of effort and regulatory uncertainty.

Maintaining the federal delegation is a benefit to Minnesota citizens in protecting their health and the environment. As the primary enforcement agency for the incorporated federal standards, the MPCA is able to direct state resources to health and environmental protection priorities that may not be a priority to U.S. EPA, and can address these priorities more promptly and more frequently. Those priority state activities include enforcement of non-compliance, inspection of affected facilities, compliance review of tests and reports, responsiveness to implementation questions, and communicating with the public about how a standard protects ambient air quality, human health, and the environment.

The need to maintain a level of regulation protective of Minnesota's air quality and consistent with Minnesota's environmental priorities. The MPCA previously adopted many federal NSPS/NESHAP/EG into state rules and, in order to accommodate future changes to the federal regulations, incorporated those standards "as amended." Incorporating federal regulations "as amended" means that whenever the federal regulations are changed, the state rules incorporate those changes to reflect the most current version of the federal regulation.

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<sup>2</sup> There are some limited exceptions to the MPCA's primacy, such as, key decision making authority that is retained by U.S. EPA and Title V compliance certifications that go to both the MPCA and U.S. EPA.



However, at the time of this rulemaking, certain federal standards are being either proposed for amendment or are under consideration by the U.S. EPA for amendment. The current version of those standards establish performance standards that are protective of human health and the environment, and in most instances, implementation has been completed at all Minnesota affected facilities. Proposed amendments are potentially inconsistent with Minnesota's environmental priorities if they relax standards that are already in place or that may not be sufficient to protect of Minnesota's air quality.

When the MPCA is uncertain whether the pending changes to federal standards will maintain the current level of protection for the environmental and human health, then it is appropriate to consider incorporating future amendments to these particular standards through the state's public rulemaking process rather than through automatic incorporation through application of the phrase "as amended." This way, the state of Minnesota will have the opportunity to evaluate, on a case by case basis, whether any decrease in the level of protection is appropriate for the State. The proposed amendments to parts 7011.0562, 7011.0563, 7011.2950, 7011.2960, 7011.3325, and 7011.3515, add the language "as amended through July 1, 2018" to ensure that the current version of the federal standards incorporated by those rules will remain in effect in Minnesota and maintain the level of environmental protection that presently exists. In these cases, if future amendments to the federal regulations are evaluated and later determined to be appropriate, they can be incorporated through the state's public rulemaking process. Issues specific to each of these incorporations are discussed in Part 4, item E of this Statement.

The need to ensure that the rules are clear, consistent, and current. The state rules are frequently amended to add new requirements or revise existing ones. Over time and multiple revisions, rule language can become inconsistent, out of date, duplicative, or incorrect. In this rulemaking the MPCA is addressing the need to make "housekeeping" changes that have no substantive effect other than to make existing rules clear, consistent and accurate.

### **C. Scope of the proposed amendments:**

The following chapters of Minnesota Rules (Minn. R.) will be affected by the proposed changes.

- Minn. R. chapter 7005. This chapter establishes the definitions and abbreviations used in the state air pollution control rules.
- Minn. R. chapter 7007. This chapter establishes specific conditions for air emission permits and offsets.
- Minn. R. chapter 7011. This chapter establishes standards for stationary sources.
- Minn. R. chapter 7017. This chapter establishes monitoring and testing requirements.
- Minn. R. chapter 7019. This chapter establishes emission inventory requirements.

The MPCA's priority in conducting this rulemaking is to incorporate a number of new NSPS/NESHAP/EG into chapter 7011. These existing federal requirements are being incorporated by reference, in most cases verbatim.

The MPCA is proposing two substantive amendments to chapter 7007: one amendment is a companion to a NSPS for hydronic heaters and forced air furnaces that is proposed elsewhere, and another proposes to remove an obsolete requirement for submitting notice to U.S. EPA.

In addition to the amendments to incorporate substantive federal requirements, the MPCA is making many changes solely to correct errors, maintain consistency, and clarify existing requirements. For those

rule parts that are being amended only to make those kinds of housekeeping changes, the scope of this rulemaking does not include any additional, substantial amendments to these rules. During the public comment period, additional non-substantive changes may be identified to the rules being proposed or to other rules in the chapters being revised. The MPCA may consider additional clarifying or consistency amendments, but is not considering making any substantive changes to the rules other than those being proposed.

## **D. Delegation of federal performance standards**

The CAA directs U.S. EPA to set standards of performance and emission guidelines to control regulated air pollutants, including hazardous air pollutants. The standards and emission guidelines are codified in the Code of Federal Regulations (CFR) parts 60, 61, 62, and 63.

The following explanation of the process of delegating CAA requirement is provided by U.S EPA from <https://www.epa.gov/caa-permitting/delegation-clean-air-act-authority>:

### ***What is delegation for 40 CFR Parts 60, 61 and 63 Standards?***

*After individual NSPS/NESHAPs are promulgated, EPA may implement and enforce the requirements. State and local regulatory agencies often implement and enforce similar requirements by adopting analogous regulations under state or local authority. In addition, Clean Air Act sections 111 and 112 allow EPA to transfer primary implementation and enforcement authority for most of the federal standards to state, local, or tribal regulatory agencies. This transfer of authority is called delegation. Upon delegation of a standard, sources must send any required notifications or reports directly to the delegated agency. The delegated agency may also receive authority to make certain source-specific decisions that reflect flexibility allowed by the standard.*

### ***What is delegation for 40 CFR Part 60 Emission Guidelines and Part 62 State/Federal Plans?***

*Though 111(d)/129 delegations are similar to NSPS/NESHAP delegations, a primary difference is once individual Part 60 Emission Guidelines are promulgated, EPA or State and local regulatory agencies need a Federal Plan or State Plan approved in Part 62 to implement and enforce the requirements.*

**NESHAP** The CAA (Section 112) directs U.S. EPA to develop National Emission Standards for Hazardous Air Pollutants (NESHAP) to control the release of hazardous air pollutants. These standards are codified in 40 CFR parts 61 and 63 and apply to “sources of hazardous air pollutants (HAP). “Major” HAP sources are stationary sources that have the potential to emit greater than ten tons per year of a single HAP or 25 tons per year of all HAPs combined. “Area” HAP sources have the potential to emit HAP at quantities less than the major source thresholds.

The MPCA has previously adopted many NESHAP into state rules and has been delegated the authority to implement and enforce them in Minnesota. The process for the MPCA to maintain delegation for Part 61 NESHAP is governed via a letter of approval from U.S. EPA. The process for the MPCA to maintain delegation for Part 63 NESHAP is governed through a memorandum of agreement between U.S. EPA and the MPCA. Both the letter of delegation and memorandum of agreement require that the MPCA must give the NESHAP the effect of state law in order to maintain its delegated authority to implement and enforce the NESHAP on behalf of the U.S. EPA.

**NSPS** New Source Performance Standards (NSPS) establish emissions control technologies that apply to newly constructed or modified stationary sources in specific industrial source categories. Section 111(b) of the CAA requires U.S. EPA to develop these standards, which are codified in 40 CFR Part 60.

The MPCA has previously adopted numerous NSPS and has been delegated the authority to implement those standards in Minnesota. State rulemaking is necessary to give the NSPS the effect of state law. Upon adoption, the MPCA will be delegated the authority to enforce the incorporated standards. This delegation is controlled through a memorandum of agreement between U.S EPA and the MPCA.

**Emission Guidelines** U.S. EPA promulgates emission guidelines (EG) for states to use to adopt standards of performance for some existing stationary sources. These EG are described in Section 111(d). EG are not directly applicable to a source; they are “guidelines” for states to follow when adopting standards. Should a state choose to not accept the responsibility to regulate an existing emission source category under U.S. EPA’s EG, U.S EPA is then required to prepare a federal plan that makes the standard effective within a state. To maintain Minnesota’s existing delegation of landfill gas control standards, the MPCA is proposing to incorporate by reference U.S. EPA’s revised EG. Upon the completion of this rulemaking, the MPCA will submit a 111(d) plan to U.S. EPA to address the requirements of [40 CFR part 60, subpart B](#).

## 2. Public participation and stakeholder involvement

Several Minnesota statutes establish specific requirements for agencies to provide notice of rulemaking. In this Statement of Need and Reasonableness (Statement), the MPCA is documenting how it has met or will meet those requirements. The following discussion of the MPCA's process of providing notice addresses two areas: how the statutorily required notices were or will be provided and how the MPCA addressed the need to provide additional notice of the rulemaking.

### A. Statutorily required notice

The MPCA has or will provide the following statutorily required notices:

1. Minn. Stat. § 14.101. A Request for Comments was published in the February 20, 2018 *State Register*, and posted on the MPCA's Public Notices webpage. On that date, GovDelivery<sup>3</sup> notice was also sent via email to 2,228 persons who had registered to receive notice of this rulemaking. On February 16, 2018, a letter describing the amendments being considered, along with a copy of the Request for Comments and a list of the federal regulations being considered, was mailed<sup>4</sup> to the owners and operators of all municipal solid waste landfills. On March 6, 2018, 30 days before the close of the comment period on April 6, 2018, the MPCA also sent an email with information about the Request for Comments comment period to a number of persons and organizations known to be interested in issues relating to wood smoke and forced air furnaces.
2. Minn. Stat. § 14.14, subd. 1a. The MPCA will publish a Notice and the proposed amendments in the *State Register* at least 30 days before a hearing is scheduled or the close of the comment period. The MPCA intends to hold one day of hearings in St. Paul.
3. Minn. Stat. § 14.14, subd. 1a. On the date the Notice is published in the *State Register*, the MPCA also intends to send a GovDelivery notice to all persons who have registered with the MPCA for the purpose of receiving notice of rule proceedings. The GovDelivery notice will provide a brief description of the rulemaking and comment period and a hyperlink to where the rulemaking documents (the Notice, Statement and attachments, and the proposed rule revisions) can be viewed. Although no one has requested to receive non-electronic notice, if a request is received they will receive copies of the Notice in hard copy via U.S. Mail at least 33 days before a hearing is scheduled or the close of the comment period.
4. Minn. Stat. § 14.116. The MPCA intends to send a cover letter with a link to electronic copies of the Notice, Statement, and the proposed revisions to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposal, and the chair of the Legislative Coordinating Commission. This letter will be sent electronically on the day that Notice and proposed rules are published in the *State Register*, or, if mailed notice is requested, at least 33 days before the hearing or close of the comment period.

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<sup>3</sup> For notices required by Minn. Stat. ch. 14, the MPCA uses a self-subscription service (GovDelivery), that allows interested and affected parties to self-register to receive rule related notices through email.

<sup>4</sup> For all mailed notices, the MPCA mails the notice at least 33 days before the close of the public comment period.

Although this statute also requires special notice if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, this requirement does not apply for this rulemaking because no bill was authored within the past two years granting authority for this rulemaking.

5. Minn. Stat. § 14.131. The MPCA will send a copy of the Statement to the Legislative Reference Library at the same time as the notice required under Minn. Stat. § 14.14, subd. 1a is sent.
6. Minn. Stat. § 14.131. The MPCA will consult with Minnesota Management and Budget (MMB) by sending MMB copies of the proposed rule language and Statement at the same time it provides them to the Governor's office for review and approval. The consultation with MMB will occur before the MPCA publishes the Notice and proposed rules.

The MPCA believes that by providing the above identified notices, and by providing the notices identified in the Additional Notice Plan below, the MPCA will adequately provide notice of this rulemaking to persons interested in or affected by these rules, pursuant to Minn. Stat. § 14.14, subd. 1a.

## **B. Additional notice plan**

Minn. Stat. §§ 14.131 and 14.14 require that an agency include in its Statement a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule, or explain why these efforts were not made. The MPCA will request the Office of Administrative Hearings to review and approve the following Additional Notice Plan, pursuant to Minn. R. pt. 1400.2060.

The MPCA intends to provide additional notice at the time the proposed rules are published for public comment through 1) the development of an extensive GovDelivery mailing list, and 2) through specific notification activities.

Development of an extensive GovDelivery mailing list GovDelivery is a self-subscription service the MPCA uses to electronically (email) notify interested or affected persons of various updates and public notices issued on a wide range of topics, including rulemakings. The MPCA maintains a GovDelivery mailing list that includes persons and organizations who wish to be notified on all MPCA rulemaking activities. This "all MPCA rulemaking" GovDelivery list will receive the statutorily required notice under Minn. Stat. pt. 14.14. However, in addition to sending notice to this statutorily required mailing list, the MPCA also intends to send to a mailing list of persons and organizations that have registered to receive notice specifically about this rulemaking.

The MPCA considers its actions to encourage registering to receive GovDelivery notices to be part of its additional notice plan because those actions have resulted in many more people being aware of this rulemaking than would have been otherwise involved. When the rules are published for public comment the MPCA plans to provide notice via GovDelivery to this extensive list of people and organizations who have identified their interest in this rulemaking. The MPCA has encouraged registering for GovDelivery notices by the following activities.

Webpage. At the start of the rule development process the MPCA established a webpage <https://www.pca.state.mn.us/air/rulemaking-incorporation-reference> to provide information about the proposed rulemaking. On this webpage the MPCA provided a link to the GovDelivery system and a notice stating- "*Stay up to date on this rulemaking. Sign up for emails tracking the progress of this*

ongoing rulemaking: *Incorporating Federal Emission Requirements and Other Air Quality Standards.*”

The webpage also included:

- A description of the amendments being considered for incorporation.
- The Request for Comments as published.
- Information about the proposed amendments, including web links to all the *Federal Registers* where the NSPS/NESHAP/EG proposed to be incorporated can be viewed.
- A schedule of comment opportunities.
- Information about MPCA staff contacts.

The webpage will be updated as needed to add new information and documents, such as this Statement and exhibits, the rules as proposed, and the Notice.

Pre-publication notices. Prior to publishing the Request for Comments for this rulemaking, the MPCA established a self-subscribing rule-specific mailing list at [https://public.govdelivery.com/accounts/MNPCA/subscriber/new?topic\\_id=MNPCA\\_326](https://public.govdelivery.com/accounts/MNPCA/subscriber/new?topic_id=MNPCA_326). On February 6, 2018, before the Request for Comments was published, a GovDelivery message was sent to 2,228 persons who had requested to be notified of “new MPCA rulemaking” to encourage them to register to receive notices specifically regarding this rulemaking.

In addition to that initial notice about this upcoming rulemaking, the MPCA encouraged registration by:

- Providing information about this rulemaking in the February 7, 2018, edition of the Air Mail Newsletter. Air Mail is an MPCA publication focusing on air quality issues. It is distributed via GovDelivery to over 1,900 registered persons. Subscribers to Air Mail include the general public, regulated facilities, media, consultants, and other government agencies.
- Providing the opportunity to register for future notices in the Request for Comments published on February 20, 2018.

By the time the proposed rules are published for public comment, the MPCA is confident that interested persons will have had ample opportunity to register to receive notice through GovDelivery. The GovDelivery notice the MPCA will provide at that time will consist of a brief explanation of the proposed rule amendments and a link to where the Notice and other rulemaking documents can be viewed.

Specific notification activities when the rules are proposed for comment. When the rules are proposed for public comment the MPCA intends to conduct the following additional activities to ensure that all interested people, businesses, and affected communities have a chance to meaningfully engage in the comment process.

- Posting the following information on the MPCA webpage established for this rule: the Notice, Statement, Statement attachments, the proposed revisions, summary information, and plain language instructions about what is being proposed and how to comment.
- Publishing the Notice, Statement and proposed rules on the MPCA’s Public Notice webpage for the full term of the comment period. (<https://www.pca.state.mn.us/public-notices>.)
- Providing notice in the MPCA publication *Air Mail*, an MPCA newsletter. *Air Mail* subscribers include a wide range of stakeholders, including private citizens, regulated parties, consultants, other units of government, nonprofits, and media organizations. Although it is not possible to assure that the *Air Mail* newsletter will be published exactly at the start of the public comment period, the MPCA will provide the maximum possible notice by either publishing notice of the comment period in the *Air Mail* edition that is published closest to the public comment period

or providing a special bulletin notice to all the subscribers to *Air Mail* when the rules are proposed.

- Providing notice to groups that have previously expressed interest in MPCA rulemaking or who represent constituencies that may be interested in MPCA rulemaking. At a minimum, these additional groups<sup>5</sup> will include:
  - Minnesota Chamber of Commerce
  - Minnesota Environmental Science and Economic Review Board
  - Minnesota Center for Environmental Advocacy
  - Minnesota Environmental Partnership
  - Sierra Club North Star Chapter
- Providing notice to tribal contacts. The MPCA plans to send electronic notice to all federally recognized tribes in Minnesota, specifically the tribal contacts identified for air issues. The list of tribal contacts is maintained by the MPCA and is edited quarterly.
- Providing notice to U.S EPA Region V air program staff.
- Providing notice to people who are might be expected to have a special interest in the proposed rules. These additional notifications may include notice directed to:
  - People or organizations interested in issues associated with wood burning
  - Solid waste landfill owners and operators
  - Minnesota businesses subject to the Part 40, subpart TTTT standards for greenhouse gases for electric generating units
  - Minnesota businesses subject to the Part 40, subparts OOOO and OOOOa standards for crude oil and natural gas facilities
- If the rule affects agricultural land, the MPCA is required by Minn. Stat. § 14.111 to provide a copy of the proposed rule changes to the Commissioner of the Minnesota Department of Agriculture (MDA) no later than 30 days before publication of the proposed rule in the *State Register*. Although the MPCA does not expect this proposal to have any effect on agricultural land, as an additional notice and a courtesy, the MPCA intends to provide pre-publication notice to the MDA staff identified as being interested in MPCA rulemaking.

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<sup>5</sup> Note: members of some of these associations may already subscribe to receive GovDelivery regarding this rulemaking; however, it is appropriate to send additional notice to ensure that these associations are notified of the proposed rule amendments.

### 3. Statutory authority

The MPCA has a general statutory authority to adopt these rules under [Minn. Stat. § 116.07](#), as follows:

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



## 4. Reasonableness of the amendments

Minn. Stat. ch. 14 requires the MPCA to make an affirmative presentation of facts establishing the need for and reasonableness of the proposed rules. In general terms, this means that the MPCA must set forth the reasons for its proposal, and the reasons must not be arbitrary and capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the MPCA is appropriate. The MPCA discusses the general reasonableness of the proposed rules in item A and in items B and C of this part, provides a discussion of two aspects of the proposed rules; the use of incorporation by reference and the reliance on the justification provided when the federal regulations were promulgated. Item D provides a discussion of the non-substantive changes being proposed. Item E addresses the specific reasonableness of each amendment.

### A. General reasonableness

The general reasonableness of adopting the proposed amendments has its basis in the needs identified for this rulemaking:

- Administer an effective air pollution program. The MPCA is committed to providing an effective air pollution program and believes that incorporating the federal NSPS/NESHAP/EG by reference is the most effective way to establish reasonable emission control conditions for the operation of the identified air emission activities. Incorporating the federal standards into the state rules is an effective way to implement the air quality program, for both the regulated community and the MPCA.
- Maintain delegation for the air program. The MPCA is committed to maintaining its delegation to implement the CAA requirements that protect air quality. It is therefore reasonable to conduct rulemaking to incorporate the proposed amendments to meet the responsibilities of that delegation.
- Protect Minnesota's air quality and reflect Minnesota's environmental priorities. The MPCA has previously adopted many federal air quality standards by reference, in most cases, verbatim. The MPCA considers that the federal standards are protective of air quality and in most cases, does not consider it necessary or reasonable to propose more stringent requirements than are imposed federally. This continues to be the case for the NSPS/NESHAP/EG being proposed in this rulemaking- incorporating the federal standards is reasonable to protect air quality and consistent with Minnesota's environmental priorities. For some of the proposed standards, because of uncertainty about the nature of possible future amendments, the MPCA is reasonably limiting the incorporation to only apply to the current version of the federal standards.
- Clear, consistent and current rules. The general reasonableness of correcting and clarifying rules is self-evident. It is inherently reasonable to acknowledge and correct errors, resolve inconsistencies, and update obsolete language. A discussion of the major areas of correction and clarification is provided in Part 4, item D of this Statement.

## B. Reasonableness of using incorporation by reference

In this rulemaking the MPCA continues its use of incorporation by reference to adopt federal requirements. An incorporation by reference is a method of including other publications or documents as part of a rule. Incorporating material by reference makes these publications or documents enforceable parts of the rule while sparing the agency the time and expense of having to reproduce it as part of the rule.<sup>6</sup> The MPCA believes that incorporation by reference is the most effective way to meet the requirements of its CAA delegation by ensuring that the federal requirements are accurately and legally adopted into state rules. The use of incorporation by reference in this rulemaking to adopt the federal regulations is a reasonable mechanism to protect Minnesota's air quality, effectively implement the federal standards, and maintain the state's delegation status. The MPCA relies on the federal justification of the federal standards, as presented in the *Federal Register*, as the state's discussion of the reasonableness of the adoption of those requirements into state rules.

Although the MPCA has incorporated many federal standards "as amended" and intends, in this rulemaking, to continue the use of "as amended" for many of the standards proposed to be incorporated, the MPCA is proposing some specific exceptions. Incorporation "as amended" means that any future amendments to the incorporated federal regulations automatically become part of Minnesota rules. Although the use of "as amended," continues to be a reasonable and administratively efficient mechanism for maintaining consistency with the federal regulations, there are certain exceptions. For certain federal standards being proposed and for certain existing standards that were incorporated through previous rulemakings, the MPCA is instead incorporating those standards as they exist at the time these amendments are proposed (specified in the proposed rules as including all amendments through July 1, 2018).

During the Request for Comments, the MPCA received two comments, each citing a different position regarding the use of "as amended." A private individual identified a concern about the future level of Minnesota's environmental protection if federal standards become less stringent than they were at the time the standard was incorporated by reference. A national waste management organization took the opposite position and specifically requested that the landfill emission requirements in 40 Code of Federal Regulations, part 60, subpart Cf be incorporated "as amended" in order to automatically include future revisions. Both positions present valid concerns about the need to respond to future changes in federal regulations, and the MPCA carefully considered the consequences of incorporating federal regulations "as amended."

The MPCA has determined that in most cases, using the phrase "as amended" will continue to provide a reasonable mechanism for maintaining consistency with the federal air quality program and for ensuring the protection of Minnesota's environment. In the past, when U.S. EPA amended its standards, the revisions either increased the level of stringency or were updated to reflect new technology. In those cases it is reasonable to allow the state rules to be automatically updated to correspond to the federal regulations that still provide an acceptable level of environmental protection. However, the MPCA is concerned that for several pending federal amendments, the changes to the federal regulations will affect the level of environmental protection, possibly resulting in a reduced level of stringency that may not reflect state environmental priorities. The MPCA believes those types of changes should be considered on a case by case basis through the state's rulemaking process. For this reason, the MPCA is

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<sup>6</sup> From the 1997 Revisor of Statutes rule drafting manual

proposing to limit the incorporation of the following standards to only the version of the federal standards that are in effect at the time of this rulemaking:

- [40 CFR part 60, subpart QQQQ](#) (NSPS for New Residential Hydronic Heaters and Forced-Air Furnaces), proposed at 7011.2960;
- [40 CFR part 60, subpart TTTT](#) (NSPS for Greenhouse Gas Emissions for Electric Generating Units), proposed at 7011.0562;
- [40 CFR part 60, subpart OOOO](#) (NSPS for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced after August 23, 2011 and on or before September 18, 2015) and [40 CFR part 60, subpart OOOOa](#) (NSPS for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015), proposed at 7011.3325;
- [40 CFR part 60, subpart XXX](#) (NSPS for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014), proposed at 7011.3515;
- The MPCA is amending two existing incorporations by reference - [40 CFR part 60, subpart AAA](#) (NSPS for New Residential Wood Heaters), incorporated at 7011.2950, and [40 CFR part 63, subpart UUUUU](#) (NESHAP for Coal- and Oil-Fired Electric Utility Steam Generating Units) incorporated at 7011.0563, to limit the use of “as amended” so that only the federal standards in effect as of July 1, 2018 are incorporated by reference ;

These seven standards are proposed to be incorporated as they are in effect on July 1, 2018, and not, as other incorporations are adopted, to include all future amendments. These standards are either proposed for amendment by U.S. EPA or, in the case of subpart AAA, expected to be amended in the near future. Although federal amendments are not finalized, the MPCA has specific concerns that the final standards may reduce the level of environmental protection and that the amended version may be in conflict with Minnesota’s priorities and environmental mission. The MPCA believes that where there is a potential for this kind of conflict, the revised federal standards should be considered through the full state rulemaking process and should not be automatically revised through the application of “as amended.” Minnesota has a very complex administrative rulemaking process that requires extensive justification and multiple opportunities for public review and comment. Although the rulemaking process is complicated and time consuming (for the MPCA and also for the people and organizations that participate) it is in place for a good reason. Minnesotans place a high value on the transparency and fairness of their government, and the process of adopting rules that have the force and effect of law should reflect that value. The MPCA believes that in the case of the seven federal regulations identified above, where there is at this time no federal record on which to base the MPCA’s determination of reasonableness, it is reasonable to only incorporate the federal requirements as they exist at this time. The MPCA expects that there may be a need to conduct future rulemaking when U.S. EPA finalizes the amendments under consideration at this time. A more complete discussion of the specific differences between the current standards and the changes that may occur in the federal standards is provided in the specific reasonableness discussion in Part 4, item E of this Statement.

The MPCA is proposing July 1, 2018, as a reasonable effective date for the seven federal regulations proposed to be incorporated in this rulemaking without the use of “as amended.” This is the date on which the U.S. EPA updated its electronic code of regulations at <https://www.govinfo.gov/app/collection/cfr/2018/>. Limiting the incorporated regulations to the ones effective as of this date ensures that the MPCA and the regulated community are conveniently able to reference the federal regulations that have been incorporated.

During the public comment period the MPCA intends to make special reference to these rules that are not being incorporated “as amended” and may make revisions prior to adopting the rules based on comments received.

### **C. Reasonableness of using the federal justification to establish reasonableness**

For the amendments being considered in this rulemaking that incorporate federal standards by reference, the U.S. EPA has already published its justification for those standards and conducted a public review and comment process. U.S. EPA’s process for adopting federal NESHAP/NSPS/EG is similar to the state rulemaking process.

- In some cases, U.S.EPA will publish an Advance Notice of Proposed Rulemaking (NPRM) to solicit public comment on a rule change it is considering.
- When it is ready to propose a rule, U.S. EPA must publish a Notice of Proposed Rulemaking. The NPRM includes the proposed rule language and the U.S. EPA’s justification for the proposed rule, including background data, economic analysis and environmental justice assessment. An example outline of the type of discussion and justification provided by U.S.EPA is provided in Attachment 1. The NPRM is published in the *Federal Register* and a public comment period is provided.
- After considering the comments, and possibly revising the proposal, U.S.EPA will publish a final rule in the *Federal Register*, with a discussion of the expected effect of the rule and any changes made since the rule was proposed. An example outline of the type of discussion and justification provided by U.S.EPA is provided on page 3 of Attachment 1.

Because the federal regulations proposed to be incorporated by reference have been through an extensive process of justification and public review, the proposed amendments incorporating those federal standards by reference fulfill the “reasonableness” requirement of Minnesota’s Administrative Procedure Act. The *Federal Registers* in which the U.S. EPA proposed and adopted each of the proposed federal NSPS/ NESHAP/EG provide a complete discussion that establishes the reasonableness of each of the federal regulations being incorporated by reference. Links to each of the *Federal Registers* where the federal NSPS/NESHAP/EG were proposed and finalized are provided in Attachment 2.

### **D. General discussion of non-substantive amendments**

In this rulemaking the MPCA is amending many rule parts to make several of the same type of non-substantive changes. These non-substantive changes include updates of out-of-date information and improvements in the readability and consistency of the rules. Because these changes are being made to a large number of rules that are not otherwise being substantially amended, it is appropriate to address the reasonableness of those changes generally here rather than specifically for each amended rule part.

- Changes made at the recommendation of the Revisor of Statutes that remove obsolete language and change out of date terms.
  - The style of rule language has changed over time. In spoken English, “shall” is rarely used and the Revisor of Statutes has recommended that it not be used when drafting new rules. In this rulemaking, when a rule part is being amended for other reasons, the MPCA is

reasonably updating this obsolete language by replacing “shall” with “must” without changing the meaning of the existing rule.

- Many parts of the rules require the regulated party to submit information or obtain approval from the “agency.” Since the elimination of the MPCA Citizens Board, which was the “agency,” it is more correct to instead refer to the MPCA “commissioner.” This is a reasonable change because it is the MPCA commissioner who actually receives the required information or conducts the required actions. Changing the rules to refer to the correct authority does not change the effect of the rules.
- Changes to provide consistency in incorporations by reference. In this rulemaking the MPCA is making a minor correction to many rule parts to remove an unnecessary reference to “adopted and” that has been routinely included in past rulemakings to incorporate federal regulations by reference. At one time it was standard practice to use the phrase “adopted and incorporated by reference.” However, the act of incorporating by reference is a rule adoption, making the phrase “adopted and” redundant. This phrase was inconsistently used; in some rules, federal regulations were incorporated by reference without use of the “adopted and” phrase. An example of this inconsistency is in Minn. R. pt. 7011.1730.

*Incorporation by Reference of New Source Performance Standards.*

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

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

The Revisor of Statutes has recommended that the phrase “adopted and” be removed to eliminate possible issues about the use of two different terms to mean the same thing. It is reasonable to make the language of all the incorporations by reference in this chapter as consistent as possible.

- Changes to ensure consistency and clarity in the headings of rule parts. The MPCA has conducted several rulemakings to amend the air quality standards. As a result, there are differences in how the headings identify that a rule part contains an incorporation by reference. In this rulemaking the MPCA is changing many rule headings to make them consistent and to provide clearer direction to the reader about what is covered in a particular rule part. None of the changes to the heading have any effect on the requirements of that part; the changes to the heading are solely to provide more useful access to information about the rules.
- Changes to how non-delegated federal requirements are identified. The MPCA is amending many rule parts to provide consistency in how the rules identify those portions of the federal regulations that are not delegated to the MPCA. The CAA anticipates that states and tribes will assume many of the responsibilities associated with the implementation of NSPS/NESHAP/EG and allows for those responsibilities to be delegated. In almost every case, when the MPCA adopts NSPS/NESHAP/EG through incorporation by reference, the federal rule language is not reproduced in the state rules with state-specific language to refer to state authorities instead of federal authorities. Instead, in most cases, the incorporation by reference only cites to the federal regulation with the result that the federal language becomes state rule verbatim. This means that the incorporated federal language retains phrases such as “the administrator will decide”, “submit requests to the administrator”, or “based on the administrator’s review.” In some cases these administrative authorities are delegated to the state, and in other cases they

are not. There are several different ways that the state and federal rules address whether the actions associated with the administrator are delegated to the state or are retained by U.S. EPA. In this rulemaking, the MPCA is amending the existing incorporations by reference to provide consistency in how the non-delegable federal regulations are addressed in the state rules.

The MPCA is proposing changes to the general provisions in Minn. R. pts. 7011.0050, 7017.0150 and 7019.0050 to clarify the delegation status of the federal rules incorporated by reference. Those clarifications of the general statements regarding delegations are being made in conjunction with additional clarifying amendments to a number of individual rule parts that incorporate federal NSPS/NESHAP/EG by reference. The process of identifying what is and is not delegated to the state complicate the incorporation by reference of each NSPS/NESHAP/EG, but is essential for clarity and consistency.

In some past MPCA rulemakings where federal regulations have been incorporated by reference, the MPCA has included a phrase that identifies the parts of the incorporated regulations that are not delegated to the state. This exception is usually phrased as “except that the authorities identified in sections \_\_\_ are not delegated...” or “except that decisions made by the administrator under \_\_\_ are not delegated...” For many of the incorporated federal regulations it is redundant to add this phrase because the federal regulation already identifies what parts are not delegable. In those cases, by repeating the part that limits the delegations, the rule is only repeating what has already been incorporated. The Revisor of Statutes has suggested removing those redundant phrases where they occur. The act of incorporating a rule by reference includes incorporating the part of that rule that identifies non-delegable elements. However, in some cases, identifying the non-delegable federal rule parts in the state rule is not redundant, because those non-delegable parts are not specified in the federal regulation being incorporated. In those cases it is necessary to identify, in the state rule, which parts are not delegated to the state. In this rulemaking, a number of rule parts are reasonably being amended to remove those areas of redundancy and avoid future confusion.

#### **Example #1**

#### ***7011.1291 Incorporation by Reference; New Source Performance Standards; New Large Municipal Waste Combustors.***

*Subpart 1. Incorporation by reference. Code of Federal Regulations, title 40, part 60, subpart Eb, as amended, entitled "Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996" is incorporated by reference, ~~except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.50b(n), are not delegated to the commissioner and must be made by the administrator.~~*

In this example, the cited federal part ([Code of Federal Regulations, title 40, section 60.50b \(n\)](#)) identifies a section of the federal regulation that identifies all the portions of the federal regulation that are not delegated to the state. Because that section of the federal regulation is a part of the subpart Eb regulations that are incorporated by reference, there is no need to additionally identify it in the state rule. In this case, the specific reference to it is reasonably deleted from the rule.

In addition to being redundant, including a specific phrase in the state rules to identify the delegated portions of the federal regulations raises consistency questions when compared to those parts of the state rules that do not include specific language identifying the non-delegable federal parts. For many

existing state rules, the non-delegable sections of the federal regulations are not specifically identified, even though the non-delegable sections are identified in the federal regulations. Minn. R. pt. 7011.0830 is an example of a state rule that does not specifically identify the non-delegable portions of the federal regulations being incorporated by reference.

#### **Example #2**

##### ***7011.0830 Incorporation by Reference; New Source Performance Standards; Portland Cement Plants.***

*Code of Federal Regulations, title 40, part 60, subpart F, as amended, entitled "Standards of Performance for Portland Cement Plants," is ~~adopted and~~ incorporated by reference.*

This particular state rule does not specify that certain decisions or authorities are not delegable, yet the NSPS being incorporated by reference, ([Code of Federal Regulations, title 40 section 60.66](#)) identifies portions of the federal regulations as being non-delegable. This sort of inconsistency in how the federal non-delegations are identified in state rules raises the question of why the MPCA has used different language to identify similar types of delegation status and whether that difference has some meaning regarding the implementation of the rule. It is reasonable to amend the rules to maintain consistency to the extent possible.

The MPCA recognizes that removing specific references in the state rules to the non-delegable portions of the federal regulations can complicate the understanding of the delegation status of certain requirements. The lack of a citation to the federally non-delegable parts could mean either that 1) the federal regulation contains specific non-delegation language that is part of the state's incorporation by reference that simply has not been repeated in the state rules, or 2) that there is no portion of the federal regulation that cannot be delegated and the entire NSPS/NESHAP/EG is delegated to the state. A regulated party will not know, by looking at the state rules, whether a required submission or action is delegated to the state or retained by U.S. EPA. However, the nature of chapter 7011, which mainly consists of citations to incorporated federal requirements, will not tell a regulated party that any particular submission or action is required. The requirements of the NSPS/NESHAP/EG, as well as the information about the delegation status, must be obtained by referring to the incorporated federal regulations. Inconsistently adding some, but not all of the federal requirements to the state rules does not enhance the user-friendliness of the rules and in fact, increases the potential for misunderstanding and miscommunication. The MPCA believes that where the incorporation is a verbatim adoption of the federal requirements, the regulated community will find it easier and more reliable to understand and comply if the rule simply directs them to the federal regulations.

In some cases, the non-delegable portions of the federal regulations are not specified in the federal regulations but they are specified in the state rules.

#### **Example #3**

##### ***7011.1435 Incorporation by Reference; New Source Performance Standards; Petroleum Refineries.***

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

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

In the federal part 60, subpart GGG regulations, there is no indication that [40 CFR part 60.592\(c\)](#) is not delegated. In this case, in the course of the past rulemaking to adopt this rule, the MPCA and U.S. EPA

determined that this part would not be delegated to the state. In each rulemaking that incorporates federal regulations by reference, if the non-delegable portions are not identified in the federal regulation, the MPCA must cooperate with U.S. EPA during the rule drafting period to determine which parts will and will not be delegated to the state and then identify the non-delegable portions in the rules. As discussed above, in this rulemaking the MPCA is proposing to amend many rule parts to remove the phrases that identify non-delegable parts in order to avoid confusion and redundancy when those parts are also specified in the federal regulations. However, for several rules, where there is an agreement with U.S. EPA about the delegation status of certain requirements, the state rules will retain those phrases in existing rules even though those non-delegable parts are not identified in the federal rules. This appears to be an inconsistency but is in fact necessary to clearly establish whether the authority for implementing the requirement is the MPCA commissioner or if it is retained by the U.S. EPA administrator in those cases when the delegation status is not identified in the federal regulations.

## E. Specific reasonableness

The specific reasonableness of the proposed changes to each rule part is discussed below.

### 1. 7005.0100, Definitions. Subpart 1. Scope.

*Scope.* As used in ~~the state air pollution control rules~~ chapters 7007, 7008, 7009, 7011, 7017, 7019, 7025, 7027, and 7030 and parts 7023.0100 to 7023.0120, the following terms have the meanings given them except as expressly provided in a specific rule.

**Justification.** The term “state air pollution control rules” is being deleted from subpart 42b in this rulemaking. It is reasonable to replace that term with a more specific reference to the actual rule chapters where the definitions apply. The amendment does not change the scope or applicability of the definitions, it only more clearly identifies where they apply.

The rule chapters identified in the existing definition of “state air pollution control rules” (7005.0100, subpart 42b) did not include a reference to chapter 7008. This was an omission in that definition that is being corrected in this rulemaking. Minn. R. ch. [7008](#) governs conditionally exempt stationary sources and conditionally insignificant activities and is clearly a state air pollution control rule.

### 2. 7005.0100, Definitions. subp. 1b Administrator.

*“Administrator” means the Administrator of the U.S. Environmental Protection Agency or the administrator’s designee.*

**Justification.** The term “administrator” is frequently used through all the state air pollution control rules to identify the administrator of the U.S. EPA. However, it is currently only defined in Minn. R. pt. 7007.0100, where its application is limited to Minn. R. pts. 7007.0050 to 7007.1850. It is reasonable to provide a definition in this part to consistently apply the term throughout all the air pollution control rules.

### 3. 7005.0100, Definitions. subp. 2 Agency.

*“Agency” means the Minnesota Pollution Control Agency ~~as constituted under Minnesota Statutes, section 116.02, subdivision 1.~~ The commissioner is the designee of the agency.*

**Justification.** The definition of “agency” is being revised to make two changes. First, the reference to the founding statute is being removed as unnecessary. Removing the reference to the statutory creation of



the MPCA makes this definition consistent with the definition of “agency” found in [7045.0020, subp. 4](#), [7041.0100, subp. 2](#), [7042.0020, subp. 2](#), [7046.0010, subp. 2](#), [7048.0100, subp. 2](#), [7080.1100, subp. 3](#), and [7083.0020, subp. 2](#).

Second, the MPCA is adding a sentence to clarify that where the term “agency” is used, it means the commissioner as the designee of the agency. This is reasonable because at the time this definition was adopted, the actions taken by the “agency” meant an action of the MPCA Board. When the MPCA Board existed, the MPCA Board and not the MPCA commissioner issued permits and authorized certain types of compliance actions. However, in 2015 the Minnesota Legislature eliminated the MPCA Board. The activities formerly conducted by the MPCA Board (agency) are now conducted by the commissioner. Even though in this rulemaking the MPCA is changing all references to “agency” to “commissioner” in those parts being amended in this rulemaking, through a Revisor of Statute’s term change, it is still reasonable to clarify that the commissioner is included within the definition of agency to apply to those rules where the term “agency” may still remain unchanged.

4. **7005.0100, Definitions, subp. 3. *Alternative method.*** “Alternative method” means a method of sampling and analyzing for an air pollutant ~~which that~~ is not a reference or equivalent method but ~~which that~~ has been demonstrated to the commissioner’s satisfaction to, in specific cases, produce results adequate for its determination of compliance.

**Justification.** Changes recommended by the Revisor of Statutes.

5. **7005.0100, Definitions, subp. 3a. *Begin actual construction.*** “Begin actual construction” means, ~~in general,~~ initiation of permanent, physical, on-site construction, reconstruction, or modification activities on an emissions unit ~~which are of a permanent nature. Such~~ Activities include, ~~but are not limited to, installation of installing~~ building supports and foundations, laying ~~of~~ underground pipework, and ~~construction of constructing~~ permanent storage structures. ~~Such~~ Activities do not include site clearing and grading or entering into binding agreements or contractual obligations. ~~With respect to~~ Regarding a change in method of operating, this term refers to those on-site activities, other than preparatory activities, which that mark the initiation of the change. Owners or operators that undertake these activities ~~prior to~~ before obtaining any required permits do so at their own risk; a permit may not be issued or may not contain the terms the applicant desires.

**Justification.** Changes recommended by the Revisor of Statutes.

6. **7005.0100, Definitions, subp. 4c. *Cementitious material.*** “Cementitious material means a powdered substance ~~which that~~ consists of any combination of the following:

Items A- D [unchanged]

**Justification.** Changes recommended by the Revisor of Statutes.

7. **7005.0100, Definitions, subp. 4d. *Concrete.*** “Concrete” means a material ~~consisting that~~ consists of a coarse and fine aggregate bound by a paste of cementitious material and water, with admixtures added to achieve various properties, ~~which then~~ and that sets into a hard and rigid substance.

