STATE OF MINNESOTA

POLLUTION CONTROL AGENCY

In the Matter of Proposed Rules Governing; Air Emission Permits, Minn. Rules Parts 7007.0000 to 7007.1700

STATEMENT OF NEED

AND REASONABLENESS

I. INTRODUCTION

On November 15, 1990, President Bush signed into law the Clean Air Act Amendments (CAAA) of 1990, amending 42 U.S.C. §§ 7401- 7671q (Supp. II 1991). Title V of the 1990 Amendments (Exhibit 1) requires each state to develop an operating permit program to implement the requirements of the Clean Air Act (CAA). The regulations adopted by the U.S. Environmental Protection Agency (EPA) implementing Title V, at 40 CFR Part 70 (Exhibit 2), require the establishment of comprehensive state air quality permitting systems consistent with the requirements of Title V of CAA. These regulations set forth the minimum elements required by CAA for state operating permit programs.

For many years, federal law has required facilities to obtain preconstruction permits before undertaking certain large new construction or modification projects. Under the 1990 Amendments, many more sources will have to obtain permits authorizing them to operate as a matter of federal law. Because Minnesota has had an operating permit program (as opposed to merely a preconstruction permit program) in place for years, most of the new sources now coming under the coverage of Title V are already required to have permits under state law. However, the Minnesota Pollution Control Agency (MPCA) must amend its existing operating permit rule to comply with the new requirements of Title V and Part 70.

The state of Minnesota must submit its operating permit program to the EPA by November 15, 1993. After receiving a complete submission, the EPA has one year to approve or disapprove it in whole or in part. Within one year after the EPA approval, sources are required to submit a permit application to the MPCA. The MPCA must act on at least one-third of the applications per year, so that all applications are acted upon within three years of the program approval by the EPA.

II. STATEMENT OF THE MPCA'S STATUTORY AUTHORITY

The MPCA's authority to issue permits is found in Minn. Stat. § 116.07, subd. 4a (1992) which provides:

> The Pollution Control Agency may issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the emission of air contaminants, or for the installation or operation of any emission facility, air contaminant treatment facility, treatment facility, potential air contaminant storage facility, or storage facility, or any part thereof, or for the sources or emissions of noise pollution.
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> The Pollution Control Agency may revoke or modify any permit issued under this subdivision and section 116.081 whenever it is necessary, in the opinion of the MPCA, to prevent or abate pollution.

State law prohibits construction, operation and modification of air emission facilities without a permit from the MPCA at Minn. Stat. § 116.081. The MPCA has authority to obtain information and inspect air emission facilities under Minn. Stat. § 116.091.

III. STATEMENT OF NEED

Minn. Stat. §§ 14.131, 14.14, subd. 2, 14.23 and 14.26 require the MPCA to make an affirmative presentation of facts establishing the need for and reasonableness of the proposed rule. "Need" means that a problem exists which requires administrative attention, and "reasonableness" means that the solution proposed by the MPCA is appropriate. The need for the new operating permit rule is discussed below, and the reasonableness of the proposed rule is discussed in the following section.

A. Need to Comply with Federal Requirements

The need for a rule of this type, an operating permit rule, has already been determined by the federal government through passage of Title V and adoption of Part 70. Title V requires each state to develop and submit to the EPA a new permit program by November 15, 1993. 42 U.S.C. § 7661a(d). To obtain federal approval, Minnesota will be required in its new permit program to take on new regulatory tasks, such as permitting additional categories of sources, regulating and inventorying many additional pollutants, responding more quickly to permit applications, making additional reports to the EPA, and instituting a new small business assistance program. 42 U.S.C. §§ 7661a(b) and 7661f. Title V permits are required to contain all the applicable requirements under federal law for a source as well as detailed provisions for testing, monitoring, record keeping and reporting to demonstrate compliance. Id.

The EPA must either approve or disapprove a state program within one year after submittal. If a state fails to submit a program within 18 months after the deadline for submittal, or if 18 months have passed since the EPA disapproved the program, the Administrator must apply the sanctions specified in the CAA: a highway funding cutoff, and a two-to-one offset ratio for new or modified sources applicable to certain nonattainment areas. 42 U.S.C § 7661a(h). If a state does not have an approved program two years after the required date, the EPA must develop and administer a federal permit program for the state. Id.

B. Need to Reduce Permit Backlog

The MPCA also needs to amend its operating permit program to help address a chronic backlog of permit applications. In 1992, Project Environment Foundation published a report summarizing its study of the Air Quality Division, and stated the following about the permitting backlog:

> Although the number of permits issued by the MPCA has grown steadily for the last three fiscal years, the demand for permits has grown even faster. Between 1988 and 1991, the MPCA received 1,124 permit applications, but issued only 849 permit actions. As a result, there is a growing backlog of permit applications.

"Clearing the Air, An Evaluation of Minnesota's Programs to Protect the Air We Breathe." Project Environment Foundation (1992), p. 96. The Office of the Legislative Auditor, which reported on the operations of the entire MPCA in 1991, also discussed the permit backlog problem and some of the negative consequences of it. It described some of the problems such delays cause:

> First, businesses want permits in a timely manner so they can start their operations or change production methods on schedule. Unnecessary delays in permit issuance can result in financial loss (23 percent of the permittees surveyed said that permit delays have caused them financial hardships). Second, efficient permitting enhances environmental protection. New permits sometimes contain stricter standards than earlier permits, and many businesses are required to conduct demonstrations of compliance with emission regulations at the time of permit issuance. Permit delays can postpone those standards and compliance demonstrations. Third, some business representatives [say] that for liability purposes, they prefer to operate under the terms of a current permit, rather than an expired permit that has been extended. Finally, an efficient, understandable permitting process makes MPCA a more credible regulator.

"Pollution Control Agency." Program Evaluation Division, Office of the Legislative Auditor, State of Minnesota (Jan. 1991), p. 33.

Since the time of these reports, the MPCA has expanded its staff and instituted certain changes, such as greater use of general permits, to reduce its backlog. However, it has not yet solved its backlog problem.

This proposed rule will further help ease the permit backlog by streamlining the process for permit modification. As discussed below, under the current system, every change in emissions at a facility requires a permit amendment, even if there is no increase in emissions. The new rule generally does not require permit amendments for changes when emissions do not increase or if they decrease or if they can be considered to be an insignificant activity. This will help reduce this burden on both the MPCA and permitted source by requiring minimum process for insignificant changes and focusing the greatest amount of attention on major permit amendments.

Streamlining the permit process is important not only to reduce the current backlog but also to avoid a future one. The 1990 Amendments to CAA greatly increase the regulation of air toxics, calling for the regulation of 189 air toxics for the first time. This will mean permitting hundreds of new Minnesota sources, which will worsen the backlog problem unless other measures are taken to offset this increase.

C. Clarification of Permit Requirements

Permits issued under the proposed rule will incorporate into a single document virtually all the air quality requirements that apply to a source. This will enable the source to better understand the requirements to which it is subject and should enhance compliance with the obligations of both state and federal law. Currently, the requirements to which a source is subject are often scattered in various provisions of statutes, federal regulations, state rules, and Minnesota's federally-approved State Implementation Plan (SIP). Additionally, rules and regulations are usually written to cover broad source categories, so the applicability of general regulations to a particular source is often unclear. This makes it difficult for the source, the MPCA, the EPA and the public to determine whether a source is in compliance with all the requirements to which it is subject.

In summary, the MPCA needs to amend its permitting rules to comply with the explicit requirements of Title V and Part 70 (and avoid federal sanctions), to remedy past backlog problems and avoid future ones, and to make permits more clearly identify the air quality requirements to which the source is subject.

IV. STATEMENT OF REASONABLENESS

The MPCA is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. "Reasonableness" means that there is a rational basis for the MPCA's proposed action. The reasonableness of the proposed rule is discussed below.

A. Reasonableness of the Rules as a Whole

1. MPCA Discretion Under the Federal Regulations

The MPCA intends for this rulemaking to result in an operating permit program which will meet the requirements of EPA regulations in Part 70, and which will ultimately be approved by the EPA. However, while Part 70 mandates much of what the MPCA is proposing to do in this rulemaking, the MPCA does have a certain amount of discretion to fashion its program to meet state needs. On this subject, Part 70 says:

> The regulations in this part provide for the establishment of comprehensive State air quality permitting systems consistent with the requirements of the Clean Air Act. These regulations define the minimum elements required by the Act for State operating permit programs and the corresponding standards and procedures by which the Administrator will approve, oversee, and withdraw approval of State operating permit programs.
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> Nothing in this part shall prevent a State, or interstate permitting authority, from establishing additional or more stringent requirements not inconsistent with this Act. The EPA will approve State programs to the extent that they are not inconsistent with the Act and these regulations.