**Justification.** Changes recommended by the Revisor of Statutes.

8. **7005.0100, Definitions, subp. 5. *Construction.*** “Construction means ~~fabrication, erection, or installation of~~ fabricating, erecting, or installing an emission facility, emissions unit, or stationary source. Construction also includes ~~excavation~~ excavating, blasting, removing rock and soil, and ~~or~~ backfilling unless the ~~administrator deems~~ commissioner determines that these activities ~~to be~~ are of

*minimal cost, do not significantly alter the site, and are not permanent in nature. Construction does not include site clearing or grading.*

**Justification.** Changes recommended by the Revisor of Statutes.

9. **7005.0100, Definitions, subp. 8. Control Equipment.** *“Control equipment” means an “air contaminant treatment facility” or “treatment facility” as those terms are defined in Minnesota Statutes section 116.06, subdivision 3.*

**Justification.** Change recommended by the Revisor of Statutes.

10. **7005.0100, Definitions. ~~subp. 9a. Division manager.~~**

*~~“Division manager” means the division manager of the Air Quality Division of the Minnesota Pollution Control Agency.~~*

**Justification.** This definition is obsolete because the MPCA no longer has an Air Quality Division. The responsibilities of the former Air Quality Division have now been assumed by the multiple divisions responsible for different activities (e.g compliance monitoring or permitting). Wherever the phrase “air quality division manager” is used, it is being amended in this rulemaking to instead refer to “the commissioner.”

11. **7005.0100, Definitions. subp. 10e. Environmental Protection Agency or EPA.** *“Environmental Protection Agency” or “EPA” means the United States Environmental Protection Agency.*

**Justification.** It is reasonable to add a definition of the Environmental Protection Agency because the term is frequently used.

12. **7005.0100, Definitions. subp. 11. Equivalent method.** *“Equivalent method” means a method of sampling and analyzing for an air pollutant ~~which~~ when the method has been demonstrated to the commissioner’s satisfaction to have, under specified conditions, a consistent and quantitatively known relationship to the reference methods in Code of Federal Regulations, title 40 part 60, appendix A, as amended; part 61 Appendix B, as amended; and part 51, appendix M, as amended.*

**Justification.** Change recommended by the Revisor of Statutes.

13. **7005.0100, Definitions. subp. 11a. Existing facility.** *“Existing facility means an emission facility at which construction, modification, or reconstruction was ~~commenced~~ began before the effective date of the applicable ~~new source performance standard or the applicable~~ state air pollution control rule.*

**Justification.** This definition is amended at the recommendation of the Revisor of Statutes to change the obsolete term “commenced” and to remove what the MPCA believes to be an unnecessary reference to “new source performance standards.” The phrase seems superfluous because “state air pollution control rule” includes new source performance standards as well as other types of applicable requirements. The MPCA intends these to be simple clarifications that do not affect the application of this definition. If, upon proposal, the MPCA finds that there are unintended consequences, the MPCA may withdraw this proposed amendment.

14. **7005.0100, Definitions. subp. 11b. Federally enforceable.** *“Federally enforceable” means enforceable by the administrator of the United States Environmental Protection Agency. Federally enforceable limitations, conditions, and requirements include requirements in or developed ~~pursuant~~ according to Code of Federal Regulations, title 40, parts 60, ~~and~~ 61, ~~and~~ 63, requirements within any applicable state implementation plan, and any permit requirements established according to Code of*

*Federal Regulations, title 40, section 51.166 or 52.21, or Code of Federal Regulations, title 40 part 51, subpart I.*

**Justification.** The range of applicable federal parts is reasonably extended to include the requirements in or developed according to title 40, part 63, in addition to the existing reference to parts 60 and 61. Many of the NESHAP incorporated by reference in chapter 7011 are federal requirements in or developed according to title 40, part 63. Changing the now obsolete “pursuant” to “according” is recommended by the Revisor of Statutes.

15. **7005.0100, Definitions. subp. 24. Minneapolis-Saint Paul Air Quality Control Region.** *“Minneapolis-Saint Paul Air Quality Control Region” means the area encompassed by the boundaries of the following counties; Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington. See Code of Federal Regulations, title 40, part 81.27 (1982).*

**Justification.** Change recommended by the Revisor of Statutes.

16. **7005.0100, Definitions. subp. 25a. National emission standard for hazardous air pollutants.** *“National emission standard for hazardous air pollutants” means a standard ~~promulgated~~ adopted by the administrator of the United States Environmental Protection Agency under the Clean Air Act, United States Code, title 42, section 741, as amended, including standards still in effect ~~pursuant~~ according to the savings clause that was enacted by the 1990 Clean Air Act amendments and codified at United States Code, title 42, section 7412(q).*

**Justification.** Changes recommended by the Revisor of Statutes.

17. **7005.0100, Definitions. subp. 25b. New facility.** *“New facility” means an emission facility on which construction, modification, or reconstruction ~~was commenced~~ began after the effective date of the applicable ~~new source performance standard or the applicable~~ state air pollution control rule.*

**Justification.** This definition is amended at the recommendation of the Revisor of Statutes to change the obsolete term “commenced” and to remove what the MPCA believes to be an unnecessary reference to “new source performance standards.” The phrase seems superfluous because “state air pollution control rule” includes new source performance standards as well as other types of applicable requirements. The MPCA intends these to be simple clarifications that do not affect the application of this definition. If, upon proposal, the MPCA finds that there are unintended consequences, the MPCA may withdraw this proposed amendment.

18. **7005.0100, Definitions. subp. 26. New source performance standard.** *“New source performance standard” means a standard of performance ~~promulgated~~ adopted by the administrator of the United States Environmental Protection Agency under the Clean Air Act, United States Code, title 42, section 7411, as amended.*

**Justification.** Change recommended by the Revisor of Statutes.

19. **7005.0100, Definitions. subp. 28. One-hour period.** *“One-hour period” means any 60-minute period ~~commencing~~ beginning on the hour.*

**Justification.** Change recommended by the Revisor of Statutes.

20. **7005.0100, Definitions. subp. 31. Particulate matter.** *“Particulate matter” means material, except water, ~~which~~ that exists at standard conditions in a finely divided form as a liquid or solid as measured by an applicable reference method, or equivalent or alternative method.*

**Justification.** Change recommended by the Revisor of Statutes.

21. **7005.0100, Definitions. subp. 35. Person.** *“Person” means person as defined has the meaning given in Minnesota Statutes, section 116.06, subdivision 17.*

**Justification.** Change recommended by the Revisor of Statutes.

22. **7005.0100, Definitions. subp. 36a. Secondary emissions.** *“Secondary emissions” means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any ~~offsite~~ off-site support facility ~~which that~~ would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel in transit.*

*In calculating the net increase in emissions from a particular physical change or change in the method of operation, secondary emissions must not be included unless they are specific, well defined, quantifiable, and impact the same general area as the stationary source of modification that causes the secondary emissions.*

**Justification.** Changes recommended by the Revisor of Statutes.

23. **7005.0100, Definitions. subp. 42. Standard of performance.** *“Standard of performance” means a restriction on the amount of air pollutants ~~which that~~ may be emitted by an emission facility.*

**Justification.** Change recommended by the Revisor of Statutes.

24. **7005.0100, Definitions. ~~subp. 42b. State air pollution control rules.~~**

~~State air pollution control rules. “State air pollution control rules” means chapters 7005, 7007, 7009, 7011, 7017, 7019, 7025, 7027, and 7030, and parts 7023.0100 to 7023.0120.~~

**Justification.** This definition is being removed because it is only used in the scope of this part (7005.0100, Definitions. Subpart 1), which is being amended in this rulemaking to eliminate that phrase and instead more clearly identify the relevant rule chapters.

25. **7005.0100, Definitions. subp. 42c. Stationary source.** *“Stationary source” means an assemblage of all emissions units and emission facilities that belong to the same industrial grouping, are located at one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Emissions units or emission facilities must be considered as part of the same industrial grouping if they belong to the same “major group” ~~(that is, which have the same two-digit code) as described in the Standard Industrial Classification Manual-1972, as amended by the 1977 Supplement (United States Government Printing Office Stock Numbers 4101 to 0066 and 003-005-00176-0, respectively)~~ incorporated by reference under part 7045.0065.*

**Justification.** The information provided about the Standard Industrial Manual is obsolete. Rather than provide a more current citation, it is reasonable to delete the information about the manual is because it is unnecessary; this manual is already incorporated by reference in the cited rule part.

26. **7005.0100, Definitions. subp. 45. Volatile organic compound or VOC.** *“Volatile organic compound” or “VOC” means any organic compound ~~which that~~ participates in atmospheric photochemical reactions. This includes any organic compound other than the following compounds:*

Items A to JJJ [unchanged]

**Justification.** Change recommended by the Revisor of Statutes.

27. **7007.0300, Sources not required to obtain a permit. Subpart 1. No permit required.** *The following stationary sources are not required to obtain a permit under Minn. R. pts. 7007.0100 to 7007.1850:*

Item A. [unchanged]

*Item B. Notwithstanding parts [7007.0200](#) and [7007.0250](#), any stationary source that would be covered by a permit solely because it is subject to one or more of the following new source performance standards:*

Subitems 1 to 4 [unchanged]

*(5) Code of Federal Regulations, title 40, part 60, subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines (incorporated by reference at part [7011.2305](#)), if all engines subject to this standard at the stationary source each have a displacement less than 30 liters per cylinder and did not rely on performance testing of the affected unit to demonstrate compliance with the standard; ~~and~~*

*(6) Code of Federal Regulations, title 40, part 60, subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines (incorporated by reference at part [7011.2310](#)), if all engines did not rely on performance testing of the affected unit to demonstrate compliance with the standard; and*

*7) Code of Federal Regulations, title 40, part 60, subpart QQQQ, Standards of Performance for New Residential Hydronic Heaters and Forced Air Furnaces (incorporated by reference at part [7011.2960](#)).*

**Justification.** Minn. R. pt. [7007.0150](#) requires that no person may “construct, modify, reconstruct, or operate an emissions unit, emission facility or stationary source until ...a written permit has been granted by the agency” unless Minn. R. pt. [7007.0300](#) provides an exemption. In this rulemaking the MPCA is providing an exemption from the permit requirements for persons who install and operate new residential hydronic heaters or forced air furnaces.

Hydronic heaters are also called “outdoor wood boilers.” U.S. EPA adopted the NSPS for hydronic heaters in 2015, establishing emissions certification requirements for heater manufacturers, along with conditions for vendors to provide training to purchasers and reporting of sales to U.S. EPA. With these standards, new units, when operated properly, will emit far less air pollution than existing hydronic heaters.

Existing hydronic heaters are exempted from obtaining an air emissions permit by the provision of Minn. R. pt. [7007.0300](#), subpart 1, item A, because they are not described in the conditions in Minn. R. pts. [7007.0200](#), subparts 2 to 5 and [7007.0250](#) where an air emissions permit is necessary. Existing units are not subject to the new federal NSPS, and current emissions information indicates that hydronic heaters do not emit pollution in amounts greater than the MPCA’s permitting thresholds in Minn. R. pt. [7007.0150](#), subp. 4.

However, once an NSPS applies to an affected facility, Minn. R. pt. [7007.0250](#), subp. 2 requires an owner or operator of the stationary source to obtain a permit. Without a permit exemption, any person purchasing a hydronic heater is required to obtain an air emissions permit from the MPCA. The MPCA is providing a permit exception for persons regulated under subpart QQQQ for several reasons.

First, the subpart QQQQ standards establish specific operating conditions that essentially provide a permit by rule. The MPCA is adopting the federal requirements and is not imposing any state-only additional conditions. The QQQQ operating conditions specify the type of fuel that may and may not be burned, the particulate emission limits that must be met, and the work practices and operating standards that constitute the proper design and operation of these units. The QQQQ standards ensure that these units are manufactured to minimize emissions to the extent reasonably possible, and manufacturers and vendors are required to provide training and support to assist owners in properly operating these heaters. Although in some cases specific permit conditions can provide additional environmental protection by providing oversight of an emission facility, in the case of hydronic heaters and forced air furnaces, requiring a permit will not result in any change to the emission standards.

Second, the nature of these units does not require the type of oversight provided by a permit. The permitting process is valuable when a source requires advance review and approval, or where a permit can establish case by case conditions for the proper operation of an emission source and establish monitoring and reporting requirements. Those same concerns do not exist for the operation of a residential hydronic heater or forced air furnace. The standards of performance were adopted to ensure that these units are designed to operate without the need for advance review or case by case operating instructions.

Third, the MPCA is not staffed to provide meaningful permit administration for the large number of units currently in use and expected to be added in the future at Minnesota residences. Minnesota's wood use survey estimates that there are 20,000 existing hydronic heaters currently being used in Minnesota. The selection of a new hydronic heater is often based on the price of alternatives (propane heating or electric heat). Currently, few are being installed because of the recent low price of propane, a common heating fuel. When fossil fuel prices again increase, there will be interest in installing wood fired heating units in homes, farms, and businesses.

Finally, there is no corresponding federal requirement that these types of heaters and furnaces be permitted. Because these types of units are not required to be permitted by U.S. EPA there is no need for the state to require that they be permitted in order to maintain delegation of the air quality program.

**28. 7007.0800, Permit content. Subpart 1. Scope.** *The ~~agency shall~~ commissioner must include the permit conditions specified in this part in all permits, except where the requirement states that it applies only to part 70 permits or only to state permits. The permit ~~shall~~ must specify and reference the origin of and the authority for each term or condition, and ~~shall~~ identify any difference in form from the requirement giving rise to the condition. Nothing in this part ~~shall be read to limit~~ limits the ~~agency's commissioner's~~ authority to put additional or ~~more stringent~~ more-stringent terms in a permit, to conduct inspections, or to request information.*

**Justification.** Changes recommended by the Revisor of Statutes.

**29. 7007.0800, Permit content. subp. 2. Emission limitations and standards.** *The permit must:*

Items A and B [unchanged]

*C. state that, where another applicable requirement of the act is more stringent than any applicable requirement of regulations ~~promulgated~~ adopted under title IV of the act (Acid Deposition Control), both provisions ~~shall be~~ are incorporated into the permit and ~~shall be~~ are enforceable by the administrator; and*

Item D [unchanged]

**Justification.** Changes recommended by the Revisor of Statutes.

30. **7007.0800, Permit content. subp. 3. Emissions units covered by permit.** The permit ~~shall~~ must cover any emissions unit within the stationary source for which there is an applicable requirement, and any unit ~~which that the agency commissioner believes should be covered in order~~ to protect human health and the environment. However, if a stationary source is not a major source and the sole reason it is required to have a permit is because it is subject to federal standards described under part [7007.0250](#), subpart 2, then the permit ~~shall~~ must only cover emissions units regulated by those federal standards. The permit ~~shall~~ must include applicable requirements for fugitive emissions in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source in part [7007.0200](#), subpart 2.

**Justification.** Changes recommended by the Revisor of Statutes.

31. **7007.0800, Permit content. subp. 4. Monitoring.**

The ~~agency shall~~ commissioner must include the ~~following~~ monitoring requirements in this subpart in all permits:

A. The permit ~~shall~~ must require the permittee to comply with all emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods ~~promulgated pursuant to~~ adopted under section 114(a)(3) or 504(b) of the act.

B. For part 70 permits, where the applicable requirements do not require periodic testing or instrumental or noninstrumental monitoring (which may consist of record keeping designed to serve as monitoring), the permit ~~shall~~ must require the permittee to conduct periodic monitoring sufficient to determine whether the stationary source is in compliance with applicable requirements. The monitoring requirements ~~shall~~ must be designed to yield reliable data from the relevant time period that are representative of the stationary source's operation, and ~~shall~~ must require the permittee to use terms, test methods, units, averaging periods, and other statistical conventions that are consistent with the emissions limitations and standards contained in the permit, and with other applicable requirements. ~~Record-keeping~~ Record-keeping provisions may be sufficient to meet the requirements of this item.

C. For state permits, where periodic testing or instrumental or noninstrumental monitoring (which may consist of record keeping designed to serve as monitoring) is not required by item A, the permit ~~shall~~ must include monitoring requirements sufficient to determine whether a stationary source is in compliance with applicable requirements; ~~if the agency commissioner finds that such~~ the monitoring is warranted by:

(1) to (3) [unchanged]

D. As necessary, the permit ~~shall~~ must require the permittee to install, use, and maintain monitoring equipment or use monitoring methods.

**Justification.** Changes recommended by the Revisor of Statutes.

32. **7007.0800, Permit content. subp. 5. Record keeping.**

The permit ~~shall~~ must incorporate all applicable requirements related to record keeping and require the permittee to maintain adequate records, including at least the following:

A. A requirement that the permittee maintain records adequate to document compliance at the stationary source, including at a minimum:

(1) to (4) [unchanged]

(5) the results of ~~such~~ the analyses; and

(6) the operating conditions existing at the time of sampling or measurement.

B. A requirement that the permittee maintain records describing any modification made at the stationary source under parts [7007.1250](#) and [7007.1350](#), as required by those provisions, but not otherwise regulated under the permit, and the emissions resulting from those changes; ;

C. A requirement that the permittee retain records of all monitoring data and support information for ~~a period of~~ five years, or longer as specified by the commissioner, from the date of the monitoring sample, measurement, or report. Support information includes all calibration and maintenance records ~~and~~ all original recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. Records ~~shall~~ must be kept at the stationary source unless the permit allows otherwise; ; and

D. A requirement that the permittee retain copies of deviation reports required by subpart 6 for ~~a period of~~ five years, or longer if requested by the commissioner, from the date ~~of submittal of~~ the report is submitted to the ~~agency~~ commissioner.

**Justification.** Changes recommended by the Revisor of Statutes.

### 33. **7007.0800, Permit content. subp. 6. Reporting.**

A. The permit ~~shall~~ must require the permittee to submit to the ~~agency~~ commissioner the reports described in this subpart. The permit ~~shall~~ must require that all reports be certified by a responsible official consistent with part [7007.0500](#), subpart 3.

~~A-B.~~ Deviation reporting time frames are described in subitems (1) and (2).

(1) For deviations that endanger human health or the environment, the permit ~~shall~~ must require the permittee to notify the commissioner as required in part [7019.1000](#), subpart 1.

(2) For all other deviations, the permit ~~shall~~ must require the permittee to submit a deviation report, on a form approved by the commissioner, at least semiannually. The report is due whether or not a deviation occurred during the reporting period. The midyear deviations report, covering deviations ~~which that~~ occurred during the period from January 1 to June 30, is due by July 30 of each year and the end-of-year deviations report, covering deviations ~~which that~~ occurred during the period from July 1 to December 31, is due by January 30 of each year.

~~B C.~~ All part 70 permits ~~shall~~ must require the permittee to submit progress reports at least every six months for any stationary source required to have a compliance schedule under part [7007.0500](#), subpart 2, item K, subitem (5). ~~Such~~ The progress reports ~~shall~~ must contain the deadlines for achieving the activities, milestones, or compliance required in the compliance schedule and dates when ~~such the~~ activities, milestones, or compliance were actually achieved. If any deadlines in the schedule of compliance were not or will not be met, the report ~~shall~~ must note that, explain why, and include any preventive or corrective measures that have been or will be adopted as a result.

~~C-D.~~ The permit ~~shall~~ must require ~~submittal of~~ submitting an annual compliance certification by January 31 of each year ~~to the agency. In the case of part 70 permits, compliance certifications shall~~



~~be submitted to the administrator as well as the agency, unless the administrator agrees that the submittals are not necessary. The certification shall must be on a form approved by the commissioner and shall must contain the following:~~

- ~~(1) the facility name and permit number;~~
- ~~(2) identification of the calendar year that the report covers;~~
- ~~(3) identification of deviation reports ~~submitted~~ covering the calendar year including the name of report (i.e. DRF-1 or DRF-2), the period covered by the report, and the date of the cover letter accompanying the report;~~
- ~~(4) identification of any noncompliance with applicable requirements or a permit condition that has not been identified in deviation reports ~~submitted to the agency~~ covering the calendar year;~~
- ~~(5) a certification that meets the requirements of part [7007.0500](#), subpart 3;~~
- ~~(6) the signature and title of a responsible official ~~as defined in part [7007.0100](#), subpart 21;~~ and~~
- ~~(7) additional requirements ~~as may be specified pursuant to~~ under sections 114(a)(3) and 504(b) of the act.~~

~~E. Notwithstanding any other provision in an applicable requirement, for the purpose of submission of To make the compliance certifications under this item D, the owner or operator is ~~not prohibited from using~~ allowed to use the following ~~in addition to any specified methods:~~~~

- ~~(a) (1) a monitoring protocol approved for the source ~~pursuant~~ according to Code of Federal Regulations, title 40, part 64, as amended; and~~
- ~~(b) (2) any other monitoring method incorporated into a permit issued under this chapter.~~

~~F. All progress reports and compliance documents described in this subpart are available for public inspection and copying at the agency upon request, subject to the provisions of part [7000.1200](#) and Minnesota Statutes, chapter 13, and section [116.075](#).~~

~~E.G. For deviations caused by emergencies, as defined in part [7007.1850](#), the permittee may assert an affirmative defense only if it meets all the requirements of part [7007.1850](#), which includes notifying the agency within two working days of when the emission limitations were exceeded due to the emergency.~~

**Justification.** The only substantive change to this part is the amendment of item C (revised as item D) to eliminate a requirement for submitting information to the U.S. EPA administrator. At the request of the U.S. EPA administrator, (Attachment 3) the MPCA is removing the requirement to submit annual compliance certifications to the U.S. EPA administrator in addition to the commissioner. This amendment does not change the requirement to submit annual compliance certifications to the commissioner.

The other changes to this subpart are non-substantive changes that are either discussed in Part 4, item D of this Statement, recommended by the Revisor of Statutes, or make the following specific corrections.

- The introductory sentence of subpart 6 states that the information in this subpart, including deviation reports, must be submitted to the commissioner. In item C (revised as item D), where certain elements of the deviation reports are identified, it is not necessary to sporadically

include the phrases “submitted” or “submitted to the agency” to identify deviation report information.

- Former item D allowed for public inspection and copying of documents. Minn. R. pt. 7000.1200, which applies to all records and data of the MPCA, already allows public access for inspection and copying. Specifying in this rule that these particular documents are publicly available implies that these documents are in some way different than other documents that are not specifically identified as being available for inspection and copying. Because all MPCA documents are publicly available under the conditions of Minn. R. pt. 7000.1200, former item D is reasonably deleted.
- Item F specifies that the permittee is subject to the requirements of Minn. R. pt. 7007.1850; the phrase that identifies a portion of what is included in Minn. R. pt. 7007.1850 is redundant and reasonably deleted.
- Subpart 6 is re-formatted to make it easier to understand. The re-formatting includes creating a new item E to address the concluding paragraph in former item C. In addition to becoming a separate item, this paragraph is being modified for clarity. The paragraph is permissive by allowing the use of other types of monitoring methods to be used for compliance certifications but the structure and wording of this paragraph made it difficult to understand. The amendments reasonably simplify the paragraph without changing the meaning.

34. **7007.0800, Permit content. subp. 7. ~~Prohibition on exceedance of~~ Stationary sources with allowances.**

*A. For affected sources, the ~~agency shall~~ commissioner must include a permit condition prohibiting emissions exceeding any allowances that the owners and operators of a stationary source lawfully hold under title IV of the act or the regulations ~~promulgated~~ adopted thereunder, except as follows: provided in items B to D.*

*~~B. No permit amendment shall be~~ is required for increases in emissions that are authorized by allowances acquired ~~pursuant to~~ under the acid rain program, provided that ~~such~~ the increases do not require a permit amendment under any other applicable requirement.*

*~~B. C. There is no~~ No limit ~~shall be placed~~ on the number of allowances held by the owners and operators of a stationary source. The owners and operators of a stationary source ~~may~~ must not, ~~however,~~ use allowances as a defense to noncompliance with any other applicable requirement.*

*~~C. D. Any such lawfully held allowance shall~~ must be accounted for according to the procedures established in Code of Federal Regulations, title 40, part 73, as amended.*

**Justification.** Changes recommended by the Revisor of Statutes.

35. **7007.0800, Permit content. subp. 8. Fee requirement.** *The permit ~~shall~~ must require payment of annual fees by owners or operators of a stationary source required to pay annual fees due under part 7002.0025.*

**Justification.** Change recommended by the Revisor of Statutes.

36. **7007.0800, Permit content. subp. 9. Additional compliance requirements.** *All permits ~~shall~~ must contain the following elements with respect to compliance:*

*A. inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee ~~shall~~ must allow the ~~agency commissioner,~~ or ~~an~~ the commissioner's authorized representative or agent ~~of the agency,~~ to perform the following:*

(1) to (3) [unchanged]

(4) sample or monitor any substances or parameters at any location:

(a) at reasonable times, ~~for the purposes of assuring~~ to ensure compliance with the permit or applicable requirements; or

(b) as otherwise authorized by the act or state law;

Item B [unchanged]

C. provisions establishing the permit shield described in part [7007.1800](#).

Nothing in this subpart ~~shall be read to limit the agency's~~ limits the commissioner's authority under Minnesota Statutes, section [116.091](#), and section 114 of the act (Record keeping, Inspections, Monitoring, and Entry) or other law.

**Justification.** Changes recommended by the Revisor of Statutes.

**37. 7007.0800, Permit content. subp. 10. Emissions trading.**

A. If requested by a permit applicant, the ~~agency shall~~ commissioner must include provisions allowing the permittee to trade emissions increases and decreases that occur within the permitted facility. No Title I modification may be made using this provision, and the trade may not result in the exceedance of any facility-wide emission limit in the permit. The ~~agency shall~~ commissioner must make such trading available to the permittee only if ~~it~~ the commissioner determines that ~~all of~~ the following are true:

(1) the unit-specific limits above which the permittee wishes to increase emissions were established solely to keep the stationary source as a whole from being subject to an applicable requirement described in part [7007.0100](#), subpart 7, items A to K, and are independent of otherwise applicable requirements;

(2) the stationary source's total emissions can be limited equally well, and compliance with applicable requirements may still be ~~assured~~ ensured, by allowing the proposed trading scenario; and

(3) [unchanged]

B. The permit ~~shall~~ must require the permittee to provide the ~~agency~~ commissioner in writing at least seven working days before making the emissions trade the written notification described in this item. The notice ~~shall~~ must:

(1) state when the trade will be made ~~and~~;

(2) describe the change in emissions that will result. ~~The notice shall also;~~ and

(3) describe how these increases and decreases in emissions will comply with the terms and conditions of the permit.

The permittee and the ~~agency shall~~ commissioner must each append the notice to ~~its~~ their copy of the stationary source's permit.

**Justification.** Changes recommended by the Revisor of Statutes.

38. **7007.0800, Permit content. subp. 11. Alternative operating scenarios.** *The commissioner must include in the permit terms and conditions allowing for reasonably anticipated alternative operating scenarios identified by the stationary source in its application. ~~Such~~ The terms and conditions ~~shall~~ must:*

Item A. [unchanged]

*B. ensure that the operation under each ~~such~~ alternative operating scenario complies with all applicable requirements and the requirements of parts [7007.0100](#) to [7007.1850](#).*

**Justification.** Changes recommended by the Revisor of Statutes.

39. **7007.0800, Permit content. subp. 12. Operation in more than one location.** *If requested by the applicant, the permit may allow a stationary source to be operated in more than one location during the course of the permit. No affected source ~~shall be~~ is allowed this option. If more than one location is authorized, the permit ~~shall~~ must include the following:*

Item A. [unchanged]

*B. conditions that will ~~assure~~ ensure compliance with all applicable requirements at all authorized locations;*

*C. requirements that the owner or operator notify the ~~agency~~ commissioner at least ten days in advance of each change in location, providing the exact location where the source will operate for all part 70 permits and at least 48 hours in advance of each change in location for all other state permits; and*

*D. conditions that ~~assure~~ ensure compliance with all other provisions of parts [7007.0100](#) to [7007.1850](#).*

**Justification.** Changes recommended by the Revisor of Statutes.

40. **7007.0800, Permit content. subp. 13. Permit duration.** *Each permit ~~shall~~ must specify the duration of the permit, or state that the permit is nonexpiring.*

**Justification.** Changes recommended by the Revisor of Statutes.

41. **7007.0800, Permit content. subp. 14. Operation of control equipment.** *If the commissioner determines that ~~such~~ the provisions would substantially improve the likelihood of future permit compliance, the permit may specify operating and maintenance requirements for each piece of control equipment located at the stationary source or require the permittee to maintain an operation and maintenance plan on site.*

**Justification.** Changes recommended by the Revisor of Statutes.

42. **7007.0800, Permit content. subp. 15. Terms to include in reissuance.** *The permit ~~shall~~ must indicate the terms that must be included in any reissuance of the permit under part [7007.0450](#), subpart 3.*

**Justification.** Change recommended by the Revisor of Statutes.

43. **7007.0800, Permit content. subp. 16. General conditions.** *Permits A permit issued by the ~~agency~~ commissioner under parts [7007.0100](#) to [7007.1850](#) ~~shall~~ must include the ~~following~~ following general conditions in items A to O, either expressly or by reference to this subpart.*

Item A [unchanged]

B. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the state law and, if the provision is federally enforceable, of the act. ~~Such~~ Violation is grounds for:

(1) enforcement action by the ~~agency~~ commissioner or the EPA; ~~or for~~

(2) permit termination, revocation and reissuance, or amendment; ~~or for~~

(3) denial of a permit reissuance application.

C. It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity ~~in order~~ to maintain compliance with the conditions of this permit.

D. This permit may be reopened and amended or revoked for cause as provided in parts [7007.1600](#) to [7007.1700](#). The filing of a request by the permittee for a permit amendment, revocation and reissuance, or termination; ~~or filing~~ of a notification of planned changes or anticipated noncompliance does not stay any permit condition, except as specifically provided in part [7007.1450](#), subpart 7.

E. This permit does not convey any property rights of any sort, or any exclusive privilege.

F. The permittee ~~shall~~ must furnish to the ~~agency~~ commissioner, within a reasonable time, any information that the ~~agency~~ commissioner may request in writing to determine whether cause exists for reopening and amending or revoking the permit or to determine compliance with the permit. Upon request, the permittee ~~shall~~ must also furnish to the ~~agency~~ commissioner copies of records required to be kept by the permittee.

G. The ~~agency's~~ commissioner's issuance of a permit does not release the permittee from any liability, penalty, or duty imposed by Minnesota or federal statutes or rules or local ordinances, except the obligation to obtain the permit or as specifically provided in the permit shield provision and part [7007.1800](#).

H. The ~~agency's~~ commissioner's issuance of a permit does not prevent the future adoption by the ~~agency~~ commissioner of pollution control rules, standards, or orders more stringent than those now in existence and does not prevent the enforcement of these rules, standards, or orders against the permittee.

I. The ~~agency's~~ commissioner's issuance of a permit does not obligate the agency to enforce local laws, rules, or plans beyond that authorized by Minnesota statutes.

J. The permittee ~~shall~~ must at all times properly operate and maintain the facilities and systems of treatment and control and the appurtenances related to them ~~which that~~ are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures.

K. The permittee may not knowingly make a false or misleading statement, representation, or certification in a record, report, plan, or other document required to be submitted to the ~~agency or to~~ ~~the~~ commissioner by the permit. The permittee ~~shall~~ must immediately upon discovery report to the commissioner an error or omission in these records, reports, plans, or other documents. The

permittee may not falsify, tamper with, render inaccurate, or fail to install any monitoring device or method required to be maintained or followed by the permit.

L. The permittee ~~shall~~ must, when requested by the commissioner, submit within a reasonable time any information and reports that are relevant to pollution or the activities authorized under ~~this~~ the permit.

M. If the permittee discovers, through any means, including notification by the ~~agency~~ commissioner, that noncompliance with a condition of the permit has occurred, the permittee ~~shall~~ must immediately take all reasonable steps to minimize the adverse impact on human health or the environment resulting from the noncompliance.

N. The permit is not transferable to any person except as provided in part [7007.1400](#), subpart 1, item E.

O. The permit authorizes the permittee to perform the activities described in the permit under the conditions of the permit. In issuing the permit, the state and ~~agency~~ commissioner assume no responsibility for damages to persons, property, or the environment caused by the activities of the permittee in the conduct of ~~its~~ the permittee's actions, including those activities authorized, directed, or undertaken under the permit. To the extent the state and ~~agency~~ commissioner may be liable for the activities of ~~its employees~~, that state employees, the liability is explicitly limited to that provided in the Tort Claims Act, Minnesota Statutes, section [3.736](#).

**Justification.** Changes recommended by the Revisor of Statutes.

#### 44. **7011.0050 General Provisions of Federal ~~New Source Performance~~ Standards Incorporated by Reference.**

**Subpart 1. General.** For purposes of interpreting, applying, and enforcing ~~new source performance standards~~ federal regulations that are incorporated by reference into this chapter;

A. Code of Federal Regulations, title 40, sections 60.1, 60.2, 60.3, 60.5, 60.6, 60.12, 60.14, 60.15, 60.17, and 60.18, as amended, are ~~adopted and~~ incorporated by reference;

B. Code of Federal Regulations, title 40, sections 63.1, 63.2, 63.3, 63.4, 63.5, 63.6, 63.11, and 63.14, as amended, are incorporated by reference; and

C. Code of Federal Regulations, title 40, sections 61.02, 61.03, 61.05, 61.06, 61.07, 61.08, 61.12, 61.15, 61.18, and 61.19, as amended, are incorporated by reference, except that the authorities identified in Code of Federal Regulations, title 40, section 61.12(d)(1), are not delegated to the commissioner and are retained by the administrator.

**Subp. 2. Required information.** All requests, reports, applications, submittals, and other communications to the administrator ~~pursuant to New Source Performance Standards~~ that are incorporated by reference into this chapter must be submitted to the commissioner unless otherwise specified in Code of Federal Regulations or state rule.

**Subp. 3. Authorities.** References to the administrator in the incorporated federal regulations refer to the commissioner, except when authorities are specifically identified in Code of Federal Regulations or state rule as nondelegable.

**Justification.** This part is amended to make several changes.

In subpart 1, items B and C, the existing general information regarding incorporated federal requirements is expanded to also include the general provisions that apply to Code of Federal Regulations sections 61 and 63. These general provisions were formerly located in Minn. R. pts 7011.7000 and 7011.9900. In this rulemaking the applicable general federal rule citations are moved from those parts into new items B and C. It is reasonable to provide the relevant citations to the general provisions of the federal regulations in one place at the beginning of this chapter, rather than to include them at various points later in the chapter. Because this new subpart combines federal citations that apply to both new source performance standards and also national emission standards for hazardous air pollutants, it is reasonable to edit the introductory paragraph to eliminate the specific reference to new source performance standards and instead only refer to the more general term “federal regulations.”

In Minn. R. pt. 7011.9900, there was an error in the list of the incorporated federal regulations that is being corrected in this rulemaking. Minn. R. pt. 7011.9900 identified the general requirements of the federal part 61 standards, but one of the citations was to Code of Federal Regulations, title 40, section 60.12. The correct citations should be to [40 CFR part 61.12](#) and is corrected in the amendments to this part.

Removing the term “adopted and” is reasonable for the reasons discussed in Part 4, item D of this Statement.

The requirement to submit certain information to the commissioner instead of the administrator is reasonably addressed in a new subpart 2. The phrase “pursuant to New Source Performance Standards” is removed to make the subpart more generally apply to all federal regulations incorporated by reference in this chapter. This is reasonable because in this chapter the MPCA incorporates more than just new source performance standards, including emission guidelines and national emission standards for hazardous air pollutants.

Subpart 3 is reasonable to clarify how incorporated federal regulations apply through state rule. When federal regulations are incorporated by reference, the state rules only identify the incorporated federal regulation but do not repeat the actual wording of the federal requirements. A person reading the incorporated federal regulations would see phrases that say “must be submitted to the administrator,” “must notify the administrator,” or “the administrator must review.” Item D clarifies that the verbatim language of the incorporated federal regulations is adjusted to reflect the fact that through incorporation by reference, those authorities change from the U.S. EPA administrator to the MPCA commissioner and the actions formerly conducted by the U.S. EPA administrator are now conducted by the MPCA commissioner. Although new subpart 2 partially addresses this issue by providing a clarifying statement about the submittal of information, that existing statement did not extend to actually changing the language for all the activities conducted by the administrator, including decisions and communications to regulated parties. It is reasonable to add a statement that clearly identifies who is responsible for the actions identified in incorporated regulations.

#### **45. 7011.0540 Derate.**

*The owner or operator of indirect heating equipment who elects to achieve compliance with an applicable standard of performance by derating ~~shall~~ must:*

- A. advise the commissioner ~~of the agency~~ in writing of the intent to achieve compliance by derating and the capacity level at which the owner or operator intends to operate this equipment;*

B. agree to a permit condition in the required operating permit that prohibits ~~operation of~~ operating the equipment ~~in excess of~~ over the derate level;

C. install a boiler steam flow meter to continuously record, indicate, and integrate boiler steam flow, and ~~shall~~ must:

(1) submit a written report to the commissioner ~~of the agency~~ within ten days of any excess steam flow occurrence above the specified derate load;

(2) use a one-hour averaging period in determining an excess above derate with corrections for deviations in steam pressure or temperature if required;

(3) submit written yearly reports to the commissioner ~~of the agency~~ confirming that no excesses have occurred during normal operations; and

(4) retain and make available for inspection by the ~~agency~~ commissioner or ~~it's~~ the commissioner's authorized employees or agents steam flow charts for a minimum ~~period~~ of two years following after the date of measurement; and

D. submit an effective method of physical limitation of boiler load ~~shall be submitted~~ for approval by the commissioner ~~of the agency prior to~~ before authorization of a boiler derate. ~~Such~~ The limitation may include ~~but is not limited to,~~ a tieback signal from the steam flow meter to the combustion control system cutting back fuel input at the derate load, a maximum limit stop on the fuel input control drive or valve, or ~~such~~ other equivalent physical means.

**Justification.** Changes recommended by the Revisor of Statutes.

**46. 7011.0553 Incorporation by Reference; Nitrogen Oxides Emission Reduction Requirements for Affected Sources**

Affected sources, as defined in part 7007.0100, subpart 4, ~~shall~~ must comply with Code of Federal Regulations, title 40, part 76, as amended, entitled "Acid Rain Nitrogen Oxides Emission Reduction Program," which is ~~adopted and~~ incorporated by reference.

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement. Changing "shall" to "must" is recommended by the Revisor of Statutes.

**47. 7011.0555 Incorporation of by Reference; New Source Performance Standard; by Reference Standards; Fossil-Fuel-Fired Steam Generators.**

Code of Federal Regulations, title 40, part 60, subpart D, as amended, entitled "Standards of Performance for Fossil-Fuel- Fired Steam Generators ~~for Which Construction is Commenced After August 17, 1971,~~" is ~~adopted and~~ incorporated by reference.

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement.

The change to the title of the incorporated standard is reasonable to reflect the actual title of the subpart being incorporated by reference.



**48. 7011.0560 Incorporation of by Reference; of New Source Performance Standard by Reference Standards; Electric Utility Steam Generating Units.**

*Code of Federal Regulations, title 40, part 60, subpart Da, as amended, entitled "Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978," is adopted and incorporated by reference, except that decisions made by the administrator under the authorities identified in Code of Federal Regulations, title 40, section 60.45a 60.45Da, are not delegated to the commissioner and must be made are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the "term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement. The change to the title of the incorporated standard is reasonable to reflect the actual title of that subpart.

The sentence that discusses those parts of the federal regulations that are not delegated to the state is being slightly revised here and where it occurs elsewhere in this chapter. The reasonableness of making changes to clarify the delegation status is discussed in Part 4, item D of this Statement. It is reasonable to revise this sentence to more broadly include the types of actions in the cited rule parts. In most cases, the non-delegated federal regulations refer to a decision that must be made by the Administrator. However, in other cases, the non-delegated federal regulation refers to information or a report that must be submitted. It is more accurate to change the sentence to simply refer to the general authorities identified than specific types of actions (e.g. "decisions" or "submittals"). Revising this sentence where it occurs does not change the effect of this exception in existing rules.

The MPCA is correcting a typographical error in the federal section cited in the last sentence. The section of the federal regulation that is not delegated is 40 CFR section 60.45Da, not 60.45a.

**49. 7011.0561 Control of Mercury from Electric Generating Units.**

**Subp. 10. Incorporations by reference.** *For purposes of this part, the methods listed in items A and B are incorporated by reference, as amended. These documents are subject to frequent change.*

*A. The Annual Book of American Society for Testing and Materials International (ASTM) Methods D2234/D2234M (Standard Practice for Collection of a Gross Sample of Coal), D2013/D2013M (Standard Practice for Preparing Coal Samples for Analysis), D5865 (Standard Test Method for Gross Calorific Value of Coal and Coke), D3173 (Standard Test Method for Moisture in the Analysis Sample of Coal and Coke), and D6722 (Standard Test Method for Total Mercury in Coal and Coal Combustion Residues by Direct Combustion Analysis). These methods are published in the Annual Book of ASTM Standards; Volume 05.06 Gaseous Fuels; Coal and Coke, 2012 edition; Catalysts: Bioenergy and Industrial Chemicals from Biomass (2017). These documents are available through the Minitex interlibrary loan system; and*

*B. Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA SW-846, Third Edition, November 1986, issued by the United States Environmental Protection Agency (EPA). Method 7471 Mercury in Solid or Semisolid Waste (Manual Cold Vapor Technique). The document is available electronically from the Environmental Protection Agency and through the Minitex interlibrary loan system at <https://www.epa.gov/hw-sw846/sw-846-compendium>.*

**Justification.** Item A is amended to update the title of the document incorporated by reference. As part of the amendments to Minn. R. pt. 7011.1205, the MPCA determined that a more current, and re-titled version of this document was available. The information identifying this document is reasonably updated where it occurs in this and other parts of this chapter.

Item B is amended to update the information for obtaining SW-846. This change is also prompted by a change to the same document in Minn. R. pt. 7011.1205. The most current version of this document is now available online. It is reasonable to delete the information about how to obtain the information from U.S. EPA or Minitex because it is available at no cost at the web address being added.

**50. 7011.0562 Incorporation by Reference: New Source Performance Standards: Greenhouse Gas Emissions for Electric Generating Units.**

*Code of Federal Regulations, title 40, part 60, subpart TTTT, as amended through July 1, 2018, entitled “Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units” is incorporated by reference.*

**Justification.** It is the goal of the State of Minnesota to reduce statewide greenhouse gas emissions across all sectors producing those emissions to a level at least 80 percent below 2005 levels by 2050. Minn. Stat. 216H.02 subd. 1. Additionally, new large energy facilities that would contribute to statewide carbon dioxide emissions cannot be constructed unless a state rule is in effect that reduces over time statewide power sector carbon dioxide emissions, unless carbon dioxide emissions from a new facilities are offset. (Minn. Stat. 216H.03 subds. 3 and 4.)

Minnesota has established a statutory goal to, by 2050, reduce statewide greenhouse gas (GHG) emissions to a level at least 80 percent below 2005 levels. (Minn. Stat. 216H.02 subd. 1.) To meet that goal, new, large energy facilities that would contribute to statewide carbon dioxide emissions cannot be constructed unless:

- a state rule is in effect that, over time, reduces statewide power sector carbon dioxide emissions; or
- carbon dioxide emissions from a new facilities are offset. (Minn. Stat. 216H.03 subds. 3 and 4).

The MPCA is proposing to incorporate by reference the federal NSPS establishing greenhouse gas limits for electric generating units (40 CFR, part 60, subpart TTTT). These requirements are discussed in <https://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf> and <https://www.gpo.gov/fdsys/pkg/FR-2014-01-08/pdf/2013-28668.pdf>. Subpart TTTT, which applies to new coal-fired electric steam boilers and natural gas fired combustion turbines, is currently in effect and is applicable to several facilities in Minnesota<sup>7</sup>. These standards establish GHG emission rates based on EPA’s determination of the “best system of emission reduction” (BSER) required by section 111(b) of the Clean Air Act. BSER is:

- partial carbon capture and sequestration for coal-fired electric generating units; and
- high efficiency combined cycle technology for natural gas-fired turbine generators.

The emission limits of subpart TTTT align with Minnesota’s goals to address greenhouse gas emissions from the electric power generating sector.

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<sup>7</sup> See:

Mankato Energy Center, MPCA AQ permit no. 01300098-001 <https://www.pca.state.mn.us/sites/default/files/01300098-101-aqpermit.pdf>

Xcel Energy Black Dog, MPCA AQ permit no. 03700003-0101 <https://www.pca.state.mn.us/sites/default/files/03700003-101-aqpermit.pdf>

In this rulemaking the MPCA is proposing to adopt only the subpart TTTT standards currently in effect and is not proposing to prospectively incorporate future amendments. U.S. EPA has proposed revisions to subpart TTTT that, if adopted as proposed, will reduce the level of regulation of GHG emissions for coal-fired electric generators. The proposed federal revisions set standards based on technology that do not reflect BSER and does not support Minnesota in achieving statewide GHG reductions. Because those revisions have not yet been adopted, it is reasonable to defer their adoption into state rules. Incorporating subpart TTTT as it is currently in effect retains the current carbon dioxide standards in Minnesota. If U.S. EPA's adopted revisions reflect Minnesota's environmental priorities, the MPCA can initiate a future rulemaking to evaluate the reasonableness of adopting the federal revisions.

**51. 7011.0563 Incorporation ~~of~~ by Reference; Emission Standards for Hazardous Air Pollutants from; Coal-and Oil-Fired Electric Utility Steam Generators.**

*Code of Federal Regulations, title 40, part 63, subpart UUUUU, as amended through July 1, 2018, entitled "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units" is incorporated by reference, ~~except that the authorities identified in Code of Federal Regulations, section 63.10041(b), are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The MPCA previously incorporated by reference the federal standards that relate to emissions from coal and oil-fired electric utility steam generators. The previous incorporation was "as amended." However, in this rulemaking the MPCA is amending the existing incorporation by reference to limit the scope of the federal standards being incorporated to only the standards that are in effect through July 1, 2018. Amendments after that date are not incorporated into the state rules.

The MPCA is proposing to limit the incorporation of future amendments because these standards are currently under reconsideration at the federal level. On December 27, 2018, U.S EPA issued a proposed revised Supplemental Cost Finding for the required risk and technology review for Mercury and Air Toxics Standard and the Clean Air Act. U.S. EPA is proposing to find that "After considering the cost of compliance relative to the HAP (hazardous air pollutant) benefits of regulation, the EPA proposes to find that it is not "appropriate and necessary" to regulate HAP emissions from coal- and oil-fired EGUs, thereby reversing the Agency's prior conclusion under CAA section 112(n)(1)(A)"

The MPCA and affected coal fired utility boiler owners currently are relying on large parts of 40 CFR, part 63, subpart UUUUU for successful implementation of Minnesota's Mercury Emissions Reduction Act of 2006 (Minnesota Statutes [216B.68 to 216B.688](#)). The federal standard establishes requirements for the installation, operation, calibration and data handling, recordkeeping and reporting of mercury emission monitors that may be eliminated by incorporating future amendments to the federal standard. The particulate matter and SO2 limits in the current standard may influence operation of air pollution equipment to meet those emission limits that are not otherwise considered by Minnesota's Mercury Emissions Reduction Act. In addition, the current standard establishes the technical basis to ensure that pollution equipment is well operated, monitored, and reported to the MPCA. It is therefore reasonable to limit the incorporation of the federal subpart UUUUU standards to those standards that are currently in effect and to consider future amendments to the federal standard through a separate rulemaking.

The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

**52. 7011.0565 Incorporation ~~of~~ by Reference; New Source Performance Standard by Reference Standards; Steam Generating Units.**

*Code of Federal Regulations, title 40, part 60, subpart Db, as amended, entitled "Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units," is ~~adopted and incorporated by reference, except that decisions made by the administrator under Code of Federal Regulations, title 40, sections 60.44b(f), 60.44b(g), and 60.49b(a)(4), are not delegated to the commissioner and must be made by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**53. 7011.0570 Incorporation ~~of~~ by Reference; New Source Performance Standard by Reference Standards; Small Steam Generating Units.**

*Code of Federal Regulations, title 40, part 60, subpart Dc, as amended, entitled "Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units," is ~~adopted and incorporated by reference, except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.48c(a)(4), are not delegated to the commissioner and must be made by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**54. 7011.0830 Incorporation ~~of~~ by Reference; New Source Performance Standard by Reference Standards; Portland Cement Plants.**

*Code of Federal Regulations, title 40, part 60, subpart F, as amended, entitled "Standards of Performance for Portland Cement Plants," is ~~adopted and incorporated by reference.~~*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**55. 7011.0865 Incorporations by Reference; Documents**

A. For the purpose of part [7011.0870](#), the documents in items B and C are incorporated by reference. These documents are not subject to frequent change.

B. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Certification Procedure CP-201, Certification Procedure for Vapor Recovery Systems ~~of~~ *at* Dispensing Facilities, February 1, 2001 April 23, 2015. This publication is available ~~through the Minitex interlibrary loan system~~ *at* <https://ww2.arb.ca.gov/our-work/programs/vapor-recovery/vapor-recovery-certification-and-test-procedures>.

Item C [unchanged]

**Justification.** The heading of this subpart is changed to more accurately identify what is being incorporated by reference. This is a reasonable clarification to distinguish this information about documents from the large number of federal regulations that are also incorporated by reference in this chapter.

The document cited in item B has been revised and a current version is available online. It is reasonable to amend the rule to reflect this newest version and where it is available.

**56. 7011.0909 Incorporation by Reference; New Source Performance Standards of Performance for New; Hot Mix Asphalt Plants**

*Code of Federal Regulations, title 40, part 60, subpart I, as amended entitled "Standards of Performance for Hot Mix Asphalt Facilities," is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement.

**57. 7011.0950 Incorporation by Reference; New Source Performance Standards of Performance for New; Asphalt Processing and Asphalt Roofing Manufacture.**

*Code of Federal Regulations, title 40, part 60, subpart UU, as amended, entitled "Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture," is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement.

**58. 7011.1005 Standards of Performance for Dry Bulk Agricultural Commodity Facilities.**

**Subpart 1. Owner or operator duties.** *The owner or operator of a commodity facility shall must:*

Item A [unchanged]

*Maintain air pollution control equipment in proper operating condition and ~~utilize~~ use the air pollution control systems as designed.*

**Subp. 2. Federal requirements.** *The owner, operator, or other person who conducts activities at a grain terminal elevator or grain storage elevator, of which construction, modification, or reconstruction commenced, as defined in*

*Code of Federal Regulations, title 40, section 60.2, after August 3, 1978, shall meet the requirements of Code of Federal Regulations, title 40, part 60, subpart DD, as amended, entitled "Standards of Performance for Grain Elevators," which is ~~adopted and~~ incorporated by reference, except that ~~decisions made by the administrator under~~ authorities identified in Code of Federal Regulations, title 40, section 60.302(d)(3), are not delegated to the commissioner and ~~must be made~~ are retained by the administrator.*

**Subp. 3. Prohibited discharges.** *A commodity facility that is not required to be controlled under subpart 2 must be controlled if the facility meets on of the descriptions listed in part 7011.1015 where the table indicates "control required." For a facility where control is required under part 7011.1015, no owner or operator, or other person who conducts activities at the facility may allow:*

Items A to C [unchanged]

*D. a discharge of particulate matter from control equipment that exhibits greater than ten percent opacity; ~~and~~ or*

Item E [unchanged]

**Subp. 4. Capture systems and control equipment.** *The owner or operator of a commodity facility not required to control emissions under subpart 2 or 3 is not required install capture systems and control*

equipment but ~~shall~~ must unload, handle, clean, dry, and load commodities to minimize fugitive emissions to a level consistent with RACT. If a capture system is used, the particulate matter must be conveyed through control equipment that has a collection efficiency of not less than 80 percent by weight.

**Subp. 5.** [unchanged]

**Justification.** The amendments that remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

The rephrasing of the delegation language in subp. 2 is reasonable for the reasons discussed in item 48 above.

In subpart 3, changing “and” to “or” is reasonable to clarify that the owner or operator must not all any of the activities in items A to E. The use of “and” implied that all five activities needed to occur before they were disallowed.

Additional revisions are at the recommendation of the Revisor of Statutes.

**59. 7011.1150 Incorporation by Reference; New Source Performance Standards of Performance for New; Coal Preparation and Processing Plants.**

*Code of Federal Regulations, title 40, part 60, subpart Y, as amended, entitled "Standards of Performance for Coal Preparation and Processing Plants," is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement. The change to the title of the incorporated standard is reasonable to reflect the actual title of that subpart.

**60. 7011.1201 Definitions.**

**Subp. 49. Wood heater.** *"Wood heater" means an enclosed ~~woodburning~~ wood-burning appliance capable of and intended for space heating and domestic water heating that meets the following criteria: These devices include, adjustable burn rate wood heaters, single burn rate wood heaters, and pellet stoves. Wood heaters may or may not include air ducts to deliver some portion of the heat produced to areas other than the space where the wood heater is located. Wood heaters include:*

*A. an air to fuel ratio in the combustion chamber averaging less than 35 to 1 as determined by the test procedure prescribed in Code of Federal Regulations, title 40, section 60.534, as amended, performed at an accredited laboratory;*

*B. a useable firebox volume of less than 20 cubic feet;*

*C. a minimum burn rate less than five kg/hr as determined by the test procedure prescribed in Code of Federal Regulations, title 40, section 60.534, as amended performed at an accredited laboratory; and*

*D. a maximum weight of 800 kilograms. In determining the weight of the appliance for these purposes, fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components that are not an integral part of the appliance or heat distribution ducting shall not be included.*

*A. Free-standing wood heaters: wood heaters that are installed on legs, on a pedestal or suspended from the ceiling. These products generally are safety listed under UL-1482, UL-737 or ULC-5627;*

B. Fireplace insert wood heaters: wood heaters intended to be installed in masonry fireplace cavities or in other enclosures. These appliances generally are safety listed under UL-1482, UL-737 or ULC-S628.

C. Built-in wood heaters: wood heaters that are intended to be recessed into the wall. These appliances generally are safety listed under UL-1482, UL-737, UL-127 or ULC-S610.

**Justification.** U.S. EPA revised the NSPS for wood heaters in 2015, adopting more stringent particulate matter standards for residential wood heaters. In the revised NSPS, U.S. EPA developed emission limits applicable to specific types of wood heating devices, and as part of that rule, revised the definition of wood heater. The MPCA is reasonably deleting the old definition of wood heater, and replacing it with the revised federal definition. In order to effectively administer the revised NSPS subpart AAA in Minnesota, state rules must reflect the federal rule.

**61. 7011.1205 ~~Incorporations~~ Incorporation by Reference; Documents.**

For the purpose of parts [7007.0501](#), [7007.0801](#), and [7011.1201](#) to [7011.1294](#), the documents in items A to C are incorporated by reference. Unless otherwise stated, these documents are not subject to frequent change.

A. Annual Book of American Society for Testing and Materials Standards (ASTM), Part 26 Volume 05.06, Gaseous Fuels, Coal and Coke; Atmospheric Analysis, 1981 edition Catalysts: Bioenergy and Industrial Chemicals from Biomass (2017). This publication is available through the Minitex interlibrary loan system.

B. Test Methods for Evaluating Solid Waste, SW-846, United States Environmental Protection Agency, Office of Solid Waste and Emergency Response, Third Edition, November 1986. This publication is available ~~through the Minitex interlibrary loan system~~ at <https://www.epa.gov/hw-sw846/sw-846-compendium> and is subject to frequent change; and

C. The following material is available from the American Society of Mechanical Engineers (ASME), 345 East 47th Street, New York, New York 10017 or from the State Law Library, Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota 55155. Through the Minitex interlibrary loan system;

(1) Standards Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994, May 1994, ASME QRO-1-2005 (reaffirmed 2015);

(2) Power Tests Performance Test Code for, Steam Generating Units, PTC 4.1, 1972-1991; and

(3) Interim Supplement 19.5 on Instrumentation and Apparatus, Application Part II of Fluid Meters, 6th Edition, 1971 Interim Supplement 19.5 on Instruments and Apparatus (1972).

**Justification.** In addition to the non-substantive clarifications recommended by the Revisor of Statutes or discussed in Part 4, item D of this Statement, this part is amended to:

- Revise the introductory paragraph to state that the documents are not subject to frequent change. Frequent revisions may have been the expectation when this part was first adopted, but the fact that the publication dates of the incorporated documents range from 1971 to 1994 indicates that they are not actually subject to frequent change. In this case, where there are several documents identified, it is reasonable to identify the general expectation for the frequency of change of all of them, and only identify those documents which do not meet that

expectation.<sup>8</sup> In the case of the listed documents, almost all of them are not expected to change.

- Change the information provided for obtaining the ASTM test methods for Gaseous Fuels, Coal and Coke. This document has been revised since 1981 and the most current version is a 2017 edition. The title of the document has changed to add “Catalysts: Bioenergy and Industrial Chemicals from Biomass” and the volume number has changed to 05.06.
- Change the information provided for obtaining Test Methods for Evaluating Solid Waste SW-846. The most recent edition of this document is now provided by U.S. EPA for no charge at the online address being added. No date or edition is associated with the online document and there is no longer any need for the rule to provide the information about the U.S. EPA office that publishes the document. Also, because the document is available online, there is no longer any need to provide the information about its availability through the Minitex interlibrary loan system. The MPCA believes it is appropriate to indicate that these test methods may be frequently changed.
- Change the information provided about the documents in item C that are published by the American Society of Mechanical Engineers (ASME).
  - The rule formerly identified the State Law Library as a source for these documents. This is reasonably changed to identify the more current source, the Minitex interlibrary loan system.
  - Subitem (1) is amended to update the document cited. The 1994 edition has been revised and the most current, 2015 edition is identified.
  - Subitem (2) is amended to update the date and name of the document cited. The 1972 edition has been revised and the most current, 1991 version is identified.
  - Subitem (3) is amended to more accurately reflect the edition that is available. The rule formerly identified the 1971 edition but no such edition is currently in the State Law Library. The MPCA has purchased the 1972 edition and placed it in the Minitex system for loan.

## 62. 7011.1225 Standards of Performance for Waste Combustors.

### Subpart 1. Class A or C waste combustor.

- A. ~~No owner or operator of A Class A or C waste combustor shall cause to be emitted into the atmosphere from each waste combustor unit~~ must not emit gases in excess of that exceed the applicable standards of performance shown in parts 7011.1227 and 7011.1228. Emissions, except opacity, shall must be calculated under standard conditions corrected to seven percent oxygen on a dry volume basis. An owner or operator of a mixed municipal solid waste or RDF waste combustor may determine compliance with the emission limitations using carbon dioxide measurements corrected to an equivalent of seven percent oxygen.
- B. ~~No owner or operator of A Class A or C waste combustor shall cause to be emitted into the atmosphere~~ must not emit visible emissions of combustion ash from an ash conveying system, or buildings or enclosures of ash conveying systems, including conveyor transfer points, in excess of that exceed five percent of the observation period (i.e. 9 minutes per three-hour period), as

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<sup>8</sup> [Minn. Stat. § 14.07, subd. 4](#) requires that the frequency of change must be provided for each incorporation by reference.



determined by Code of Federal Regulations, title 40, part 60, Appendix A, Method 22, as amended. This limit does not apply to visible emissions discharged inside buildings or enclosures of ash conveying systems.

**Subp. 2. Class I or II waste combustors.** ~~No owner or operator of a Class I or II waste combustor shall cause to be emitted into the atmosphere from each waste combustor unit~~ must not emit gases in excess of that exceed the standards of performance shown in part 7011.1230.

**Subp. 3. Class III waste combustors.** ~~No owner or operator of a Class III waste combustor shall cause to be emitted into the atmosphere from each waste combustor unit~~ must not emit gases that contain particulate matter, PCDD/PCDF, mercury, carbon monoxide, or opacity ~~in excess of that exceeds~~ the standards of performance in part 7011.1231. Emissions ~~shall~~ must be calculated under standard conditions, corrected to seven percent oxygen on a dry volume basis. An owner or operator may determine compliance with the emissions limitations using carbon dioxide measurements corrected to an equivalent of seven percent oxygen. The relationship between carbon dioxide and oxygen ~~shall~~ must be established at each compliance test.

Subp. 4 [unchanged]

**Subp. 5. Class IV waste combustors.** ~~No owner or operator of a Class IV waste combustor shall cause to be emitted into the atmosphere from each waste combustor unit~~ must not emit gases that contain particulate matter, carbon monoxide, or opacity ~~in excess of those that exceeds the concentrations in~~ part 7011.1233. Emissions ~~shall~~ must be calculated under standard conditions, corrected to seven percent oxygen on a dry volume basis. An owner or operator may determine compliance with the emission limitations using carbon dioxide measurements corrected to an equivalent of seven percent oxygen. The relationship between carbon dioxide and oxygen ~~shall~~ must be established at each compliance test.

**Justification.** Clarifying revisions are at the recommendation of the Revisor of Statutes.

### 63. 7011.1228 Nitrogen Oxides Limits for Class A Waste Combustors

The nitrogen oxides emission limits in Table A apply to each waste combustor unit at a Class A waste combustor facility. The owner or operator ~~shall~~ must use the procedures of part 7011.1260 for determining compliance with the nitrogen oxides emission limits of Table A.

Alternatively, an owner or operator may average nitrogen oxide emissions across the waste combustor facility according to the procedures in Code of Federal Regulations, title 40, section 60.33b(d)(1), as amended. Waste combustor units for which emissions averaging is used ~~shall~~ must not exceed the nitrogen oxide emission limits in Table B.

Tables A and B [unchanged]

Before a waste combustor owner or operator may implement emissions averaging, the owner or operator ~~shall~~ must identify units that are included in the nitrogen oxides emission averaging plan in either the compliance report required by part 7017.2035 that contains the results of the units' initial performance tests required by part 7011.1279, item A, subitem (1), or in the annual report required in part 7011.1285, as applicable ~~prior to~~ before implementing the averaging plan. The units ~~being~~ included in the averaging plan may be redesignated every calendar year. Partial year averaging is allowable upon written commissioner approval.

**Justification.** Clarifying revisions are at the recommendation of the Revisor of Statutes.

#### 64. 7011.1230 Standards of Performance for Class I Municipal Waste Combustors

**Subpart 1. Scope.** *The owner or operator of a Class I waste combustor ~~shall~~ must comply with the emission limits, notification, monitoring, testing, ~~record-keeping~~ record-keeping, and reporting requirements of the new source performance standards incorporated in parts 7011.1291 to 7011.1294, except as provided in subpart 2. In addition, the owner or operator ~~shall~~ must comply with the following limitations:*

- A. *~~parts 7011.1240, subpart 1; 7011.1281; 7011.1282; 7011.1283; and 7011.1284 if the owner or operator chooses to comply with the operator certification requirements of Code of Federal Regulations, title 40, section 60.54b, as amended, by obtaining certification through the Minnesota Pollution Control Agency, then the owner or operator shall comply with parts 7011.1240, subpart 1; 7011.1281; 7011.1282; 7011.1283; and 7011.1284;~~*

Item B [unchanged]

- C. *the industrial solid waste management plan requirements of part 7011.1250;*

Items D to F [unchanged]

**Subp. 2. Mercury emission limitations.** *Instead of the mercury emission limits contained in Code of Federal Regulations, title 40, sections 60.52b(a)(5), 60.58b(d)(2)(ix), and 60.58b(d)(2)(x), as amended, the owner or operator of a Class I waste combustor ~~shall~~ must comply with the mercury emission limits described in this subpart and the testing and reporting requirements of parts 7011.1265, subpart 2; and 7011.1270, item E.*

Table [unchanged]

**Justification.** Clarifying revisions are at the recommendation of the Revisor of Statutes.

#### 65. 7011.1260 Continuous Monitoring

**Subpart 1. Combustion chamber temperature monitor.** *The owner or operator of a Class D, III, or IV waste combustor ~~shall~~ must install and operate ~~at all times~~ temperature monitors that continuously read and record the temperature at the point in the combustion unit one second downstream of the entrance of the last overfire or secondary air injection. The owner or operator may elect to place temperature monitors at another point downstream from the entrance of the last overfire or secondary air injection, ~~provided that~~ if the owner or operator conducts mapping of the operating combustion chambers to develop temperature isopleths and correlates these temperatures to the downstream temperature monitors. The averaging period for combustion chamber temperatures ~~shall~~ must be four-hour arithmetic block averages calculated from four one-hour arithmetic averages. Each one-hour arithmetic average ~~shall~~ must consist of at least ten data points equally spaced in time.*

**Subp. 2. Particulate matter control device temperature monitors.** *The owner or operator of a waste combustor ~~shall~~ must install, calibrate, maintain, and operate ~~at all times~~ temperature monitors that continuously read and record the temperatures of the flue gas at the inlet of each particulate matter control device.*

**Subp. 3. Continuous monitors.** *The owner or operator of a waste combustor ~~shall~~ must install, calibrate, maintain, and operate a continuous monitoring system when burning solid waste. Monitoring systems that continuously read and record the following outputs ~~shall~~ must be installed:*

A. in Class III, A, C, or D waste combustors:

(1) for carbon monoxide at the waste combustor outlet;

(2) for steam flow or an alternative unit load measurement parameter as described in part 7011.1265, subpart 4a, in waste combustors ~~which~~ that recover heat with a boiler;

Subitems (3) and (4) [unchanged];

Item B [unchanged]

C. in all classifications of waste combustors subject to sulfur dioxide emission limits for sulfur dioxide. For those facilities for which compliance is determined by the percent reduction of emissions, monitors ~~shall~~ must be installed at the inlets and outlets of the air pollution control system.

**Subp. 4. Averaging periods.** Except as provided in this subpart and subparts 4a and 5, ~~the requirements of parts 7017.1002 to 7017.1220 apply to continuous monitoring data collection, reduction, and averaging periods.~~

Items A and B [unchanged]

C. At waste combustors other than mass burn rotary waterwall combustors or RDF waste combustors for carbon monoxide, a four-hour block average. For mass burn rotary waterwall combustors or RDF stokers, the averaging period for carbon monoxide ~~shall~~ must be a daily 24-hour arithmetic average measured between 12 midnight and the following midnight. The four-hour and 24-hour average ~~shall~~ must be calculated from one-hour arithmetic averages. At least four points equally spaced in time shall be used to calculate each one-hour average. During periods of calibration, quality assurance audits, and routine maintenance, only two data points during the hour, at least 15 minutes apart, are required to calculate an hourly average. Each one-hour average ~~shall~~ must be corrected to seven percent oxygen on an hourly basis using the one-hour arithmetic average of the oxygen or carbon dioxide continuous emissions monitoring system.

D. For sulfur dioxide, the geometric average of the one-hour arithmetic average emission concentration during each 24-hour daily period measured from midnight to midnight. At least four data points equally spaced in time shall be used to calculate each one-hour arithmetic average. During periods of calibration, quality assurance audits, and routine maintenance, only two data points during the hour, at least 15 minutes apart, are required to calculate an hourly average. Each one-hour average ~~shall~~ must be corrected to seven percent oxygen on an hourly basis using the one-hour arithmetic average of the oxygen or carbon dioxide continuous emissions monitoring system.

E. For nitrogen oxides, the arithmetic average of the one-hour arithmetic average emission concentration during each 24-hour daily period measured from midnight to midnight. At least four data points equally spaced in time ~~shall~~ must be used to calculate each one-hour arithmetic average. During periods of calibration, quality assurance audits, and routine maintenance, only two data points during the hour, at least 15 minutes apart, are required to calculate an hourly average. Each one-hour average ~~shall~~ must be corrected to seven percent oxygen on an hourly basis using the one-hour arithmetic average of the oxygen or carbon dioxide continuous emissions monitoring system.

Items F and G [unchanged]

**Subp. 4a. Calculation of sulfur dioxide and nitrogen oxide emissions.**

A. Compliance with the sulfur dioxide emission limit and percent reduction ~~shall~~ must be determined by using a continuous emission monitor to measure sulfur dioxide and calculating a 24-hour daily geometric mean emission concentration and daily geometric mean percent reduction using Code of Federal Regulations, title 40, part 60, Appendix A, Method 19, section 5.4, as amended, to determine the daily geometric average percent reduction in the potential sulfur dioxide emission concentration. For waste combustors ~~which~~ that do not operate continuously, compliance ~~shall~~ must be determined using a daily geometric mean of all hourly average values for the hours during the day that the facility is operated.

B. Compliance with the nitrogen oxides emission standards ~~shall~~ must be determined by using a continuous emission monitor for measuring nitrogen oxides and calculating a 24-hour daily arithmetic average emission concentration using Code of Federal Regulations, title 40, part 60, Appendix A, Method 19, section 4.1, as amended. For waste combustors ~~which~~ that do not operate continuously, compliance ~~shall~~ must be determined using an arithmetic mean of all hourly average values for the hours during the day that the facility is operated.

**Subp. 5. Installation and operation of continuous monitors.** The owner or operator of a waste combustor with continuous monitors ~~shall~~ must comply with ~~the requirements of~~ parts 7017.1002 to 7017.1220, except as provided in items A to I.

A. Following the initial compliance test as required under part 7011.1270, the owner or operator of a waste combustor ~~shall~~ must submit the initial compliance report ~~as~~ required under part 7011.1285, subpart 5.

B. Continuous monitors ~~shall~~ must be operated ~~so as~~ to measure and record data for at least 75 percent of the hours per day for 90 percent of the days of the calendar quarter that the waste combustor is operating and combusting solid waste.

C. All valid monitoring data ~~shall~~ must be used to calculate emission rates, emission reductions, and operating parameters, even if the conditions of item B are not met.

D. When continuous emissions data for sulfur dioxide removal efficiency, sulfur dioxide or nitrogen oxide emission rates, or carbon monoxide are not obtained because of monitor breakdowns, repairs, calibration checks, and zero and span adjustments, emission data calculations to determine compliance ~~shall~~ must be made using the following methods:

(1) for sulfur dioxide removal efficiency or sulfur dioxide or nitrogen oxide emission concentrations, Code of Federal Regulations, title 40, part 60, Appendix A, Method 19, as amended, to provide valid emission data in order to meet the requirements of item B. Other monitoring systems or other data collection methods may be used as approved by the commissioner; and

(2) for carbon monoxide, Code of Federal Regulations, title 40, part 60, Appendix A, Method 10, as amended, to provide valid emission data ~~in order~~ to meet the requirements of item B. Other monitoring systems or other data collection methods may be used as approved by the commissioner.

E. Zero drift and span drift checks of emission monitoring systems shall be conducted in accordance with Code of Federal Regulations, title 40, section 60.13, as amended.

F. Span values for continuous monitors ~~shall~~ must be as described in subitems (1) to (4). Dual scale monitors may be used to monitor emissions beyond the ranges specified in subitems (1) to (4).

(1) The span value of the sulfur dioxide continuous monitors at the inlet to the sulfur dioxide control device ~~is~~ must be 125 percent of the maximum estimated hourly potential sulfur dioxide emissions of the waste combustor unit, and the span value of the monitor at the outlet of the sulfur dioxide control device ~~is~~ must be 50 percent of the maximum estimated hourly potential sulfur dioxide emissions of the waste combustor unit.

(2) The span value of the nitrogen oxides continuous monitors ~~shall~~ must be 125 percent of the maximum estimated hourly potential nitrogen oxides emissions of the waste combustor unit.

(3) The span value of the oxygen or carbon dioxide monitor ~~shall~~ must be 25 percent oxygen or carbon dioxide.

(4) The span value of the carbon monoxide monitor ~~shall~~ must be 125 percent of the maximum estimated hourly potential carbon monoxide emissions of the waste combustor unit.

G. Quarterly accuracy determinations, daily calibration drift tests, and annual relative accuracy test audits ~~shall~~ must be performed in accordance with procedures in Code of Federal Regulations, title 40, part 60, Appendix F, as amended, for sulfur dioxide, nitrogen oxides, carbon monoxide, and oxygen or carbon dioxide, except that section 5.1.1 (relative accuracy test audit) ~~shall~~ must not apply to the oxygen monitor.

H. The procedures under Code of Federal Regulations, title 40, section 60.13, as amended, ~~shall~~ must be followed for installation, evaluation, and operation of continuous emissions monitoring systems for sulfur dioxide, nitrogen oxides, opacity, and oxygen or carbon dioxide.

I. The oxygen or carbon dioxide monitor ~~shall~~ must conform to Performance Specification 3 in Code of Federal Regulations, title 40, part 60, Appendix B, as amended, except that section 2.3 ~~shall~~ must not apply.

**Subp. 6. Recording data from continuous monitoring.** The owner or operator of a waste combustor ~~shall~~ must maintain a record of ~~the information contained in this subpart.~~ ~~The owner or operator of a Waste combustors~~ waste combustor shall must maintain a permanent record of continuously measured parameters. The record of monitoring shall must contain:

Items A to C [unchanged]

**Subp. 7. Exceedances of continuously monitored emission limits.** If accurate and valid data results collected from continuous monitors for sulfur dioxide, nitrogen oxides, or carbon monoxide data exceed emission limits established in part 7011.1225 or in the waste combustor's permit after normal start-up, the waste combustor owner or operator ~~shall undertake~~ must take the following actions:

A. The exceedance ~~shall~~ must be reported to the commissioner as soon as reasonably possible, giving consideration to matters of plant or worker safety, or access to communications.

B. Appropriate repairs or modifications to return the waste combustor to compliance must be commenced within 72 hours of the exceedance.

C. If the waste combustor cannot be returned to compliance within 72 hours of ~~the occurrence of the~~ occurring, the waste combustor ~~shall~~ must be shut down. If the modifications to return the waste combustor to compliance require ~~the amendment of~~ amending the air emission facility permit, the waste combustor ~~shall~~ must shut down within 72 hours of the exceedance.

D. When repairs or modifications have been completed, the waste combustor owner or operator ~~shall~~ must demonstrate to the commissioner that the waste combustor is in compliance. The waste combustor may be started up after the owner or operator ~~has notified~~ notifies the commissioner in writing of the date the owner or operator plans to start up the waste combustor and the date that compliance testing is scheduled. Notification ~~shall~~ must be given at least ten days in advance of the compliance test date.

**Justification.** Clarifying revisions are at the recommendation of the Revisor of Statutes.

**66. 7011.1265 Required Performance Tests, Methods, and Procedures**

**Subpart 1. Performance test methods and procedures.** An owner or operator of a waste combustor required to conduct performance tests for a waste combustor ~~shall~~ must use the performance test methods and procedures specified in parts [7017.2001](#) to [7017.2060](#) except as modified in this part. Not operating a sorbent injection system for the sole purpose of testing in order to demonstrate compliance with the percent reduction standards for sulfur dioxide and hydrogen chloride is not a modification under part [7007.0100](#), subpart 14.

**Subp. 2. Performance test methods for criteria pollutants.** An owner or operator of a waste combustor required to conduct performance tests for particulate matter, sulfur dioxide, or nitrogen oxides must use the test methods as described in under items A to D.

A. For particulate matter, except that for Class I, II, A, and C waste combustors, the minimum sample volume must be 1.7 dscm, and the probe and filter holder heating systems in the sample train must be set to provide a gas temperature no greater than 160 degrees Celsius, plus or minus 14 degrees. For Class III and IV waste combustors, the minimum sample volume must be 0.85 dscm. Owners or operators may request approval for smaller sampling times or volumes from the commissioner ~~prior~~ to ~~before~~ testing, when necessitated by process variables or site-specific limitations. An oxygen or carbon dioxide measurement must be obtained simultaneously with each Method 5 test run for particulate matter. Particulate matter emissions, expressed in gr/dscf, must be corrected to seven percent oxygen by using the following formula:

$$c_7 = \frac{14c}{(21 - \%O_2)}$$

where:  $c_7$  is the concentration of particulate matter corrected to seven percent oxygen;  
 $c$  is the concentration of particulate matter as measured by Code of Federal Regulations, title 40, part 60, Appendix A-3, Method 5, and Code of Federal Regulations, title 40, part 51, Appendix M, Method 202; and  $\%O_2$  is the percentage of oxygen as measured by Code of Federal Regulations, title 40, part 60, Appendix A-2, Method 3, as amended.

(1) Filterable particulate matter emission is the concentration of particulate matter as measured by Code of Federal Regulations, title 40, part 60, Appendix A-3, Method 5, as amended.

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

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

(a) oxygen or carbon dioxide measurements;

(b) dry basis F factor; and

(c) dry basis emission rate calculation procedures in Code of Federal Regulations, title 40, part 60, Appendix A-7, Method 19, as amended.

B. For opacity emissions, Code of Federal Regulations, title 40, part 60, Appendix A, Method 9, as amended, ~~shall~~ must be used to determine compliance with opacity limits.

C. For Class IV waste combustors carbon monoxide emissions, compliance with the emission limit ~~shall~~ must be determined by using Code of Federal Regulations, title 40, part 60, Appendix A, Method 10, as amended.

D. For fugitive ash emissions, Code of Federal Regulations, title 40, part 60, Appendix A, Method 22, as amended, ~~shall~~ must be used. The minimum observation time ~~shall~~ must be a series of three one-hour observations. The observation period ~~shall~~ must include times when the facility is transferring ash from the waste combustor unit to the area where ash is stored or loaded into containers or trucks. The average duration of visible emissions per hour ~~shall~~ must be calculated from the three one-hour observations. The average ~~shall~~ must be used to determine compliance with the emission limit.

**Subp. 3. Performance test methods for other air contaminants.** If not specified in this subpart, the owner or operator ~~shall~~ must use test methods in Code of Federal Regulations, title 40, part 60, Appendix A, or part 61, Appendix B, as amended, or other methods determined by the commissioner in writing to be equivalent. For Class A waste combustors, other methods used for performance testing must be approved by the Environmental Protection Agency.

A. For hydrogen chloride, the percentage reduction in the potential hydrogen chloride emissions (%PHCl) is computed using the following formula:

$$\%PHCl = \frac{(E_i - E_o)}{E_i}$$

where  $E_i$  is the potential hydrogen chloride emission rate measured at the control device inlet, corrected to seven percent O<sub>2</sub>; and  $E_o$  is the hydrogen chloride emission rate measured at the outlet of the acid gas control device, corrected to seven percent O<sub>2</sub>.

Code of Federal Regulations, title 40, part 60, Appendix A, Method 26 or 26A, as amended, ~~shall~~ must be used for determining the hydrogen chloride emission rate. The minimum sampling time ~~shall~~ be is one hour. An oxygen or carbon dioxide measurement ~~shall~~ must be obtained simultaneously with each Method 26 test run for hydrogen chloride. The average of the hydrogen chloride emission concentration or percent reduction is used to determine compliance.

B. For PCDD/PCDF emissions, Code of Federal Regulations, title 40, part 60, Appendix A, Method 23, as amended, ~~shall~~ must be used ~~for determining~~ to determine compliance with the PCDD/PCDF emission limits. For Class II and A facilities, the minimum sample time ~~shall be is~~ four hours per test run. For Class III, C, and D facilities, the minimum sample time ~~shall be is~~ three hours per test run. An oxygen or carbon dioxide measurement ~~shall~~ must be obtained simultaneously with each Method 23 test run for PCDD/PCDF. The average of the PCDD/PCDF test runs is used to determine compliance.

C. For mercury, lead, and cadmium emissions, Code of Federal Regulations, title 40, part 60, Appendix A, Method 29, as amended, ~~shall~~ must be used for measuring emissions of lead, cadmium,

and mercury. The minimum sample volume ~~shall be~~ is 1.7 dscm. An oxygen or carbon dioxide measurement ~~shall must~~ be obtained simultaneously with each Method 29 test run for lead and cadmium. The average of the lead or cadmium emission concentrations from three test runs or more ~~shall must~~ be used to determine compliance. The procedures in item D ~~shall must~~ be used to determine compliance with the mercury emission limits.

D. To determine the mercury concentration, the arithmetic average of three or more samples at the outlet of the air pollution control device ~~shall must~~ be used. The minimum sample volume ~~shall be~~ is 1.7 dscm. The maximum sample run time ~~shall be~~ is two hours. An oxygen or carbon dioxide measurement ~~shall must~~ be obtained simultaneously with each Method 29 test run for mercury.

To determine the percent reduction of mercury, concurrent sampling for mercury at the inlet and outlet of the air pollution control system ~~shall must~~ be performed at each occurrence of mercury emissions performance testing.

Owners and operators of RDF combustors may choose to conduct mercury emissions testing either every 90 days or every 12 months. If the owner or operator of an RDF combustor chooses to conduct testing every 90 days, the requirements of subitems (1) and (2) apply. If the RDF combustor chooses to test every 12 months, the requirements of subitem (3) apply.

(1) Procedures to determine compliance with the short-term mercury emission concentration limit are described in unit (a). If the waste combustor does not show compliance as determined in unit (a), compliance ~~shall must~~ be determined as described in units (b) and (c).

(a) The waste combustor is in compliance with the mercury concentration limit if the arithmetic average of three or more samples is less than or equal to the applicable short-term mercury emission concentration limit.

(b) If the average computed in unit (a) exceeds the short-term mercury emission concentration limit, the removal efficiency for each run ~~shall must~~ be computed as follows:

$$\%Hg_{\text{removal efficiency}} = [Hg_{\text{in}} - Hg_{\text{out}}] / Hg_{\text{in}} \times 100$$

Where:  $Hg_{\text{removal efficiency}}$  is the removal efficiency of each sample run,  $Hg_{\text{in}}$  is the mercury concentration measured at the inlet of the air pollution control device, and  $Hg_{\text{out}}$  is the mercury concentration measured at the outlet.

(c) The waste combustor is in compliance with the short-term mercury emission limit, if the arithmetic average of each of the removal efficiencies as computed in unit (b) is greater than or equal to 85 percent.

(2) Procedures to determine compliance with the long-term mercury emission concentration limit are described in unit (a). If the waste combustor does not show compliance as determined in unit (a), compliance ~~shall must~~ be determined as described in unit (b).

(a) To determine compliance with the mercury emission concentration limit, the arithmetic average of all mercury emission concentrations measured in a compliance test available for the previous calendar year ~~shall must~~ be used. Initial compliance with the long-term mercury concentration limit ~~shall must~~ be determined upon completion of the first calendar year. Subsequent compliance ~~shall must~~ be determined at each occurrence of mercury emission performance testing.

(b) If the average that was computed in unit (a) exceeds the long-term mercury emission concentration, the removal efficiency for each run ~~shall must~~ be computed by the equation in



subitem (1), unit (b). The waste combustor is in compliance with the long-term mercury emission limit if the arithmetic average of each of the removal efficiencies is greater than or equal to 85 percent.

(3) Owners or operators of waste combustors combusting RDF who choose to conduct mercury emission testing every 12 months ~~shall~~ must use the procedures in this subitem to determine compliance with mercury emission limits.