40 CFR § 70.1(a) and (c). The proposed rule, therefore, is drafted to be no less stringent than Part 70. As allowed, it establishes (or retains from existing law) certain requirements that are more stringent than, but not inconsistent with, Part 70.

Currently, operating permits are issued in accordance with Minn. Rules ch. 7001, which applies not just to air quality permits but to other permits issued by the MPCA, such as water quality, solid waste, and hazardous waste permits. While the portions of that chapter related specifically to air quality will be repealed by this rule, the general provisions of that chapter will continue to apply to other permits.

In many instances, the MPCA has chosen to continue the provisions of existing law in the proposed rule. There are three primary reasons for doing this. First, it promotes continuity between air permits issued in the past and those issued in the future. By minimizing how many things the proposed rule will change, the MPCA can hopefully minimize some of the confusion that will attend the transition to the new rule. Second, the existing law has generally served the MPCA well, and the original reasoning behind adopting many of the provisions in it apply equally to the proposed rule too. Third, the existing rule will continue to apply to non-air quality permits. Using the same provisions in the proposed rule and in chapter 7001 will allow the MPCA to apply the same provisions to all permits when feasible. The analysis described in section IV.B. of this Statement of Need and Reasonableness (SONAR) will point out when a proposed provision is consistent with existing law, but will not repeat this explanation for why is it reasonable to remain consistent.

2. Integration of State and Federal Permitting Programs

For many years, both the state and federal governments have had laws requiring air permitting. Federal law has required permitting prior to the construction of major facilities and prior to making major modifications to existing major facilities. These requirements were set forth in two separate "new source review" programs, one for areas attaining federal ambient air quality standards, and one for areas not attaining those standards. The program for attainment areas is known as the prevention of significant deterioration (PSD) program, and is established in Part C of CAA and in implementing regulations. 42 U.S.C. §§ 7470-7492; 40 CFR § 52.21. The program for nonattainment areas, sometimes called the nonattainment program, is established in Part D of CAA and in implementing regulations. 42 U.S.C. §§ 7501-7509a; 40 CFR § 51.165. The MPCA is authorized to implement both of these new source review programs on behalf of the EPA in Minnesota.

In contrast to federal law, which has required permits prior to major construction or modifications, the existing state rule requires a permit to construct or operate a source based on total air emissions from the source, regardless of when it was originally built or whether it has been recently modified. Minn. Rules pt. 7001.1210 (1991). A permit amendment is required prior to any modification to a permitted source. Minn. Rules pt. 7001.1210, subp. 1. Permits and permit amendments issued under the current state permitting rule must reflect the requirements of the federal new source review programs and the state rules, even though the existing state rule does not explicitly integrate the federal and state requirements.

The proposed rule integrates requirements under state law with all the of the requirements under Title V, and to a certain extent, the requirements of the new source review programs.[1] This integration is reasonable because it minimizes the complexity of the rule and makes it easier for the regulated community and the public to read. All state and Title V requirements related to who needs a permit, how to file an application, how permits are reviewed, etc., are located in the same rule. Except where the proposed rule states otherwise, the MPCA is applying the same provisions to both state and federal permits. It is reasonable to do this to minimize the complexity of the rule and maintain consistency between the two types of permits. Also, the MPCA generally considers EPA's reasons for requiring a certain provision for Part 70 sources, as expressed in the preamble to Part 70, to also apply to state sources. This reasoning is not repeated in the section by section analysis for every provision, but should be read to underlie the entire rule.

[1]The requirements of the preconstruction programs are not fully integrated into the proposed rule because they impose complex requirements on a minority of sources, so complete integration would have been more confusing than helpful. The rule attempts to minimize confusion by reminding readers in several locations that additional requirements apply to construction or modification falling under the federal new source review programs.

3. Preconstruction Permits vs. Operating Permits

Title V places a new layer of federal permitting law on top of the existing federal laws by requiring operating permits in addition to the preconstruction permits described above. The federal law assumes, but does not require, that implementing states will first issue preconstruction permits authorizing construction and initial operation in compliance with the preconstruction programs, and subsequently issue operating permits which incorporate the requirements of the preconstruction permits but add additional operating requirements. See preamble discussion of administrative amendments at 57 Fed. Reg. p. 32289. This approach would essentially require states to have a preconstruction permitting program and a separate operating permit program.

The MPCA has chosen not to maintain two separate air permitting programs, but rather to continue its existing practice of having one permitting program that incorporates both preconstruction requirements and operating requirements. Prior to 1985, the MPCA did attempt to issue the two types of permits separately, but found that it required too much staff time to do so. Because of resource limitations, the MPCA would issue the preconstruction permits but often be unable to follow up with issuance of the operating permit, meaning that those sources continued to operate for many years under a preconstruction permit initially intended to authorize only short-term operation. Since 1985, the MPCA has issued unified permits, authorizing both construction and operation, and has found this approach to be a much better use of limited staff time. It also helps to simplify an already complex area of regulation. Therefore, the proposed rule reasonably provides that permits issued under it will authorize both construction and operation.

4. Federal Enforceability Issues

Another complex issue that the proposed rule attempts to deal with is that of federal enforceability, or the extent to which requirements of a permit issued by the state may be enforced by the federal government and citizens under CAA. Historically, permit requirements mandated by the new source review programs, or requirements allowing a source to avoid being subject to the new source review programs, have been considered federally enforceable if the program under which the permit is issued has been approved by EPA and if the permits have been issued with the appropriate public and EPA review. See 54 Fed. Reg. pp. 27274, 27282 (June 28, 1989). Part 70 provides that permits issued by states with approved operating permit programs are federally enforceable, except for conditions in them which are not required by CAA (and are not designed to limit a source's potential to emit). 40 CFR § 70.6(b). In addition, certain state laws, and permit requirements based on them, become federally enforceable when they are approved by the EPA as part of a SIP to achieve attainment with federal ambient air quality standards. 42 U.S.C. §§ 7410, 7413(a).

Under the existing air quality permit program the MPCA issues two types of state permits. The first type is a federally enforceable state permit (referred to as a synthetic minor state permit) and the second type is a state permit which is not considered federally

enforceable. One of the main differences under the current program between the two types of state permits is the synthetic minor permit is public noticed and the state permit is not. Under this rule the MPCA has elected to make all permits federally enforceable. The MPCA has taken this position for the following reasons:

a. By increasing the state permitting threshold, as outlined in part 7007.0250, subpart 3, the number of state permits (not federally enforceable) has been decreased approximately 42 percent (refer to Exhibit 3) . In addition, the MPCA believes that the synthetic minor permit category will dramatically increase in number. This is due to the fact that most sources which have the ability to limit potential to emit by agreeing to a federally enforceable permit limit will do so, in order to avoid Part 70 permitting requirements. The net impact of the above statements is that the MPCA anticipates that a much smaller percentage of the permits it issues will be state permits.

b. The elimination of the issuance of state permits which are not federally enforceable creates one category and one set of procedures when applying for a state permit. Given how few state permits of this type the MPCA would be issuing, creating a separate procedural track for them would cause needless administrative complexity.

The impact of making all state permits federally enforceable is the requirement that all federally enforceable state permits have to be public noticed. The permittee is affected because an additional 30 days is needed before the permit can be issued. The MPCA is affected because public noticing state permits requires additional resources (staff preparation and the cost of noticing). The MPCA, however, believes the impact to the permittee and the state is greatly minimized due to the fact that state permits will be non-expiring. The result is that the impact is only on a one time issuance basis. Secondly, the MPCA intends on developing a streamlined method for public noticing. An example would be public noticing numerous state permits in one public notice (referred to as batch public noticing).

In summary, MPCA staff believe making all state permits federally enforceable will result in a streamlined and less complex process for issuance.

5. Public Input to Date

On June 8, 1992, the MPCA published a notice in the State Register inviting the public to participate in a work group to assist in the development of this rule. Based primarily on the response to that notice, 30 to 40 representatives have participated in work group meetings. Work group participants included representatives from industry, an environmental group, and MPCA staff. Thirteen work group meetings were held between August 1992 and February 1993. The work group reviewed the draft rule in detail as it evolved.

On March 22, 1993, the MPCA Board Air Quality Committee held a public meeting to formally receive comments on the draft rule. Comments were presented by representatives of various companies, the Chamber of Commerce, and the Project Environment Foundation. The

Chamber of Commerce also presented the MPCA at that meeting with 22 pages of detailed comments on the draft rule, and met with MPCA representatives three times regarding those comments before and after the public meeting.