(a) The waste combustor is in compliance with the 12-month mercury emission concentration limit if the arithmetic average of three or more samples is less than the 12-month test interval mercury emission concentration limit.

(b) If the average computed in unit (a) exceeds the 12-month mercury emission concentration limit, the removal efficiency for each run ~~shall~~ must be computed by the equation in subitem (1), unit (b). The waste combustor is in compliance with the 12-month mercury emission limit if the arithmetic average of the removal efficiencies is greater than 85 percent.

**Subp. 4. Steam flow measurement method.** The method contained in ASME ~~Power Test Codes: Test Codes for Steam-Generating Units, PTC 4.1 (1972)~~, section 4, incorporated by reference in part 7011.1205, ~~shall~~ must be used for calculating the steam flow required under part 7011.1260, subpart 3, item A, subitem (2). The recommendations of ~~Instruments and Apparatus: Measurement of Quantity of Materials, Application Part II of Fluid Meters, Interim Supplement 19.5 (1971) on Instruments and Apparatus~~, chapter 4, incorporated by reference in part 7011.1205, ~~shall~~ must be followed for design, construction, installation, calibration, and use of nozzles and orifices, except that measurement devices such as flow nozzles and orifices are not required to be recalibrated after they are installed. All signal conversion elements associated with steam flow measurements must be calibrated according to the manufacturer's instructions before each PCDD/PCDF test, and at least once per year. This annual calibration ~~shall~~ must be recorded in the daily operating record as described in part 7011.1285, subpart 2.

Subp. 4a [unchanged]

**Subp. 4b. Procedures for correlating carbon dioxide and oxygen concentrations.** If carbon dioxide is selected for use in diluent corrections, the relationship between oxygen and carbon dioxide levels ~~shall~~ must be established during the initial performance test according to the procedures and methods specified as described in items A to E.

A. The fuel factor equation in Code of Federal Regulations, title 40, part 60, Appendix A, Method 3B, ~~shall~~ must be used to determine the relationship between oxygen and carbon dioxide at a sampling location. Method 3, 3A, or 3B ~~shall~~ must be used to determine the oxygen concentration at the same location as the carbon dioxide monitor.

B. Samples ~~shall~~ must be taken for at least 30 minutes in each hour.

C. Each sample ~~shall~~ must represent a one-hour average.

D. A minimum of three runs ~~shall~~ must be performed.

E. The relationship between carbon dioxide and oxygen concentrations that is established ~~shall~~ must be submitted as part of the initial performance test report.

**Subp. 5. Performance tests required.** Performance tests ~~shall~~ must be conducted on waste combustors to determine the emission concentrations of the following air contaminants”

Items A to C [unchanged]

- D. any other air contaminant for which an emission limitation applies to the waste combustor, except for opacity and those contaminants for which compliance is demonstrated by ~~the use of~~ using a continuous monitor.

**Subp. 6. Operation during performance testing.** The owner or operator of a waste combustor ~~shall~~ must report operating conditions to the commissioner ~~the operating conditions,~~ including operating parameters of the air pollution control equipment, flue gas temperatures, air flow raters, and presssure drop across the combustion system.

**Subp. 7. Maximum demonstrated capacity.** For Class I, II, III, A, C, and D waste combustors, maximum demonstrated capacity of each waste combustor unit ~~shall~~ must be determined during the initial performance test for PCDD/PCDF and each subsequent performance test during which compliance with the PCDD/PCDF emission limit in part [7011.1225](#) is achieved. For Class IV waste combustors, maximum demonstrated capacity ~~shall~~ must be determined during the initial performance test and each subsequent performance test during which compliance with emission limits is demonstrated.

**Subp. 8. Particulate matter control device temperature.** The owner or operator of a waste combustor with postcombustion particulate matter control ~~shall~~ must determine and record the four-hour arithmetic average gas stream temperature as measured at the inlet to each particulate matter control device during the initial and each subsequent performance test for PCDD/PCDFs demonstrating compliance with the PCDD/PCDF emission limit in part [7011.1225](#).

**Subp. 9** [unchanged]

**Subp. 10. Solid waste composition.** Solid waste composition studies ~~shall~~ must be conducted as described in part [7007.0501](#), subpart 2.

**Subp. 11. Exceedances of emission limits.** If accurate and valid data results of a performance test demonstrate an exceedance of a standard of performance ~~as described in~~ under part [7011.1225](#) or in the waste combustor's air emission facility permit after normal start-up, the waste combustor owner or operator ~~shall undertake~~ must take the actions in items A to D.

A. The owner or operator ~~shall~~ must immediately report the exceedance to the commissioner and shall comply with the applicable reporting provisions of part [7007.0800](#), subpart 6.

B. The owner or operator ~~shall undertake~~ must take appropriate steps to return the waste combustor to compliance, and ~~shall~~ must demonstrate compliance within 60 days of the initial report of the exceedance.

C. If the commissioner determines that compliance has not been achieved within 60 days of the initial report of exceedance, the waste combustor ~~shall~~ must be shut down.

D. If shutdown was required under item C, the waste combustor may be restarted under the conditions specified by the commissioner. The owner or operator must notify the commissioner in writing of the date on which the owner or operator plans to ~~start-up~~ start up and to begin compliance testing. Notification ~~shall~~ must be at least ten days in advance of the compliance test date.

**Justification.** Subpart 4 refers to two documents incorporated by reference in Minn. R. pt. [7011.1205](#). Because that incorporation by reference is being updated in this rulemaking to refer to the most recent editions, it is reasonable to make the corresponding changes where these documents are cited.

Clarifying revisions in all subparts are at the recommendation of the Revisor of Statutes.

**67. 7011.1291 Incorporation by Reference of; New Source Performance Standard for New Standards; Large Municipal Waste Combustors.**

**Subpart 1. Incorporation by reference.** Code of Federal Regulations, title 40, part 60, subpart Eb, as amended, entitled "Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996," is incorporated by reference, ~~except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.50b(n), are not delegated to the commissioner and must be made by the administrator.~~

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

**68. 7011.1292 Incorporation by Reference of; New Source Performance Standard for New Standards; Hospital/Medical/Infectious Waste Incinerators.**

**Subpart 1. Incorporation by reference.** Code of Federal Regulations, title 40, part 60, subpart Ec, as amended, entitled "Standards of Performance for New Stationary Sources: Hospital/Medical/Infectious Waste Incinerators," is incorporated by reference, ~~except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.50c(i), are not delegated to the commissioner and must be made by the administrator.~~

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

The change to the title of the incorporated standard is reasonable to reflect the actual title of the subpart being incorporated by reference.

**69. 7011.1293 Incorporation by Reference of; New Source Performance Standard for New Standards; Small Municipal Waste Combustors.**

**Subpart 1. Incorporation by reference.** Code of Federal Regulations, title 40, part 60, subpart AAAA, as amended, entitled "Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001" is incorporated by reference.

**Justification.** The amendment that changes the heading of this rule part is reasonable for the reasons discussed in Part 4, item D of this Statement.

**70. 7011.1294 Incorporation by Reference of; New Source Performance Standard for New Standards; Other Solid Waste Incineration Units**

**Subpart 1. Incorporation by reference.** Code of Federal Regulations, title 40, part 60, subpart EEEE, as amended, entitled "Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006" is incorporated by reference, ~~except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.2889(b), are not delegated to the commissioner and must be made by the administrator.~~

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

**71. 7011.1299 Incorporation by Reference; New Source Performance Standards of Performance for; Incinerators.**

*Code of Federal Regulations, title 40, part 60, subpart E, as amended, entitled "Standards of Performance for Incinerators," is incorporated by reference.*

**Justification.** The amendment that changes the heading of this rule part is reasonable for the reasons discussed in Part 4, item D of this Statement.

**72. 7011.1350 Incorporation by Reference of; New Source Performance Standard for Standards; Sewage Sludge Incinerators**

**Subpart 1. *Incorporation by reference.*** *The following new source performance standards are incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 60, subpart O, as amended, entitled "Standards of Performance for Sewage Treatment Plants," is incorporated by reference, ~~except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.153(e), are not delegated to the commissioner and must be made by the administrator;~~ and*

*B. Code of Federal Regulations, title 40, part 60, subpart LLLL, as amended, entitled "Standards of Performance for New Sewage Sludge Incineration Units" is incorporated by reference, ~~except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.4785(c), are not delegated to the commissioner and must be made by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

**73. 7011.1355 Standards of Performance for Incorporation by Reference; Emission Guidelines and Compliance Times; Existing Sewage Sludge Incinerator Units; Compliance with Clean Air Act Section 129 Standards.**

**Subp. 2. *Incorporation by reference of federal emission guidelines and compliance times for existing sewage sludge incinerators.***

*A. The following requirements from Code of Federal Regulations, title 40, part 60, subpart MMMM, as amended, entitled "Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units," are incorporated by reference, ~~as amended:~~*

Subitems 1 to 8 [unchanged]

Item B [unchanged]

**Justification.** The changes to the heading of this rule part are reasonable for the reasons discussed in Part 4, item D of this Statement. Adding "entitled" and quotation marks around the title of the regulation are recommended by the Revisor of Statutes. The amendment that changes the location of "as amended" (from the end of the sentence to the middle of the sentence) is reasonable to be consistent with how this phrase occurs throughout this chapter in other incorporations by reference.

**74. 7011.1365 Incorporation by Reference of; Emission Guidelines and Compliance Times for; Existing Commercial and Industrial Solid Waste Incinerators.**

*A. The following requirements from Code of Federal Regulations, title 40, part 60, subpart DDDD, sections 60.2575 to 60.2875, as amended, entitled "Emission Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units" are is incorporated by reference, as amended with the following exceptions:*

*(1) increments of progress: Code of Federal Regulations, title 40, sections 60.2575 to 60.2615. The deadlines for each increment of progress are found in Table 1 of Code of Federal Regulations, title 40, part 60, subpart DDDD, and are as follows:*

*(a) owners or operators must submit a final control plan to the commissioner by one year after September 29, 2014; and*

*(b) owners or operators of an affected unit must demonstrate compliance with the emission guidelines adopted under this part within three years after September 29, 2014;*

*(2) waste management plan: Code of Federal Regulations, title 40, sections 60.2620 to 60.2630;*

*(3) operator training and qualification: Code of Federal Regulations, title 40, sections 60.2635 to 60.2665;*

*(4) emission limitations and operating limits: Code of Federal Regulations, title 40, sections 60.2670 to 60.2680;*

*(5) performance testing: Code of Federal Regulations, title 40, sections 60.2690 to 60.2695;*

*(6) initial compliance requirements: Code of Federal Regulations, title 40, sections 60.2700 to 60.2706;*

*(7) continuous compliance requirements: Code of Federal Regulations, title 40, section 60.2710 to 60.2725;*

*(8) monitoring: Code of Federal Regulations, title 40, sections 60.2730 to 60.2735;*

*(9) record keeping and reporting: Code of Federal Regulations, title 40, sections 60.2740 to 60.2800;*

*(10) Title V operating permits: Code of Federal Regulations, title 40, section 60.2805. Owners or operators of commercial and industrial solid waste incineration units that do not hold Title V operating permits must submit an application for a Title V permit by one year after September 29, 2014;*

*(11) air curtain incinerators: Code of Federal Regulations, title 40, sections 60.2810 to 60.2870; and*

*(12) definitions: Code of Federal Regulations, title 40, section 60.2875.*

*B. For the purposes of this subpart, the terms used in Code of Federal Regulations, title 40, sections 60.2572 to 60.2875, are defined as follows:*

*(1) "administrator" means the commissioner; and*

*A. sections 60.2500 to 60.2570 are not incorporated by reference;*

B. the deadlines for each increment of progress provided for in Table 1 of Code of Federal Regulations, title 40, part 60, subpart DDDD, are:

(1) by September 29, 2015, for owners or operators to submit a final control plan to the commissioner; and

(2) by September 29, 2017, for owners or operators of an affected unit to demonstrate compliance with the emission guidelines adopted under this part;

C. owners or operators of commercial and industrial solid waste incineration units that do not hold Title V operating permits must submit an application for a Title V permit by September 29, 2015;

D.-(2) "you" means the owner or operator of an affected commercial and industrial solid waste incineration unit.

**Justification.** The requirements of this part are not being changed in this rulemaking, only the format of the previously adopted incorporation by reference is being changed. The effect of this rule remains the same.

Item A is amended to make it consistent with how other incorporations by reference are identified in state rules. For most incorporations by reference, instead of identifying each of the specific parts that are being incorporated, the rule incorporates the entire federal regulation and only the parts that are *excepted* from the incorporation are specifically identified. However, in existing Minn. R. pt. [7011.1365](#), only the federal rule parts that were being incorporated were specifically identified. It is reasonable to correct this inconsistency in the interest of making this rule more easily understood.

All of the federal parts that are deleted in existing item A, subitems 2 to 12, and item B, are within the range of federal regulations that are covered under the term “Code of Federal Regulations, title 40, subpart DDDD” and do not need to be separately identified to be incorporated by reference.

Item A is amended to correctly identify the title of the incorporated subpart.

In revised items B and C, the deadlines for conducting specific actions are amended to the actual dates rather than a time period from the date of authorization. This is a reasonable clarification that does not change the deadline. Because Minnesota’s rulemaking process is complicated it is not possible to identify the exact effective date of a rule in the rule language. The rulemaking process requires that rules must first be adopted, then a notice of adoption must be published in the *State Register* and then the rule becomes effective five working days after the notice of adoption is published. Often, when a specific effective date must be identified, the rules are proposed using a phrase such as “within one year of the effective date of this rule” which, upon the rules becoming effective, the Revisor of Statutes is able to editorially change to “within one year of \_\_\_” whatever the effective date actually is. The Revisor of Statutes cannot however, change the rule language to the extent that it simply specifies the effective date. In this example, the Revisor of Statutes was able to change the rule to say “within three years of September 29, 2014,” but could not specify what that date is. That type of change must be done through rulemaking.

In the case of this rule, the federal standard requires compliance within either one or three years of receiving delegation from U.S. EPA. Although in some states, delegation may not be concurrent with the effective date of the rule, Minnesota has been delegated authority for future incorporations of part 60 standards, with the result that the effective date of the rule is also the date of the delegation.

The notice of adoption of Minn. R. pt. 7011.1365 was published in the September 22, 2014 *State Register*, meaning that five working days later, the rule and the delegation of the rule became effective on September 29, 2014.

The changes to the heading of this part are reasonable for the reasons discussed in Part 4, item D of this Statement.

**75. 7011.1370 Incorporation by Reference of New Source Performance Standard for Standards; New Commercial and Industrial Solid Waste Incinerators**

**Subpart 1. Incorporation by reference.** *Code of Federal Regulations, title 40, part 60, subpart CCCC, as amended, entitled "Standards of Performance for Commercial and Industrial Solid Waste Incineration Units For Which Construction Is Commenced After November 30, 1999 or For Which Modification or Reconstruction Is Commenced On or After June 1, 2001" is incorporated by reference, except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.2030(c) are not delegated to the commissioner and must be made by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

The change to the title of the incorporated standard is reasonable to reflect the actual title of the subpart being incorporated by reference.

**76. 7011.1400 Definitions Applicable to Petroleum Refineries**

**Subp. 1. Scope.** *As used in The definitions in this part apply to parts [7011.1400](#) to [7011.1430](#), the following words shall have the meanings defined herein.*

**Subp. 2. Coke burn-off.** *"Coke burn-off" means the coke removed from the surface of the fluid catalytic cracking unit catalyst by combustion in the catalyst regenerator. The rate of coke burn-off is calculated by the formula specified in part 7011.1430, subpart 5.*

**Subp. 2a. Existing** *"Existing" means equipment on which construction, modification, or reconstruction did not begin after June 11, 1973.*

**Subp. 3. Fossil fuel.** *"Fossil fuel" means natural gas, petroleum, coal, and wood; and any form of solid, liquid, or gaseous fuels derived from such materials.*

**Subp. 4. Fuel gas.** *"Fuel gas" means any gas ~~which~~ that is generated by a petroleum refinery process unit and ~~which~~ that is combusted, including any gaseous mixture of a natural gas and fuel gas ~~which~~ that is combusted.*

**Subp. 5. Fuel gas combustion device.** *"Fuel gas combustion device" means any equipment, such as process heaters, boilers, and flares, used to combust fuel gas; but does not include fluid coking units and fluid catalytic cracking unit incinerator-waste heat boilers ~~and~~ or facilities in which gases are combusted to produce sulfur or sulfuric acid.*

**Subp. 6.** *[unchanged]*

**Subp. 7. High heating value.** *"High heating value" means the number of (Btu/lb) (cal/gm) of a fossil fuel as determined by the A.S.T.M. test methods described in part ~~7011.0525~~ 7011.0500, subpart 8.*

**Subp. 8. Indirect heating equipment.** *“Indirect heating equipment” means furnace, boiler, or other unit of combustion equipment used in the process of burning fossil fuel for the purpose of producing to produce steam, hot water, hot air, or other hot liquid, gas, or solid, where the products of combustion do not have direct contact with the heated medium. “Indirect heating equipment” includes all fuel gas combustion devices which that burn a liquid or solid fossil fuel but does not include fluid catalytic cracking unit incinerator-waste heat boilers, fluid coking units, and or facilities in which gases are combusted to produce sulfur or sulfuric acid.*

**Subp. 8a. New** *“New” means equipment on which construction, modification, or reconstruction began after June 11, 1973.*

**Subp. 10. Petroleum Refinery.** *“Petroleum refinery” means any a facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oil, lubricants, or other products through distillation by distilling petroleum or through redistillation by redistilling, cracking, or reforming of unfinished petroleum derivatives. “Petroleum” includes fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator-waste heat boilers, fuel gas combustion devices, and all indirect heating equipment associated with the refinery.*

**Justification.** The heading of this part is amended to add a reference to petroleum refineries. Because the definitions in this part only apply to the standards of performance for petroleum refineries it is reasonable to make this clarification to avoid confusion.

The scope of this part is being revised to be plain English without changing the meaning.

The definitions of what are considered to be “existing” and “new” petroleum refineries are being moved to this part from where they were previously located in Minn. R. pts. [7011.1405](#) and [7011.1410](#). These definitions were misplaced within the rules so that they only applied to a single rule part, although the terms are used throughout Minn. R. pts. [7011.1400](#) to [7011.1430](#). It is reasonable to place definitions where they will apply to the entire scope of rules where they are used. The existing definitions are slightly modified on the recommendation of the Revisor of Statutes to use the plain English terms “begin” and “began” instead of “commence” and “commenced.”

Subparts 4, 5, 8, and 10 are revised to make minor grammatical changes and to remove obsolete phrases at the recommendation of the Revisor of Statutes. None of these revisions change the effect of these subparts.

The change to the cross reference in subpart 7 is reasonable to identify the location of the A.S.T.M. methods being cited. Minn. R. pt. [7011.0525](#) only clarifies that “high heating value” means the same as “gross heating value.” The actual reference to the methods for determining the gross heating value is in the definition of “gross heating value” in Minn. R. pt. [7011.0500](#).

## **77. ~~7011.1405 Standards of Performance Standards; for Existing Affected Facilities at Petroleum Refineries~~**

**Subp. 4. Definition.** ~~*For the purposes of this part, “existing” means equipment on which construction, modification, or reconstruction did not commence after June 11, 1973.*~~

**Justification.** This definition is being moved to the definitions in Minn. R. pt. [7011.1400](#) where it will more broadly apply wherever it is used throughout Minn. R. pts. [7011.1400](#) to [7011.1430](#). As it is currently defined, “existing” only applies for purposes of Minn. R. pt. [7011.1405](#). However, the term is also used in Minn. R. pt. [7011.1410](#) so that it is reasonable that it apply through the entire range of parts that regulate the emissions from petroleum refineries.



The changes to the heading of this part are reasonable for the reasons discussed in Part 4, item D of this Statement.

78. **7011.1410 ~~Standards of Performance~~ Standards; ~~for New Affected Facilities at Petroleum Refineries~~**

**Subp. 4. Definition.** ~~For the purposes of this part, "new" means equipment on which construction, modification, or reconstruction commenced after June 11, 1973.~~

**Justification.** This definition is being moved to the definitions in Minn. R. pt. [7011.1400](#) where it will more broadly apply wherever it is used throughout Minn. R. pt. [7011.1400](#) to [7011.1430](#). As it is currently defined, "new" only applies for purposes of Minn. R. pt. [7011.1410](#). However, the term is also used in Minn. R. pts. [7011.1420](#) and [7011.1430](#) so that it is reasonable that it apply through the entire range of parts that regulate the emissions from petroleum refineries.

The changes to the heading of this part are reasonable for the reasons discussed in Part 4, item D of this Statement.

79. **7011.1435 ~~Incorporation by Reference; of New Source Performance Standards~~; Petroleum Refineries.**

*The following new source performance standards are ~~adopted and~~ incorporated by reference:*

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

B. Code of Federal Regulations, title 40, part 60, subpart GGG, as amended, entitled "Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006," ~~except that decisions made by the administrator under the authorities identified in Code of Federal Regulations, title 40, section 60.592(c), are not delegated to the commissioner and must be made~~ are retained by the administrator.

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

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

E. [unchanged]

**Justification.** The amendments that change the heading of this rule part, remove the phrase "adopted and," and remove the specific exceptions to the incorporations by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

In item B, the change to the title of the incorporated standard is reasonable to reflect the actual title of the subpart being incorporated by reference.

The rephrasing of the delegation language in item B is reasonable for the reasons discussed in item 48 above.

#### **80. 7011.1510 Monitoring ~~of~~ Operations.**

**Subpart 1. Records.** *The owner or operator of any storage vessel, the construction or modification of which ~~commenced~~ began on or after June 11, 1973, ~~which that~~ has a storage capacity of greater than 40,000 gallons (151,412 liters) ~~shall~~ must for each storage vessel:*

*A. maintain a file of each type of petroleum liquid stored, ~~of~~ the typical Reid vapor pressure of each type of petroleum liquid stored, ~~of~~ the dates of storage and withdrawals, and ~~of~~ the date on which the storage vessel is empty; and*

*B. determine and record the average monthly storage temperature and true vapor pressure of the petroleum liquid stored at such temperature if:*

Subitems (1) and (2) [unchanged]

**Subp. 2.** [unchanged]

**Subp. 3. Vapor pressure determination.** *The true vapor pressure ~~shall be~~ is determined by the procedure in American Petroleum Institute Bulletin 2517. This procedure is dependent upon ~~determination of~~ determining the storage temperature and the Reid vapor pressure, which requires sampling of the petroleum liquids in the storage vessels. Unless ~~the agency or the commissioner~~ requires in specific cases that the stored petroleum liquid be sampled, the true vapor pressure may be determined by using the average monthly storage temperature and the typical Reid vapor pressure. For those liquids for which certified specifications limiting the Reid vapor pressure exist, that Reid vapor pressure may be used. For other liquids, supporting analytical data must be made available on request of ~~the agency or the commissioner~~ when typical Reid vapor pressure is used.*

**Justification.** Changes recommended by the Revisor of Statutes.

#### **81. 7011.1520 Incorporation ~~of~~ by Reference; New Source Performance Standards; ~~by Reference~~; Storage Vessels.**

*The following new source performance standards are ~~adopted and~~ incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 60, subpart K, as amended, entitled "Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978-";*

*B. Code of Federal Regulations, title 40, part 60, subpart Ka, as amended, entitled "Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984," except that ~~decisions made by the administrator under the authorities identified in~~ Code of Federal Regulations, title 40, section 60.114a, are not delegated to the commissioner and ~~must be made~~ are retained by the administrator-; and*

*C. Code of Federal Regulations, title 40, part 60, subpart Kb, as amended, entitled "Standards of Performance for Volatile Organic Liquid Storage Vessels (including petroleum liquid storage vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984," ~~except~~*

*that decisions made by the administrator under Code of Federal Regulations, title 40, sections 60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii), are not delegated to the commissioner and must be made by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

The rephrasing of the delegation language in item B is reasonable for the reasons discussed in item 48 above.

**82. 7011.1550 Incorporation by Reference; New Source Performance Standards of Performance for New; Bulk Gasoline Terminals.**

*Code of Federal Regulations, title 40, part 60, subpart XX, as amended, entitled "Standards of Performance for Bulk Gasoline Terminals," is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**83. 7011.1635 Incorporation by Reference; New Source Performance Standard by Reference Standards; Sulfuric Acid Plants.**

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

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**84. 7011.1730 Incorporation by Reference; of New Source Performance Standards; Nitric Acid Plants.**

*The following new source performance standards are incorporated by reference:*

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

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

**Justification.** An introductory sentence is being added to make this part consistent with how other rule parts address the incorporation by reference of more than one set of federal regulations in the same rule part. An example of this format is found in Minn. R. pt. [7011.1820](#). It is reasonable to make the format of all the NSPS as consistent as possible to avoid confusion. By adding the introductory sentence, there is no need for the phrase “adopted and incorporated by reference” where each set of federal regulations is identified.

The changes to the heading of this part are reasonable for the reasons discussed in Part 4, item D of this statement.

**85. 7011.1820 Incorporation by Reference; of New Source Performance Standards; by Reference-Lead Smelters.**

*The following new source performance standards are ~~adopted and~~ incorporated by reference:*

A. Code of Federal Regulations, title 40, part 60, subpart L, as amended, entitled "Standards of Performance for Secondary Lead Smelters;" and

B. Code of Federal Regulations, title 40, part 60, subpart R, as amended, entitled "Standards of Performance for Primary Lead Smelters."

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement.

**86. 7011.1840 Incorporation by Reference; New Source Performance Standards; of Performance; for New-Primary Copper Smelters.**

Code of Federal Regulations, title 40, part 60, subpart P, as amended, entitled "Standards of Performance for Primary Copper Smelters," is ~~adopted and~~ incorporated by reference.

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement.

**87. 7011.1880 Incorporation by Reference; New Source Performance Standards; of Performance for New-Primary Zinc Smelters**

Code of Federal Regulations, title 40, part 60, subpart Q, as amended, entitled "Standards of Performance for Primary Zinc Smelters," is ~~adopted and~~ incorporated by reference.

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement.

**88. 7011.1920 Incorporation of by Reference; New Source Performance Standards by Reference; Secondary Brass and Bronze Production Plants.**

Code of Federal Regulations, title 40, part 60, subpart M, as amended, entitled "Standards of Performance for Secondary Brass and Bronze Production Plants," is ~~adopted and~~ incorporated by reference.

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement.

**89. 7011.2020 Incorporation by Reference; of New Source Performance Standards; by Reference Steel Plants.**

The following new source performance standards are ~~adopted and~~ incorporated by reference:

A. Code of Federal Regulations, title 40, part 60, subpart N, as amended, entitled "Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973-";

B. Code of Federal Regulations, title 40, part 60, subpart Na, as amended, entitled "Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983-";

C. Code of Federal Regulations, title 40, part 60, subpart AA, as amended, entitled "Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and on or Before August 17, 1983-"; and

*D. Code of Federal Regulations, title 40, part 60, subpart AAa, as amended, entitled "Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7 17, 1983."*

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement.

Minor punctuation changes are made at the recommendation of the Revisor of Statutes.

The MPCA is correcting a typographical error in item D. The correct date, which corresponds to the date of the federal regulation, is August 17, not August 7. This is only a correction to the title of the cited federal regulation and does not have any effect on the requirements previously adopted.

**90. 7011.2050 Incorporation by Reference; New Source Performance Standards; ~~of Performance; for New-Primary Aluminum Reduction Plants.~~**

*Code of Federal Regulations, title 40, part 60, subpart S, as amended, entitled "Standards of Performance for Primary Aluminum Reduction Plants," is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement.

**91. 7011.2080 Incorporation by Reference; New Source Performance Standards; ~~of Performance; for New; Ferroalloy Production Facilities.~~**

*Code of Federal Regulations, title 40, part 60, subpart Z, as amended, entitled "Standards of Performance for Ferroalloy Production Facilities," is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement.

**92. 7011.2305 Incorporation by Reference; New Source Performance Standards; ~~of Performance for Stationary Compression Ignition Internal Combustion Engines~~**

*Code of Federal Regulations, title 40, part 60, subpart IIII, as amended, entitled "Standards of Performance for Stationary Compression Ignition Internal Combustion Engines," is incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part are reasonable for the reasons discussed in Part 4, item D of this Statement.

**93. 7011.2310 Incorporation by Reference; New Source Performance Standards; ~~of Performance for Stationary Spark Ignition Internal Combustion Engines.~~**

*Code of Federal Regulations, title 40, part 60, subpart JJJJ, as amended, entitled "Standards of Performance for Stationary Spark Ignition Internal Combustion Engines," is incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part are reasonable for the reasons discussed in Part 4, item D of this Statement.

**94. 7011.2350 Incorporation by Reference; New Source Performance Standards; ~~of Performance for New; Stationary Gas Turbines.~~**

*Code of Federal Regulations, title 40, part 60, subpart GG, as amended, entitled "Standards of Performance for Stationary Gas Turbines," is ~~adopted and~~ incorporated by reference, except that ~~decisions made by the administrator under~~ the authorities identified in Code of Federal Regulations, title*

40, sections 60.332(a)(3) and 60.335(a), are not delegated to the commissioner and ~~must be made~~ are retained by the administrator.

**Justification.** The amendments that remove the reference to “adopted and,” and the changes to the heading are reasonable for the reasons discussed in Part 4, item D of this Statement.

The rephrasing of the delegation language is reasonable for the reasons discussed in item 48 above.

**95. 7011.2375 Incorporation by Reference of; New Source Performance Standard for Standards; Stationary Combustion Turbines.**

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

**Justification.** The amendments that remove the specific exceptions to the incorporation by reference, the reference to “adopted and,” and the changes to the heading are reasonable for the reasons discussed in Part 4, item D of this Statement.

**96. 7011.2400 Incorporation by Reference; New Source Performance Standards of Performance for; Phosphate Fertilizer Industry.**

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

- A. Code of Federal Regulations, title 40, part 60, subpart T, as amended, entitled "Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.";*
- B. Code of Federal Regulations, title 40, part 60, subpart U, as amended, entitled "Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants.";*
- C. Code of Federal Regulations, title 40, part 60, subpart V, as amended, entitled "Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants.";*
- D. Code of Federal Regulations, title 40, part 60, subpart W, as amended, entitled "Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants-"; and*
- E. Code of Federal Regulations, title 40, part 60, subpart X, as amended, entitled "Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities."*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

Minor punctuation changes are made at the recommendation of the Revisor of Statutes.

**97. 7011.2450 Incorporation by Reference; New Source Performance Standards of Performance for New; Kraft Pulp Mills.**

*The following new source performance standards are incorporated by reference:*

- A. Code of Federal Regulations, title 40, part 60, subpart BB, as amended, entitled "Standards of Performance for Kraft Pulp Mills;" ~~is adopted and incorporated by reference;~~ and*

*B. Code of Federal Regulations, title 40, part 60, subpart BBa, as amended, entitled "Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013," is ~~adopted and incorporated by reference.~~*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

An introductory sentence is being added to make this part consistent with how other rule parts address the incorporation by reference of more than one set of federal regulations in the same rule part.

**98. 7011.2500 Incorporation by Reference; New Source Performance Standards of Performance for New; Glass Manufacturing Plants.**

*Code of Federal Regulations, title 40, part 60, subpart CC, as amended, entitled "Standards of Performance for Glass Manufacturing Plants," is ~~adopted and incorporated by reference.~~*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**99. 7011.2550 Incorporation by Reference; New Source Performance Standards of Performance for; Surface Coating of Metal Furniture.**

*Code of Federal Regulations, title 40, part 60, subpart EE, as amended, entitled "Standards of Performance for Surface Coating of Metal Furniture," is ~~adopted and incorporated by reference.~~*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**100. 7011.2555 Incorporation by Reference; New Source Performance Standards of Performance for; Automobile and Light Duty Truck Surface Coating Operations.**

*Code of Federal Regulations, title 40, part 60, subpart MM, as amended, entitled "Standards of Performance for Automobile and ~~Light-Duty~~ Light Duty Truck Surface Coating Operations," is ~~adopted and incorporated by reference.~~*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

The phrase “light-duty” is changed to “light duty” to reflect the actual title of the incorporated subpart.

**101. 7011.2560 Incorporation by Reference; New Source Performance Standards of Performance for; Pressure Sensitive Tape and Label Surface Coating Operations.**

*Code of Federal Regulations, title 40, part 60, subpart RR, as amended, entitled "Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations," is ~~adopted and incorporated by reference.~~*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**102. 7011.2565 Incorporation by Reference; New Source Performance Standards of Performance for; Industrial Surface Coating: Large Appliances.**

*Code of Federal Regulations, title 40, part 60, subpart SS, as amended, entitled "Standards of Performance for Industrial Surface Coating: Large Appliances," is ~~adopted and incorporated by reference.~~*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

103. **7011.2570 Incorporation by Reference; New Source Performance Standards of Performance for; Metal Coil Surface Coating.**

*Code of Federal Regulations, title 40, part 60, subpart TT, as amended, entitled "Standards of Performance for Metal Coil Surface Coating," is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

104. **7011.2575 Incorporation by Reference; New Source Performance Standards of Performance for the; Beverage Can Surface Coating Industry.**

*Code of Federal Regulations, title 40, part 60, subpart WW, as amended, entitled "Standards of Performance for the Beverage Can Surface Coating Industry," is ~~adopted and~~ incorporated by reference, except that ~~decisions made by the administrator under the authorities identified in Code of Federal Regulations, title 40, section 60.496(a)(1), and the last sentence of Code of Federal Regulations, title 40, section 60.493(b)(2)(i)(A), are not delegated to the commissioner and must be made~~ are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

The rephrasing of the delegation language is reasonable for the reasons discussed in item 48 above.

105. **7011.2580 Incorporation by Reference; New Source Performance Standards of Performance for; Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.**

*Code of Federal Regulations, title 40, part 60, subpart TTT, as amended, entitled "Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines," is ~~adopted and~~ incorporated by reference, except that ~~decisions made by the administrator under Code of Federal Regulations, title 40, sections 60.723(b)(1), 60.723(b)(2)(i)(C), 60.723(b)(2)(iv), 60.724(e), and 60.725(b), are not delegated to the commissioner and must be made by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

106. **7011.2600 Incorporation by Reference; New Source Performance Standards of Performance for New; Lime Manufacturing Plants.**

*Code of Federal regulations, title 40, part 60, subpart HH, as amended, entitled "Standards of Performance for Lime Manufacturing Plants," is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

107. **7011.2650 Incorporation by Reference; New Source Performance Standards of Performance for New; Lead Acid Battery Manufacturing Plants.**

*Code of Federal Regulations, title 40, part 60, subpart KK, as amended, entitled "Standards of Performance for Lead-Acid Battery Manufacturing Plants," is ~~adopted and~~ incorporated by reference.*



**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

108. **7011.2700 Incorporation by Reference; New Source Performance Standards of Performance for New; Metallic Mineral Processing Plants.**

*Code of Federal Regulations, title 40, part 60, subpart LL, as amended, entitled "Standards of Performance for Metallic Mineral Processing Plants," is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

109. **7011.2750 Incorporation by Reference; New Source Performance Standards of Performance for New; Phosphate Rock Plants.**

*Code of Federal Regulations, title 40, part 60, subpart NN, as amended, entitled "Standards of Performance for Phosphate Rock Plants," is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

110. **7011.2800 Incorporation by Reference; New Source Performance Standards; of Performance for Ammonium Sulfate Manufacture.**

*Code of Federal Regulations, title 40, part 60, subpart PP, as amended, entitled "Standards of Performance for Ammonium Sulfate Manufacture," is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

111. **7011.2850 Incorporation by Reference; New Source Performance Standards of Performance for; Publication Rotogravure Printing.**

*Code of Federal Regulations, title 40, part 60, subpart QQ, as amended, entitled "Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing," is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

112. **7011.2900 Incorporation by Reference of; New Source Performance Standards; Synthetic Organic Chemical Manufacturing.**

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

*A. Code of Federal Regulations, title 40, part 60, subpart VV, as amended, entitled "Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981 and on or Before November 7, 2006," except that ~~decisions made by the administrator under authorities identified in Code of Federal Regulations, title 40, section 60.482-1(c)(2), are not delegated to the commissioner and must be made~~ are retained by the administrator.;*

*B. Code of Federal Regulations, title 40, part 60, subpart III, as amended, entitled "Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes," ~~except that decisions made by the~~*

~~administrator under Code of Federal Regulations, title 40, section 60.613(e), are not delegated to the commissioner and must be made by the administrator.;~~

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

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

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

In item A, the title is revised to reflect the actual title of subpart VV.

**113. 7011.2950 Incorporation by Reference; New Source Performance Standards of Performance for New; Residential Wood Heaters.**

~~Code of Federal Regulations, title 40, part 60, subpart AAA, as amended through July 1, 2018, entitled "Standards of Performance for New Residential Wood Heaters," is adopted and incorporated by reference, except that decisions made by the administrator under Code of Federal Regulations, title 40, sections 60.530(c), 60.531, 60.533, 60.534, 60.535, 60.536(i)(2), 60.537, 60.538(e), and 60.539 are not delegated to the commissioner and must be made by the administrator.~~

**Justification.** The MPCA estimates that in Minnesota, up to 55% of direct emissions of fine particulate matter from combustion sources comes from wood-burning devices<sup>9</sup>. The smoke from wood heaters contains a mixture of fine particles and toxic air pollutants. Exposure to these pollutants causes a wide range of health effects, including aggravation or heart or respiratory problems, changes in lung function and increased respiratory systems, as well as premature death ([80 FR 13675](#)). Residential wood heaters are of concern because they can operate around the clock in residential areas and, due to conditions related to installation or surrounding buildings, can have poor dispersion. These conditions lead to local high exposures to fine particulate matter.

As a result, U.S. EPA established final compliance deadline of May 2020 for all wood heaters affected by the standard. The NSPS establishes particulate matter (PM) emission limits for manufacturers of wood heaters to meet, and requires that the heaters be certified by U.S. EPA as meeting those standards. After May 2020, no uncertified stoves can be sold. To the degree that older, higher emitting, less efficient wood heaters are replaced by newer heaters that meet the requirements of this rule, setting

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<sup>9</sup> MPCA, January 2019. *The Air We Breathe: The State of Minnesota's Air Quality 2019*  
<https://www.pca.state.mn.us/sites/default/files/Iraq-1sy19.pdf>

these requirements for cleaner new stoves will result in substantial reductions in exposure and reduced health impacts.

In November 2018, U.S. EPA requested comments on whether to revise subpart AAA to add a two-year “sell-through” period following the May 2020 compliance date. Wood heaters can be in place for up to 20 years, meaning that the longer non-compliant heaters are allowed to be sold and operated, the more all fine particulate matter is emitted. Since there are wood heaters available today that meet the year 2020 PM emission requirements, the MPCA commented to U.S. EPA that it believes the extension is unnecessary.

At this time, U.S. EPA has not indicated whether it will propose an extension for wood heater manufacturers to comply with subpart AAA. The MPCA is already delegated the NSPS, and believes that in order to ensure ongoing fine particulate matter reductions, it is prudent to adopt the standards as they exist at this time. The MPCA is incorporating all amendments to this federal standard that are in effect through July 1, 2018. Amendments after that date will not be incorporated into the state rules. The MPCA will evaluate final standards to determine whether rulemaking should be conducted to incorporate future amendments into state rule.

The rephrasing of the delegation language is reasonable for the reasons discussed in item 48 above.

**114. 7011.2960 Incorporation by Reference; New Source Performance Standards; Residential Hydronic Heaters and New Forced-Air Furnaces.**

*Code of Federal Regulations, title 40, part 60, subpart QQQQ, as amended through July 1, 2018, entitled “Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces,” is incorporated by reference.*

**Justification.** The MPCA is incorporating by reference the federal emission standards for new residential hydronic heaters and forced air furnaces. Subpart QQQQ establishes standards of performance for new residential hydronic heaters and new residential forced air furnaces. These requirements are discussed in <https://www.gpo.gov/fdsys/pkg/FR-2015-03-16/pdf/2015-03733.pdf>.

The MPCA estimates that in Minnesota, up to 55% of direct emissions of fine particulate matter from combustion sources comes from wood-burning devices<sup>10</sup>. The smoke from residential hydronic heaters and wood-fired forced air furnaces contain a mixture of fine particles and toxic air pollutants. Exposure to these pollutants causes a wide range of health effects, including aggravation or heart or respiratory problems, changes in lung function and increased respiratory systems, as well as premature death (80 FR 13675). Residential hydronic heaters are of concern because they can operate around the clock in residential areas and due to conditions related to installation or surrounding buildings, have poor dispersion. These conditions lead to local high exposures to fine particulate matter.

To the degree that older, higher emitting, less efficient hydronic heaters are replaced by newer heaters that meet the requirements of this rule, setting these requirements for cleaner new stoves and wood fired furnaces will result in substantial reductions in exposure and reduced health impacts.

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<sup>10</sup> MPCA, January 2019. *The Air We Breathe: The State of Minnesota’s Air Quality 2019*  
<https://www.pca.state.mn.us/sites/default/files/Iraq-1sy19.pdf>

In the 2015 NSPS, U.S. EPA established final compliance deadline of May 2020 for all hydronic heaters and forced air furnaces. The NSPS establishes PM emission limits for manufacturers of hydronic heaters and furnaces to meet, and requires that the heaters be certified by U.S. EPA as meeting those standards. After May 2020, no uncertified hydronic heaters or furnaces can be sold. In November 2018, U.S. EPA proposed to revise subpart QQQQ to add a two-year “sell-through” period following the May 2020 compliance date to allow retailers additional time to sell any heaters manufactured prior to May 2020. Hydronic heaters can be in place for up to 20 years; since there are hydronic heaters available today that meet the year 2020 PM emission requirements, the MPCA commented to U.S EPA that it believes the extension is unnecessary.