The most important issues raised at the work group meetings, the March 22, 1993, public meeting, and the meetings with the Chamber of Commerce are identified and addressed in the section by section analysis.

B. Reasonableness of the Rule by Section

The following discussion addresses the reasonableness of specific provisions of the proposed rule. The sections of the new chapter 7007 are discussed first, and the discussion of changes to existing rule provisions follow.

1. 7007.0050 SCOPE

This part is reasonable because it succinctly tells the reader what is covered by the rest of the chapter, namely: not just permits to construct, but also those to operate and modify, sources of air pollution. It also tells the reader that this chapter blends the permitting requirements of state law with those of 40 CFR Part 70 and new source review programs. (See the discussion in part IV.A.2 and 3 of this SONAR.) Finally, this part alerts the reader to additional permitting requirements that apply under the new source review programs.

2. 7007.0100 DEFINITIONS

a. Introduction

The definitions set forth in this part are largely based on the federal definitions in 40 CFR § 70.2. While the MPCA is not explicitly required by that section to use the exact same definitions, the MPCA must be able to show that its permit program is not inconsistent with CAA or Part 70. It is therefore reasonable, to facilitate that showing and for the sake of simplicity, for the proposed rule to retain the definitions of Part 70 unless there is a good reason not to.

The following definitions are either taken verbatim from 40 CFR § 70.2, or adopted with minor changes which were made to make the definition clearer or more specific to the MPCA's program, and which do not substantively change the definition: "Act," "Administrator," "Affected State," "Draft Permit," "EPA," "Final Permit," "General Permit," "Part 70 Permit," "Part 70 Program," "Proposed Permit," "Responsible Official," and "State." The definitions of "Affected Source," "Affected Unit," and "Designated Representative" are taken from the EPA's recently- adopted regulation implementing Title IV of CAA. 40 CFR Part 72.

The definitions set forth below deviate from Part 70 enough to merit explanation, or are not included in Part 70.

b. Applicable Requirement (Subpart 7)

The proposed rule requires, in compliance with Part 70, that permits issued under the rule include conditions needed to ensure compliance with all applicable requirements. The definition of "applicable requirements" has been expanded beyond the federal definition to reflect the fact that the proposed rule integrates both the state and federal permitting requirements. Permits issued under the proposed rule must therefore reflect not just the "applicable requirements" listed in Part 70 but most of the requirements to which a source would be subject under state law. Items A through K list the requirements of the Part 70 "applicable requirement" definition. By referring generally to standards and requirements adopted under certain sections of the CAA, the definition will automatically expand as those standards and requirements are adopted by EPA.[2]

The language of item B of the definition deviates from its federal counterpart in 40 CFR § 70.2 by including not just the conditions of preconstruction permits, but the requirements of the preconstruction programs themselves. The federal language is based on the assumption that a state would first issue preconstruction permits (which reflect the requirements of the federal preconstruction programs) and then incorporate those same requirements into a subsequent operating permit. The proposed definition is reasonable because Minnesota is proposing an integrated rule which issues preconstruction and operating requirements in the same permit. Those permits must therefore reflect any applicable federal preconstruction program requirements.

The rest of the list sets forth the additional requirements that the MPCA believes should be reflected in permits issued under this chapter. Item L lists the national ambient air quality standards (NAAQS), and increment and visibility requirements, not already addressed in item K (which only applies to temporary sources pursuant to Part 70). It is reasonable to list these requirements because the state is required by federal law to ensure compliance with them, and the permits are the best vehicle to do that. It is reasonable to keep items K and L separate so that the proposed rule may distinguish between what EPA requires the permits to reflect (in item K) and what the MPCA requires the permits to reflect (in item L).

Items M through U list virtually all the air requirements of state law to which a permitted source may be subject, excluding rules regarding odor emissions located in chapter 7011. It is reasonable to include these requirements in this definition, and thereby to require permits under this chapter to incorporate the requirements of these state rules, so that the permits will be as complete as possible. If these requirements were not listed, a source receiving a permit might logically but wrongly assume that all legal requirements enforced by the MPCA related to air emissions were included, and remain unaware of other scattered requirements related to air emissions in state rules. The proposed rule's more inclusive approach is consistent with the general sentiment underlying Part 70, to use the permits to help permittees and others better understand what laws apply to the permitted source. Subpart 7,

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[2]Consistent with Part 70, citations to the CAA are to the more familiar CAA citation, rather than to the United States Code codification (except where the citation begins "42 U.S.C.").

items A and P, exclude odor requirements under parts 7011.0300 to 7011.0330. This provision is reasonable because there is no standard method of testing compliance, and the MPCA is proposing to eliminate or modify most parts of the odor provision.

The references to state law in this definition are to the codification that will exist by the time the rule is adopted, as a result of currently pending changes being made by the revisor at the MPCA's request. As the MPCA changes the requirements, or adds new requirements to the listed chapters, they will automatically become part of the definition of applicable requirement. If the MPCA adopts new requirements and puts them in a new chapter, that new chapter will have to be added to the list to be considered an applicable requirement.

c. Effective Date (Subpart 10)

The MPCA proposes making this rule effective as soon as the state rulemaking process is completed, even before the EPA approves the state's Part 70 Program. This is reasonable so that the MPCA may begin receiving the required applications, and begin drafting permits, as soon as possible, making it easier for the MPCA to meet the requirements of 40 CFR § 70.4(b)(11) to issue all Part 70 permits within three years of EPA program approval, at the rate of one-third per year. Even though Part 70 permits cannot be finally issued until after EPA approval of the Part 70 program, much of the required work preparing the permits can be done in advance. Also, state permits can be issued as soon as the rule is effective. Finally, an early effective date means that the benefits of greater flexibility to permittees, and reduced MPCA workload processing permit amendment applications, may be enjoyed as soon as possible.

d. Major Source (Subpart 14)

This subpart refers the reader to part 7007.0200 because the MPCA believes it is more convenient for the reader to position the lengthy definition of major source there.

e. Modification (Subpart 15)

The proposed rule includes a definition of "modification" even though Part 70 does not define this term. It is reasonable to define this term because the requirement to obtain a permit amendment before making a certain change at a permitted facility depends initially upon whether the change is a modification.

The proposed definition considerably expands upon the definition of "modification" currently located at Minn. Rules pt. 7005.0100, subp. 24a. First, subitem (1) of the proposed definition incorporates anything that would be considered a Title I Modification as defined later in the rule. Title I Modifications include changes that are defined as "modifications" under certain provisions of Title I of CAA, and which are singled out in Part 70 for special treatment (discussed further with respect to that definition and parts 7007.1250-7007.1500). It is reasonable to make Title I Modifications a subset of all modifications, because to do otherwise would be counterintuitive and might lead readers to wrongly assume that if a change is not a "modification", it could not be a "Title I Modification" either.

The definition goes on in subitem (2) to define as a "modification" any physical or operational change causing an increase in emissions. This requirement is very similar to the existing definition of modification at part 7005.0100, with slight wording changes to make the sentence more consistent with the definition of modification used by the federal new source review programs. See 40 CFR §§ 51.165(a)(1)(v)(A) and 52.21(b)(2)(i). The second sentence of subitem (2) clarifies that new emissions of a regulated air pollutant are also considered increases, consistent with the definition of modification used in the new source performance standards program of 40 CFR § 60.2. The third sentence of subitem (2) tells the reader the formula that should be used to determine if there has been an increase in emissions, and refers the reader to the formula set forth in part 7007.1200. It is reasonable to specify a formula in this context because different formula currently in use in federal air regulations could come up with different results. The reasonableness of the MPCA's choice of formula is discussed in the analysis of part 7007.1200.

Subitem (2) goes on to list five categories of changes that are not by themselves considered modifications. Category (a) excludes changes already allowed under a permit, or under another enforceable document which states that no permit amendment is required. This is reasonable because, in the cases described in this category, the action is already authorized under an enforceable document, so a permit amendment is unnecessary. By excluding such changes from the definition of modification, the proposed rule makes room for the MPCA to allow alternative operating scenarios (discussed in the analysis of part 7007.0800) in the permit, and to resolve compliance violations without necessarily requiring a permit amendment for modifications required by the enforcement document.

Category (b), excluding routine maintenance, repair, and replacement, is consistent with similar exclusions in all the federal programs discussed in the analysis of the Title I Modification definition. See 40 CFR §§ 51.165(a)(1)(v)(C), 52.21(b)(2)(iii), 60.14(e)(1), and 61.15(d)(1). It is reasonable to exclude routine maintenance, repair, and replacement in order to be consistent with these federal programs, and also because permits are issued based on the presumption that these activities will continually occur. It is therefore unnecessary, and it would be administratively unworkable, to require permit amendments prior to allowing them.