At this time, U.S. EPA has not indicated whether it will adopt an extension for hydronic heater and forced air furnace manufacturers to comply with subpart QQQQ. The MPCA intends to accept delegation of the NSPS upon rule adoption, and believes that in order to effectively administer the NSPS and ensure ongoing fine particulate matter reductions, it is prudent to adopt the standards as they exist at this time. The MPCA is incorporating all amendments to this federal standard that are in effect through July 1, 2018. Amendments after that date are not incorporated into the state rules. The MPCA will evaluate final standards to determine whether they should be incorporated into state rules.

**115. 7011.3000 Incorporation by Reference; New Source Performance Standards of Performance for the; Rubber Tire Manufacturing Industry.**

*Code of Federal Regulations, title 40, part 60, subpart BBB, as amended, entitled "Standards of Performance for the Rubber Tire Manufacturing Industry," is ~~adopted and~~ incorporated by reference, except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.543(c)(2)(ii)(B), are not delegated to the commissioner and must be made by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**116. 7011.3050 Incorporation by Reference; New Source Performance Standards of Performance for; Polymer Manufacturing Industry.**

*Code of Federal Regulations, title 40, part 60, subpart DDD, as amended, entitled "Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry," is ~~adopted and~~ incorporated by reference, except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.562-2(c), are not delegated to the commissioner and must be made by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**117. 7011.3100. Incorporation by Reference; New Source Performance Standards of Performance for New; Polymeric Coating of Supporting Substrates Facilities.**

*Code of Federal Regulations, title 40, part 60, subpart VVV, as amended, entitled "Standards of Performance for Polymeric Coating of Supporting Substrates Facilities," is ~~adopted and~~ incorporated by reference, except that decisions made by the administrator under Code of Federal Regulations, title 40, sections 60.743(a)(3)(v)(A) and (B), 60.743(e), 60.745(a), and 60.746, are not delegated to the commissioner and must be made by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**118. 7011.3150 Incorporation by Reference; New Source Performance Standards of Performance for Flexible Vinyl and Urethane Coating and Printing.**

*Code of Federal Regulations, title 40, part 60, subpart FFF, as amended, entitled "Standards of Performance for Flexible Vinyl and Urethane Coating and Printing," is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**119. 7011.3200 Incorporation by Reference; New Source Performance Standards of Performance for New Synthetic Fiber Production Facilities.**

*Code of Federal Regulations, title 40, part 60, subpart HHH, as amended, entitled "Standards of Performance for Synthetic Fiber Production Facilities," is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**120. 7011.3250 Incorporation by Reference; New Source Performance Standards of Performance for New Petroleum Dry Cleaners.**

*Code of Federal Regulations, title 40, part 60, subpart JJJ, as amended, entitled "Standards of Performance for Petroleum Dry Cleaners," is ~~adopted and~~ incorporated by reference, except that ~~decisions made by the administrator under the authorities identified in~~ Code of Federal Regulations, title 40, section 60.623, are not delegated to the commissioner and ~~must be made~~ are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

The rephrasing of the delegation language is reasonable for the reasons discussed in item 48 above.

**121. 7011.3300 Incorporation by Reference; of New Source Performance Standards by Reference; Onshore Natural Gas Processing**

*The following new source performance standards are ~~adopted and~~ incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 60, subpart KKK, as amended, entitled "Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011," except that ~~decisions made by the administrator under the authorities identified in~~ Code of Federal Regulations, title 40, section 60.634, are not delegated to the commissioner and ~~must be made~~ are retained by the administrator.; and*

*B. Code of Federal Regulations, title 40, part 60, subpart LLL, as amended, entitled "Standards of Performance for ~~Onshore Natural Gas Processing: SO<sub>2</sub> SO<sub>2</sub>~~ Emissions From Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011."*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

The change to the title of the incorporated standard is reasonable to reflect the actual title of the subpart being incorporated by reference.

The rephrasing of the sentence in item A addressing delegation authority is reasonable for the reasons discussed in item 48 above.

122. **7011.3325 Incorporating by Reference; New Source Performance Standards; Crude Oil and Natural Gas Production, Transmission and Distribution**

*The following new source performance standards are incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 60, subpart OOOO, as amended through July 1, 2018, entitled “Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification, or Reconstruction Commenced after August 23, 2011, and on or before September 18, 2015”; and*

*B. Code of Federal Regulations, title 40, part 60, subpart OOOOa, as amended through July 1, 2018, entitled “Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification, or Reconstruction Commenced after September 18, 2015”.*

**Justification.** The MPCA is incorporating by reference two sets of federal NSPS relating to crude oil and natural gas production, transmission and distribution. Subpart OOOO establishes NSPS for facilities that existed before September 18, 2015 and Subpart OOOOa establishes NSPS for facilities that existed after that date. These requirements are discussed in <https://www.gpo.gov/fdsys/pkg/FR-2012-08-16/pdf/2012-16806.pdf> and <https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11971.pdf>.

The NSPS control the release of methane gas, a potent greenhouse gas. State policy is to reduce greenhouse gas emissions. [Minn. Stat. § 216H.03](#) establishes the state goal to reduce greenhouse gases by 80% of 2005 emissions by 2050. To ensure that new greenhouse gas emission sources do not compromise the ability to achieve the state’s reduction goals, the MPCA is proposing to adopt the federal regulations as they currently exist, and to not automatically incorporate future amendments that may not apply the best system of emissions reduction to control methane. The MPCA is incorporating all amendments to these federal standards that are in effect through July 1, 2018. Amendments after that date are not incorporated into the state rules.

Because the NSPS subparts OOOO and OOOOa affect oilfield facilities, and Minnesota does not have oilfields, it is unlikely that any Minnesota facility will be required to comply with these standards. However, the standards apply to new oil and natural gas compression, processing facilities, and to the extent that future facilities are constructed in Minnesota, they will become subject to the standards of performance controlling methane and VOCs contained in the existing NSPS. At the point U.S. EPA adopts revised NSPS, the MPCA will evaluate the standards to determine whether they meet state goals for environmental protection.

123. **7011.3350 Incorporation by Reference; New Source Performance Standards of Performance for New; Nonmetallic Mineral Processing Plants.**

*Code of Federal Regulations, title 40 part 60, subpart 000, as amended, entitled "Standards of Performance for Nonmetallic Mineral Processing Plants," is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement.

124. **7011.3400 Incorporation by Reference; New Source Performance Standards of Performance for New; Wool Fiberglass Insulation Manufacturing Plants.**

*Code of Federal Regulations, title 40, part 60, subpart PPP, as amended, entitled "Standard of Performance for Wool Fiberglass Insulation Manufacturing Plants," is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement.

125. **7011.3430 Incorporation by Reference; New Source Performance Standards of Performance for; VOC Emissions from SOCM I Reactor Processes**

*Code of Federal Regulations, title 40, part 60, subpart RRR, as amended, entitled "Standard of Performance for VOC Emissions from SOCM I Reactor Processes," is ~~adopted and~~ incorporated by reference, ~~except that the authorities identified in section 60.718, paragraph (b), are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement.

The specific exception to the incorporation by reference contains an error. The federal rule part that contains the exceptions to the delegation is 60.708, not 60.718. However, the correct citation is not relevant because this phrase is reasonably deleted for the reasons discussed in Part 4, item D of this Statement.

126. **7011.3450 Incorporation by Reference; New Source Performance Standards of Performance for New; Magnetic Tape Coating Facilities**

*Code of Federal Regulations, title 40, part 60, subpart SSS, as amended, entitled "Standards of Performance for Magnetic Tape Coating Facilities," is ~~adopted and~~ incorporated by reference, ~~except that decisions made by the administrator under Code of Federal Regulations, title 40, sections 60.711(a)(16), 60.713(b)(1)(i), 60.713(b)(1)(ii), 60.713(b)(5)(i), 60.713(d), 60.715(a), and 60.716, are not delegated to the commissioner and must be made by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

127. **7011.3500, Definitions Subpart 1, Scope.** *The definitions in Code of Federal Regulations, title 40, ~~section 60.751~~ subparts Cc, Cf, WWW, and XXX, apply to terms in parts 7011.3500 to 7011.3510 7011.3525, unless the terms are otherwise defined in this part.*

**Justification.** The scope of this part is being amended to include additional federal definitions and extend the applicability of these definitions to all of the rules that address the emissions from municipal solid waste landfills.

The scope of the definitions was formerly limited to only include the definitions established in the federal regulations that applied to subpart WWW standards ([40 CFR part 60.751](#)). However, the range of state rules identified in the scope included both the federal WWW standards (7011.3510) and the federal Cc standards (7011.3505) The scope is reasonably amended to expand the range of applicable federal definitions to include those two existing rule parts and to also include the rule parts being added in this rulemaking to incorporate the federal subpart XXX ([40 CFR part 60, subpart XXX](#)) and Cf ([40 CFR part 60, subpart Cf](#)) standards being incorporated by reference in proposed Minn. R. pts. 7011.3515 and 7011.3525.

128. **7011.3500, Definitions subp. 2. Design capacity.** ~~“Design capacity” means solid waste capacity.~~

**Justification.** This definition is deleted because it is unnecessary as a result of the changes being made to Minn. R. pt. 7011.3505, subp. 5 that replace “design capacity” with “solid waste capacity.” The term is not used in any other rule.

129. **7011.3500, Definitions subp. 3. Existing landfill.** ~~“Existing landfill” means a landfill that has accepted waste for disposal at any time since November 8, 1987, or has additional solid waste capacity available for future waste disposal, and for which construction, reconstruction, or modification was commenced, as defined in Code of Federal Regulations, title 40, section 60.2, before May 30, 1991.~~

**Justification.** In subpart 3, the conditions that define what is meant by an “existing landfill” are being moved to Minn. R. pt. [7011.3505](#) where they specifically apply. The term “existing landfill” was only used in Minn. R. pt. 7011.3505, and is not relevant to Minn. R. pt. 7011.3510, as is provided in the existing scope of the definitions. The MPCA has reasonably moved the conditions that determine whether a landfill is “existing” to Minn. R. pt. 7011.3505 to more clearly establish the scope of the requirements of that part.

130. **7011.3500, Definitions. subp. 6. Solid waste capacity.** ~~“Solid waste capacity” means the total amount of compacted solid waste, design capacity, as defined in Code of Federal Regulations, title 40, section 60.751, that will be in place in the landfill at the time of the expiration of the facility’s solid waste permit, or at the time ultimate capacity is reached.~~

**Justification.** This definition is being amended to correct the term being referred to in the federal definitions. The existing definition is unclear about what term is being referred to by “as defined in Code of Federal Regulations, title 40, section 60.751.” [40 CFR part 60.751](#) establishes definitions for many terms, but does not include a definition of “total amount of compacted solid waste” or “compacted solid waste.” The MPCA believes the appropriate federal term to refer to in this definition is “design capacity,” which is defined in section 60.751. This is only a clarifying change and does not change the effect of this definition.

In the MPCA’s 1996 Statement of Need and Reasonableness to adopt the definition of “solid waste capacity” in subpart 6, the MPCA stated:

*The definition of “solid waste capacity” (Part 7011.3500, subpart 6) replaces the term “design capacity,” which is used through the federal rule. It is reasonable to replace the term “design capacity” because the term is already in use with a different meaning in Minnesota solid waste*



regulation (Minn. R. 7035.0300, subp. 32). The term “solid waste capacity” is a reasonable replacement because it captures the intent of the federal rule, but reflects the Minnesota permitting system.

**131. 7011.3505 Standards of Performance; ~~for Existing Municipal Solid Waste Landfills Existing~~ before May 30, 1991.**

**Subpart 1. Scope.** ~~Each~~ The owner or operator of an existing a landfill must comply with the requirements of this part and Code of Federal Regulations, title 40, part 60, subpart WWW, as amended, and as incorporated by reference in part 7011.3510, with the following additions and changes. if construction, modification, or reconstruction, began before May 30, 1991; and

A. the landfill has accepted solid waste for disposal since November 8, 1987; or

B. the landfill has additional solid waste capacity available for future waste disposal.

**Subp. 2. Operational standards for collection and control systems.** ~~Each~~ The owner or operator of a landfill that must monitor surface methane concentrations shall must comply with Code of Federal Regulations, title 40, section 60.755(c)(1), except that the owner or operator shall must conduct the monitoring at least three times per year, once during each of the following time periods: March 14 to May 14, June 21 to September 23, and October 21 to November 21.

**Subp. 3. Monitoring of operations.** ~~Each~~ The owner or operator of a landfill ~~owner or operator~~ seeking to comply with Code of Federal Regulations, title 40, section 60.752(b)(2)(iii), may confirm that there is no means to bypass the control device in the design plan, submitted in accordance with Code of Federal Regulations, title 40, section 60.752(b)(2)(i), in lieu of complying with the requirements in Code of Federal Regulations, title 40, ~~sections~~ section 60.756(b)(2) and ~~60.756(c)(2).~~

**Subp. 4. Reporting requirements.** The owner or operator of a landfill shall must submit the reports required by Code of Federal Regulations, title 40, sections 60.752(a), and 60.757(a)(1), ~~60.757(a) and (3), and 60.757(b)(1)(i),~~ on the following schedule:

A. The owner or operator of an active landfill, and the owner or operator of a closed ~~existing~~ landfill with a solid waste capacity greater than or equal to 2.5 million megagrams, and 2.5 million cubic meters, shall must submit an initial solid waste capacity report no later than the submittal of the next annual report required by part 7035.2585;

B. The owner or operator of an active landfill that proposes to increase the total solid waste capacity to greater than or equal to 2.5 million megagrams, and 2.5 million cubic meters, shall must submit an amended solid waste capacity report no later than the submittal of the solid waste management facility permit application that proposes an increase in permitted capacity; and

C. The owner or operator of a landfill that must submit an NMOC emission rate report to comply with Code of Federal Regulations, title 40, section 60.757(b), shall must submit the initial NMOC emission rate report no later than the submittal of the next annual report required by part 7035.2585 or the submittal of the solid waste management facility permit application that proposes an increase in permitted capacity, whichever occurs earlier.

**Subp. 5. Compliance times for equipment installation.**

~~A. Each~~ The owner or operator of an existing a landfill with that has:

(1) ~~a design solid waste capacity greater than or equal to 2.5 million megagrams, and 2.5 million cubic meters;~~ and with

(2) ~~an NMOC emission rate of 50 megagrams per year or more, shall~~ must complete installation of gas collection and control equipment capable of meeting the conditions ~~provided~~ in Code of Federal Regulations, title 40, section 60.752(b)(2)(ii), ~~within 30 months after January 28, 1997 by~~ June 28, 2000.

~~B. The owner or operator of an existing a landfill with that has:~~

(1) ~~a design solid waste capacity greater than or equal to 2.5 million megagrams, and 2.5 million cubic meters;~~ and

(2) ~~an NMOC emission rate less than 50 megagrams per year on January 28, 1997, shall~~ must comply with this part within 30 months of the date of the first NMOC emission rate that equals or exceeds 50 megagrams per year.

**Subp. 6. Exception to standard or compliance schedule.** ~~An~~ The owner or operator of an existing a landfill seeking to apply a less stringent emission standard or longer compliance schedule than that specified in this part may submit a written request to the ~~agency commissioner~~ and the United States Environmental Protection Agency under Code of Federal Regulations, title 40, section 60.24(f).

**Subp. 7. NMOC emission rate estimations.** ~~An~~ The owner or operator of an existing a landfill that has a landfill gas collection system in place on January 28, 1997, may comply with Code of Federal Regulations, title 40, section 60.754(a)(5), using the method in Code of Federal Regulations, title 40, section 60.754(b), if the ~~existing landfill~~ owner or operator can demonstrate to the ~~agency commissioner~~ that the system effectively collects landfill gas from all ~~gas-producing~~ gas-producing areas of the landfill, and negative pressure can be maintained at each wellhead without excess air infiltration.

**Justification.** The MPCA is making a number of clarifying changes that do not substantially change the requirements in this part.

- The scope of the rule is modified to incorporate the current [7011.3500](#) definition of “existing landfill.” The dates that define an “existing landfill” are incorporated without change into the scope of this part, although the structure of the definition is revised, without changing the substance of it, for clarity.
- All references to “existing” landfill are being removed. The scope of this rule (subpart 1) establishes that this entire rule only applies to landfills that meet the established conditions to be considered “existing.” The inconsistent use of “existing” to modify “landfill” in different subparts creates confusion regarding the scope of the requirements. It is reasonable to eliminate the term where it occurs and instead rely on the conditions established in subpart 1 to establish which landfills are subject to the requirements.
- The rule currently uses “each owner or operator,” “the owner or operator”, and “landfill owner or operator,” interchangeably. Although the federal language on which this rule is based also uses different phrases to identify the subject of each sentence, the inconsistent phrases are changed to “the owner and operator” for consistency without changing the effect of the rule.
- In subpart 5, the requirements are divided into new items and subitems for clarity without changing the effect.

- In subpart 5, items A.(1) and B (1), the term “design capacity” is changed to “solid waste capacity” to eliminate confusion regarding the use of this term. The term “design capacity” is already defined and used in the solid waste rules ([ch. 7035](#)) to mean something different than its intended use in chapter 7011. To avoid the possible confusion of the two terms, in Minn. R. pt. 7011.3500, subp. 2, the MPCA previously defined “design capacity” to mean the same as “solid waste capacity.” In this rulemaking, the MPCA is simply eliminating the use of the term “design capacity” and instead using the term “solid waste capacity.” This change does not alter the effect of the rule, only eliminates the use of two terms meaning the same thing.
- The compliance deadline in subpart 5, item A (2) is revised to identify the actual compliance date. When this rule was originally proposed, the deadline for compliance was “within 30 months of the effective date of this part” because at the time of proposal, the effective date of the rules was not known. After the rules were adopted, the Revisor of Statutes was able to editorially change that phrase to the actual date that the rules became effective, although the Revisor of Statute’s change did not calculate out the actual date 30 months later. It is reasonable at this time to make that calculation to simplify the actual compliance deadline.
- The Revisor of Statutes recommended several minor grammatical changes for consistency and clarity that do not change the effect of the rule.
- The reasonableness of the amendments that change the reference from “agency” to “commissioner,” are discussed in Part 4, item D of this Statement.

132. **7011.3510 Incorporation of ~~by Reference; Standards of Performance for New Source Performance Standards By Reference Standards; Municipal Solid Waste Landfills Existing on or after May 30, 1991~~**

**Subpart 1. ~~Incorporation by reference.~~** *Code of Federal Regulations, title 40, part 60, subpart WWW, entitled “Standards of Performance for Municipal Solid Waste Landfills,” is incorporated by reference.*

**Subpart 1a. Scope.** *The requirements of this part apply to the owner or operator of a landfill that began construction, modification, or reconstruction after May 30, 1991.*

**Subp. 1b. Incorporation by reference.** *Code of Federal Regulations, title 40, part 60, subpart WWW, as amended, entitled “Standards of Performance for Municipal Solid Waste Landfills,” is incorporated by reference.*

**Subp. 2. Additional requirements.** *The owner or operator of a landfill subject to Code of Federal Regulations, title 40, part 60, subpart WWW, ~~as amended,~~ shall must additionally comply with part 7011.3505, subpart 4.*

**Justification.** Subpart 1 is shown as repealed because the numbering of the subparts had to be changed to accommodate the addition of a new scope at the start of this part. The federal standard incorporated in the now repealed subpart 1 is incorporated without change in new subpart 1b.

The MPCA is adding a new subpart 1a “scope,” because in this rulemaking, the MPCA is incorporating new, additional federal NSPS applicable to new landfills (40 CFR, title 60, subpart XXX standards being added in Minn. R. pt. 7011.3515). It is reasonable to clarify the applicability of standards, particularly when there is more than one standard that applies to a type of air emission source. It is important to clarify which standard applies, because, as described in the discussion of the amendments to Minn. R. pt. 7011.3515, there are considerable differences between the requirements.

The scope provides the relevant date for establishing the applicability of this part. This part will apply when construction begins, and also when the source makes a physical change such as modification or reconstruction.

The amendments that change the heading of this rule part are needed to identify the type of landfills to which the subpart WWW standards continue to apply.

Existing subpart 3 is slightly amended to clarify that the requirements of Minn. R. pt. 7011.3505, subpart 4 apply in addition to the requirements in subpart WWW. This is not a change to the existing requirements, only a clarification. Deleting the phrase “as amended” in subpart 3 is reasonable because the phrase is unnecessary. The incorporation of subpart WWW in subpart 1.b includes future amendments.

**133. 7011.3515 Incorporation by Reference; New Source Performance Standards; Municipal Solid Waste Landfills Existing after July 17, 2014**

**Subpart 1. Scope.** *The requirements of this part apply to the owner or operator of a landfill that began construction, modification, or reconstruction after July 17, 2014.*

**Subp. 2. Incorporation by Reference.** *Code of Federal Regulations, title 40, Part 60, Subpart XXX, as amended through July 1, 2018, entitled “Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification after July 17, 2014,” is incorporated by reference.*

**Justification.** Subpart 1 establishes that this part applies to the owners and operators of landfills constructed, modified, or reconstructed after July 17, 2014, which corresponds to the effective date of the subpart XXX new source performance standards. The MPCA is incorporating all amendments to this federal standard that are in effect through July 1, 2018. Amendments after that date are not incorporated into the state rules.

On August 29, 2016, U.S. EPA adopted subpart XXX to reduce emissions of methane-rich landfill gas from new, modified and reconstructed municipal solid waste (MSW) landfills. In a separate action, U.S. EPA also issued emission guidelines for reducing emissions from existing MSW landfills.

In the development of the NSPS and EG, U.S. EPA evaluated current practices by states in regulating landfill gas control, and identified the landfill gas control systems that represent the best system of emissions reduction (BSER). The MPCA has reviewed subparts XXX and Cf, and has determined that affected facilities in Minnesota are either already in full compliance or must only make adjustments to their gas monitoring programs. The landfill gas control requirements of existing landfills in Minnesota (both operating and closed) currently meet or exceed the federal NSPS and EG.

In May 2017, U.S. EPA announced they were reconsidering several issues relating to the 2016 rules for MSW. Although U.S. EPA has not completed its reconsideration of the MSW regulations, it continues to maintain that it is considering revisions, and the MPCA is expecting that those revisions will relax or weaken methane control. The NSPS controls the release of methane gas, a potent greenhouse gas. [Minn. Stat. § 216H.03](#) establishes a state goal for 2050 to reduce greenhouse gases by 80% of 2005 emissions. To ensure that new greenhouse gas emission sources do not compromise the ability to achieve the state’s reduction goals, the MPCA is proposing to adopt these rules as they currently exist and not as they may be revised.

In subpart 2 the MPCA is incorporating NSPS for new landfills by reference. The requirements of 40 CFR part 60, subpart XXX are discussed in <https://www.gpo.gov/fdsys/pkg/FR-2016-08-29/pdf/2016-17687.pdf>.

The following excerpt from that *Federal Register* summarizes the difference between the subpart WWW requirements and the requirements of subpart XXX being added in this rulemaking.

- **Thresholds for Installing Controls.** The final NSPS retain the current design capacity threshold of 2.5 million megagrams (Mg) and 2.5 million cubic meters (m<sup>3</sup>), but reduce the nonmethane organic compounds (NMOC) emission threshold for the installation and removal of a gas collection and control system (GCCS) from 50 Mg per year (Mg/yr) to 34 Mg/yr. An MSW landfill that exceeds the design capacity threshold must install and start up a GCCS within 30 months after Landfill Gas (LFG) emissions reach or exceed an NMOC level of 34 Mg/yr. Consistent with the existing NSPS (subp. WWW), the owner or operator of a landfill may control the gas by routing it to a non-enclosed flare, an enclosed combustion device, or a treatment system that processes the collected gas for subsequent sale or beneficial use.
- **Emission Threshold Determination.** The EPA is finalizing an alternative site-specific emission threshold methodology for when a landfill must install and operate a GCCS. This alternative methodology, referred to as “Tier 4,” is based on surface emission monitoring (SEM) and demonstrates whether or not surface emissions are below a specific threshold. The Tier 4 SEM demonstration allows landfills that exceed the threshold using modeled NMOC emission rates using Tier 1 or 2 to demonstrate that actual site-specific surface methane emissions are below the threshold. A landfill that can demonstrate that surface emissions are below 500 parts per million (ppm) for four consecutive quarters does not trigger the requirement to install a GCCS even if Tier 1, 2, or 3 calculations indicate that the 34 Mg/yr threshold has been exceeded. Landfills that have calculated NMOC emissions of 50 Mg/yr or greater are not eligible for the Tier 4 emission threshold determination in order to prevent conflicting requirements between subpart XXX and the landfills NESHAP (40 CFR part 63, subpart AAAA). Many landfills that are subject to subpart XXX will also be subject to the landfills NESHAP. The landfills NESHAP requires landfills that exceed the size threshold (2.5 million Mg and 2.5 million m<sup>3</sup>) and exceed the NMOC emissions threshold (50 Mg/yr) to install and operate a GCCS.
- **Low LFG Producing Areas.** The EPA is also finalizing criteria for determining when it is appropriate to cap or remove all or a portion of the GCCS. The final criteria for capping or removing all or a portion of the GCCS are: (1) The landfill is closed, (2) the GCCS has operated for at least 15 years or the landfill owner or operator can demonstrate that the GCCS will be unable to operate for 15 years due to declining gas flows, and (3) the calculated NMOC emission rate at the landfill is less than 34 Mg/yr on three successive test dates.
- **Landfill Gas Treatment.** In the final NSPS, the EPA has addressed two issues related to LFG treatment. First, the EPA is clarifying that the use of treated LFG is not limited to use as a fuel for a stationary combustion device but may be used for other beneficial uses such as vehicle fuel, production of high-British thermal unit (Btu) gas for pipeline injection, or use as a raw material in a chemical manufacturing process. Second, the EPA is finalizing the definition of treated landfill gas that applies to LFG processed in a treatment system meeting the requirements in 40 CFR part 60, subpart XXX and defining treatment system as a system that filters, de-waters, and compresses LFG for sale or beneficial use. The definition of treatment system allows the level of treatment to be tailored to the type and design of the specific combustion equipment or the other beneficial uses such as vehicle fuel, production of high-Btu gas for pipeline injection, or use as a raw material in a chemical manufacturing process in which the LFG is used. Owners or

operators must develop a site-specific treatment system monitoring plan that includes monitoring parameters addressing all three elements of treatment (filtration, de-watering, and compression) to ensure the treatment system is operating properly for the intended end use of the treated LFG. They also must keep records that demonstrate that such parameters effectively monitor filtration, de-watering, and compression system performance necessary for the end use of the treated LFG.

- **Wellhead Operational Standards.** The EPA is finalizing changes to certain operational standards (i.e., the requirement to meet specific operating limits) for nitrogen/oxygen level at the wellheads. Landfill owners or operators are not required to take corrective action based on exceedances of specified operational standards for nitrogen/oxygen levels at wellheads, but they must continue to monitor and maintain records of nitrogen/oxygen levels on a monthly basis in order to inform any necessary adjustments to the GCCS and must maintain records of monthly readings. The operational standard, corrective action, and corresponding recordkeeping and reporting remain for temperature and maintaining negative pressure at the wellhead.
- **Surface Monitoring.** The EPA is finalizing the requirement to monitor all surface penetrations at landfills. In final 40 CFR part 60, subpart XXX, landfills must conduct SEM at all cover penetrations and openings within the area of the landfill where waste has been placed and a gas collection system is required to be in place and operating according to the operational standards in final 40 CFR part 60, subpart XXX. Specifically, landfill owners or operators must conduct surface monitoring on a quarterly basis at the specified intervals and where visual observations indicate elevated concentrations of LFG, such as distressed vegetation and cracks or seeps in the cover and all cover penetrations.
- **Startup, Shutdown, and Malfunction.** The EPA is finalizing a requirement that standards of performance in the NSPS apply at all times, including periods of startup, shutdown, and malfunction (SSM). The EPA is also finalizing an alternative standard during SSM events: In the event the collection or control system is not operating, the gas mover system must be shut down and all valves in the collection and control system that could contribute to venting of the gas to the atmosphere must be closed within 1 hour of the collection or control system not operating.
- **Other Clarifications.** The EPA is finalizing a number of clarifications to address several issues that have been raised by landfill owners or operators during implementation of the current NSPS and Emission Guidelines. These clarifications include adding criteria for when an affected source must update its design plan and clarifying when landfill owners or operators must submit requests to extend the timeline for taking corrective action. The EPA is also updating several definitions in the NSPS. In addition, while the EPA is not mandating organics diversion, we are finalizing two specific compliance flexibilities in the NSPS to encourage wider adoption of organics diversion and GCCS Best Management Practices (BMPs) for emission reductions at landfills. These compliance flexibilities are discussed in sections VI.A.1 and VI.A.2 (wellhead monitoring) and section V.B and VI.B (Tier 4 emission threshold determination) of this preamble.

134. **7011.3525 Incorporation by Reference. Emission Guidelines and Compliance Times; Municipal Solid Waste Landfills Existing on or before July 17, 2014**

**Subpart 1. Scope.** *The requirements of this part apply to the owner or operator of a landfill that began construction, modification, or reconstruction on or before July 17, 2014*

**Subp. 2. Incorporation by reference; federal emission guidelines.** *Code of Federal Regulations, title 40, Part 60, Subpart Cf, as amended, entitled “Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills” is incorporated by reference with the following exceptions:*

*A. The incorporation of section 60.31f (e) changes the phrase “; 40 CFR part 62, subpart GGG; or a state plan implementing subpart Cc of this part” to “” or 40 CFR part 62, subpart GGG,”;*

*B. The incorporation of section 60.32f changes the phrase “Planning, awarding of contracts, installing, and starting up MSW landfill air emission collection and control equipment that is capable of meeting the Emission Guidelines under § 60.33f must be completed.” to “The owner or operator must complete planning, awarding of contracts, installing, and starting up MSW landfill air emission collection and control equipment that is capable of meeting the Emission Guidelines under § 60.33f.”*

*C. The incorporation of section 60.33f (a) does not include the phrase “For approval, a state plan must require” and changes the phrase “to collect and control” to “must collect and control”;*

*D. The incorporation of section 60.33f (b) changes the phrase “For approval, a state plan must include provisions for the installation of” to “The owner or operator must install”;*

*E. The incorporation of section 60.33f (c) changes the phrase “For approval, a state plan must include provisions” to “The owner or operator must provide”;*

*F. The incorporation of section 60.33f (d) changes the sentence “For approval, a state plan must require each owner or operator of an MSW landfill having a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume to submit an initial design capacity report to the Administrator as provided in § 60.38f (a)” to “The owner or operator of an MSW landfill having a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume must submit an initial design capacity report to the commissioner as provided in § 60.38f (a)”;*

*G. The incorporation of section 60.33f (e) changes the sentence “For approval, a state plan must require each owner or operator of an MSW landfill having a design capacity equal or greater than 2.5 megagrams and 2.5 million cubic meters to either install a collection and control system as provided in paragraphs (b) and (c) of this section or calculate an initial NMOC emission rate for the landfill using the procedures specified in § 60.35f (a)” to “The owner or operator of an MSW landfill having a design capacity equal or greater than 2.5 megagrams and 2.5 million cubic meters must either install a collection and control system as provided in paragraphs (b) and (c) of this section or calculate an initial NMOC emission rate for the landfill using the procedures specified in § 60.35f (a)”;*

*H. The incorporation of section 60.34f does not include the sentence “For approval, a state plan must include provisions for the operational standards in this section for an MSW landfill with a gas collection and control system used to comply with the provisions of §60.33f(b) and (c)”;*

*I. The incorporation of section 60.35f changes the phrase “For approval, a state plan must include” to “The owner or operator must use the”;*

*J. The incorporation of section 60.36f changes the sentence “For approval, a state plan must include” to “The owner or operator must comply with”;*

*K. The incorporation of section 60.37f changes the phrase “For approval, a state plan must include” to “The owner or operator must use the monitoring provisions in this section, except as provided in § 60.38f(d)(1)”;*

L. The incorporation of section 60.38f:

(1) changes the phrase “For approval, a state plan must include” to “The owner or operator must comply with”;

(2) changes the phrase in paragraph (a) “90 days after the effective date of EPA approval of the state’s plan under section 111(d) of the Clean Air Act.” to “12 months after the effective date of this rule”;

(3) changes the phrase in paragraph (c) “90 days after the effective date of EPA approval of the state’s plan under section 111(d) of the Clean Air Act.” to “12 months after the effective date of this rule”; and

(4) in paragraph (d) does not include the sentence “The state plan must include a process for state review and approval of the site-specific design plan for each gas collection and control system.”;

(5) in paragraph (e), changes the phrase “; 40 CFR part 62, subpart GGG; or a state plan implementing subpart Cc of this part,” to “, or 40 CFR part 62, subpart GGG,”;

M. The incorporation of section 60.39f does not include the sentence “For approval, a state plan must include the recordkeeping provisions in this section”; and

N. The incorporation of section 60.40f does not include the sentence “For approval, a state plan must include the specifications for active collection systems in this section.”

**Justification.** The MPCA issues construction and operation permits to solid waste landfills under existing state rules ([7001.3050](#)). Because the MPCA has primary authority for regulating solid waste landfills, the MPCA believes it is in the most appropriate position to ensure the implementation and enforcement of federal rules controlling landfill gases. The MPCA has previously adopted Minn. R. pts. [7011.3500](#) through [7011.3510](#), incorporating federal EG to control landfill gas emissions from existing landfills. Since those rules were adopted and Minnesota’s plan was approved in 1998, U.S. EPA has revised the EG. The MPCA must therefore revise the plan it has already submitted to U.S. EPA under section 111(d) of the Clean Air Act so that it can administer standards for existing landfills. The first step toward revising the 111(d) plan is to adopt the new EG and establish compliance schedules in state rules. The revised state rules must be equivalent to the federal EG. ([40 CFR part 60.24 \(a\)](#))

The federal EG for controlling landfill gas emissions have been written by the U.S. EPA using somewhat of a “model rule” format. Using a model rule format eases the process of incorporating the guidelines into a state’s plan. Prior to U.S. EPA adopting the convention of writing EG as model rules, a state would have to rewrite the federal EG in their entirety for adoption. This increased the size and length of a state’s plan, and complicated the approval process between U.S. EPA and the state. Careful review was needed to ensure that all provisions of the federal guidelines were addressed by the state and that the state rules were equivalent. Writing EG in the form of model rules allows states to adopt them by reference, demonstrates “equivalence”, and allows for modifications if necessary. In this rulemaking, the MPCA is incorporating the federal model rule by reference. Because U.S. EPA did not promulgate rule language that can be entirely incorporated by reference, in subpart 2 the MPCA is identifying those parts of the federal EG that relate solely to the approval of the state plan and either modifying them to make sense as a requirement or simply excluding them from the incorporation by reference. It is reasonable to modify or eliminate those portions that are only related to the state’s approval process.



Subpart 2 incorporates the federal EG and compliance times for existing landfills by reference. The requirements of 40 CFR part 60, subpart Cf are discussed in <https://www.gpo.gov/fdsys/pkg/FR-2016-08-29/pdf/2016-17700.pdf>

Federal regulation ([40 CFR part 60.38f](#)) requires that states must require certain reports about affected facilities. In Item L of subp. 2, the MPCA is establishing the compliance schedule for reports from existing landfills. The EG allow a state to establish a compliance deadline of up to 90 days after U.S. EPA approves the state plan, which is somewhat of a moving target. The MPCA is proposing a firm date of 12 months after rule adoption so that there is a clear deadline for landfills to create monitoring plans and determine actions necessary to comply with methane control requirements. The MPCA believes this is a reasonable time frame because it provides four years between the 2016 promulgation of the federal emission guidelines and the MPCA's expectation to submit a plan in 2020 (one year after the MPCA expects to complete rulemaking in 2019). Because affected landfills in Minnesota already have operating landfill gas controls, and have existing monitoring, recordkeeping and reporting requirements, the MPCA does not expect the new requirements to impose additional burdens.

135. ~~**7011.7000 General Provisions of Federal National Emission Standards for Hazardous Air Pollutants for Source Categories Incorporated by Reference.**~~

~~*For purposes of interpreting, applying, and enforcing the National Emission Standards for Hazardous Air Pollutants for Source Categories that are incorporated by reference into this chapter, Code of Federal Regulations, title 40, sections 63.1, 63.2, 63.3, 63.4, 63.5, 63.6, 63.11, and 63.14, as amended, are adopted and incorporated by reference.*~~

~~*All requests, reports, applications, submittals, and other communications to the administrator pursuant to National Emission Standards for Hazardous Air Pollutants for Source Categories that are incorporated by reference into this chapter must be submitted to the commissioner.*~~

**Justification.** This part is reasonably deleted because the incorporation by reference of these federal regulations and the information about the submittal of information to the commissioner, is addressed in the amendments to part 7011.0050.

136. ~~**7011.7040 Incorporation by Reference; Emission Standards; Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry.**~~

~~*The following national emission standards for hazardous air pollutants are incorporated by reference:*~~

~~*A. Code of Federal Regulations, title 40, part 63, subpart F, as amended, entitled "National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry," is adopted and incorporated by reference, except that the authorities identified in section 63.106(c) are not delegated to the commissioner and are retained by the administrator.; and*~~

~~*B. Code of Federal Regulations, title 40, part 63, subpart G, as amended, entitled "National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations and Wastewater," is adopted and incorporated by reference, except that the authorities identified in section 63.153(c) are not delegated to the commissioner and are retained by the administrator.*~~

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

**137. 7011.7050 Incorporation by Reference; Emission Standards; Industrial Commercial, and Institutional Boilers and Process Heaters; Major Sources.**

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

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

The change to the title of the incorporated standard is reasonable to reflect the actual title of the subpart being incorporated by reference.

**138. 7011.7055 Incorporation by Reference; Emission Standards; Industrial, Commercial, and Institutional Boilers; Area Sources.**

*Code of Federal Regulations, title 40, part 63, subpart JJJJJ, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources," is incorporated by reference, ~~except that the authorities identified in Code of Federal Regulations, title 40, section 63.11236(c), are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

**139. 7011.7060 Incorporation by Reference; Emission Standards; Organic Hazardous Air Pollutants ~~from~~ for Equipment Leaks.**

The following national emission standards for hazardous air pollutants are incorporated by reference:

A. *Code of Federal Regulations, title 40, part 63, subpart H, as amended, entitled "National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.183(c) are not delegated to the commissioner and are retained by the administrator.~~ and*

B. *Code of Federal Regulations, title 40, part 63, subpart I, as amended, entitled "National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.193(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

**140. 7011.7080 Incorporation by Reference; Emission Standards; Coke Oven Batteries**

*Code of Federal Regulations, title 40, part 63, subpart L, as amended, entitled "National Emission Standards for Coke Oven Batteries," is ~~adopted and incorporated by reference, except that the~~*

*authorities identified in section 63.313(d) are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

141. **7011.7090 Incorporation by Reference; Emission Standards; Coke Ovens; Pushing, Quenching, and Battery Stacks**

*Code of Federal Regulations, title 40, part 63, subpart CCCCC, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.7351(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

142. **7011.7100 Incorporation by Reference; Emission Standards; Perchloroethylene Dry Cleaning Facilities.**

*Code of Federal Regulations, title 40, part 63, subpart M, as amended, entitled "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.326(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

143. **7011.7120 Incorporation by Reference; Emission Standards; Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.**

*Code of Federal Regulations, title 40, part 63, subpart N, as amended, entitled "National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.348(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

144. **7011.7140 Incorporation by Reference; Emission Standards; Ethylene Oxide Emissions Standards for Sterilization Facilities Sterilizers**

*The following national emission standards for hazardous air pollutants are incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 63, subpart O, as amended, entitled "Ethylene Oxide Emissions Standards for Sterilization Facilities;" is ~~adopted and incorporated by reference, except that the authorities identified in section 63.368 (c) are not delegated to the commissioner and are retained by the administrator;~~ and*

B. Code of Federal Regulations, title 40, part 63, subpart WWWW, as amended, entitled “National Emission Standards for Hospital Ethylene Oxide Sterilizers.”

**Justification.** The amendments add a new introduction that incorporates by reference all the emission standards that follow. Adding this more comprehensive statement to address all the requirements in the rule part eliminates the need to repeat the incorporation by reference in every item and is consistent with how the rules incorporate multiple federal regulations.

In item B the MPCA is incorporating federal emission standards for hospital ethylene Oxide sterilizers by reference. Subpart WWWW establishes NESHAP for those area sources. These requirements are discussed in <https://www.federalregister.gov/documents/2007/12/28/E7-25233/national-emission-standards-for-hospital-ethylene-oxide-sterilizers>.

The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

The heading is additionally modified to remove “facilities”, because although subpart O governs facilities, the subpart WWWW emission standards being added in this rulemaking do not apply to facilities. The term “sterilizers” is more broadly inclusive of the sources of ethylene oxide emissions governed in this part.

**145. 7011.7160 Incorporation by Reference; Emission Standards; Industrial Process Cooling Towers.**

*Code of Federal Regulations, title 40, part 63, subpart Q, as amended, -entitled "National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.407(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**146. 7011.7180 Incorporation by Reference; Emission Standards; Gasoline Distribution**

The following national emission standards for hazardous air pollutants are incorporated by reference:

A. Code of Federal Regulations, title 40, part 63, subpart R, as amended, entitled "National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations);" is ~~adopted and incorporated by reference, except that the authorities identified in section 63.429(c) are not delegated to the commissioner and are retained by the administrator.; and~~

B. Code of Federal Regulations, title 40, part 63, subpart BBBBBB, as amended, entitled “National Emission Standards for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities.”

**Justification.** The amendments add a new introduction that incorporates by reference all the emission standards that follow. Adding this more comprehensive statement to address all the requirements in the rule part eliminates the need to repeat the incorporation by reference in every item.

In item B the MPCA is incorporating federal NESHAP for Gasoline Distribution, Bulk Terminals, Bulk Plants and Pipeline Facilities by reference. Subpart BBBBBB establishes NESHAP for those emission sources. These requirements are discussed in

<https://www.federalregister.gov/documents/2008/01/10/E7-25400/national-emission-standards-for-hazardous-air-pollutants-for-source-categories-gasoline-distribution>.

The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**147. 7011.7185 Incorporation by Reference; Emission Standards; Gasoline Dispensing Facilities.**

*Code of Federal Regulations, title 40, part 63, subpart CCCCC, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities," is ~~adopted and~~ incorporated by reference, except that the authorities identified in Code of Federal Regulations, title 40, part 63.11131 (c), are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**148. 7011.7200 Incorporation by Reference; Emission Standards; Halogenated Solvent Cleaning.**

*Code of Federal Regulations, title 40, part 63, subpart T, as amended, entitled "National Emission Standards for Halogenated Solvent Cleaning," is ~~adopted and~~ incorporated by reference, except that the authorities identified in section 63.470(c) are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**149. 7011.7235 Incorporation by Reference; Emission Standards; Primary Lead Smelting.**

*Code of Federal Regulations, title 40, part 63, subpart TTT, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting," is ~~adopted and~~ incorporated by reference, except that the authorities identified in section 63.1550(c) are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**150. 7011.7240 Incorporation by Reference; Emission Standards; Secondary Lead Smelting**

*Code of Federal Regulations, title 40, part 63, subpart X, as amended, entitled "National Emission Standards for Marine Tank Vessel Loading Operations," is ~~adopted and~~ incorporated by reference, except that the authorities identified in section 63.551(c) are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

151. **7011.7260 Incorporation by Reference; Emission Standards; Marine Tank Vessel Loading Operations.**

*Code of Federal Regulations, title 40, part 63, subpart Y, as amended, entitled "National Emission Standards for Marine Tank Vessel Loading Operations," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.568(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

152. **7011.7280 Incorporation by Reference; Emission Standards; Petroleum Refineries.**

*The following national emission standards for hazardous air pollutants are incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 63, subpart CC, as amended, entitled "National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.655(c) are not delegated to the commissioner and are retained by the administrator.~~; and*

*B. Code of Federal Regulations, title 40, part 63, subpart UUU, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.1578(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments add a new introduction that incorporates by reference all the emission standards that follow. Adding this more comprehensive statement to address all the requirements in the rule part eliminates the need to repeat the incorporation by reference in every item.

The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

153. **7011.7290 Incorporation by Reference; Emission Standards; Oil and Natural Gas Production, Transmission, and Storage.**

*The following national emission standards for hazardous air pollutants are incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 63, subpart HH, as amended, entitled "National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.776(c) are not delegated to the commissioner and are retained by the administrator.~~; and*

*B. Code of Federal Regulations, title 40, part 63, subpart HHH, as amended, entitled "National Emission Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.1286(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments add a new introduction that incorporates by reference all the emission standards that follow. Adding this more comprehensive statement to address all the requirements in the rule part eliminates the need to repeat the incorporation by reference in every item.

The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**154. 7011.7300 Incorporation by Reference; Emission Standards; Magnetic Tape Manufacturing Operations.**

*Code of Federal Regulations, title 40, part 63, subpart EE, as amended, entitled "National Emission Standards for Magnetic Tape Manufacturing Operations," is ~~adopted and~~ incorporated by reference, except that the authorities identified in section 63.708(c) are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**155. 7011.7320 Incorporation by Reference; Emission Standards; Aerospace Manufacturing and Rework Facilities.**

*Code of Federal Regulations, title 40, part 63, subpart GG, as amended, entitled "National Emission Standards for Aerospace Manufacturing and Rework Facilities," is ~~adopted and~~ incorporated by reference, except that the authorities identified in section 63.759(c) are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**156. 7011.7340 Incorporation by Reference; Emission Standards; Wood Furniture Manufacturing Operations.**

*Code of Federal Regulations, title 40, part 63, subpart JJ, as amended, entitled "National Emission Standards for Wood Furniture Manufacturing Operations," is ~~adopted and~~ incorporated by reference, except that the authorities identified in section 63.808(c) are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**157. 7011.7360 Incorporation by Reference; Emission Standards; Shipbuilding and Ship Repair Operations.**

*Code of Federal Regulations, title 40, part 63, subpart II, as amended, entitled "National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)," is ~~adopted and~~ incorporated by reference, except that the authorities identified in section 63.789(c) are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

158. **7011.7370 Incorporation by Reference; Emission Standards; Boat Manufacturing.**

*Code of Federal Regulations, title 40, part 63, subpart VVVV, as amended, entitled "National Emission Standards for Boat Manufacturing," is ~~adopted and~~ incorporated by reference, ~~except that the authorities identified in section 63.5776(b) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

159. **7011.7380 Incorporation by Reference; Emission Standards; Printing and Publishing Industry.**

*Code of Federal Regulations, title 40, part 63, subpart KK, ~~as amended,~~ entitled "National Emission Standards for the Printing and Publishing Industry," is ~~adopted and~~ incorporated by reference, ~~except that the authorities identified in section 63.831(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

160. **7011.7385 Incorporation by Reference; Emission Standards; Paper and Other Web Coating.**

*Code of Federal Regulations, title 40, part 63, subpart JJJJ, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating," is ~~adopted and~~ incorporated by reference, ~~except that the authorities identified in section 63.3420(b) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

161. **7011.7390 Incorporation by Reference; Emission Standards; Municipal Solid Waste Landfills.**

*Code of Federal Regulations, title 40, part 63, subpart AAAA, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills," is ~~adopted and~~ incorporated by reference, ~~except that the authorities identified in section 63.1985(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

162. **7011.7400 Incorporation by Reference; Emission Standards; Off-site Waste Operations.**

*The following national emission standards for hazardous air pollutants are incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 63, subpart DD, as amended, entitled "National Emission Standards for Hazardous Air Pollutants from Off-site Waste and Recovery Operations;" ~~is adopted and~~ incorporated by reference, ~~except that the authorities identified in section 63.698(c) are not delegated to the commissioner and are retained by the administrator.;~~*



*B. Code of Federal Regulations, title 40, part 63, subpart OO, as amended, entitled "National Emission Standards for Tanks-Level 1," is adopted and incorporated by reference, except that the authorities identified in section 63.908(c) are not delegated to the commissioner and are retained by the administrator;*

*C. Code of Federal Regulations, title 40, part 63, subpart PP, as amended, entitled "National Emission Standards for Containers," is adopted and incorporated by reference, except that the authorities identified in section 63.929(c) are not delegated to the commissioner and are retained by the administrator;*

*D. Code of Federal Regulations, title 40, part 63, subpart QQ, as amended, entitled "National Emission Standards for Surface Impoundments," is adopted and incorporated by reference, except that the authorities identified in section 63.949(c) are not delegated to the commissioner and are retained by the administrator;*

*E. Code of Federal Regulations, title 40, part 63, subpart RR, as amended, entitled "National Emission Standards for Individual Drain Systems," is adopted and incorporated by reference, except that the authorities identified in section 63.967(c) are not delegated to the commissioner and are retained by the administrator; and*

*F. Code of Federal Regulations, title 40, part 63, subpart VV, as amended, entitled "National Emission Standards for Oil-Water Separators and Organic-Water Separators," is adopted and incorporated by reference, except that the authorities identified in section 63.1050(c) are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments add a new introduction that incorporates by reference all the emission standards that follow. Adding this more comprehensive statement to address all the requirements in the rule part eliminates the need to repeat the incorporation by reference in every item.

The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

**163. 7011.7410 Incorporation by Reference; Emission Standards; Hazardous Waste Combustion.**

*Code of Federal Regulations, title 40, part 63, subpart EEE, as amended, entitled "National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors," is adopted and incorporated by reference, except that the authorities identified in section 63.1214(c) are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

**164. 7011.7420 Incorporation by Reference; Emission Standards; Polymers and Resins.**

*The following national emission standards for hazardous air pollutants are incorporated by reference:*

*A. Group I polymers and resins. Code of Federal Regulations, title 40, part 63, subpart U, as amended, entitled "National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins," is adopted and incorporated by reference, except that the authorities identified in section 63.507(c) are not delegated to the commissioner and are retained by the administrator;*

B. Group II polymers and resins. Code of Federal Regulations, title 40, part 63, subpart W, as amended, entitled "National Emission Standards for Hazardous Air Pollutants ~~from~~ for Epoxy Resins Production and Non-Nylon Polyamides Production," ~~is adopted and incorporated by reference, except that the authorities identified in section 63.529(c) are not delegated to the commissioner and are retained by the administrator.;~~

C. Group III polymers and resins. Code of Federal Regulations, title 40, part 63, subpart OOO, as amended, entitled "National Emission Standards for Hazardous Air ~~Pollutants for~~ Pollutant Emissions: Manufacture of Amino/Phenolic Resins Production," ~~is adopted and incorporated by reference, except that the authorities identified in section 63.1419(c) are not delegated to the commissioner and are retained by the administrator.;~~ and

D. Group IV polymers and resins. Code of Federal Regulations, title 40, part 63, subpart JJJ, as amended, entitled "National Emission Standards for Hazardous Air ~~Pollutants for~~ Pollutant Emissions: Group IV Polymers and Resins," ~~is adopted and incorporated by reference, except that the authorities identified in section 63.1336(c) are not delegated to the commissioner and are retained by the administrator.~~

**Justification.** The amendments add a new introduction that incorporates by reference all the emission standards that follow. Adding this more comprehensive statement to address all the requirements in the rule part eliminates the need to repeat the incorporation by reference in every item.

The changes to the titles of the incorporated standards in items B, C, and D are reasonable to reflect the actual title of those subparts.

The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

**165. 7011.7460 Incorporation by Reference; Emission Standards; Ferroalloys Production.**

Code of Federal Regulations, title 40, part 63, subpart XXX, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese," ~~is adopted and incorporated by reference, except that the authorities identified in section 63.1661(c) are not delegated to the commissioner and are retained by the administrator.~~

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

**166. 7011.7480 Incorporation by Reference; Emission Standards; Flexible Polyurethane Foam Production.**

Code of Federal Regulations, title 40, part 63, subpart III, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production," ~~is adopted and incorporated by reference, except that the authorities identified in section 63.1309(c) are not delegated to the commissioner and are retained by the administrator.~~

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

167. **7011.7485 Incorporation by Reference; Emission standards; Flexible Polyurethane Foam Production and Fabrication Operations**

The following national emission standards for hazardous air pollutants are incorporated by reference:

A. Code of Federal Regulations, title 40, part 63, subpart MMMMM, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations;" ~~is adopted and incorporated by reference, except that the authorities identified in section 63.8828(c) are not delegated to the commissioner and are retained by the administrator;~~ and

B. Code of Federal Regulations, title 40, part 63, subpart OOOOOO, as amended, entitled "National Emission Standards for Flexible Polyurethane Foam Production and Fabrication Area Sources."

**Justification.** The amendments add a new introduction that incorporates by reference all the emission standards that follow. Adding this more comprehensive statement to address all the requirements in the rule part eliminates the need to repeat the incorporation by reference in every item.

The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference in item A and the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

Item B identifies the federal standards applicable to area emission sources of flexible polyurethane foam production and fabrication. Subpart OOOOOO establishes NESHAP for those emission sources. These requirements are discussed in <https://www.federalregister.gov/documents/2007/07/16/E7-12018/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-acrylic-and-modacrylic>.

168. **7011.7520 Incorporation by Reference; Emission standards; Mineral Wool Production**

Code of Federal Regulations, title 40, part 63, subpart DDD, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production," ~~is adopted and incorporated by reference, except that the authorities identified in section 63.1195(c) are not delegated to the commissioner and are retained by the administrator.~~

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

169. **7011.7560 Incorporation by Reference; Emission standards; Pesticide Active Ingredient Production**

Code of Federal Regulations, title 40, part 63, subpart MMM, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: ~~for~~ Pesticide Active Ingredient Production," ~~is adopted and incorporated by reference, except that the authorities identified in section 63.1369(c) are not delegated to the commissioner and are retained by the administrator.~~

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

The change to the title of the incorporated standard is reasonable to reflect the actual title of that subpart.

**170. 7011.7580 Incorporation by Reference; Emission standards; Pharmaceuticals Production**

*Code of Federal Regulations, title 40, part 63, subpart GGG, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Pharmaceuticals Production is ~~adopted and~~ incorporated by reference, except that the authorities identified in section 63.1261(c) are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

The change to the title of the incorporated standard is reasonable to reflect the actual title of that subpart.

**171. 7011.7600 Incorporation by Reference; Emission standards; Phosphoric Acid Manufacturing and Phosphate Fertilizers Production**

*The following national emission standards for hazardous air pollutants are incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 63, subpart AA, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: from Phosphoric Acid Manufacturing ~~and Phosphate Fertilizers Production, Plants~~" is ~~adopted and~~ incorporated by reference, except that the authorities identified in section 63.611(c) are not delegated to the commissioner and are retained by the administrator.; and*

*B. Code of Federal Regulations, title 40, part 63, subpart BB, as amended, entitled "National Emission Standards for Hazardous Air Pollutants from Phosphate Fertilizers Production Plants," is ~~adopted and~~ incorporated by reference, except that the authorities identified in section 63.632(c) are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments add a new introduction that incorporates by reference all the emission standards that follow. Adding this more comprehensive statement to address all the requirements in the rule part eliminates the need to repeat the incorporation by reference in every item.

The change to the title of the incorporated standard is reasonable to reflect the actual title of that subpart.

The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

**172. 7011.7610 Incorporation by Reference; Emission standards; Hydrochloric Acid Production**

*Code of Federal Regulations, title 40, part 63, subpart NNNNN, as amended, entitled "National Emission Standards for Hazardous Air Pollutants Pollutant Emissions: Hydrochloric Acid Production is ~~adopted and~~ incorporated by reference, except that the authorities identified in section 63.9070(c) are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

The change to the title of the incorporated standard is reasonable to reflect the actual title of that subpart.

**173. 7011.7620 Incorporation by Reference; Emission standards; Polyether Polyols Production**

*Code of Federal Regulations, title 40, part 63, subpart PPP, as amended, entitled "National Emission Standards for Hazardous Air Pollutants ~~Pollutant Emissions~~ for Polyether Polyols Production is ~~adopted and incorporated by reference, except that the authorities identified in section 63.1421(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

The change to the title of the incorporated standard is reasonable to reflect the actual title of that subpart.

**174. 7011.7640 Incorporation by Reference; Emission standards; Portland Cement Manufacturing**

*Code of Federal Regulations, title 40, part 63, subpart LLL, as amended, entitled "National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.1358(b) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

**175. 7011.7650 Incorporation by Reference; Emission standards; Primary Copper Smelting**

*Code of Federal Regulations, title 40, part 63, subpart QQQ, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting is ~~adopted and incorporated by reference, except that the authorities identified in section 63.1458(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

**176. 7011.7660 Incorporation by Reference; Emission standards; Primary Aluminum Production**

*Code of Federal Regulations, title 40, part 63, subpart LL, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Primary Aluminum Production is ~~adopted and incorporated by reference, except that the authorities identified in section 63.853(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

**177. 7011.7665 Incorporation by Reference; Emission standards; Secondary Aluminum Production**

*Code of Federal Regulations, title 40, part 63, subpart RRR, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production is ~~adopted and incorporated by reference, except that the authorities identified in section 63.1519(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**178. 7011.7670 Incorporation by Reference; Emission standards; Steel Pickling- Hydrochloric Acid Process**

*Code of Federal Regulations, title 40, part 63, subpart CCC, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.1166(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

The change to the title of the incorporated standard is reasonable to reflect the actual title of that subpart.

**179. 7011.7675 Incorporation by Reference; Emission standards; Integrated Iron and Steel Manufacturing Facilities**

*Code of Federal Regulations, title 40, part 63, subpart FFFF, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.7851(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**180. 7011.7680 Incorporation by Reference; Emission standards; Publicly Owned Treatment Works**

*Code of Federal Regulations, title 40, part 63, subpart VVV, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Publicly owned Treatment Works," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.1594(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**181. 7011.7700 Incorporation by Reference; Emission standards; Pulp and Paper Production**

*The following national emission standards for hazardous air pollutants are incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 63, subpart S, as amended, entitled "National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Production Industry," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.458 (c) are not delegated to the commissioner and are retained by the administrator.~~; and*

*B. Code of Federal Regulations, title 40, part 63, subpart MM, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills," is ~~adopted and incorporated by reference,~~*

~~except that the authorities identified in section 63.868 (b) are not delegated to the commissioner and are retained by the administrator.~~

**Justification.** The amendments add a new introduction that incorporates by reference all the emission standards that follow. Adding this more comprehensive statement to address all the requirements in the rule part eliminates the need to repeat the incorporation by reference in every item.

The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**182. 7011.7720 Incorporation by Reference; Emission standards; Wet-Formed Fiberglass Mat Production**

~~Code of Federal Regulations, title 40, part 63, subpart HHHH, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production," is adopted and incorporated by reference, except that the authorities identified in section 63.3002(b) are not delegated to the commissioner and are retained by the administrator.~~

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

The change to the title of the incorporated standard is reasonable to reflect the actual title of that subpart.

**183. 7011.7730 Incorporation by Reference; Emission standards; Wool Fiberglass Manufacturing**

~~Code of Federal Regulations, title 40, part 63, subpart NNN, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing," is adopted and incorporated by reference, except that the authorities identified in section 63.1388(c) are not delegated to the commissioner and are retained by the administrator.~~

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**184. 7011.7740 Incorporation by Reference; Emission standards; Cellulose Products Manufacturing**

~~Code of Federal Regulations, title 40, part 63, subpart UUUU, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: for Cellulose Products Manufacturing," is adopted and incorporated by reference, except that the authorities identified in section 63.5605(b) are not delegated to the commissioner and are retained by the administrator.~~

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

The change to the title of the incorporated standard is reasonable to reflect the actual title of that subpart.

**185. 7011.7760 Incorporation by Reference; Emission standards; Leather Finishing Operations**

*Code of Federal Regulations, title 40, part 63, subpart TTTT, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations," is ~~adopted and~~ incorporated by reference, ~~except that the authorities identified in section 63.5455 (c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

**186. 7011.7770 Incorporation by Reference; Emission standards; Printing, Coating, and Dyeing of Fabrics and other Textiles**

*Code of Federal Regulations, title 40, part 63, subpart OOOO, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles," is ~~adopted and~~ incorporated by reference, ~~except that the authorities identified in section 63.4370 (c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

**187. 7011.7780 Incorporation by Reference; Emission standards; Manufacturing Nutritional Yeast**

*Code of Federal Regulations, title 40, part 63, subpart CCCC, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Manufacturing Nutritional Yeast," is ~~adopted and~~ incorporated by reference, ~~except that the authorities identified in section 63.2191(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

**188. 7011.7800 Incorporation by Reference; Emission standards; Reinforced Plastic Composites Production**

*Code of Federal Regulations, title 40, part 63, subpart WWWW, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production," is ~~adopted and~~ incorporated by reference, ~~except that the authorities identified in section 63.5930(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

**189. 7011.7820 Incorporation by Reference; Emission standards; Polyvinyl Chloride and Copolymers Production**

*Code of Federal Regulations, title 40, part 63, subpart J, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production," is ~~adopted and~~ incorporated by reference, ~~except that the authorities identified in section 63.216(b) are not delegated to the commissioner and are retained by the administrator.~~*



**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

190. **7011.7840 Incorporation by Reference; Emission standards; Solvent Extraction For Vegetable Oil Production**

*Code of Federal Regulations, title 40, part 63, subpart GGGG, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.2871(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

191. **7011.7860 Incorporation by Reference; Emission standards; Rubber Tire Manufacturing**

*Code of Federal Regulations, title 40, part 63, subpart XXXX, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.6014(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

192. **7011.7880 Incorporation by Reference; Emission standards; Friction Materials Manufacturing Facilities**

*Code of Federal Regulations, title 40, part 63, subpart QQQQ, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Friction Materials Manufacturing Facilities," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.9560(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

193. **7011.7900 Incorporation by Reference; Emission standards; Surface Coating of Large Appliances**

*Code of Federal Regulations, title 40, part 63, subpart NNNN, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.4180(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

194. **7011.7905 Incorporation by Reference; Emission standards; Surface Coating of Metal Coil**

*Code of Federal Regulations, title 40, part 63, subpart SSSS, as amended, entitled "National Emission Standards for Hazardous Air Pollutant Surface Coating of Metal Coil," is ~~adopted and incorporated by~~*

*reference, except that the authorities identified in section 63.5200(c) are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**195. 7011.7910 Incorporation by Reference; Emission standards; Surface Coating of Metal Furniture**

*Code of Federal Regulations, title 40, part 63, subpart RRRR, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.4980(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**196. 7011.7920 Incorporation by Reference; Emission standards; Refractory Products Manufacturing**

*Code of Federal Regulations, title 40, part 63, subpart SSSSS, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.9822(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**197. 7011.7930 Incorporation by Reference; Emission standards; Brick and Structural Clay Products Manufacturing**

*Code of Federal Regulations, title 40, part 63, subpart JJJJ, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Manufacturing," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.8510(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**198. 7011.7935 Incorporation by Reference; Emission standards; Clay Ceramics Manufacturing**

*The following national emission standards for hazardous air pollutants are incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 63, subpart KKKKK, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.8660(c) are not delegated to the commissioner and are retained by the administrator.~~; and*

*B. Code of Federal Regulations, title 40, part 63, subpart RRRRRR, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources."*

**Justification.** The amendments add a new introduction that incorporates by reference all the emission standards that follow. Adding this more comprehensive statement to address all the requirements in the rule part eliminates the need to repeat the incorporation by reference in every item.

The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and” in item A, are reasonable for the reasons discussed in Part 4, item D of this Statement.

Item B identifies the federal standards applicable to area emission sources of clay ceramics manufacture. Subpart RRRRRR establishes NESHAP for those emission sources. These requirements are discussed in <https://www.federalregister.gov/documents/2007/12/26/E7-24720/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-clay-ceramics>.

**199. 7011.7940 Incorporation by Reference; Emission standards; Asphalt Processing and Asphalt Roofing Manufacturing**

*The following national emission standards for hazardous air pollutants are incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 63, subpart LLLLL, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.8697(b) are not delegated to the commissioner and are retained by the administrator.~~;*  
*and*

*B. Code of Federal Regulations, title 40, part 63, subpart AAAAAA, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing."*

**Justification.** The amendments add a new introduction that incorporates by reference all the emission standards that follow. Adding this more comprehensive statement to address all the requirements in the rule part eliminates the need to repeat the incorporation by reference in every item.

The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and” in item A, are reasonable for the reasons discussed in Part 4, item D of this Statement.

Item B identifies the federal standards applicable to area sources of emissions from asphalt processing and asphalt roofing manufacturing. Subpart AAAAAA establishes NESHAP for those emission sources. These requirements are discussed in <https://www.federalregister.gov/documents/2009/12/02/E9-27946/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-asphalt-processing>.

**200. 7011.7960 Incorporation by Reference; Emission standards: Semiconductor Manufacturing**

*Code of Federal Regulations, title 40, part 63, subpart BBBB, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing," is ~~adopted and incorporated by reference, except that the authorities identified in section 63.8510(c) are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

201. **7011.7980 Incorporation by Reference; Emission standards: Engine Test Cells/Stand**

*Code of Federal Regulations, title 40, part 63, subpart PPPPP, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stand;" is ~~adopted and~~ incorporated by reference, ~~except that the authorities identified in section 63.9370(c), are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

202. **7011.8000 Incorporation by Reference; Emission standards: Surface Coating of Wood Building Products**

*Code of Federal Regulations, title 40, part 63, subpart QQQQ, as amended, -entitled "National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products;" is ~~adopted and~~ incorporated by reference, ~~except that the authorities identified in section 63.4780(c), are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

203. **7011.8010 Incorporation by Reference; Emission standards: Site Remediation**

*Code of Federal Regulations, title 40, part 63, subpart GGGGG, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Site Remediation," is incorporated by reference, ~~except that the authorities identified in section 63.7956, paragraph (c), are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part and that remove the specific exceptions to the incorporation by reference, are reasonable for the reasons discussed in Part 4, item D of this Statement.

204. **7011.8020 Incorporation by Reference; Emission standards; Primary Magnesium Refining**

*Code of Federal Regulations, title 40, part 63, subpart TTTTT, as amended, -entitled "National Emission Standards for Hazardous Air Pollutants: Primary Magnesium Refining," is incorporated by reference, ~~except that the authorities identified in section 63.9941, paragraph (c), are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part and that remove the specific exceptions to the incorporation by reference, are reasonable for the reasons discussed in Part 4, item D of this Statement.

205. **7011.8030 Incorporation by Reference; Emission standards: Taconite Iron Ore Processing**

*Code of Federal Regulations, title 40, part 63, subpart RRRRR, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing," is incorporated by reference, ~~except that the authorities identified in section 63.9651, paragraph (c), are not delegated to the commissioner and are retained by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

**206. 7011.8040 Incorporation by reference; Emission standards; Iron and Steel Foundries**

*The following national emission standards for hazardous air pollutants are incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 63, subpart EEEEE, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries," is incorporated by reference, except that the authorities identified in section 63.7761, paragraph (c), are not delegated to the commissioner and are retained by the administrator.; and*

*B. Code of Federal Regulations, title 40, part 63, subpart ZZZZ, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources."*

**Justification.** The amendments add a new introduction that incorporates by reference all the emission standards that follow. Adding this more comprehensive statement to address all the requirements in the rule part eliminates the need to repeat the incorporation by reference in every item.

The amendments that change the heading of this rule part, and that remove the specific exceptions to the incorporation by reference in item A, are reasonable for the reasons discussed in Part 4, item D of this Statement.

Item B identifies the federal standards applicable to area sources of emissions from iron and steel foundries. Subpart ZZZZ establishes NESHAP for those emission sources. These requirements are discussed in <https://www.federalregister.gov/documents/2008/01/02/E7-24836/national-emission-standards-for-hazardous-air-pollutants-for-iron-and-steel-foundries-area-sources>.

**207. 7011.8050 Incorporation by Reference; Emission standards; Miscellaneous organic Chemical Manufacturing.**

*Code of Federal Regulations, title 40 part 63, subpart FFFF, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing," is incorporated by reference, except that the authorities identified in section 63.2545, paragraph (b) are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

**208. 7011.8060 Incorporation by Reference; Emission standards; Surface Coating of Metal Cans**

*Code of Federal Regulations, title 40, part 63, subpart KKKK, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans," is incorporated by reference, except that the authorities identified in section 63.3560, paragraph (c), are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

209. **7011.8070 Incorporation by Reference; Emission standards: Miscellaneous Coating Manufacture**

*Code of Federal Regulations, title 40, part 63, subpart HHHHH, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacture," is incorporated by reference, except that the authorities identified in section 63.8100, paragraph (b), are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

210. **7011.8080 Incorporation by Reference; Emission standards: Mercury Emissions from Mercury Cell Chlor-Alkali Plants**

*Code of Federal Regulations, title 40, part 63, subpart IIIII, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants," is incorporated by reference, except that the authorities identified in section 63.8264, paragraph (c), are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

211. **7011.8090 Incorporation by Reference; Emission standards: Surface Coating of Miscellaneous Metal Parts and Products**

*Code of Federal Regulations, title 40, part 63, subpart MMMM, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products," is incorporated by reference, except that the authorities identified in section 63.3980, paragraph (c), are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

212. **7011.8100 Incorporation by Reference; Emission standards: Lime Manufacturing Plants**

*Code of Federal Regulations, title 40, part 63, subpart AAAAA, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants," is incorporated by reference, except that the authorities identified in section 63.7141, paragraph (c), are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

213. **7011.8110 Incorporation by Reference; Emission standards: Organic Liquids Distribution (Nongasoline)**

*Code of Federal Regulations, title 40, part 63, subpart EEEE, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)," is incorporated by reference, except that the authorities identified in section 63.2402, paragraph (b), are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

214. **7011.8120 Incorporation by Reference; Emission standards: Stationary Combustion Turbines**

*Code of Federal Regulations, title 40, part 63, subpart YYYY, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Stationary Combustion Turbines," is incorporated by reference, except that the authorities identified in section 63.6170, paragraph (c), are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

215. **7011.8130 Incorporation by Reference; Emission standards: Surface Coating of Plastic Parts and Products**

*Code of Federal Regulations, title 40, part 63, subpart PPPP, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Surface Coating of Plastic Parts and Products," is incorporated by reference, except that the authorities identified in section 63.4580, paragraph (c), are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

216. **7011.8140 Incorporation by Reference; Emission standards: Surface Coating of Automobiles and Light-Duty Trucks**

*Code of Federal Regulations, title 40, part 63, subpart IIII, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks," is incorporated by reference, except that the authorities identified in section 63.3175, paragraph (c), are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

217. **7011.8150 Incorporation by Reference; Emission standards: Reciprocating Internal Combustion Engines**

*Code of Federal Regulations, title 40, part 63, subpart ZZZZ, as amended, entitled "National ~~Emission~~ Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Combustion Engines," is incorporated by reference, except that the authorities identified in section 63.6670, paragraph (c), are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

The change to the title of the incorporated standard is reasonable to reflect the actual title of that subpart.

**218. 7011.8160 Incorporation by Reference; Emission standards: Plywood and Composite Wood Products**

*Code of Federal Regulations, title 40, part 63, subpart DDDD, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products," is incorporated by reference, except that the authorities identified in section 63.2291, paragraph (c), are not delegated to the commissioner and are retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the specific exceptions to the incorporation by reference are reasonable for the reasons discussed in Part 4, item D of this Statement.

**219. ~~7011.8170 Industrial Process Cooling Towers~~**

*Code of Federal Regulations, title 40, part 63, subpart Q, as amended, entitled "National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers," is incorporated by reference, except that the authorities identified in section 63.407, paragraph (c), are not delegated to the commissioner and are retained by the administrator.*

**Justification.** This part is being repealed because it duplicates Minn. R. pt. 7011.7160, which also incorporates by reference the federal requirements of Code of Federal Regulations, title 40, part 63, subpart Q relating to industrial cooling towers.

**220. 7011.8190 Incorporation by Reference; Emission standards; Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or Process**

*Code of Federal Regulations, title 40, part 63, subpart SS, as amended, entitled "National Emission Standards for Hazardous Air Pollutants: Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process," is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to systems and devices associated with fuel gas systems or processes. Subpart SS establishes NESHAP for those emission sources. These requirements are discussed in <https://www.gpo.gov/fdsys/pkg/FR-1999-06-29/pdf/99-13164.pdf>.

**221. 7011.8200 Incorporation by Reference; Emission standards; Equipment Leaks**

*The following national emission standards for hazardous air pollutants are incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 63, subpart TT, as amended, entitled "National Emission Standards for Equipment Leaks—Control Level 1"; and*

*B. Code of Federal Regulations, title 40, part 63, subpart UU, as amended, entitled "National Emission Standards for Equipment Leaks—Control Level 2 Standards."*

**Justification.** This part incorporates by reference two of the federal standards applicable to equipment leaks. Subparts TT and UU establish NESHAP for those emission sources. These requirements, applicable to both Control Levels 1 and 2, are discussed in <https://www.gpo.gov/fdsys/pkg/FR-1999-06-29/pdf/99-13164.pdf>.



**222. 7011.8205 Incorporation by Reference; Emission standards; Storage Vessels (Tanks)—Control Level 2**

*Code of Federal Regulations, title 40, part 63, subpart WW, as amended, entitled “National Emission Standards for Hazardous Air Pollutants: Storage Vessels (Tanks) - Control Level 2,” is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to storage vessels. Subpart WW establishes NESHAP for those emission sources. These requirements are discussed in <https://www.gpo.gov/fdsys/pkg/FR-1999-06-29/pdf/99-13164.pdf>.

**223. 7011.8210 Incorporation by Reference; Emission standards; Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations**

*Code of Federal Regulations, title 40, part 63, subpart XX, as amended, entitled “National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations,” is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to ethylene manufacture process units. Subpart XX establishes NESHAP for those emission sources. These requirements are discussed in <https://www.gpo.gov/fdsys/pkg/FR-2002-07-12/pdf/02-12841.pdf>.

**224. 7011.8215 Incorporation by Reference; Emission standards; Electric Arc Furnace Steelmaking Facilities**

*Code of Federal Regulations, title 40, part 63, subpart YYYYY, as amended, entitled “National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities,” is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to electric arc furnace steelmaking facilities. Subpart YYYYY establishes NESHAP for those emission sources. These requirements are discussed in <https://www.federalregister.gov/documents/2007/12/28/E7-24837/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-electric-arc-furnace>.

**225. 7011.8220 Incorporation by Reference; Emission Standards; Paint Stripping and Miscellaneous Surface Coating Operations; Area Sources**

*Code of Federal Regulations, title 40, part 63, subpart HHHHHH, as amended, entitled “National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources,” is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to paint stripping and miscellaneous surface coating operations. Subpart HHHHHH establishes NESHAP for those emission sources. These requirements are discussed in <https://www.gpo.gov/fdsys/pkg/FR-2008-01-09/pdf/E7-24718.pdf>.

**226. 7011.8225 Incorporation by Reference; Emission Standards; Lead Acid Battery Manufacturing**

*Code of Federal Regulations, title 40, part 63, subpart PPPPPP, as amended, entitled “National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources,” is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to lead acid battery manufacturing sources. Subpart PPPPPP establishes NESHAP for those emission sources. These

requirements are discussed in <https://www.federalregister.gov/documents/2007/07/16/E7-12018/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-acrylic-and-modacrylic> .

**227. 7011.8230 Incorporation by Reference; Emission standards; Wood Preserving; Area Sources**

*Code of Federal Regulations, title 40, part 63, subpart QQQQQQ, as amended, entitled “National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources,” is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to wood preserving sources. Subpart QQQQQQ establishes NESHAP for those emission sources. These requirements are discussed in <https://www.federalregister.gov/documents/2007/07/16/E7-12018/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-acrylic-and-modacrylic>.

**228. 7011.8235 Incorporation by Reference; Emission standards; Glass Manufacturing Area Sources**

*Code of Federal Regulations, title 40, part 63, subpart SSSSSS, as amended, entitled “National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources,” is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to glass manufacturing sources. Subpart SSSSSS establishes NESHAP for those emission sources. These requirements are discussed in <https://www.federalregister.gov/documents/2007/12/26/E7-24720/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-clay-ceramics>.

**229. 7011.8240 Incorporation by Reference; Emission standards; Secondary Nonferrous Metals Processing Area Sources**

*Code of Federal Regulations, title 40, part 63, subpart TTTTTT, as amended, entitled “National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources,” is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to secondary nonferrous metal processing sources. Subpart TTTTTT establishes NESHAP for those emission sources. These requirements are discussed in <https://www.federalregister.gov/documents/2007/12/26/E7-24720/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-clay-ceramics>.

**230. 7011.8245 Incorporation by Reference; Emission standards; Chemical Manufacturing Area Sources**

*Code of Federal Regulations, title 40, part 63, subpart VVVVVV, as amended, entitled “National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources,” is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to chemical manufacturing sources. Subpart VVVVVV establishes NESHAP for those emission sources. These requirements are discussed in <https://www.federalregister.gov/documents/2009/10/29/E9-25576/national-emission-standards-for-hazardous-air-pollutants-for-chemical-manufacturing-area-sources>.

231. **7011.8250 Incorporation by Reference; Emission standards; Area Source Standards for Plating and Polishing Operations**

*Code of Federal Regulations, title 40, part 63, subpart WWWWWW, as amended, entitled “National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations,” is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to plating and polishing operations. Subpart WWWWWW establishes NESHAP for those emission sources. These requirements are discussed in <https://www.federalregister.gov/documents/2008/07/01/E8-14795/national-emission-standards-for-hazardous-air-pollutants-area-source-standards-for-plating-and->

232. **7011.8255 Incorporation by Reference; Emission Standards; Metal Fabrication and Finishing**

*Code of Federal Regulations, title 40, part 63, subpart XXXXXX, as amended, entitled “National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories,” is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to nine specific source categories of metal fabrication and finishing. Subpart XXXXXX establishes NESHAP for those emission sources. These requirements are discussed in <https://www.federalregister.gov/documents/2008/07/23/E8-16263/national-emission-standards-for-hazardous-air-pollutants-area-source-standards-for-nine-metal->

233. **7011.8260 Incorporation by Reference; Emission standards; Ferroalloys Production Facilities**

*Code of Federal Regulations, title 40, part 63, subpart YYYYYY, as amended, entitled “National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities,” is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to emissions from ferroalloy production facilities. Subpart YYYYYY establishes NESHAP for those emission sources. These requirements are discussed in <https://www.federalregister.gov/documents/2008/12/23/E8-30424/revision-of-source-category-list-for-standards-under-section-112k-of-the-clean-air-act-and-national->

234. **7011.8265 Incorporation by Reference; Emission standards; Aluminum, Copper, and Other Nonferrous Foundries**

*Code of Federal Regulations, title 40, part 63, subpart ZZZZZZ, as amended, entitled “National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries,” is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to emissions from certain types of foundries. (aluminum, copper and non-ferrous metals) Subpart ZZZZZZ establishes NESHAP for those emission sources. These requirements are discussed in <https://www.federalregister.gov/documents/2009/06/25/E9-14613/revision-of-source-category-list-for-standards-under-section-112k-of-the-clean-air-act-national->

235. **7011.8270 Incorporation by Reference; Emission standards; Chemical Preparations Industry**

*Code of Federal Regulations, title 40, part 63, subpart BBBB BB, as amended, entitled “National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry,” is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to emissions from the chemical preparations industry. Subpart BBBB BB establishes NESHAP for those emission sources. These requirements are discussed in <https://www.federalregister.gov/documents/2009/12/30/E9-30500/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-chemical-preparations>.

236. **7011.8275 Incorporation by Reference; Emission standards; Paints and Allied Products Manufacturing**

*Code of Federal Regulations, title 40, part 63, subpart CCCCCC, as amended, entitled “National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing,” is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to emissions from paint and allied products manufacturing. Subpart CCCCCC establishes NESHAP for those emission sources. These requirements are discussed in <https://www.federalregister.gov/documents/2009/12/03/E9-27947/national-emission-standards-for-hazardous-air-pollutants-area-source-standards-for-paints-and-allied>.

237. **7011.8280 Incorporation by Reference; Emission standards; Prepared Feed Manufacturing**

*Code of Federal Regulations, title 40, part 63, subpart DDDDDDD, as amended, entitled “National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing,” is incorporated by reference.*

**Justification.** This part incorporates by reference the federal standards applicable to emissions from the manufacture of prepared feeds. Subpart DDDDDDD establishes NESHAP for those emission sources. These requirements are discussed in <https://www.gpo.gov/fdsys/pkg/FR-2010-01-05/pdf/E9-30498.pdf>.

238. **7011.9900 General Provisions of Federal National Emission Standards for Hazardous Air Pollutants Incorporated by Reference.**

*For purposes of interpreting, applying, and enforcing national emission standards for hazardous air pollutants that are incorporated by reference into this chapter, Code of Federal Regulations, title 40, sections 61.02, 61.03, 61.05, 61.06, 61.07, 61.08, 61.12, 61.15, 61.18, and 61.19, as amended, are incorporated by reference, except that decisions made by the administrator under Code of Federal Regulations, title 40, section 60.12(d)(1) are not delegated to the commissioner and must be made by the administrator.*

*B. All requests, reports, applications, submittals, and other communications to the administrator pursuant to National Emission Standards for Hazardous Air Pollutants that are incorporated by reference into this chapter must be submitted to the commissioner.*

**Justification.** This part is reasonably deleted because the incorporation by reference of these federal regulations and the information about the submittal of information to the commissioner, is addressed in amendments to part 7011.0050.

**239. 7011.9910 Incorporation by Reference; Emission standards; Arsenic**

The following national emission standards for hazardous air pollutants are ~~adopted and~~ incorporated by reference:

A. Code of Federal Regulations, title 40, part 61, subpart N, as amended, entitled "National Emission Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants," except that ~~decisions made by the administrator under the authorities identified in~~ Code of Federal Regulations, title 40, sections 61.164(a)(2) and 61.164(a)(3), are not delegated to the commissioner and ~~must be made~~ are retained by the administrator;

B. Code of Federal regulations, title 40, part 61, subpart O, as amended, entitled "National Emission Standard for Inorganic Arsenic Emissions from Primary Copper Smelters," except that ~~decisions made by the administrator under the authorities identified in~~ Code of Federal Regulations, title 40, sections 61.172(b)(2)(ii)(B), 61.172(b)(2)(ii)(C), 61.174(a)(2), and 61.174(a)(3), are not delegated to the commissioner and ~~must be made~~ are retained by the administrator; and

C. Code of Federal Regulations, title 40, part 61, subpart P, as amended, entitled "National Emission Standard for Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities."