Category (c), excluding production rate increases from existing units if the increase does not violate a permit condition, applicable requirement, or other enforceable documents, is consistent with a similar exclusion in the federal Title I programs. See 40 CFR §§ 51.165(a)(1)(v)(C), 52.21(b)(2)(iii), 60.14(e)(2), and 61.15(d)(2). It is reasonable to exclude these increases to be consistent with the federal programs, and also because the MPCA recognizes that production rates for any given unit will usually vary over time. If it is necessary to limit the production rate of a unit to ensure compliance with an applicable requirement, the permit will do so.

Category (d), excluding increases in the hours of operation unless they violate a permit term, applicable requirement, or other enforceable documents, is consistent with similar exclusions in the federal Title 1 programs. See 40 CFR §§ 51.165(a)(1)(v)(C), 52.21(b)(2)(iii), 60.14(e)(3), and 61.15(d)(3). It is reasonable to exclude such increases to be consistent with the federal programs, and also because, like production rates, hours of operation of any given unit or facility will vary over time. If it is necessary to limit the

number of hours operated to ensure compliance with an applicable requirement, the permit, the applicable requirement, or the other enforceable documents will do so.

Category (e) excludes from the definition switching to another type of fuel if ordered to do so by the state or federal government. This exclusion is consistent with similar exclusions in the federal new source review programs. See 40 CFR §§ 51.165(a)(1)(v)(C) and 52.21(b)(2)(iii). This exclusion is reasonable for consistency purposes, and also because the state and federal governments only have authority to issue such orders under limited circumstances, and if such an order is issued, it would be unreasonable to place the permittee in the position of postponing compliance until a permit amendment could be issued.

It is important to note that the exclusions listed above are only exclusions to the part of the definition in subitem (2). They do not apply to Title I Modifications, though as just described, the MPCA has endeavored to make the exclusions consistent with similar exclusions already used in the Title I programs where it is reasonable to do so.

f. Regulated Air Pollutant (Subpart 20)

This definition has been expanded to include state ambient air quality standards. This is reasonable because the proposed rule is designed to ensure compliance with state and well as federal requirements.

g. Reissuance (Subpart 21)

The proposed rule uses the term "reissuance" instead of the Part 70 term "renewal" in order to maintain consistency with the other permitting programs implemented by the MPCA under Minn. Rules pt. 7001.

h. State Permit (Subpart 24)

The proposed rule uses this term to distinguish permits which are required solely by virtue of state law from Part 70 permits, which are required by federal law.

i. Stationary Source (Subpart 25)

The MPCA refers the reader to the existing definition of stationary source in Minn. Rules pt. 7005.0100, subp. 42c. That definition blends the definition of "stationary source" and the definition of "building, structure, facility, or installation" from the federal new source review programs, 40 CFR §§ 51.165(a)(1)(i) and (ii), and 52.21(b)(5) and (6), and deviates from the definition of stationary source in 40 CFR § 70.2. The MPCA chose to retain its existing definition rather than have two slightly different definitions of the same term. This approach is reasonable because it promotes consistency and continuity, and ultimately, the same facilities will be covered by either definition, as discussed in the analysis of the major source definition in part 7007.0200.

j. Title I Condition (Subpart 26)

The proposed rule establishes this term to allow the MPCA to distinguish certain types of permit conditions which EPA requires to be permanent from others. The need for the permanence of Title I conditions is discussed in the section analyzing part 7007.1050.

k. Title I Modification (Subpart 27)

EPA regulations prohibit the use of certain flexibility and streamlined amendment procedures for "modifications under any provision of Title I of CAA." 40 CFR §§ 70.4(b)(12) and 70.7(e)(2). Part 70 does not define this term, but given its importance and the frequency with which it is used in the proposed rule, it is reasonable to provide a definition here. The proposed definition represents the MPCA's understanding of EPA's interpretation of the phrase "modifications under any provision of Title I of CAA," and directs the reader to the specific federal regulations where the three types of modifications are described.

l. Transition Period or Transition (Subpart 28)

Certain requirements of the proposed rule do not apply until all sources have been issued permits under the new chapter, which must take place in the three years following EPA full program approval. (See discussion of parts 7007.0350, 7007.0400, and 7007.0750). It is therefore useful to define this term.

3. 7007.0150 PERMIT REQUIRED

a. Subpart 1. Prohibition

The first sentence of this subpart establishes the general, threshold prohibition against operating emissions units, emission facilities, and stationary sources except in compliance with a permit issued under this chapter. It is the foundation upon which the remainder of the chapter rests. This language is reasonable because it continues the existing prohibition of Minn. Rules pt. 7001.1210, subp. 1, and because it implements federal requirements which prohibit a Part 70 source (a source to which Part 70 applies) from operating after the permit application date except in compliance with a permit. 40 CFR § 70.7(b). Subpart 1 does not mention the application date, but the protection provided by the federal language is provided in the "application shield" language of part 7007.0350, subpart 3.

The next two sentences direct the reader to the exceptions to the general prohibition, the reasonableness of which are discussed later. Because of the importance of these exceptions, it is reasonable to bring the reader's attention to them in this subpart.

The last sentence tells the reader that permits required by this subpart must be obtained before the person "begin[s] actual construction" on the project for which a permit is needed (with important exceptions discussed later). This language marks a change from the current state rule which requires that a permit be obtained before a person "commences" an activity,

such as construction, for which a permit is needed. Minn. Rules pt. 7001.0030. As defined in Minn. Rules pt. 7005.0100, subp 4a, "commencing" includes entering into binding contracts to construct. "Begin actual construction," proposed to be defined in Minn. Rules pt. 7005.0100, subp. 3a, does not include such agreements, but focuses on on-site physical activities. As a result, facilities will be allowed to enter into contracts for construction prior to obtaining a permit, as long as they do not "begin actual construction."

This change is reasonable because it is more consistent with the federal PSD program, which requires a permit prior to beginning actual construction. 40 CFR § 52.21(i)(1). It is also reasonable because contractual activities alone, independent of on-site physical activity, have no environmental effect. If the permit is denied, the prospective permittee may lose money, but the environment is unchanged. Of course, the prospective permittee assumes the risk of financial loss if it enters into binding contracts prior to permit approval and ultimately does not obtain the permit.

b. Subpart 2. Permit Required

Subpart 2 is reasonable because it describes to the permittee what types of permits are required under what sections of this rule.

c. Subpart 3. Environmental Review

Subpart 3 is intended to notify readers that they may also be subject to the requirements of the Environmental Policy Act, which should be complied with before, or at the same time, that a permit under this rule is being pursued.

d. Subpart 4. Calculation of Potential to Emit

The first sentence of subpart 4 requires the owner or operator to calculate emissions using the "potential to emit" definition already located at Minn. Rules pt. 7005.0100, subp. 35a. Part 7007.0200, reflecting the requirements of Part 70, defines which sources need a Part 70 permit based on their "potential" emissions. Potential emissions differ significantly from what are known as "actual" emissions, and therefore merit definition. The existing state definition of the term "potential to emit" is substantially the same as the federal definition of it at 40 CFR § 70.2, and it is therefore reasonable to rely upon it rather than have two slightly different definitions of the same term. Given the importance of the definition, and the fact that it is located in a different chapter, it is reasonable to refer readers to the definition in this subpart.

The MPCA is also basing the permit thresholds for state permits on potential emissions. This is consistent with the federally-mandated approach in part 7007.0200, and with existing state rules. Minn. Rules pt. 7001.1210. It is reasonable to rely on potential emissions for determining if a state permit is required in order to be consistent with part 7007.0200 and current MPCA rules, and also because potential emissions provide for a more predictable and enforceable means of determining if permitting requirements apply than actual emissions do.

Potential emissions remain relatively constant, where actual emissions may vary greatly from year to year depending on production rate, hours of operation, or other factors. It is therefore easier to predict what potential emissions will be, and easier for the MPCA to determine what they have been.

Subpart 4 requires that emissions from activities in subpart 2 of the "insignificant activities list" in part 7007.1300, shall not be included when calculating potential to emit, but emissions from subpart 3 shall be if required by the MPCA. Part 70 allows the MPCA to establish a list of insignificant activities for which information need not be provided in the permit, as discussed in the analysis of part 7007.1300. 40 CFR § 70.5(c).

However, the regulation requires that the application must include any information "needed to determine the applicability of, or to impose, any applicable requirement...." Id. The regulation does not authorize states to exclude emissions from insignificant activities when determining whether or not a permit is required or whether an applicable requirement applies.

Under the circumstances, the MPCA is proposing to have two insignificant activities lists. The first, in subpart 2 of part 7007.1300, lists activities the emissions from which the MPCA has never counted when determining the applicability of state or delegated federal laws. The MPCA does not read Part 70 to require the MPCA to now start counting these emissions. The second insignificant activities list, in subpart 3 of part 7007.1300, includes activities the emissions from which the MPCA believes should be counted, if required by the MPCA, when determining a source's potential to emit (PTE). The MPCA would require the source to calculate potential emissions from activities listed in subpart 3 if emissions from other sources described in the permit application came close enough to a threshold (for permitting under this part or for any applicable requirement) that emissions from the listed activities could push the source over the threshold.

This approach reasonably balances the conflicting goals of (1) ensuring compliance with the proposed rule, Part 70, and applicable requirements, and (2) streamlining the permitting processing by minimizing the effort directed toward addressing de minimis emissions. For this reason, and for the sake of simplicity and consistency with the Part 70 thresholds, the proposed rule applies the same approach toward insignificant activities with respect to the state permitting thresholds.

e. The Use of Control Equipment When Calculating Potential to Emit

As just discussed, permittees calculate emissions for applicability on a PTE basis. Currently PTE is calculated assuming the highest emission rate based on operating 8,760 hours per year. A number of tools exist for limiting potential emissions through a permit (such as limiting hours of operation or raw material usage, requiring operation of pollution control equipment, etc.). The MPCA is considering undertaking a separate rulemaking which would be designed to allow control equipment to be considered when calculating PTE even when a permit does not require the operation of the control equipment. The MPCA believes this could be done by requiring, through rule, the operation of any control equipment at a stationary source unless a permit allows it not to be operated, and then by submitting the rule to EPA for approval as part of the state's SIP. Upon EPA approval, the requirement to operate control

equipment would be federally enforceable. Given the definition of PTE in Minn. Rules pt. 7005.0100, subp 35a, the control equipment could then automatically be treated as part of the emission unit's design, and its effect taken into account when calculating PTE. The result of this provision would be that some sources which would otherwise be required to obtain a permit would become exempt from permitting or be qualified to obtain a less stringent type of permit.

4. 7007.0200 SOURCES REQUIRED OR ALLOWED TO OBTAIN PART 70 PERMITS

This part and the next part establish two different types of permits which may be obtained under the proposed rule: Part 70 permits and state permits. Part 70 permits are those which are required under 40 CFR Part 70, and those permits must be issued in compliance with all the requirements of Part 70. State permits are those that are required solely under state law. While the majority of requirements under the proposed rule apply equally to both Part 70 permits and state permits, the MPCA is establishing two types of permits under this part so that it can apply some of the federal requirements only to Part 70 permits.

a. Subparts 2-5. Sources Required to Obtain a Part 70 Permit

Subparts 2-5 list the sources that must obtain Part 70 permits. The sources for which Part 70 permits are required under these subparts are those sources for which the state is required by Part 70 to provide operating permits. 40 CFR § 70.3(a). These subparts excludes from their scope those sources which the EPA allows states to exempt under 40 CFR § 70.3(b).

Subpart 2 is consistent with the definition of "major source" in 40 CFR § 70.2. While it does not specifically mention groups of stationary sources under common control, as the federal definition does, the definition of "stationary source" used in the proposed rule is broad enough to already encompass such groups. Ultimately, the same facilities are considered major sources. Subparts 3 and 4 are listed as required by 40 CFR § 70.3(a) and (b). Subpart 5, requiring Part 70 permits if an EPA regulation requires one, is reasonable because it allows the MPCA and the stationary source to comply with such a federal regulation even before the MPCA amends this rule to explicitly described the stationary source.

b. Subpart 6. Sources Allowed to Obtain a Part 70 Permit

Subpart 6 allows any source which is subject to a standard, limitation, or other requirement under section 111 or 112 of CAA and not already required to get a Part 70 permit to choose to obtain a Part 70 permit. This subpart is reasonable because it is required under 40 CFR § 70.3(b)(2).

5. 7007.0250 SOURCES REQUIRED TO OBTAIN A STATE PERMIT

This part describes the sources required to obtain a state permit.

a. Subpart 2. NSPS/NESHAP Sources Required to Obtain State Permits

Subpart 2, item A requires any source subject to a federal new source performance standard (NSPS) to obtain a state permit. This is a continuation of the existing rule, which similarly requires a permit for sources subject to NSPS. Minn. Rules pt. 7001.1210, subp. 2, item A(2). Subpart 2, item B, requires a state permit if a source is subject to a federal national emission standard for hazardous air pollutants (NESHAPS). This provision clarifies in a permit which portion applies to the NSPS or NESHAPS requirements. This requirement is reasonable because a state permit represents the best way for the MPCA to ensure compliance with these federal standards, the enforcement of which has been delegated to the MPCA.

Furthermore, EPA specifically stated that NSPS and NESHAP sources in this category are only deferred to provide relief from the administrative burden of permitting the sources under the Part 70 process. Therefore, the provision is also reasonable because the state can keep track of the deferred sources until EPA requires the deferred sources to be permitted under the Part 70 process.

b. Subpart 3. SIP Sources Required to Obtain State Permits

Subpart 3 allows the MPCA to require a source to obtain a permit if necessary as part of a SIP. Currently, if emissions from a stationary source are contributing to a violation of a NAAQS, the MPCA issues administrative orders to the source under Minn. Stat. § 116.07, subd. 9. This provision is reasonable because it allows the MPCA to impose site-specific limitations on a source through use of a permit rather than an administrative order. Using permits for this purpose is preferable to using administrative orders because it allows the MPCA to consistently use the same type of document whenever site-specific limitations must be imposed on a source. The MPCA has and will continue to have detailed rules in place regarding the application, issuance, review, content, and modification of permits; no such procedures exist with regard to administrative orders.

c. Subpart 4. Sources Required to Obtain State Permits Due to PTE Thresholds

Subpart 4 requires stationary sources to obtain state permits if they have a PTE for lead, sulfur dioxide (SO2), fine particulate matter (PM-10) or volatile organic compounds (VOCs) more than the listed threshold amounts, and not required to obtain a Part 70 permit. The MPCA's reasons underlying this proposal are set forth below.

1. Background

The existing state rule generally requires a stationary source to obtain an air permit if it has potential emissions of a single "criteria" pollutant (other than lead) of 25 tons per year (tpy) or more. Minn. Rules pt. 7001.1210, subps. 1 and 2. Criteria pollutants are defined

under state law as: SO2, particulate matter (TSP), particulate matter less than 10 microns (PM-10), nitrogen oxides (NOX), carbon monoxide (CO), ozone (caused by emissions of volatile organic compounds), lead, and hydrogen sulfide. Minn. Rules pt. 7005.0100, subp. 8a. The current rule specifically exempts certain listed sources from needing a permit. The MPCA has not included such exemptions in the proposed rule because the applicability of exemptions has proven confusing to the regulated community. The method of approaching exemptions through the development of thresholds is clear and exempts at least as large of a universe. A state permit is required for emissions of more than 0.5 tpy of lead. Minn. Rules pt. 7001.1210, subps. 1 and 2.

Part 70 establishes minimum permitting thresholds in the definition of major source located in 40 CFR § 70.2, and incorporated into the proposed rule at part 7007.0200. Any source potentially emitting more than 100 tpy of any regulated pollutant in an attainment area is deemed a major source requiring a Part 70 permit. For sources emitting hazardous air pollutants (HAPs), the permitting threshold is 10 tpy of any single HAP or 25 tpy of any combination of HAPs. The list of HAPs is contained in Exhibit 4 of this document. In nonattainment areas, the permitting threshold ranges from 10 to 100 tpy, depending on the pollutant and on how far the ambient air is below federal standards. States are allowed to be more restrictive than the minimum federal requirements in determining permitting thresholds. 40 CFR § 70.2.

The permitting thresholds proposed in this part represent the result of the MPCA's efforts to reconcile limited staff resources with the goal of protecting the environment as much as possible. Due to the increase in the number of sources, resulting mainly from the permitting of sources emitting HAPs, the workload will increase significantly. Even with increased resources and streamlined modification procedures, it is necessary to reduce the staff time spent on the least environmentally threatening sources in order to efficiently regulate the more environmentally threatening sources and meet all the regulatory requirements of Part 70. Increasing the minimum permitting thresholds allows the MPCA to devote its resources in the most efficient way possible and still protect air quality. MPCA staff estimate a reduction of approximately 180 sources currently permitted using the proposed thresholds (see Exhibit 3)

The permitting thresholds proposed in this subpart are set at the approximate levels necessary to reasonably assure that the emissions from a stationary source will not jeopardize the state's ability to comply with state and federal ambient air quality standards. These ambient standards are established by the EPA at 40 CFR § 50 and by the MPCA at Minn. Rules pt. 7005.0080. The level above which emissions could pose a significant threat to ambient air quality was determined through computer modeling.