**Justification.** The amendments that change the heading of this rule part and the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

The rephrasing of the delegation language in items A and B is reasonable for the reasons discussed in item 48 above.

**240. 7011.9920 Incorporation by Reference; Emission standards; Asbestos**

Code of Federal Regulations, title 40, part 61, subpart M, as amended, entitled "National Emission Standard for Asbestos," is ~~adopted and~~ incorporated by reference, ~~except that decisions made by the administrator under Code of Federal Regulations, title 40, sections 61.149(c)(2), 61.150(a)(4), 61.151(c), 61.152(b)(3), 61.154(d), and 61.155(a), are not delegated to the commissioner and must be made by the administrator.~~

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

**241. 7011.9921 Definitions**

**Subpart 1. Scope.** ~~The following definitions of words and phrases are controlling terms in this part have the meanings given for the purposes of parts 7011.9921 to 7011.9927;.~~

**Subp. 2. Air flow permeability.** "Air flow permeability" means the volumetric rate of air flow in cfm, produced by a pressure decrease of 0.5 inches water gage across a new, clean filtering fabric, divided by the area of the fabric in ft<sup>2</sup>. ~~Tests of air flow permeability must be performed as specified in ASTM Designation D737-69.~~

**Subp. 3. Agency.** ~~"Agency" means the Minnesota Pollution Control Agency as constituted pursuant to Minnesota Statutes, section 116.02.~~

**Subp. 4.** [unchanged]

**Subp. 4a. Commissioner.** ~~"Commissioner" means the commissioner of the Minnesota Pollution Control Agency.~~

**Subp. 5. Debris.** ~~"Debris" means waste produced by the demolition of demolishing a building or structure.~~

**Subp. 6.** [Repealed by amendment, L 1987 c 186 s 15]

**Subp. 7. Local exhaust ventilation system.** ~~"Local exhaust ventilation system" means the capture of a system that captures particulate matter generated by a process ~~through the application of~~ by applying an air stream induced at the process and that has a device ~~which that~~ that encloses the process, partially encloses the process, or guides the capturing air flow at the process. ~~The design and operation of ventilation devices must conform with ANSI Z9.2-1971, published by the American National Standards Institute.~~~~

**Subp. 8. Manufacturing operation.** ~~"Manufacturing operation" means the processing of asbestos or the production of any a product containing asbestos, with the exception of any a process in which an asbestos-containing asbestos-containing material is sprayed.~~

**Subp. 9. Particulate matter.** ~~"Particulate matter" means any material, other than uncombined water, which exists in a finely divided form as a liquid or solid.~~

**Subp. 10.** [unchanged]

**Subp. 11. Visible emission.** ~~"Visible emission" means any emission which that is visually detectable.~~

**Subp. 12. Detectable amount of asbestos.** ~~For purposes of parts [7011.9921](#) to [7011.9927](#) a product shall be deemed to contain asbestos if a detectable amount of asbestos is present in the product or in any material that goes into the product. A "detectable amount of asbestos" is defined as that amount detectable by the methods of x-ray diffraction, petrographic optical microscopy, or other method approved by the commissioner.~~

**Justification.** The MPCA is making a number of changes to this part.

- The phrasing of the scope is revised to be plain English without changing the meaning.
- The Revisor of Statutes has recommended a number of minor, grammatical changes to use active voice and conform to current rulemaking style. These do not change the effect of the rules.
- The definition of "air flow permeability" includes a requirement for conducting tests of air flow permeability that is more appropriately imposed in the standards, not as part of a definition. This requirement is being moved to Minn. R. pt. 7011.9925 without change.
- The definitions of "agency" and "commissioner" are deleted because they are redundant with the definitions already provided in Minn. R. pt. [7005.0100](#), subparts 2 and 4b, which apply to terms used throughout the state air pollution control rules.
- The last sentence of the definition of "local exhaust ventilation system" is being moved to Minn. R. pt. 7011.9922 because it is a requirement and not a definition. The sentence uses the term "ventilation device," which is only used in this part of the definition of "ventilation system" and the only place that "ventilation system" is used is in Minn. R. pt. 7011.9922. It is more appropriate to require the use of a particular reference document in the part of the rule where conditions for the use of a particular design are applied. Changing the location of this

information does not affect the meaning of the definition or the application of Minn. R. pt. 7011.9922.

- The definition of “particulate matter” is deleted because it is redundant. There is already a definition of particulate matter in Minn. R. pt. [7005.0100](#), subp. 31 which applies to all air quality rules, including chapter 7011. In that definition, particulate matter is defined as: *“Particulate matter” means material, except water, which exists at standard conditions in a finely divided form as a liquid or solid as measured by an applicable reference method, or an equivalent or alternative method.* Two definitions could be confusing and it is reasonable to retain the definition that applies generally to all air quality rules.
- There are several issues with the definition of “detectable amount of asbestos” in subpart 12. First, it is not in alphabetical order with the other definitions. Second, the first sentence repeats information that is already included in the scope of this part. Subpart 1 already states that the definitions apply for purposes of Minn. R. pts. [7011.9921](#) to [7011.9927](#), there is no need to repeat the scope for this particular definition. Finally, although the rules refer to “asbestos,” the term “detectable amount of asbestos” is never used in the cited range of rules and therefore, the definition serves no purpose. The first sentence of the definition applies to asbestos “in products” and only Minn. R. pt. [7011.9923](#) establishes conditions on asbestos in products. The information provided in the definition of “detectable amount of asbestos” is more appropriately included in a new subpart 3 of that rule part, and not as a definition and is reasonably removed from this part and added to Minn. R. pt. 7011.9923.

#### 242. **7011.9922 Manufacturing Operations.**

**Subpart 1. Emissions from local exhaust ventilation system.** *Emissions of particulate matter to the atmosphere from a local exhaust ventilation system in a building, structure, facility, or installation within which any manufacturing operation is carried on ~~shall~~ must not exceed the amount ~~which that~~ would be emitted if ~~such~~ the emissions were treated in a fabric filter installation as described in part 7011.9925.*

**Subp. 2. Other emissions.** *All other visible emissions of particulate matter to the atmosphere from a building, structure, facility, or installation within which any manufacturing operation is carried on ~~shall~~ must not exceed the amount ~~which that~~ would be emitted if ~~such~~ the emissions were treated in a fabric filter installation as described in part 7011.9925.*

**Subp. 3.** [unchanged]

**Subp. 4. Design and operation requirements.** *The design and operation of ventilation devices in ventilation systems must conform with ANSI Z9.2, Fundamentals Governing the Design and Operation of Local Exhaust Ventilation Systems (2012), published by the American National Standards Institute. The standard is incorporated by reference, is not subject to frequent change and is available through the Minitex interlibrary loan system.*

**Justification.** The requirement to use ANSI Z9.2 for the design of ventilation devices is moved from the definitions in Minn. R. pt. [7011.9921](#) to the rule part where the term is applicable in relation to the requirements for ventilation systems. The information provided about the design and operation of ventilation devices is slightly modified from the information formerly provided in the definition to:

- Add a reference to “ventilation systems” to establish the relevance of the requirement to this part; and
- Incorporate the document by reference and change the date of the document. The date of 1971 is out of date and a more recent version (2012) is available from ANSI. Although previously

referenced in the definition, this document was never properly incorporated by reference or made publicly available through the state Law Library or Minitex. The MPCA believes it is reasonable to incorporate it by reference at this time without changing the effect or applicability of this part.

243. **7011.9923 Spraying.**

**Subpart 1. Open area.** *The spraying in any area open to the outdoor atmosphere of any acoustical insulating, thermal insulating, or fireproofing product ~~which that~~ contains asbestos is prohibited.*

**Subp. 2. Emissions to outdoor atmosphere.** *Emissions to the outdoor atmosphere of particulate matter from ~~the spraying of~~ any acoustical insulating, thermal insulating, or fireproofing product ~~which that~~ contains asbestos, if ~~such the~~ spraying is not otherwise prohibited by law, ~~shall must~~ not exceed the amounts ~~which that~~ would be emitted to the atmosphere if the area containing ~~such the~~ emissions were treated by a fabric filter installation as described in part 7011.9925.*

**Subp. 3. Detectable amount of asbestos.** *A product is deemed to contain asbestos if a detectable amount of asbestos is in the product or in any material that goes into the product. "Detectable amount of asbestos" means an amount detectable by x-ray diffraction, petrographic optical microscopy, or any other method approved by the commissioner.*

**Justification.** The requirements applicable to detectable amount of asbestos is moved with only minor grammatical changes from the definitions in Minn. R. pt. [7011.9921](#) to the rule part that regulates asbestos in products. This is a reasonable change because this is a requirement, not a definition.

The Revisor of Statutes recommended minor changes to the wording of this requirement from how it was previously phrased in the definitions.

244. **7011.9925 Fabric Filter Specifications.**

**Subpart 1. Requirements.** *Fabric filter collection devices referred to in parts [7011.9922](#), subparts 1 and 2, and [7011.9923](#), subpart 2, ~~shall must~~ be operated at not more than four inches water gage pressure decrease as measured across the filter fabric. No bypass devices are permitted. ~~Such The~~ collection devices ~~shall must~~ be equipped with either of the following classes of fabrics:*

A. woven fabrics ~~which that~~ have an air flow permeability not exceeding 30 cfm/ft<sup>2</sup> and ~~which that~~, if constructed of synthetic materials, contain no fill yarn other than ~~that which~~ is spun yarn; or

B. felted fabrics ~~which that~~ have an average density of not less than 14 oz/yd<sup>2</sup>, an average thickness of not less than 1/16 inch, and an air flow permeability of not more than 35 cfm/ft<sup>2</sup>.

**Subp. 2. Failure to meet requirements.** *Fabric filter devices do not meet the requirements of this part if any of the following conditions exist: leakage of gases, ~~containing that contain~~ particulate matter, from the control system ~~prior to before~~ filtration; torn or ruptured bags; improperly positioned bags; badly worn or threadbare bags; or presence of visible emissions of particulate matter ~~during the emptying of when~~ collection hoppers are emptied.*

**Subp. 3. Air flow permeability.** *Tests of air flow permeability must be performed as specified in ASTM Designation D737-18, Standard Test Method for Air Permeability of Textile Fabrics (2018), published by ASTM International. The test method is incorporated by reference, is not subject to frequent change, and is available through the Minitex interlibrary loan system.*

**Justification.** The requirement to use ASTM Designation D737-18 is reasonably moved from the definitions in Minn. R. pt. [7011.9921](#) to the rule part where air flow permeability is addressed. This is a



reasonable change because this is a requirement, not a definition. Although this document was previously referred to in the definition, it was never properly incorporated by reference or made publicly available through the state Law Library or Minitex. The MPCA believes it is reasonable to incorporate it by reference at this time without changing the effect or applicability of this part. It is also reasonable to update the version cited to the most recent edition.

The Revisor of Statutes recommended minor changes to the wording of this requirement from how it was previously phrased in the definitions.

**245. 7011.9930 Incorporation by Reference; Emission standards; Benzene**

*The following national emission standards for hazardous air pollutants are ~~adopted and~~ incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 61, subpart J, as amended, entitled "National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene," except that ~~decisions made by the administrator under~~ the authorities identified in Code of Federal Regulations, title 40, section 61.112(c), are not delegated to the commissioner and must be made ~~are retained~~ by the administrator.;*

*B. Code of Federal Regulations, title 40, part 61, subpart L, as amended, entitled "National Emission Standard for Benzene Emissions from Coke-By-Product Recovery Plants," except that ~~decisions made by the administrator under Code of Federal Regulations, title 40, section 61.136(d), are not delegated to the commissioner and must be made by the administrator.~~*

*C. Code of Federal Regulations, title 40, part 61, subpart Y, as amended, entitled "National Emission Standard for Benzene Emissions from Benzene Storage Vessels," except that ~~decisions made by the administrator under Code of Federal Regulations, title 40, section 61.273, are not delegated to the commissioner and must be made by the administrator.~~*

*D. Code of Federal Regulations, title 40, part 61, subpart BB, as amended, entitled "National Emission Standard for Benzene Emissions from Benzene Transfer Operations-"; and*

*E. Code of Federal Regulations, title 40, part 61, subpart FF, as amended, entitled "National Emission Standard for Benzene Waste Operations," except that ~~decisions made by the administrator under Code of Federal Regulations, title 40, section 61.353, are not delegated to the commissioner and must be made by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to "adopted and," are reasonable for the reasons discussed in Part 4, item D of this Statement.

**246. 7011.9940 Incorporation by Reference; Emission standards; Beryllium**

*The following national emission standards for hazardous air pollutants are ~~adopted and~~ incorporated by reference:*

*A. Code of Federal Regulations, title 40, part 61, subpart C, as amended, entitled "National Emission Standard for Beryllium"; and*

*B. Code of Federal Regulations, title 40, part 61, subpart D, as amended, entitled "National Emission Standard for Beryllium Rocket Motor Firing."*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

The Revisor of Statutes recommended adding “and.”

**247. 7011.9950 Incorporation by Reference; Emission standards; Mercury**

*Code of Federal Regulations, title 40, part 61, subpart E, as amended, entitled "National Emission Standard for Mercury," is ~~adopted and incorporated by reference, except that decisions made by the administrator under Code of Federal Regulations, title 40, sections 61.53 (c)(4) and 61.55(d), are not delegated to the commissioner and must be made by the administrator.~~*

**Justification.** The amendments that change the heading of this rule part, remove the specific exceptions to the incorporation by reference, and remove the reference to “adopted and,” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**248. 7011.9960 Incorporation by Reference; Emission standards; Radon**

*The following national emission standards for hazardous air pollutants are ~~adopted and incorporated by reference:~~*

- A. Code of Federal Regulations, title 40, part 61, subpart B, as amended, entitled "National Emission Standards for Radon Emissions from Underground Uranium Mines-";*
- B. Code of Federal Regulations, title 40, part 61, subpart Q, as amended, entitled "National Emission Standard for Radon Emissions from Department of Energy Facilities-";*
- C. Code of Federal Regulations, title 40, part 61, subpart R, as amended, entitled "National Emission Standards for Radon Emissions from Phosphogypsum Stacks-";*
- D. Code of Federal regulations, title 40, part 61, subpart T, as amended, entitled "National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings-"; and*
- E. Code of Federal Regulations, title 40, part 61, subpart W, as amended, -entitled "National Emission Standards for Radon Emissions from Operating Mill Tailings."*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

**249. 7011.9970 Incorporation by Reference; Emission standards; Radionuclides**

*The following national emissions standards for hazardous air pollutants are ~~adopted and incorporated by reference:~~*

- A. Code of Federal Regulations, title 40, part 61, subpart H, as amended, entitled National Emission Standards for Emissions of Radionuclide Emissions Other Than Radon From Department of Energy Facilities-;*
- B. Code of Federal Regulations, title 40, part 61, subpart I, as amended, entitled National Emission Standards for Emissions of Radionuclide Emissions From Federal Facilities Licensed by the Other Than Nuclear Regulatory Commission Licensees and Federal Facilities Not Covered by Subpart H-; and*
- C. Code of Federal Regulations, title 40, part 61, subpart K, as amended, entitled "National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants."*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

The change to the title of the incorporated standard is reasonable to reflect the actual title of that subpart.

**250. 7011.9980 Incorporation by Reference; Emission standards; Vinyl Chloride.**

*Code of Federal Regulations, title 40, part 61, subpart F, as amended, entitled "National Emission Standard for Vinyl Chloride," is ~~adopted and~~ incorporated by reference, except that ~~decisions made by the administrator under~~ authorities identified in Code of Federal Regulations, title 40, section 61.66, are ~~not delegated to the commissioner and must be made~~ retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

The rephrasing of the delegation language in items A and B is reasonable for the reasons discussed in item 48 above.

**251. 7011.9990 Incorporation by Reference; Emission standards; Volatile hazardous air pollutants.**

*Code of Federal Regulations, title 40, part 61, subpart V, as amended, entitled "National Emission Standard for Equipment Leaks (Fugitive Emission Sources)," is ~~adopted and~~ incorporated by reference, except that ~~decisions made by the administrator under~~ authorities identified in Code of Federal Regulations, title 40, sections 61.242-1(c)(2) and 61.244, are ~~not delegated to the commissioner and must be made~~ retained by the administrator.*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

The rephrasing of the delegation language in items A and B is reasonable for the reasons discussed in item 48 above.

**252. 7017.0150 General Provisions of Monitoring and Testing Requirements.**

*References to the administrator in the incorporated federal regulations refer to the commissioner, except when authorities are specifically identified in Code of Federal Regulations or state rule as nondelegable.*

**Justification.** In this new part the MPCA is addressing how the authorities in incorporated rules should refer to the commissioner. This is similar to how incorporations by reference are facilitated in chapter 7011. At two points in this chapter, there are existing references to submissions to the “administrator” that must instead be submitted to the “commissioner.” (Minn. R. pts. 7017.1010, subp. 3 and 7017.2015, subp. 4.) The MPCA is reasonably proposing to remove those parts of the rules and instead make this statement once at the start of the chapter.

**253. 7017.1010 Incorporation of Federal Monitoring Requirements by Reference; Monitoring Requirements.**

**Subpart 1. *New source performance standards.*** *The following regulations are ~~adopted and~~ incorporated by reference:*

- A. *Code of Federal Regulations, title 40, part 60.13, as amended, entitled "Monitoring Requirements";*

B. Code of Federal Regulations, title 40, part 60, Appendix B, as amended, entitled "Performance Specifications"; and

C. Code of Federal Regulations, title 40, part 60, Appendix F, as amended, entitled "Quality Assurance Procedures."

**Subp. 2. National Emissions Standards for Hazardous Air Pollutants.** *The following regulations are ~~adopted and~~ incorporated by reference:*

A. Code of Federal Regulations, title 40, section 61.14, as amended, entitled "Monitoring Requirements"; and

~~B. National Emissions Standards for Hazardous Air Pollutants, Code of Federal Regulations, title 40, section 63.8, as amended, entitled "Monitoring Requirements."~~

~~**Subp. 3. Submission to commissioner.** All requests, reports, applications, and other communications to the administrator pursuant to subparts 1 and 2 must be submitted to the commissioner.~~

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement.

In item B of subpart 2, the phrase "National Emissions Standards for Hazardous Air Pollutants" is redundant and inconsistent with how federal NESHAP are cited and is reasonably removed.

Subpart 3 is reasonably repealed because of the change proposed to Minn. R. pt. 7017.0150, which adds a general provision to address how the change from the "administrator" to "commissioner" should be addressed.

**254. 7017.1020 Incorporation by Reference; Continuous Emission Monitoring by Affected Sources**

*Affected sources, as defined in part [7007.0100](#), subpart 4, ~~shall~~ must comply with Code of Federal Regulations, title 40, part 75, as amended, entitled "Continuous Emission Monitoring," which is ~~adopted and~~ incorporated by reference*

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement. The change of "shall" to "must" is recommended by the Revisor of Statutes.

**255. 7017.1170 Quality Assurance and Control Requirements for CEMS.**

**Subp. 1a.** [unchanged]

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

**Subp. 3. Daily calibration drift assessment and adjustment.** *The facility owner or operator must conduct daily calibration drift assessments and make adjustments as needed according to the procedure listed in items A and B, Code of Federal Regulations, title 40, section 60.13(d)(1), or Code of Federal Regulations, title 40, part 75, Appendix B, section 2.1, as amended, as applicable, for each pollutant concentration and diluent monitor. The calibration drift assessment must be conducted on each monitor range. The span value specified in the applicable requirement or compliance document must be used to determine the zero and span calibration points. If no span value is specified in the applicable requirement or compliance document, the owner or operator must use a span value equivalent to 1.5 times the emission limit.*

*A. For an extractive CEMS, minimum drift assessment procedures ~~shall~~ must include introducing applicable zero and span gas mixtures into the measurement system as near the probe as is practical. Gases within  $\pm$  two percent of tag value ~~shall~~ must be used to perform the span (upscale) drift assessment. The span and zero gas mixtures ~~shall~~ must be the same composition as specified in the applicable performance specification.*

*B. For a nonextractive, in situ CEMS, minimum drift assessment procedures ~~shall~~ must include upscale checks using a certified calibration gas cell or test cell ~~which~~ that is functionally equivalent to a known gas concentration. The zero check may be performed by computing the zero value from upscale measurements or by mechanically producing a zero condition.*

**Subps. 4 to 8** [unchanged]

**Justification.** The rephrasing of the sentence in subpart 2, and the grammatical changes in subpart 3, are recommended by the Revisor of statutes.

256. **7017.1215 Incorporation by Reference; Quality Assurance and Control Requirements for COMS.**

*For quality assurance and control requirements for COMS, the facility owner or operator must conduct quality assurance and quality control as specified in Procedure 3 - Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources, Code of Federal Regulations, title 40, part 60, Appendix F, as amended, which is ~~adopted and~~ incorporated by reference.*

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement.

257. **7017.2010 Incorporation of Test Methods by Reference; Test Methods**

*For the purpose of parts [7017.2020](#) to [7017.2060](#), the documents in items A to D are incorporated by reference. ~~These documents are subject to frequent change.~~*

*A to D* [unchanged]

**Justification.** The sentence referring to the frequency of change of these documents is removed at the recommendation of the Revisor of Statutes because [Minn. Stat. § 14.07, subd. 4](#) does not require that rules include a statement about the frequency of change when the incorporated document is a federal regulation.

258. **7017.2015 Incorporation of Federal Testing Requirements by Reference; Testing Requirements.**

**Subp. 2 New source performance standards.** *The following are ~~adopted and~~ incorporated by reference:*

*A. Code of Federal Regulations, title 40, section 60.8, as amended, entitled "Performance Tests," except that ~~decisions made by the administrator under~~ authorities identified in Code of Federal*

Regulations, title 40, sections 60.8(b)(2) and 60.8(b)(3), are not delegated to the commissioner and ~~must be made~~ are retained by the administrator.

B. Code of Federal Regulations, title 40, section 60.11, as amended, entitled "Compliance with Standards and Maintenance Requirements," except that ~~decisions made under~~ authorities identified in Code of Federal Regulations, title 40, section 60.11(e), are not delegated to the commissioner and ~~must be made~~ are retained by the administrator.

**Subp. 3. National emission standards for hazardous air pollutants.** The following are ~~adopted and~~ incorporated by reference:

A. Code of Federal Regulations, title 40, section 63.7, as amended, entitled "Performance Testing Requirements."

B. Code of Federal Regulations, title 40, section 61.13, as amended, entitled "Emission Tests and Waiver of Emission Tests," except that ~~decisions made by the administrator under~~ authorities identified in Code of Federal Regulations, title 40, section 61.13(h)(1)(ii), are not delegated to the commissioner and ~~must be made~~ are retained by the administrator.

~~**Subp. 4. Document submission.** All requests, reports, applications, submittals, and other communications to the administrator pursuant to subparts 2 and 3 must be submitted to the person identified in part ~~7017.2017~~, except that for those sections identified in this part as not delegated to the commissioner, the request, report, application, or submittal must be submitted to the EPA administrator.~~

**Justification.** The amendments that change the heading of this rule part and remove the term "adopted and" are reasonable for the reasons discussed in Part 4, item D of this Statement. The rephrasing of the delegation language in subpart 2, items A and B is reasonable for the reasons discussed in item 48 above.

Subpart 3 is reasonably repealed because of the change proposed to Minn. R. pt. 7017.0150, which adds a general provision to address how the change from the "administrator" to "commissioner" should be addressed.

## 259. 7017.2060 Performance Test Procedures.

**Subpart 1.** [unchanged]

**Subp. 2. Sample port location.** The sampling location, as selected by Method 1, ~~shall be~~ is the same for each pollutant during a performance test.

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

A. Unless the commissioner has approved an equivalent method, the owner or operator must use Method 5, Code of Federal Regulations, title 40, part 60, Appendix A-3, as amended, and Method 202, Code of Federal Regulations, title 40, part 51, Appendix M, as amended.

items B to D. [unchanged]

**Subp. 4. And 4a.** [unchanged]

**Subp. 5. Opacity determination by Method 9.** Opacity observations ~~shall~~ must be performed by a certified observer and in accordance with the requirements of Method 9. In addition, the requirements of subpart 6 and the following items ~~shall~~ apply:

A. The commissioner ~~may~~ must reject the opacity results if the commissioner cannot determine the compliance status of the emission facility due to error, bias, or insufficient documentation during the performance test. The recommendations of Method 9 and EPA document EPA-600/4-77-027b, Addition Section 3.12 (Feb. 1984), as amended, entitled "Quality Assurance Handbook for Air Pollution Measurement Systems: Volume III. Stationary Source Specific Methods," which is incorporated by reference, ~~shall~~ must be used in determining the acceptability of opacity results. This document is available ~~at the State Law Library~~ through the Minitex interlibrary loan system and is not subject to frequent change.

B. One series of readings is required for each condition where opacity is required to be tested. Each test run ~~shall comprise~~ consists of 240 consecutive readings at 15-second intervals and ~~shall~~ must be obtained concurrently with a test run for particulate matter, where applicable. Copies of the opacity form showing all readings and required notation ~~shall~~ must be included in the performance test report.

C. The results of continuous monitoring by transmissometer ~~which that~~ indicate that the opacity at the time visual observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission, ~~provided that~~ if the owner or operator ~~shall meet~~ meets the burden of proving that the instrument used met, at the time of the alleged violation, Performance Specification 1, had been properly maintained and, at the time of the alleged violation, calibrated, and that the resulting data have not been tampered with in any way. The data ~~shall be~~ is subject to the reduction processes in subpart 6.

D. Data reduction ~~shall~~ must be performed in accordance with Paragraph 2.5 of Method 9 and subpart 6. A one-hour period means any 60 consecutive minutes and a six-minute period means any set of 24 consecutive 15-second intervals.

**Subp. 6. Opacity data reduction procedures.** For the purpose of this part, "excursion" means an opacity higher than the base standard that is allowed for a limited number of minutes within a time period. Compliance with opacity limits ~~shall be~~ is determined from all data points collected in an averaging period and according to items A and B.

A. For opacity standards ~~which that~~ allow excursions based on six-minute periods, an exceedance of the standard ~~has occurred~~ occurs if, having taken the allowable excursion into account, any six-minute average exceeds the standard. The exceedance ~~shall be~~ is expressed as the value of the highest six-minute average and the number of nonoverlapping six-minute averages that exceed the standard within the period of the test run.

B. For opacity standards that do not allow excursions, an exceedance of the standard ~~has occurred~~ occurs if any six-minute average exceeds the standard. The exceedance ~~shall be~~ is expressed as the value of the highest six-minute average and the number of nonoverlapping six-minute averages that exceed the standard within the period of the test run.

**Subp. 7. Polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans determination.** For Method 23, each sample run ~~shall~~ must be at least three hours in duration at an average sampling rate of 0.5 dscf/minute or higher. The minimum sample volume ~~shall be~~ is 90 dscf. Longer test runs may be required by the commissioner ~~in order~~ to collect a greater sample volume if low resolution mass spectroscopy is to be used for analysis of the field samples or as otherwise required by part [7017.2045](#), subpart 6.

**Justification.** The Revisor of Statutes has recommended several minor amendments.

260. **7019.0050 General Provisions of Emission Inventory Requirements**

References to the administrator in the incorporated federal regulations refer to the commissioner, except when authorities are specifically identified in Code of Federal Regulations or state rule as non-delegable.

**Justification.** The MPCA is also adding a new part to address how the authorities in incorporated rules should refer to the commissioner. This is similar to how incorporations by reference are facilitated in chapter 7011. In this rulemaking the MPCA is proposing to remove the part (Minn. R. pts. 7019.0100, subp. 3) that specifies that submissions to the “administrator” must instead be submitted to the “commissioner.” It is reasonable to make this statement as a general provision at the start of the chapter.

261. **7019.0100 Incorporation of by Reference; Notification and Record-Keeping**  
**Requirements by Reference.**

**Subpart 1.** *New source performance standards. Code of Federal Regulations, title 40, section 60.7, as amended, entitled "Notification and Record keeping," is ~~adopted and~~ incorporated by reference.*

**Subp. 2. National Emission Standards for Hazardous Air Pollutants.**

*The following are ~~adopted and~~ incorporated by reference:*

A. [unchanged]

B. Code of Federal Regulations, title 40, section 63.10 as amended, entitled "Record-keeping Recordkeeping and Reporting Requirements."

C. and D [unchanged]

**~~Subp. 3. Submission to commissioner.~~**

~~All requests, reports, applications, submittals, and other communications to the administrator pursuant to subparts 1 and 2 must be submitted to the commissioner.~~

**Justification.** The amendments that change the heading of this rule part and remove the term “adopted and” are reasonable for the reasons discussed in Part 4, item D of this Statement. The change from “record-keeping to “recordkeeping” reflects the actual title of the federal standard. Subpart 3 is reasonably deleted because this statement is addressed in part 7019.0050, which is being added in this rulemaking.

262. **7019.3030 Method of Calculation.**

*Items A- B [unchanged]*

*C. For purposes of selecting a calculation method, a method is considered available if the conditions associated with the method in parts 7019.3040 to 7019.3100 are met. The method described in part 7019.3100 may be used, provided that the proposal is submitted to the ~~division manager~~ commissioner by September 1 of the first year for which the emissions are being calculated. The commissioner ~~shall~~ must reject data submitted using the methods described in parts 7019.3040 to 7019.3090 if the conditions for the method are not fully met.*

**Justification.** The term “division manager” is reasonably changed to “commissioner” because in this rulemaking, the MPCA is repealing the definition of “division manager” in Minn. R. pt. [7005.0100](#), subp.



9a. A division manager was defined as the manager of the MPCA's air quality division, which is no longer part of the MPCA's organization. It is reasonable to change this term to "commissioner" to ensure that the required information will be received by the appropriate person at the MPCA.

## 5. Statutorily required regulatory analysis

### A. Statutory mandates of Minn. Stat. § 14.131 (a)

This part addresses the requirements of [Minn. Stat. § 14.131](#), which compel state agencies to address a number of questions in the Statement. For these proposed amendments, there may be two levels of MPCA response to the statutory questions. For the amendments that incorporate federal requirements verbatim, the MPCA will provide a general response to the statutory question because the only real effect will be to change the implementation authority from the federal to the state level. However, for certain of the proposed amendments, the MPCA will provide a more detailed response if the amendment will have specific state-level effects.

In this Statement the MPCA does not provide any discussion of these statutory requirements for those amendments that only correct or clarify existing rules without changing the effect of the rule. For those rules that are only being corrected and clarified, the statutory questions were addressed when those rules were originally proposed and the non-substantive changes being proposed in this rulemaking do not have any effect on that original discussion.

For most of the statutory questions, the MPCA's response can be general and will apply across all of the proposed rules, regardless of the specific amendment being proposed.

1. "A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule. [Minn. Stat. § 14.131](#) (1)"

#### **Who is affected?**

General response. Addressing this statutory requirement requires a discussion of the current regulatory status of those industries and activities in Minnesota that are affected by the NSPS/NESHAP/EG the MPCA is proposing to incorporate by reference. The NSPS/NESHAP/EG being incorporated by reference in this rulemaking are already in effect for all regulated entities, and in most cases, have been in effect for several years. (Attachment 2 identifies the effective dates of each NSPS/NESHAP/EG.) The "classes of persons who probably will be affected" by this rulemaking are the same as the classes that were affected when the federal requirements were first adopted. The only consequence of this rulemaking for those entities is that the regulatory agency for permit and compliance issues will change from U.S. EPA to the MPCA. No class of persons will be newly affected by the state's adoption of the proposed incorporations by reference except to the extent they would have been affected by the existing federal requirements.

#### Specific response.

Landfills. The MPCA believes that several operating municipal solid waste (MSW) landfills in Minnesota may be subject to the subpart Cf monitoring and emission control requirements being incorporated by reference in this rulemaking (proposed at Minn. R. pt. 7011.3525). The applicability of these standards is based on their current permitted capacity; not all landfills will meet that applicability threshold. Whether or not a facility will be subject to the standards may change over time as the amount of solid waste changes. The MPCA estimates that at least eight landfills currently exceed the applicability threshold, and additional landfills may exceed it in the future. This means that for most Minnesota

landfills, the only change for those owners and operators will be that the MPCA and not U.S. EPA will be the implementing authority.

The requirements of 40 CFR part 60, subp. XXX only apply to landfills for which construction, reconstruction or modification commenced after July 17, 2014. Because there are currently no such new landfills in Minnesota, the MPCA does not expect any facilities to be affected at this time.

Wood burners. The requirements of 40 CFR part 60, subp. QQQQ (proposed at Minn. R. pt. 7011.2960) affect anyone who owns or operates, manufactures, sells, imports, or distributes the specified types of wood burning heaters (hydronic heaters and forced air furnaces). The requirements of 40 CFR part 60, subp. QQQQ have different effective dates depending on the activity. (Most of the federal effective dates have passed, although the requirements relating to particulate emissions will not be effective until 2020.) Regardless of the effective date of the federal requirements, incorporating these requirements into state rules will not change any existing or future requirements applicable to these entities.

In Minn. R. pt. 7007.0300, subp. 1, the MPCA is proposing an exemption from the requirement to obtain a state permit for the owners and operators of new residential hydronic heaters and new residential forced air furnaces. As a result of this exemption, no residential users of these types of heaters will be affected to the extent of having to obtain a permit.

#### **Who bears the cost?**

Because the substantive amendments being proposed are already federally effective, the MPCA does not expect that any industry in Minnesota will bear additional costs as a result of the adoption of any of the proposed amendments.

When the federal NSPS/NESHAP/EG were adopted, they affected specific industries and activities by imposing new requirements. The U.S. EPA's justification for each of those federal NSPS/NESHAP/EG, is presented in the *Federal Register* where those regulations were proposed, and includes a discussion of the potential effects on the specific industries and activities subject to the requirements. The MPCA is relying on those federal evaluations in support of this rulemaking. The *Federal Register* discussion of identified industries and activities, and the effect of the amendments on those identified entities, extends to those affected industries and activities located in Minnesota.

#### **Who benefits?**

Adopting the proposed NSPS/NESHAP/EG by reference will maintain the MPCA's ability to implement the CAA requirements on the state level. Having a delegated air quality program is a benefit to the citizens of Minnesota by maintaining the standards of the CAA in Minnesota and by ensuring that permitting and compliance issues are addressed according to state priorities. Having a delegated air quality program is a benefit to the regulated community by simplifying the process of obtaining permits and resolving compliance issues.

The regulated community will specifically benefit from the proposal to remove the requirement to provide duplicate compliance certifications to U.S. EPA and the MPCA. The amendment to Minn. R. pt. 7007.0800, subpart 6, item D eliminates the need to submit compliance certifications to the administrator of the U.S. EPA.

The MPCA has been delegated the implementation and enforcement of landfill gas controls at existing MSW landfills since 1998 when EPA approved Minnesota's 111(d) implementing the EG in Minnesota. The MPCA has effectively administered the guidelines for the past 20 plus years, and believes that allowing the MPCA to continue its administration, rather than returning implementation and

enforcement back to U.S. EPA, is a benefit to affected MSW landfill owners. The requirements relating to methane gas emissions are a potential benefit to the environment by limiting emissions relating to climate change, in addition to providing ongoing control of other toxic air emissions contained in landfill gas.

2. “The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues. [Minn. Stat. § 14.131 \(2\)](#)”

#### **Costs to MPCA**

The MPCA expects to incur additional cost to implement and enforce the proposed NSPS/NESHAP/EG. That burden will be in the form of additional responsibility in the area of permitting and compliance activities at the emission sources regulated by the proposed amendments (e.g. at ethylene oxide sterilizers or gasoline distribution facilities). However, the MPCA’s program delegation from U.S. EPA includes corresponding federal funding to implement delegated requirements. The cost associated with additional MPCA effort to implement the proposed NSPS/NESHAP/EG will be addressed through federal and state budgeting plans.

It is not possible at this time to determine whether the MPCA’s proposal to limit the incorporation of certain standards to those standards in effect as of July 1, 2018, will result in the need for the MPCA to more frequently conduct rulemaking. Whether or not additional rulemaking will be required will depend on how U.S. EPA amends its regulations in the future. Regardless of whether those standards are incorporated “as amended” or limited to only those amendments in effect “through July 1, 2018,” the MPCA may incur future rulemaking costs to respond to federal amendments.

In practice, there will be a potential for the MPCA to incur costs regardless of whether a federal standard is incorporated “as amended” or “as amended through July 1, 2018.” In either case, when the U.S. EPA amends the federal standard, the MPCA will need to determine whether it must conduct rulemaking to incorporate the federal change. For those standards incorporated “as amended,” if the federal regulation is amended to be less stringent, the MPCA must determine whether those changes should be automatically incorporated into the state rule or whether it must conduct rulemaking to preserve the previous, more stringent level of regulation. A similar determination must be made for those standards incorporated “as amended through July 1, 2018.” If U.S. EPA amends the federal standard to reduce the level of regulation from the level that exists as of July 1, 2018, the MPCA may not necessarily need to conduct rulemaking; the incorporated federal standard would remain in effect at the level the MPCA intended at the time of rulemaking. However, if the U.S. EPA amended the federal standard to either to be more stringent or to reduce the level of regulation in a manner that the MPCA considered still protective, then the MPCA may need to conduct rulemaking to amend the state rule to correspond to the amended federal standard. The costs the MPCA would incur will depend on the changes made to the federal standards and how they correspond to Minnesota’s air quality protection priorities.

#### **Costs to other agencies**

No other agency is responsible for implementing the proposed NSPS/NESHAP/EG and therefore, no other agency will incur costs as a result of the proposed requirements. Although it may be that some other state agency is a regulated party that will incur costs because it is subject to the proposed amendments, those emissions are already regulated under the federal requirements and no other agency will incur additional costs as a result of the state adoption of the proposed amendments.

### Effect on state revenue

There will be no effect on state revenue resulting from the proposed amendments.

3. “A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.” [Minn. Stat. § 14.131](#) (3) and

“A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.” [Minn. Stat. § 14.131](#) (4)

Because of their similarities, the MPCA is addressing these statutory requirements in a combined discussion. Both of these statutory questions require a determination of how the MPCA considered alternatives that will *achieve the purpose of the rule*. It is therefore important to establish the purpose of the proposed amendments in order to discuss how that purpose relates to costs and then determine whether less costly alternatives could achieve that purpose. The need for, or “purpose” of, the proposed revisions is discussed in detail in Part 1, item B of this Statement.

The purpose of the proposed amendments is to:

- 1) maintain an effective air pollution program for the specific Minnesota industries and activities addressed by the NSPS/NESHAP/EG being incorporated by reference;
- 2) maintain delegation from U.S. EPA to implement the CAA in Minnesota;
- 3) maintain a level of regulation protective of Minnesota’s air quality and consistent with Minnesota’s environmental priorities; and
- 4) correct and clarify identified deficiencies in the existing air quality rules.

The MPCA considers that the proposed incorporation by reference of NSPS/NESHAP/EG represent the least costly and least intrusive method for achieving the first three purposes. The State of Minnesota has a long-standing commitment to implementing an effective air pollution program that meets the standards of the federal CAA. Incorporating the federal CAA requirements by reference as of a definite effective date ensures that the federal requirements that are in effect at this time are implemented at the state level. In order to be delegated the authority to implement the federal CAA, the state rules must be equivalent to federal regulations. Incorporating federal requirements verbatim into the state rule is the most cost effective means of ensuring that equivalence.

Before proposing rules, the MPCA considers alternatives to the rules being proposed and also considers whether there are alternatives to rulemaking that will achieve the same result. In regard to the first consideration; whether there are alternatives to the federal NSPS/NESHAP/EG, the alternative to adopting them by reference would be to develop state-only requirements that are at least as stringent as the federal requirements. The MPCA finds that this would be needlessly complicated, burdensome, and ineffective in meeting the purposes of having an effective air pollution control program and maintaining federal delegation to implement the CAA in Minnesota.

The second area the MPCA considered is whether there is an alternative to conducting rulemaking to achieve a program equivalent to the federal program. The requirements for delegation of the CAA are specific regarding the authority required by the delegated states. In order to be equivalent to the federal program, state standards must have the force and effect of law. Because the MPCA cannot implement NSPS/NESHAP/EG in Minnesota as guidance, the MPCA must adopt them into rule; there is no effective

alternative to rulemaking that will meet the purpose of meeting the second need, the need to maintain CAA delegation.

4. “The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals. [Minn. Stat. § 14.131](#) (5).”

In item 1 of this discussion of statutory requirements, the MPCA explains that no class of persons is newly regulated or will incur costs as a result of the proposed rules because the standards are already in effect through federal authority. The requirements incorporated by reference do not impose new costs on regulated entities and the corrections and clarifications do not change the existing requirements for regulated parties. Therefore, there is no “probable cost of complying” and no need to provide the information relevant to this statutory requirement. As discussed for item 1 above, the U.S. EPA conducted an economic analysis for each NSPS/NESHAP/EG being proposed. These economic analyses were relevant to the rules at the time they became effective federally and are relied on by the MPCA in support of the proposed rules.