2. Modeling Procedure

MPCA staff used the following modeling procedure to determine thresholds for SO2, NOX and PM-10.

(a) Introduction

Dispersion modeling was conducted to determine the maximum allowable emission rates under worst-case conditions that meet Minnesota and NAAQS for S02, PM-10, and NOX. For SO2, standards have been established for one-hour, three-hour, 24-hour and annual averaging periods. For PM-10, standards have been established for 24-hour and annual averaging periods. For NOX, standards have been established only for the annual averaging period.

(b) Building Downwash

"Building downwash" is the term used to describe the effect of nearby buildings on how a plume of emissions from a source disperses into the ambient air. Because the ratio of stack height to building height determines the severity of building downwash, different combinations of stack height and building height were considered in the dispersion modeling. The modeling considered several different stack heights on or near one-story and two-story structures of 15 and 30 feet, respectively.

Stack heights of 15, 20, 25, 30 and 35 feet were modeled for stacks on or near one-story structures. Likewise, stack heights of 30, 35, 40, 45, and 50 feet were modeled for stacks on or near two-story structures. The stack heights used for this modeling are considered representative.

(c) Stack Gas Assumptions

Since the temperature at which a gas leaves the stack affects plume rise and therefore dispersion, two different stack temperatures were considered. Although stack temperatures range from ambient conditions to over 1000 degrees F, this analysis reflects values of 68 to 260 degrees F. The former represents ambient or room temperature conditions (e.g., from grain elevators or grinding operations). The latter represents the lower temperature rate of most combustion sources (eg. boilers, furnaces, heaters, dryers). Since the lower the temperature of emissions, the less dispersion occurs, these represent conservative assumptions.

Other modeling assumptions included a stack gas exit velocity of 5 meters per second (984 feet per minute) and a stack diameter of one foot. These modeling assumptions are considered representative.

(d) Modeling Methodology

The EPA Industrial Source Complex (ISC2) model was used together with 1973-1977 meteorological data at five different National Weather Service stations: Duluth, International Falls, Minneapolis/St. Paul, and Rochester in Minnesota, and Fargo, North Dakota. The modeling considered both rural and urban conditions assuming flat terrain.

Predicted concentrations were calculated using a polar receptor grid with 36 wind directions and downwind distances of 100, 200, 300, 400 and 500 meters.

This model was used because it is the only EPA model that includes building downwash. The 1973-1977 data was used because it was available for more stations than any other five year period.

(e) Summary of Modeling Results

MPCA staff evaluated values for each pollutant (SO2, PM-10, and NOX) for its corresponding averaging times, together with different combinations of stack height, building height, stack gas exit temperatures, land use types and meteorological conditions as described below. A copy of the data generated from the model is attached as Exhibit 5.

For NOX, the emission level at which attainment with NAAQS could still be achieved was a level above the 100 tpy major source threshold. Therefore, MPCA staff proposed the threshold for NOX be increased from 25 tpy to 100 tpy.

For SO2 and PM-10 the model for the averaging times of one, three, or 24 hours showed that it was possible for a source to violate an ambient air quality standard in a situation where the source had little or no stack height to aid in the dispersion of the pollutant. MPCA therefore took an average of worst-case tpy levels to determine that in the case of SO2 the threshold should be increased from 25 tpy to 50 tpy, and that the PM-10 threshold should remain at 25 tpy. The MPCA staff is also considering adopting a technical performance standard to require sources that emit SO2 or PM-10 to comply with a minimum stack height standard. Such a standard would further reduce the likelihood of a short-term ambient air quality violation occurring. Refer to Exhibit 5 for the complete range of values evaluated.

For CO modeling was not considered, because the ambient air quality standard for CO would not be exceeded by a stationary source with annual emissions under the major source threshold of 100 tpy. This result is accomplished by a scaling of the one hour SO_2 standard of 1300 mg/m^3, verses the CO standard of 35,000 mg/m3, and noting the factor of 10 difference.

For lead modeling was not considered, because the threshold for permitting sources emitting lead is specified as 0.5 tpy in Minnesota's SIP.

For volatile organic hydrocarbons (VOCs), under Minnesota's existing rule, VOCs were considered in permitting as an indicator for toxic emissions. Due to minimum federal requirements, under the proposed rule the toxic permitting threshold for any single toxic pollutant listed will be 10 tpy, and for any combination of toxic pollutant listed will be 25 tpy. MPCA staff believe the 10 tpy and 25 tpy thresholds replace the necessity for the current VOC permitting threshold of 25 tpy. Therefore, MPCA staff have proposed to increase the current 25 tpy VOC threshold to the minimum federal requirement for a VOC source which is 100 tpy. When a permittee calculates VOC emissions to determine state permit applicability, the permittee will be required to include fugitive emissions. In some cases, federal requirements do not require the calculation of fugitive emissions. Therefore this potentially creates two categories of VOC permits at the 100 tpy threshold.

(f) Summary of Threshold Changes.

POLLUTANT	CURRENT THRESHOLD	PROPOSED THRESHOLD
SO2	25 TPY	50 TPY
PM-10	25 TPY	25 TPY
LEAD	.5 TPY	.5 TPY
NOX	25 TPY	100 TPY (fed min)
CO	25 TPY	100 TPY (fed min)
VOC	25 TPY	100 TPY

Industry representatives on the work group verbally requested that permit thresholds in Minnesota be consistent with the minimum federal requirements. The MPCA, however, believes the proposed thresholds represent the most reasonable approach given the need to balance environmental considerations and the need to streamline permit activities of non-major sources.

d. Subpart 5. Part 70 Permits

The first sentence of this subpart states that any source with a Part 70 permit need not obtain a state permit. This is reasonable because Part 70 permits meet or exceed all the provisions of the proposed rule applicable to state permits.

The second sentence of this subpart makes it clear that a source may use a state permit to limit its emissions to levels below the Part 70 permit triggers, and thereby avoid having to get a Part 70 permit. For example, a source with a PTE 110 tpy of a non-hazardous regulated air pollutant could obtain a state permit limiting its emissions to 90 tpy. Presuming the source is in an attainment area, it would thereby fall below the definition of major source and would no longer be required to obtain a Part 70 permit under part 7007.0200. Stationary sources may wish to do this to avoid the somewhat more restrictive procedural and content requirements that apply to Part 70 permits.

6. 7007.0300 SOURCES NOT REQUIRED TO OBTAIN A PERMIT

a. Subpart 1. No Permit Required

Subpart 1 exempts certain stationary sources from the requirement to obtain a permit under this chapter. Item A exempts sources not already required to get a Part 70 or state permit under parts 7007.0200 and 7007.0250. It is reasonable to exempt other sources because parts 7007.0200 and 7007.0250 already describe those sources that, in the judgment of the federal government and the MPCA, warrant permitting. To require permits for other sources would reduce the MPCA's ability to properly and efficiently permit the more important sources.

Subpart 1, items B and C exempt sources which are explicitly exempted from Part 70 requirements at 40 CFR § 70.3(b)(4). Through this subpart the MPCA proposes to exempt these sources from the requirement to obtain a state permit too, for the same reasons that the EPA has exempted them from Part 70: namely, because it is impracticable for the MPCA, and unduly burdensome to the sources, to include them in the permit program, and the environmental benefits would not justify the effort. This is primarily due to the large number of sources (in the case of wood heaters), the one-time nature of the activity (in the case of asbestos demolition), and the complexities of determining who the permittee should be. The MPCA hereby adopts and incorporates by reference the reasoning of the EPA in exempting these sources, as set forth in the preamble to Part 70, section IV.3, at 57 Fed. Reg. pp. 32263 and 32264.

b. Subpart 2. Emission Inventory Requirement

Currently, the need to report actual emissions in the emissions inventory of Minn. Rules pt. 7019.0105[3] is linked to the need to get a permit from the MPCA. This rulemaking proposes to amend the inventory provisions so that an inventory is required if a source needs a permit under chapter 7007 OR if the source will potentially emit more than 25 tpy of a regulated pollutant. The last sentence of subpart 1 is included to bring the reader's attention to the fact that a source may now need to submit an inventory even though it no longer needs a permit (i.e., because the state permitting thresholds are being relaxed).

7. 7007.0350 EXISTING SOURCE APPLICATION DEADLINES AND OPERATION DURING TRANSITION

a. Subpart 1. Transition Applications Under This Part; Deadline Based on SIC Code

Subpart 1. A, B and C establishes a schedule for the submission of applications from every existing source in the state that is required to have an operating permit under this chapter. Part 70 requires that all such applications be submitted by a date one year after the source becomes subject to the permit program, which would be one year after the EPA approves the permit program. 40 CFR § 70.5(a)(1). The MPCA intends to submit the program to the EPA in November of 1993, and EPA has one year to review the program. 42 U.S.C. § 7661a(d)(1). The MPCA therefore anticipates EPA program approval in November of 1994, which means that all applications described under subpart 2 must be submitted by November of 1995.

Part 70 allows states to establish earlier deadlines, and as a practical matter, requires earlier submission of at least a third of the applications, because it requires states to have issued one-third of the operating permits by a date one year after program approval (i.e., November 1995, the same date it sets for application submission). 40 CFR § 70.4(b)(11)(ii). In order to meet these deadlines, and to spread the MPCA's workload out in a reasonable fashion, items A, B and C establish application deadlines of July 15, 1994, February 15, 1995, and September 15, 1995.

The first deadline should fall eight to 10 months after the effective date of the proposed rule, assuming an effective date of between September 15 and November 15, 1993. This gives the regulated community time to become aware of the new rule, to determine which deadline applies to them, and to prepare applications. The third deadline, of September 15, 1995, provides some margin of safety in case the EPA takes less than a full year to approve the state's permitting program, meaning the ultimate federal deadline would fall before November 15, 1995. The second deadline is spaced evenly between the first and third, to more evenly distribute the MPCA's workload.

The MPCA decided to divide the regulated community into industry groupings based on Standard Industrial Classification (SIC) codes for purposes of assigning application deadlines. Grouping by the type of facility is reasonable because it allows the MPCA to most efficiently target industry sectors in its outreach and education efforts in the months before the application deadlines. It also makes it more likely that news of the deadlines, and education about the rule, will be spread by industry groups themselves. Finally, if the applications for entire industry sectors all come in at the same time, MPCA engineers reviewing the applications will be able to develop an expertise in those sectors, promoting more efficient and thorough review of the applications. It is reasonable to divide the regulated community based on SIC codes because they are a widely accepted and understood means of categorizing industries based on facility type, and most facilities know or can easily determine their own SIC code.

The MPCA decided which facilities fall within which SIC codes by using a weighting criteria procedure to break apart application submittals into three relatively equal workload periods. A summary of the workload analysis is contained as Exhibit 6. First the MPCA examined the number of sources in each SIC code category and then estimated the difficulty of permitting the different groups. The SIC code list was than divided in thirds by workload. There are several general permits that were recently issued, so these SIC codes were placed in Group C, because reissuance is a lower priority. In addition, sources in SIC code 4953 were moved from category B to category A for the following reason:

Section 129(e) of the CAA specifies certain conditions about permits for solid waste incineration units. Each solid waste incineration unit for which EPA has developed emission guidelines or standards must obtain a "Title V" or Part 70 permit. This paragraph also states that each unit for which standards apply must operate "pursuant to a permit issued under this subsection and Title V" beginning 36 months after promulgation of a standard, or on the effective date of the state's "Title V" permit program, which ever is later. The effective date of Minnesota's rule is anticipated to be November 15, 1994.

On February 11, 1991, EPA promulgated emission guidelines for municipal solid waste combustor facilities with a municipal solid waste processing capacity of 250 tons per day. In Minnesota, this standard applies to four municipal waste combustors. Promulgating these emission guidelines sets in motion the conditions of Section 129 for these facilities.

The MPCA therefore proposes to require these four units to submit permit applications for their Part 70 permit by July 15, 1994. This will allow the MPCA to prepare the operating permit, required by Section 129(e), so that the facility will be in compliance with the provisions of Section 129, by November 1994.

Item D is reasonable because in some instances a source may fall into more than one SIC code, and this item identifies which deadline would then apply. Item E allows owners and operators with three or more stationary sources to delay one or more of the required applications by meeting a subsequent deadline, with MPCA permission. This is reasonable because it could be unnecessarily burdensome for an owner or operator of multiple facilities to try to file three or more applications by one of the two earlier deadlines. The MPCA does not believe there are enough owners or operators in this position to substantially effect the distribution of applications among the categories.

Item F of subpart 1 notifies readers that the application dates in the rule supersede the expiration dates of their permits. It is reasonable to require compliance with the rule date instead of a subsequent expiration date because otherwise, the MPCA would not be able to obtain all Part 70 applications by one year after EPA approval. It is reasonable to allow sources to delay applications until the rule application date, even though their previous permits may be scheduled to expire sooner, because it would be a waste of the source's and MPCA's time to require submission under the current permitting rule. Alternatively, it would be unfair to require applications under the proposed rule prior to the application deadlines because sources need a reasonable time to become familiar with the proposed rules' requirements.

In item G of subpart 1 the MPCA waives its authority to take enforcement action against the owner or operator of a stationary source for failure to obtain a permit under the existing rule if the owner or operator files a timely permit application under the new chapter, with two exceptions. The MPCA decided to provide this waiver in an effort to get all sources into compliance with the new permit requirements. Despite the fact that the existing permit requirements have existed for many years, the MPCA believes that there are a substantial number of sources not currently aware that they need permits. The MPCA hopes to reach many of these sources with the outreach and education efforts that will accompany the new rule. Without the waiver, the MPCA is concerned that newly-aware sources will choose not to apply for permits for fear of being subject to an enforcement action for failure to have a permit under the existing rule. This one time window to apply under the waiver is intended to minimize that concern and encourage as many sources as possible to now enter the permitting system, during the transition to the new rule.

However, as noted in item G, subitem (1), this waiver does not apply to an owner's or operator's failure to obtain a permit required by the federal new source review programs. The MPCA is required by federal law to enforce these programs, and it would exceed the MPCA's authority to apply the waiver to them. In addition, the waiver does not apply to any owner's or operator's failure to obtain an amendment before modifying a permitted stationary source. The waiver is intended to encourage sources that have never been part of the permitting process, and which the MPCA might otherwise not know about, to come forward. Applying the waiver to violations at permitted facilities would not serve that purpose.

b. Subpart 2. Compliance with Permit or Applicable Requirements During Transition

Subpart 2, item A effectively extends the life of a permit issued under the existing rule until a new permit is issued under the new rule. This is reasonable because there will in many cases be a lag time between when a permit is scheduled to expire and when a new one can be issued. This subpart ensures that the source will continue to operate under the terms of the existing permit. Item B of this subpart tells applicants to operate their sources in compliance with applicable requirements until a permit is issued. Sources would be required to comply with applicable requirements anyway, but this item reminds them that such compliance is required even though they do not yet have a permit. (It stands in contrast to part 7007.1450, subpart 8, which requires permittees awaiting a minor or moderate permit amendment to operate in compliance with both applicable requirements and the proposed permit conditions in their application, if they proceed with the modification prior to getting the amendment.)

c. Subpart 3. Application Shield

Subpart 3, item A, establishes an "application shield," as required by 40 CFR § 70.7(b), stating that sources that have applied for a timely and complete permit will not be deemed in violation of the prohibition in subpart 1 while the application is pending. (But see the subsequent discussion of subpart 3.) In the context of the federal rule, which assumes that a new operating permit program is being established where there was none, this provision is particularly important; without it, hundreds of sources would immediately be in violation of subpart 1 when the rule became effective. In Minnesota, this provision is of much less significance, because the majority of sources which need permits under the proposed rule should already be operating under permits issued under the existing rule. However, because some sources will be required to obtain permits under the proposed rule for the first time (i.e., certain toxics sources), the application shield is still useful.

The proposed rule limits the applicability of the application shield to the continued operation of sources already in operation when the rule becomes effective. This limitation is necessary to prevent sources from modifying existing facilities or constructing new facilities without obtaining a permit under the rule, which is currently illegal and which, in many cases, will remain illegal under the proposed rule. It deviates from the federal language in this respect because the federal language does not account for pre-existing permit programs such as Minnesota's which already requires preconstruction and operating permits.