5. “The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.”  
[Minn. Stat. § 14.131](#) (6)

The consequences of not adopting the proposed NSPS/NESHAP/EG are significant. Minnesota is delegated the authority to implement the CAA, and that delegation requires that the state rules reflect the federal requirements. The consequence of not adopting the proposed NSPS/NESHAP/EG will be that the MPCA will not receive delegation to implement the proposed NSPS/NESHAP/EG and that U.S. EPA will be responsible for implementing those requirements in Minnesota, including permitting and compliance monitoring. This will result in significant waste for the affected regulatory agencies and confusion and burden to the regulated community.

There will be a serious consequence of adopting the NSPS for hydronic heaters/forced air furnaces ([40 CFR part 60, subpart QQQQ](#) incorporated in Minn. R. pt. 7011.2960), without also adopting the corresponding permit exemption in Minn. R. pt. 7007.0300. The consequences of not providing the permit exemption for residential wood burners would be extremely significant, requiring the MPCA to issue many thousands of air quality permits and the corresponding permitting costs to owners of such burners.

There may be adverse consequences to not making the amendments that correct and clarify existing rule language. Although many of the changes are proposed only to update the rule language to be more current and consistent, some of the changes are important to ensure compliance. The changes that provide updates to incorporated reference materials will ensure that the regulated community uses the most current version and that the materials are reasonably available for access by the regulated community. The changes that clarify the language of existing requirements are important in order to minimize the potential for confusion on the part of the regulated community and also the MPCA as it implements those requirements.

6. “An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.”

By incorporating the federal NSPS/NESHAP/EG by reference, verbatim, the MPCA will eliminate the potential for differences between the state and federal requirements and therefore, the need for any analysis of differences.

The amendment to Minn. R. pt. 7007.0300 that provides an exemption to the permit requirement for residential hydronic heaters and forced air furnaces is consistent with the fact that under the federal program, no permit is required for residential wood burners.

7. “An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule... “cumulative effect” means the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

By incorporating the federal regulations by reference and maintaining federal delegation of the air quality program, the rules are eliminating the potential for a cumulative effect by removing an additional tier of regulatory review and enforcement. The proposed rule amendments will align Minnesota’s state air quality rules with the federal rules that are already in effect. Incorporating the federal requirements by reference ensures that the state rules do not overlap or add new requirements that could be considered cumulative with the existing federal requirements. Incorporating the federal regulations by reference will not add a level of regulation, it will only change the implementation authority from U.S. EPA to the MPCA, with no increase in regulatory burden.

The amendment to Minn. R. pt. 7007.0800, subpart 6, item D that removes a requirement to submit duplicate information to the U.S. EPA eliminates a cumulative effect by removing an additional level of notification.

8. “Describe how the agency, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory systems set forth in section 14.002.” (Minn. Stat. § 14.002 states: “ whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.”)

In every rulemaking the MPCA considers how it might meet the statutory directive to support performance-based regulatory systems and has often included performance-based concepts into the state rules. However, in this case, the MPCA is limited in how it can apply performance-based concepts while still ensuring that Minnesota’s rules are consistent with and at least as stringent as the federal regulations and therefore meet the requirements of the CAA. The MPCA believes that the most effective way to ensure compliance with the CAA, from the perspective of regulated parties as well as from the MPCA’s perspective as the regulatory agency, is to incorporate, verbatim, federal requirements by reference to the extent possible. Adopting the same requirements as are required by U.S. EPA benefits the regulated community by establishing a clear and consistent air quality program that directly corresponds to the national program. Verbatim incorporation of the federal requirements is also the most effective way to maintain the delegation from U.S. EPA to implement the air quality program. Re-writing the federal requirements into a Minnesota-unique, performance-based regulatory system would be an extremely burdensome task for the MPCA, would lose the benefit of national regulatory consistency, impose additional burdens on the regulated community, and would certainly complicate, if not imperil, the delegation of the federal air program in Minnesota.

## B. Additional statutory mandates for rulemaking

1. Minn. Stat. § 14.127 regarding the determination of the effect of the proposed rule on small cities and small businesses

[Minn. Stat. §14.127](#), subd. 1 requires an agency to “determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees. For purposes of this section, "business" means a business entity organized for profit or as a nonprofit, and includes an individual, partnership, corporation, joint venture, association, or cooperative.”

The MPCA has considered the cost of complying with the proposed rules and has determined that the cost of complying with the rules in the first year after they take effect will not exceed \$25,000 for any small business or small city. The MPCA has made this determination based on the fact that, as discussed in Part 5, item 1 of this Statement, there will be no probable costs of complying with the proposed rules. The MPCA has determined that where a cost may be incurred, it is a cost that was incurred at the time the federal standards were adopted and not at this point when they are being incorporated into state rule. The NSPS/NESHAP/EG proposed in this rulemaking have been effective since they were adopted by U.S. EPA.

2. Minn. Stat. § 14.128 regarding local implementation

[Minn. Stat. § 14.128](#) requires an agency to “determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. An agency must make this determination before the close of the hearing record or before the agency submits the record to the administrative law judge if there is no hearing. The administrative law judge must review and approve or disapprove the agency’s determination. "Local government" means a town, county, or home rule charter or statutory city.”

The state air quality standards are not implemented at the local level and therefore, no changes to local ordinances or regulations will be required in response to the proposed amendments. It is possible that the proposed amendments will affect a local unit of government in their role as a regulated source of air emissions and therefore subject to the requirement. Some counties operate landfills that may be subject to the proposed requirements of 40 CFR part 60, subparts XXX and Cf (proposed to be adopted at Minn. R. pts. 7011.3515 and 7011.3525). However, the MPCA does not anticipate that, even in those cases where a local unit of government is a regulated entity, the adoption of these requirements into state rules will result in the need to adopt or amend an ordinance to comply with the requirements incorporated by reference.

3. Minn. Stat. § 116.07, subd. 2(f) regarding comparison with states that border Minnesota and in EPA Region V.

[Minn. Stat. § 116.07, subd. 2\(f\)](#) *In any rulemaking proceeding under chapter 14 to adopt standards for air quality, solid waste, or hazardous waste under this chapter, or standards for water quality under chapter 115, the statement of need and reasonableness must include:*

*(1) an assessment of any differences between the proposed rule and:*

*(i) existing federal standards adopted under the Clean Air Act, United States Code, title 42, section 7412(b)(2); the Clean Water Act, United States Code, title 33, sections 1312(a) and*



1313(c)(4); and the Resource Conservation and Recovery Act, United States Code, title 42, section 6921(b)(1);

(ii) similar standards in states bordering Minnesota; and

(iii) similar standards in states within the Environmental Protection Agency Region 5; and

(2) a specific analysis of the need and reasonableness of each difference.

Non-substantive changes. In this Statement the MPCA is not providing a discussion of the differences that exist between federal regulations and the requirements of surrounding states for those amendments that are only clarifications and corrections. At the time those rules were adopted, the MPCA would have provided a discussion of the differences between those rules and their federal regulations and the regulations in surrounding states. None of the corrections and clarifications the MPCA is proposing in this rulemaking change the effect of each of the rules previously adopted and no additional comparison is necessary.

Comparison between substantive amendments and federal requirements. The substantive amendments being proposed consist of the federal NSPS/NESHAP/EG that are being incorporated by reference. The proposed NSPS/NESHAP/EG are being incorporated in exactly the same form as they exist in the federal regulations and therefore, there is no difference between the proposed rules and the corresponding federal regulations.

Although there are no differences between the requirements of the federal NSPS/NESHAP/EG and those being proposed for incorporation by reference in this rulemaking, there are differences between the scope of the federal air quality program in terms of the NSPS/NESHAP/EG that are in effect federally and those that are being proposed for incorporation into the state rules. The proposed rules do not incorporate all of the currently promulgated federal regulations. The MPCA is only proposing to incorporate those NSPS/NESHAP/EG that could be applicable to Minnesota industries and although this includes almost all of the federal NSPS/NESHAP/EG, a few of the federal regulations have not yet been adopted in state rules.

Comparison between the substantive amendments and the requirements of surrounding states. The states that either border Minnesota or are in U.S. EPA Region V and are considered “surrounding states” are:

State	EPA Region
Illinois	V
Indiana	V
Iowa	VII
Michigan	V
North Dakota	VIII
Ohio	V
South Dakota	VIII
Wisconsin	V

It is difficult to summarize the differences between the proposed amendments and “similar standards” in surrounding states. Each state is unique regarding which NSPS/NESHAP/EG are relevant to the emissions generated in that state and therefore, which NSPS/NESHAP/EG have been identified as priorities for adoption into state rules. In addition, each state also has their own administrative process for implementing federal requirements, sometimes incorporating by reference (e.g. Indiana), sometimes adopting state-specific rule language that reflects the federal requirements, and sometimes using other methods, such as including the federal requirements in individual permits (e.g. Ohio and Wisconsin). Attachment 4 provides information about the status of the federal standards in neighboring states and other states in U.S. EPA Region V.

Although the Region V states either conduct rulemaking to incorporate federal standards, as Minnesota does, or implement the federal regulations through some other mechanism (such as including them in individual permits), every Region V state has obtained basic delegation for the CAA. This means that every Region V state is actively pursuing the necessary steps to implement the relevant NSPS/NESHAP/EG in their state. The non-Region V states that border Minnesota are similar in that, at a minimum, they have basic delegation to implement the CAA.

Minnesota differs from most of the Region V states and surrounding states in its practice of incorporating federal standards “as amended.” Most Region V states and surrounding states incorporate federal regulations only as they exist at the time of the state rulemaking and do not incorporate future federal amendments “as amended.” (The other states that incorporate federal standards “as amended” are Ohio and South Dakota.) Minnesota’s proposal to limit the incorporation of seven federal standards to those in effect on July 1, 2018 is consistent with the practice of most of these states.

In general, the proposed amendments do not make Minnesota’s air quality program significantly more or less stringent than the corresponding air quality programs in neighboring states or other states in Region V. There may be differences regarding exactly which NSPS/NESHAP/EG each state implements, and there may be differences in each state’s mechanisms for implementing them, but all of the states have to some extent sought to implement an air quality program equivalent to the federal program.

4. Minn. Stat. §116.07, subd. 6 relating to economic factors affecting feasibility.

[Minn. Stat. § 116.07](#), subd. 6 requires *“In exercising all its powers the Pollution Control Agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.”*

The MPCA has met the requirements of this statute by the discussions provided in Part 5, item A regarding the possible economic effect of the proposed rules.

## 6. Environmental justice policy

This discussion of how the MPCA considered environmental justice in the context of the proposed revisions is an important element of the MPCA's rulemaking process, although it is not a requirement of Minnesota's Administrative Procedures Act. Considering environmental justice means that the MPCA strives to:

- consider how proposed rules may affect low-income populations and communities that have a high proportion of people of color; and
- involve members of those communities in the rulemaking process.

The MPCA has developed a policy and strategy for environmental justice similar to that of the U.S. EPA. The MPCA's environmental justice policy states that:

*"The MPCA will, within its authority, strive for the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.*

**Fair treatment** means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

**Meaningful involvement** means that:

- People have an opportunity to participate in decisions about activities that may affect their environment and/or health;
- The public's contribution can influence the regulatory agency's decision;
- Their concerns will be considered in the decision making process; and
- The decision-makers seek out and facilitate the involvement of those potentially affected.

*The above concept is embraced as the understanding of environmental justice by the MPCA."*

In 2013, the MPCA renewed its commitment to environmental justice and added an environmental justice goal and objectives in the MPCA's strategic plan. In the 2018-2022 strategic plan, (<https://www.pca.state.mn.us/about-mpca/mpca-strategic-plan>) the MPCA has identified 16 strategic goals, one being: Incorporate strategies to address environmental justice concerns in all programs.

As it has developed the proposed amendments and conducted the rulemaking process, the MPCA has considered the appropriate way to address both aspects of the environmental justice policy: fair treatment and meaningful involvement.

Fair treatment. The proposed NSPS/NESHAP/EG will have a neutral effect on the environmental burden borne by any communities. In terms of the burden of emission sources, the proposed amendments do not have any effect on where regulated facilities can be located and therefore do not have any effect on current or future environmental burden on particular communities. The proposed NSPS/NESHAP/EG regulate emissions from many different sources and those sources may or may not be located in communities where there is a disproportionate environmental burden. In terms of improving air quality in communities that are currently environmentally burdened, the proposed amendments will not have any effect, except to the extent that permitting and compliance issues will be more effectively addressed at the state level. The MPCA is proposing to adopt the federal requirements verbatim and is not proposing more stringent emission standards than are currently federally effective.

Meaningful involvement. Although the MPCA has, for some rulemakings, conducted additional outreach and engagement to specific communities where the environmental justice issues are identified, for this rulemaking the MPCA has not conducted additional outreach to solicit engagement by specific communities. Because it is incorporating the federal requirements by reference without any state-specific changes, the MPCA is relying on the efforts already made by U.S. EPA to notify and engage interested and affected parties. U.S. EPA addressed environmental justice issues in the *Federal Register* at the time each of the proposed NSPS/NESHAP/EG were proposed ([Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations](#)) The proposed amendments are not changing any of the requirements that are already in effect and therefore, are not raising any previously unaddressed concerns relating to environmental justice.

In this rulemaking the MPCA intends to meet the statutory notice requirements by publishing notice of the rulemaking and providing GovDelivery notices to many interested parties and through many different mechanisms. However, the MPCA has not and does not intend to provide additional notification to any particular community based solely on environmental justice concerns<sup>11</sup>. Because the MPCA does not believe that the proposed amendments will have a negative effect on any communities where environmental justice is an issue, it does not feel that special efforts to engage these communities is an appropriate use of either MPCA or community resources.

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<sup>11</sup> *The MPCA will provide notice of proposed rules to tribal contacts, but in this case, this notice is a government to government courtesy and not based on anticipation of specific issues related to environmental justice.*

## 7. Authors and exhibits

### A. Authors

- Anne Jackson, P.E., MPCA
- Mary Lynn, rule coordinator, MPCA
- Leslie Fredrickson, Staff Attorney, MPCA

### B. Attachments

1. Example of U.S.EPA proposed rule discussion.
2. List of links to *Federal Registers*.
3. Delegation letter dated May 14, 2014 to Katie Koelfgen, MPCA from George Czerniak, U.S. EPA.
4. Summary information regarding NSPS/NESHAP/EG in surrounding states.

## 8. Conclusion

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

Based on the forgoing, the proposed amendments are both needed and reasonable.

6/3/19

Date

*Peter Testa, Deputy*  
\_\_\_\_\_  
Laura Bishop, Commissioner  
Minnesota Pollution Control Agency

The following outline of a **Notice of Proposed Rule** is provided for 40 CFR part 60, subpart XXX - Standards of Performance for Municipal Solid Waste Landfills.

<https://regulations.justia.com/regulations/fedreg/2014/07/17/2014-16405.html>

I. Executive Summary

- A. Purpose of Regulatory Action
- B. Summary of Major Provisions
- C. Costs and Benefits

II. General Information

- A. Does this action apply to me?
- B. What should I consider as I prepare my comments?

III. Background

- A. Legal Authority
- B. What is the purpose and scope of this action?
- C. Where in the Code of Federal Regulations will these changes appear?

IV. Summary of Proposed Changes Based on Periodic Review of the MSW Landfills NSPS Under the CAA

V. What analyses did the EPA conduct to determine BSER?

- A. Review of Control Technology
- B. What data and control criteria did the EPA consider in evaluating potential changes to the timing of installing, expanding, and removing the GCCS?
- C. What control options did the EPA consider?
- D. What are the implementation concerns with changing the design capacity criteria?
- E. What are the implementation concerns with reducing the NMOC threshold?
- F. What are the implementation concerns with shortening the initial or expansion lag times?
- G. Request for Comment on BSER

VI. Rationale for the Proposed Changes Based on Review of the NSPS

- A. What are the environmental impacts and costs associated with the baseline?
- B. How did the EPA determine which control option to propose?

VII. Summary of Clarifications and Resolutions That Are the Result of Implementation Activity

- A. Definitions for Treated Landfill Gas and Treatment System and Treatment System Monitoring
- B. Startup, Shutdown and Malfunction Provisions
- C. Closed Areas
- D. Surface Monitoring
- E. Electronic Reporting
- F. Wellhead Monitoring Requirements
- G. Requirements for Updating the Design Plan
- H. Submitting Corrective Action Timeline Requests
- I. Other Corrections and Clarifications

VIII. Rationale for the Clarifications and Resolutions That Are the Result of Implementation Activity

- A. Definitions for Treated Landfill Gas and Treatment System and Treatment System

- Monitoring
- B. Startup, Shutdown and Malfunction Provisions
- C. Closed Areas
- D. Surface Monitoring
- E. Electronic Reporting
- F. Wellhead Monitoring Requirements
- G. Requirements for Updating Design Plan
- H. Submitting Corrective Action Timeline Requests
- I. Other Corrections and Clarifications
- IX. Request for Comment on Specific Provisions
  - A. Definitions for Treated Landfill Gas and Treatment System and Treatment System Monitoring
  - B. Wellhead Monitoring Requirements
  - C. Enhanced Surface Monitoring Requirements
  - D. Alternative Emission Threshold Determination Techniques
- X. Impacts of Proposed Revisions
  - A. What are the air quality impacts?
  - B. What are the water quality and solid waste impacts?
  - C. What are the secondary air impacts?
  - D. What are the energy impacts?
  - E. What are the cost impacts?
  - F. What are the economic impacts?
  - G. What are the benefits?
  - H. What are the health and welfare effects of LFG emissions?
- XI. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations



The following outline of a **Notice of Final Rules** is provided for 40 CFR part 60, subpart XXX - Standards of Performance for Municipal Solid Waste Landfills.

(<https://www.gpo.gov/fdsys/pkg/FR-2016-08-29/pdf/2016-17687.pdf>)

I. Executive Summary

- A. Purpose of Regulatory Action
- B. Summary of Major Provisions
- C. Costs and Benefits

II. General Information

- A. Does this action apply to me?
- B. Where can I get a copy of this document and other related information?

III. Background

- A. Landfill Gas Emissions and Climate Change
- B. What are the public health and welfare effects of landfill gas emissions?
- C. What is the EPA's authority for reviewing the NSPS?
- D. What is the purpose and scope of this action?
- E. How would the changes in applicability affect sources currently subject to subparts Cc and WWW?

IV. Summary of the Final NSPS

- A. What are the control requirements?
- B. What are the monitoring, recordkeeping, and reporting requirements?
- C. Startup, Shutdown, and Malfunction Provisions
- D. Other Corrections and Clarifications

V. Summary of Significant Changes Since Proposal

- A. Changes to Monitoring, Recordkeeping, and Reporting
- B. Tier 4
- C. Changes To Address Closed or Non-Productive Areas
- D. Startup, Shutdown, and Malfunction
- E. How would the changes in applicability affect sources currently subject to subparts Cc and WWW?

IV. Summary of the Final NSPS

- A. What are the control requirements?
- B. What are the monitoring, recordkeeping, and reporting requirements?
- C. Startup, Shutdown, and Malfunction Provisions
- D. Other Corrections and Clarifications

V. Summary of Significant Changes Since Proposal

- A. Changes to Monitoring, Recordkeeping, and Reporting
- B. Tier 4
- C. Changes To Address Closed or Non-Productive Areas
- D. Startup, Shutdown, and Malfunction Provisions
- E. Definitions for Treated Landfill Gas and Treatment System and Treatment System Monitoring
- F. Other Corrections and Clarifications

VI. Rationale for Significant Changes Since Proposal

- A. Changes To Monitoring, Recordkeeping, and Reporting
- B. Tier 4
- C. Changes To Address Closed or Non-Productive Areas
- D. Startup, Shutdown, and Malfunction Provisions
- E. Definitions of Treated Landfill Gas and Treatment System
- F. Other Corrections and Clarifications

VII. Impacts of This Final Rule

- A. What are the air quality impacts?
- B. What are the water quality and solid waste impacts?
- C. What are the secondary air impacts?
- D. What are the energy impacts?
- E. What are the cost impacts?
- F. What are the economic impacts?
- G. What are the benefits?

VIII. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Paperwork Reduction Act (PRA)
- C. Regulatory Flexibility Act (RFA)
- D. Unfunded Mandates Reform Act (UMRA)
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act (CRA)

## Federal Air Quality Requirements Considered for Incorporation by Reference into Minnesota Rules

Part 60 Federal Emission Guidelines	Federal Register link	Effective
40 CFR pt. 60 subp. Cf Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills	<b>Final</b> <a href="https://www.gpo.gov/fdsys/pkg/FR-2016-08-29/pdf/2016-17700.pdf">https://www.gpo.gov/fdsys/pkg/FR-2016-08-29/pdf/2016-17700.pdf</a>  <b>Proposed</b> <a href="https://www.gpo.gov/fdsys/pkg/FR-2014-07-17/pdf/2014-16405.pdf">https://www.gpo.gov/fdsys/pkg/FR-2014-07-17/pdf/2014-16405.pdf</a>	8/29/16
<b>Part 60 Federal NSPS</b>		
40 CFR pt. 60, subp. XXX: Standards of Performance for Municipal Solid Waste Landfills	<b>Final</b> <a href="https://www.gpo.gov/fdsys/pkg/FR-2016-08-29/pdf/2016-17687.pdf">https://www.gpo.gov/fdsys/pkg/FR-2016-08-29/pdf/2016-17687.pdf</a>  <b>Proposed</b> <a href="https://www.federalregister.gov/documents/2002/05/23/02-12844/standards-of-performance-for-municipal-solid-waste-landfills">https://www.federalregister.gov/documents/2002/05/23/02-12844/standards-of-performance-for-municipal-solid-waste-landfills</a>	8/29/16
40 CFR pt. 60 subp. QQQQ: Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces	<b>Final</b> <a href="https://www.federalregister.gov/documents/2015/03/16/2015-03733/standards-of-performance-for-new-residential-wood-heaters-new-residential-hydronic-heaters">https://www.federalregister.gov/documents/2015/03/16/2015-03733/standards-of-performance-for-new-residential-wood-heaters-new-residential-hydronic-heaters</a>  <b>Proposed</b> <a href="https://www.federalregister.gov/documents/2014/02/03/2014-00409/standards-of-performance-for-new-residential-wood-heaters-new-residential-hydronic-heaters">https://www.federalregister.gov/documents/2014/02/03/2014-00409/standards-of-performance-for-new-residential-wood-heaters-new-residential-hydronic-heaters</a>	3/16/15
40 CFR pt. 60, subp. OOOO: Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution	<b>Final</b> <a href="https://www.gpo.gov/fdsys/pkg/FR-2012-08-16/pdf/2012-16806.pdf">https://www.gpo.gov/fdsys/pkg/FR-2012-08-16/pdf/2012-16806.pdf</a>  <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2010-0505-0002">https://www.regulations.gov/document?D=EPA-HQ-OAR-2010-0505-0002</a>	8/16/12
40 CFR pt. 60, subp. OOOOa: Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015	<b>Final</b> <a href="https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11971.pdf">https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11971.pdf</a>  <b>Proposed</b> <a href="https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-21023.pdf">https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-21023.pdf</a>	6/3/16
40 CFR pt. 60, subp. TTTT; Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units	<b>Final</b> <a href="https://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf">https://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf</a>  <b>Proposed</b> <a href="https://www.gpo.gov/fdsys/pkg/FR-2014-01-08/pdf/2013-28668.pdf">https://www.gpo.gov/fdsys/pkg/FR-2014-01-08/pdf/2013-28668.pdf</a>	10/23/15
<b>Part 63 Federal NESHAP</b>		
40 CFR pt. 63, subp. SS: National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to A Fuel Gas System or Process	<b>Final</b> <a href="https://www.gpo.gov/fdsys/pkg/FR-1999-06-29/pdf/99-13164.pdf">https://www.gpo.gov/fdsys/pkg/FR-1999-06-29/pdf/99-13164.pdf</a>  <b>Proposed</b> Proposed rules published October 14, 1988. No link available.	6/29/99
40 CFR pt. 63, subp. TT: National Emission Standards for Equipment Leaks - Control Level 1	<b>Final</b> <a href="https://www.gpo.gov/fdsys/pkg/FR-1999-06-29/pdf/99-13164.pdf">https://www.gpo.gov/fdsys/pkg/FR-1999-06-29/pdf/99-13164.pdf</a>  <b>Proposed</b> Proposed rules published October 14, 1988. No link available.	6/29/99
40 CFR pt. 63, subp. UU: National Emission Standards for Equipment Leaks - Control Level 2 Standards	<b>Final</b> <a href="https://www.gpo.gov/fdsys/pkg/FR-1999-06-29/pdf/99-13164.pdf">https://www.gpo.gov/fdsys/pkg/FR-1999-06-29/pdf/99-13164.pdf</a>  <b>Proposed</b> Proposed rules published October 14, 1988. No link available.	6/29/99
40 CFR pt. 63, subp. WW: National Emission Standards for Storage Vessels (Tanks) - Control Level 2	<b>Final</b> <a href="https://www.gpo.gov/fdsys/pkg/FR-1999-06-29/pdf/99-13164.pdf">https://www.gpo.gov/fdsys/pkg/FR-1999-06-29/pdf/99-13164.pdf</a>  <b>Proposed</b> Proposed rules published October 14, 1988. No link available.	6/29/99
40 CFR pt. 63, subp. XX: National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations	<b>Final</b> <a href="https://www.federalregister.gov/documents/2002/07/12/02-12841/national-emission-standards-for-hazardous-air-pollutants-generic-maximum-achievable-control">https://www.federalregister.gov/documents/2002/07/12/02-12841/national-emission-standards-for-hazardous-air-pollutants-generic-maximum-achievable-control</a>  <b>Proposed</b> <a href="https://www.federalregister.gov/documents/2000/12/06/00-">https://www.federalregister.gov/documents/2000/12/06/00-</a>	12/2/02

	<a href="https://www.federalregister.gov/documents/2007/12/28/E7-25233/national-emission-standards-for-hazardous-air-pollutants-generic-maximum-achievable-control">29767/national-emission-standards-for-hazardous-air-pollutants-generic-maximum-achievable-control</a>	
40 CFR pt. 63, subp. WWWW: National Emission Standards for Hospital Ethylene Oxide Sterilizers	<b>Final</b> <a href="https://www.federalregister.gov/documents/2007/12/28/E7-25233/national-emission-standards-for-hospital-ethylene-oxide-sterilizers">https://www.federalregister.gov/documents/2007/12/28/E7-25233/national-emission-standards-for-hospital-ethylene-oxide-sterilizers</a> <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2005-0171-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2005-0171-0001</a>	12/28/07
40 CFR pt. 63, subp. YYYY: National Emission Standards for Area Sources: Electric Arc Furnace Steelmaking Facilities	<b>Final</b> <a href="https://www.federalregister.gov/documents/2007/12/28/E7-24837/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-electric-arc-furnace">https://www.federalregister.gov/documents/2007/12/28/E7-24837/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-electric-arc-furnace</a> <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2004-0083-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2004-0083-0001</a>	12/28/07
40 CFR pt. 63, subp. ZZZZ National Emission Standards for Iron and Steel Foundries Area Sources	<b>Final</b> <a href="https://www.federalregister.gov/documents/2008/01/02/E7-24836/national-emission-standards-for-hazardous-air-pollutants-for-iron-and-steel-foundries-area-sources">https://www.federalregister.gov/documents/2008/01/02/E7-24836/national-emission-standards-for-hazardous-air-pollutants-for-iron-and-steel-foundries-area-sources</a> <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0359-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0359-0001</a>	1/2/08
40 CFR pt. 63, subp. BBBB National Emission Standards for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities	<b>Final</b> <a href="https://www.federalregister.gov/documents/2008/01/10/E7-25400/national-emission-standards-for-hazardous-air-pollutants-for-source-categories-gasoline-distribution">https://www.federalregister.gov/documents/2008/01/10/E7-25400/national-emission-standards-for-hazardous-air-pollutants-for-source-categories-gasoline-distribution</a> <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0406-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0406-0001</a> and <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0406-0149">https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0406-0149</a>	1/10/08
40 CFR pt. 63, pt. HHHHHH: Paint stripping and miscellaneous surface coating operations at area sources.	<b>Final</b> <a href="https://www.gpo.gov/fdsys/pkg/FR-2008-01-09/pdf/E7-24718.pdf">https://www.gpo.gov/fdsys/pkg/FR-2008-01-09/pdf/E7-24718.pdf</a> <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2005-0526-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2005-0526-0001</a>	1/9/08
40 CFR pt. 63, subp. OOOOO National Emission Standards for Flexible Polyurethane Foam Production and Fabrication Area Sources	<b>Final</b> <a href="https://www.federalregister.gov/documents/2007/07/16/E7-12018/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-acrylic-and-modacrylic">https://www.federalregister.gov/documents/2007/07/16/E7-12018/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-acrylic-and-modacrylic</a> <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0897-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0897-0001</a>	7/16/07
40 CFR pt. 63, subp. PPPPP National Emission Standards for Lead Acid Battery Manufacturing Area Sources	<b>Final</b> <a href="https://www.federalregister.gov/documents/2007/07/16/E7-12018/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-acrylic-and-modacrylic">https://www.federalregister.gov/documents/2007/07/16/E7-12018/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-acrylic-and-modacrylic</a> <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0897-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0897-0001</a>	7/16/07
40 CFR pt. 63, subp. QQQQQ National Emission Standards for Wood Preserving Area Sources	<b>Final</b> <a href="https://www.federalregister.gov/documents/2007/07/16/E7-12018/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-acrylic-and-modacrylic">https://www.federalregister.gov/documents/2007/07/16/E7-12018/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-acrylic-and-modacrylic</a> <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0897-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0897-0001</a>	7/16/07
40 CFR pt. 63, subp. RRRRR National Emission Standards for Clay Ceramics Manufacturing Area Sources	<b>Final</b> <a href="https://www.federalregister.gov/documents/2007/12/26/E7-24720/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-clay-ceramics">https://www.federalregister.gov/documents/2007/12/26/E7-24720/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-clay-ceramics</a> <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0424-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0424-0001</a>	12/26/07
40 CFR pt. 63, subp. SSSSS National Emission Standards for Glass Manufacturing Area Sources	<b>Final</b> <a href="https://www.federalregister.gov/documents/2007/12/26/E7-24720/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-clay-ceramics">https://www.federalregister.gov/documents/2007/12/26/E7-24720/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-clay-ceramics</a> <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0360-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0360-0001</a>	12/26/07

40 CFR pt. 63, subp. TTTTTT National Emission Standards for Secondary Nonferrous Metals Processing Area Sources	<b>Final</b> <a href="https://www.federalregister.gov/documents/2007/12/26/E7-24720/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-clay-ceramics">https://www.federalregister.gov/documents/2007/12/26/E7-24720/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-clay-ceramics</a>  <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0940-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0940-0001</a>	12/26/07
40 CFR pt. 63, subp. VVVVVV National Emission Standards for Chemical Manufacturing Area Sources	<b>Final</b> <a href="https://www.federalregister.gov/documents/2009/10/29/E9-25576/national-emission-standards-for-hazardous-air-pollutants-for-chemical-manufacturing-area-sources">https://www.federalregister.gov/documents/2009/10/29/E9-25576/national-emission-standards-for-hazardous-air-pollutants-for-chemical-manufacturing-area-sources</a>  <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2008-0334-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2008-0334-0001</a> and <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2008-0334-0088">https://www.regulations.gov/document?D=EPA-HQ-OAR-2008-0334-0088</a>	10/20/09
40 CFR pt. 63, subp. WWWWWW National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations	<b>Final</b> <a href="https://www.federalregister.gov/documents/2008/07/01/E8-14795/national-emission-standards-for-hazardous-air-pollutants-area-source-standards-for-plating-and">https://www.federalregister.gov/documents/2008/07/01/E8-14795/national-emission-standards-for-hazardous-air-pollutants-area-source-standards-for-plating-and</a>  <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2005-0084-0008">https://www.regulations.gov/document?D=EPA-HQ-OAR-2005-0084-0008</a>	7/1/08
40 CFR pt. 63, subp. XXXXXX National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories	<b>Final</b> <a href="https://www.federalregister.gov/documents/2008/07/23/E8-16263/national-emission-standards-for-hazardous-air-pollutants-area-source-standards-for-nine-metal">https://www.federalregister.gov/documents/2008/07/23/E8-16263/national-emission-standards-for-hazardous-air-pollutants-area-source-standards-for-nine-metal</a>  <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0306-0002">https://www.regulations.gov/document?D=EPA-HQ-OAR-2006-0306-0002</a>	7/23/08
40 CFR pt. 63, subp. YYYYYY National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities	<b>Final</b> <a href="https://www.federalregister.gov/documents/2008/12/23/E8-30424/revision-of-source-category-list-for-standards-under-section-112k-of-the-clean-air-act-and-national">https://www.federalregister.gov/documents/2008/12/23/E8-30424/revision-of-source-category-list-for-standards-under-section-112k-of-the-clean-air-act-and-national</a>  <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2008-0154-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2008-0154-0001</a>	12/23/08
40 CFR pt. 63, subp. ZZZZZZ National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries	<b>Final</b> <a href="https://www.federalregister.gov/documents/2009/06/25/E9-14613/revision-of-source-category-list-for-standards-under-section-112k-of-the-clean-air-act-national">https://www.federalregister.gov/documents/2009/06/25/E9-14613/revision-of-source-category-list-for-standards-under-section-112k-of-the-clean-air-act-national</a>  <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2008-0236-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2008-0236-0001</a>	6/25/09
40 CFR pt. 63, subp. AAAAAAA National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing	<b>Final</b> <a href="https://www.federalregister.gov/documents/2009/12/02/E9-27946/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-asphalt-processing-and">https://www.federalregister.gov/documents/2009/12/02/E9-27946/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-asphalt-processing-and</a>  <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2009-0027-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2009-0027-0001</a>	12/2/09
40 CFR pt. 63, subp. BBBBBBB National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry	<b>Final</b> <a href="https://www.federalregister.gov/documents/2009/12/30/E9-30500/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-chemical-preparations">https://www.federalregister.gov/documents/2009/12/30/E9-30500/national-emission-standards-for-hazardous-air-pollutants-for-area-sources-chemical-preparations</a>  <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2009-0028-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2009-0028-0001</a>	12/30/09
40 CFR pt. 63, subp. CCCCCC National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing	<b>Final</b> <a href="https://www.federalregister.gov/documents/2009/12/03/E9-27947/national-emission-standards-for-hazardous-air-pollutants-area-source-standards-for-paints-and-allied">https://www.federalregister.gov/documents/2009/12/03/E9-27947/national-emission-standards-for-hazardous-air-pollutants-area-source-standards-for-paints-and-allied</a>  <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2008-0053-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2008-0053-0001</a>	12/3/09
40 CFR pt. 63, subp. DDDDDDD National Emission Standards for Hazardous Air Pollutants: Prepared Feeds Manufacturing	<b>Final</b> <a href="https://www.gpo.gov/fdsys/pkg/FR-2010-01-05/pdf/E9-30498.pdf">https://www.gpo.gov/fdsys/pkg/FR-2010-01-05/pdf/E9-30498.pdf</a>  <b>Proposed</b> <a href="https://www.regulations.gov/document?D=EPA-HQ-OAR-2008-0080-0001">https://www.regulations.gov/document?D=EPA-HQ-OAR-2008-0080-0001</a>	1/5/10



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

~~MAY 14 2014~~

REPLY TO THE ATTENTION OF:

Katie Koelfgen  
Manager  
Land and Air Compliance Section  
Industrial Division  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155-4194

Dear Ms. Koelfgen:

This is in response to your March 13, 2014 letter to Regional Administrator Susan Hedman. Your letter requested that the U.S. Environmental Protection Agency confirm that submittal of the Title V annual compliance certifications (ACCs) to the Minnesota Pollution Control Agency (MPCA) fulfills the requirement to submit the ACCs to EPA under the circumstances listed below. Specifically, you requested that we confirm that the reporting provisions in 40 CFR §70.6(c)(5)(iv) requires all compliance certifications be submitted to EPA as well as the permitting authority may be met by sending such submissions only to the State of Minnesota provided that 1) submissions do not contain or rely upon confidential information; 2) MPCA maintains authority to implement 40 CFR Part 70 Title V Operating Permit program; and 3) EPA will be able to access these reports and related documents via hard or electronic copy, when requested.

MPCA was granted full approval by EPA to implement 40 CFR Part 70 Operating Permit program on December 4, 2001. EPA and MPCA also have a signed Memorandum of Agreement (MOA) dated July 25, 1997, that includes making such documents available to EPA under Section IV) Data Management and Information Transfer. In addition, MPCA enters and tracks each Title V permitted facility that is required to submit a compliance certification in their Compliance Tracking database and retains a hard or electronic copy of the ACCs. Under the Information Collection Request for the Air Facility System or its successor, ICIS-Air, MPCA is required to report to EPA minimum data requirements such as the ACC due /received dates, review date, results of the review, and if deviations were reported by the facility in a timely, complete and accurate manner.

EPA will publish approval in the Federal Register recognizing the submission of the ACCs to MPCA shall fulfill the reporting requirements under 40 CFR §70.6(c)(5)(iv). In relying on the

submittal of the ACCs to MPCA, EPA will continue to meet its air quality goals while streamlining the permitting process in reporting and eliminating the duplication of paperwork submitted by the facility.

If you or your staff have questions, please feel free to contact Rochelle Marceillars, of my staff, at (312) 353-4370.

Sincerely,



George Czerniak  
Director  
Air and Radiation Division

## Summary Information Relevant to Comparison between Proposed Rules and the Rules in Effect in Surrounding States

State	Clean Air Act delegation status	State mechanism to implement CAA requirements	State website for information.
Illinois	"Illinois has delegation of all existing and future "unchanged" Part 60 New Source Performance Standards (NSPS) and Part 61 National Emission Standards for Hazardous Air Pollutants (NESHAPs) standards. Illinois has primary implementation and enforcement authority for the delegated standards."		<a href="https://www.epa.gov/il/illinois-part-60-nsps-and-part-61-neshap-delegations">https://www.epa.gov/il/illinois-part-60-nsps-and-part-61-neshap-delegations</a>
Indiana	<i>"Indiana has delegation of all existing and future "unchanged" Part 60 New Source Performance Standards (NSPS) and Part 61 National Emission Standards for Hazardous Air Pollutants (NESHAPs) standards. Indiana has primary implementation and enforcement authority for the delegated standards."</i>	Indiana incorporates federal requirements by reference	<a href="https://www.epa.gov/in/indiana-part-60-nsps-and-part-61-neshap-delegations">https://www.epa.gov/in/indiana-part-60-nsps-and-part-61-neshap-delegations</a>
Iowa (EPA Region 7)	Iowa was recently (6/1/18) delegated authority for a large number of NSPS/NESHAP	Iowa incorporates federal NSPS/NESHAP by reference. Has not adopted the part XXX or Cf landfill standards.	<a href="https://www.epa.gov/ia/delegation-authority-iowa-new-source-performance-standards-and-national-emission-standards">https://www.epa.gov/ia/delegation-authority-iowa-new-source-performance-standards-and-national-emission-standards</a>
Michigan	Delegated for all current and future NSPS. Has not been delegated for extensive NESHAP, but may include federal requirements into individual permits	Michigan incorporates federal requirements by reference. Michigan has not incorporated extensive NESHAP but have authority to enforce federal NESHAP requirements through permits.	<a href="https://www.epa.gov/mi/air-standards-delegations-michigan">https://www.epa.gov/mi/air-standards-delegations-michigan</a>
Ohio	Delegated for all current and future NSPS. Delegated for NESHAP only on a permit by permit basis.	Ohio incorporates NESHAP into individual permits and delegation is provided on a permit by permit basis.	
North Dakota (EPA Region 8)	Many of the federal NSPS/NESHAP have been delegated. Information about the currently delegated elements is provided at the website.		<a href="https://www.epa.gov/region8/delegations-authority-nsps-and-neshap-standards-states-and-tribes-region-8">https://www.epa.gov/region8/delegations-authority-nsps-and-neshap-standards-states-and-tribes-region-8</a>
Ohio	"Federal air regulations have been delegated to state or local air pollution control agencies in Ohio. These air regulations establish nationwide requirements for a wide range of commercial and industrial activity, and include, but are not limited to, new source	The implementation and delegation of the federal requirements is provided on a permit by permit basis.	<a href="https://www.epa.gov/oh/air-standards-delegations-ohio">https://www.epa.gov/oh/air-standards-delegations-ohio</a>



State	Clean Air Act delegation status	State mechanism to implement CAA requirements	State website for information.
	performance standards (NSPS), national emission standards for hazardous air pollutants (NESHAPs), and maximum achievable control technology (MACT) standards.”		
South Dakota (EPA Region 8)	Many of the federal NSPS/NESHAP have been delegated. Information about the currently delegated elements is provided at the website.		<a href="https://www.epa.gov/region8/delegations-authority-nsps-and-neshap-standards-states-and-tribes-region-8">https://www.epa.gov/region8/delegations-authority-nsps-and-neshap-standards-states-and-tribes-region-8</a>
Wisconsin	“Wisconsin has delegation of all existing and future “unchanged” Part 60 New Source Performance Standards (NSPS) and Part 61 National Emission Standards for Hazardous Air Pollutants (NESHAP) standards. Wisconsin has primary implementation and enforcement authority for the delegated standards.”	Wisconsin incorporates federal requirements by reference into state rules and also into individual permits.	<a href="https://www.epa.gov/wi/wisconsin-part-60-nsps-and-part-61-neshap-delegations">https://www.epa.gov/wi/wisconsin-part-60-nsps-and-part-61-neshap-delegations</a>