Item B of subpart 3 is required by 40 CFR § 70.7(b).

d. Subpart 4. Preservation of Enforcement Authority

Subpart 4 warns the reader that the MPCA may still take enforcement action for earlier violations of the permit provisions being repealed by the proposed rule, or for violations of permits issued under that rule. The MPCA's preservation of its authority to enforce the repealed rule is consistent with Minn. Stat. § 645.35 which sets forth the same general principle. This subpart is reasonable because it maintains continuity between the existing rule

and the proposed one by keeping the currently existing permits enforceable. It avoids the creation of a general amnesty for violations of the existing permitting rule, which would be unnecessary and unfair, but refers the reader to a more limited amnesty provision set forth in part 7007.0350, subpart 1, item G. Because the existing rule is part of Minnesota's federally-approved SIP, the rule and some of the permits issued under it are also federally enforceable. The last sentence is intended to prevent any implication that the rule limits EPA's ability to enforce the repealed rule and existing permits.

e. Subpart 5. Acid Rain Sources

Subpart 5 notifies permittees that sources subject to Phase II acid rain permits are required to submit a Phase II permit application to the MPCA by January 1, 1996, for SO_2 and January 1, 1998, for nitrogen dioxide. This provision is reasonable because it is required under 40 CFR § 70.5(a)(1)(iv). The second sentence is in recognition of the fact that the MPCA may not yet have acted on the applications due from these sources under subpart 2, by the time the deadlines in this part come about.

8. 7007.0400 PERMIT REISSUANCE APPLICATIONS AFTER TRANSITION; NEW SOURCE AND PERMIT AMENDMENT APPLICATIONS

a. Subpart 1. Requirement for an Application

Subpart 1 provides that applications for new, or amended permits and reissued permits after the transition period shall be considered timely if they meet the requirements of this part. It is reasonable to define timely in this subpart because other provisions of the proposed rule depend on whether or not a timely application has been submitted, such as the application shield language of part 7007.0350, subpart 3 and the continuation of an expiring permit under part 7007.0450, subpart 3.

b. Subpart 2. Permit Reissuance After the Transition Period

Subpart 2 requires that stationary sources apply for reissuance of a permit at least 180 days before the expiration of the existing permit, unless the permit specifies that the application must be submitted sooner. For Part 70 permits, this is mandated by 40 CFR § 70.5(a)(1)(iii). The MPCA is applying the same deadline to state permits for simplicity and consistency.

Subpart 2 allows the MPCA to specify in a permit that a sooner reapplication is needed to minimize the possibility of expiration, but no sooner than nine months prior to the expiration date. 40 CFR § 70.5(a)(1)(iii) allows the MPCA to require reapplication up to 18 months prior to the expiration date. Id. However, applications submitted 18 months prior to expiration will have to be made so far in advance of reissuance that they are likely to require repeated amendments to keep them up to date. Requiring reapplication nine months prior to

expiration, where necessary, reduces this problem and is adequate to ensure reissuance prior to expiration in almost all instances. In those few cases where the MPCA is unable to reissue the permit before the date on which it is scheduled to expire, the permit continuation provisions of part 7007.0450, subpart 3, will ensure that the permit does not expire.

c. Subpart 3. New Permits and Amendments to Existing Permits

Subpart 3 allows sources to submit an application at any time for a new stationary source or a permit amendment. It is at the stationary source's option when to file the application because it cannot begin actual construction on the new source or modification until it has received the permit (except as specifically provided otherwise in the rule). Like the existing rule at Minn. Rules pt. 7001.0040, the proposed rule recommends applying 180 days before the planned date of commencing the new construction or modification. However, prospective applicants are also warned that the MPCA has up to 18 months to take final action on the permits or amendments under part 7007.0750, subpart 2, to prevent any inference that the MPCA is certain to take final action within 180 days. If the reason for the reapplication is the promulgation of new federally applicable requirements, the applicant is required to apply for an amendment within nine months of promulgation of the new requirement. This is reasonable because it gives the MPCA time to review and issue the amendment within 18 months of the promulgation of the new federal requirement, as required by 40 CFR § 70.7(f)(1)(i).

9. 7007.0450 PERMIT REISSUANCE APPLICATIONS AND CONTINUATION OF EXPIRING PERMITS

a. Subpart 1. Reissuance Applications

Subpart 1 provides that permit reissuance requires the same procedural requirements that apply to initial permit issuance. This provision is required by 40 CFR § 70.7(c). To avoid confusion and inconsistency, the same requirement is applied to reissuances of state permit, though it will seldom actually apply because most state permits will not expire.

b. Subpart 2. Inclusion of Certain Terms in a Reissued Permit

Subpart 2 states a reissued permit shall include any Title I condition. This is reasonable because Title I conditions, as defined in part 7007.0100, do not expire. If the permit is to reflect all air emission conditions applicable to the permittee, it must reflect Title I conditions.

c. Subpart 3. Continuation of an Expiring Permit

Subpart 3 extends the legal life of a permit beyond its scheduled expiration date if the permittee has submitted a timely and complete application for a permit reissuance, except when the MPCA makes the findings listed in this subpart. This subpart is reasonable because it satisfies the requirements of federal law at 40 CFR § 70.4(b)(10), and continues the terms of the existing state rule at Minn. Rules pt. 7001.0160. By not extending a permit under the circumstances described in items A, B, and C, the rule creates a strong incentive to remedy any noncompliance and to cooperate with the MPCA in reissuance. It also makes this rule consistent in this regard with past MPCA practice for air permits and with continuing MPCA practice for other permits which will continue to be subject to Minn. Rules pt. 7001.0160.

10. 7007.0500 CONTENT OF A PERMIT APPLICATION

a. Subpart 1. Standard Application Form and Required Information

Subpart 1, item A, requires the applicant to submit an application on a standard application form provided by the MPCA. In addition, an applicant must provide all information necessary for the MPCA to determine the applicability of, or to impose any applicable requirement, or to evaluate the fee amount required under the schedule approved pursuant to chapter 7002, regardless of whether the application requests it. These requirements are mandated by 40 CFR § 70.5(c).

Members of the workgroup representing industry were concerned about the fact that the applicant has the obligation to determine what the applicable requirements are for their sources. However, this provision is specifically mandated by 40 CFR § 70.5(c) and by the long-standing legal principle that stationary sources are expected to be aware of what laws apply to their activities. Recognizing how difficult that can be in this complex area of regulation, the MPCA has provided the applicant in item B the option of a pre-application meeting in order to help address this concern, and directs small businesses to a source of assistance provided under state law. In addition, the MPCA is moving forward with the production of an application manual to assist applicants in identifying the applicable requirements to which they are subject, and in completing the application. The MPCA's goal is to have the manual completed by the time the rule is finalized.

Item C points out that additional requirements under the federal new source review programs must still be complied with in applications that will be subject to new source review. The operating permit program requirements of federal law do not repeal the requirements of the federal new source review programs, but merely supplement them. Because the proposed rule provides for the issuance of consolidated permits authorizing both construction and operation, it is reasonable to clarify that additional requirements will still apply to permits subject to new source review.

Item D allows applicants to omit from their applications information showing that they are not violating ambient air standards, unless the MPCA requests it. In order to show that a source's emissions do not threaten ambient standards, the source would have to undertake complex and expensive computer modeling. However, that sort of information is generally not needed unless the source is in or near a nonattainment area and emits a substantial amount of the pollutant for which the area is in nonattainment. Because such situations are the exception rather than the rule, it would be unduly burdensome to require sources to routinely provide this information, and it would be inefficient for the MPCA to spend time reviewing it. Where it is needed, it will be requested.

Item E is provided to clarify that the MPCA is not waiving its statutory authority to collect additional information from applicants.

b. Subpart 2. Information Included

Subpart 2 details the information required of the applicant on the standard application form.

Item A requires identifying information as required by 40 CFR § 70.5(c)(1). This item also specifically requires information about both owners and operators, and identification of the person who prepared the permit, consistent with existing requirements of Minn. Rules § 7001.0050, items A, B, and C. It is reasonable to require information about both owners and operators because the obligations to obtain a permit, and most applicable requirements, apply to both parties. It is reasonable to require identification of the person preparing the permit application to facilitate permit review.

Item B requires the information required by 40 CFR § 70.5(c)(2).

Item C requires emissions-related information as mandated by 40 CFR § 70.5(c)(3). The first sentence of subitem (1) reflects the requirements of 40 CFR § 70.5(c)(3)(i). The second sentence, allowing certain applicants for state permits to provide information only about the units that make them subject to the requirement for a state permit is reasonable because the MPCA does not need any additional information in those circumstances. In the identified circumstances, the sources are so small that they do not meet the state permit thresholds, and the only reason the MPCA requires them to have permits is to facilitate enforcement of the federal regulations to which they are subject. It is therefore reasonable to limit their application requirements to the relevant units. The third sentence, regarding fugitive emissions is mandated by 40 CFR § 70.3(d).

Subitem (2) sets forth the MPCA's approach toward emissions from insignificant activities. The reasonableness of this approach, which is based on the federal requirements of 40 CFR § 70.5.(c), is explained in the section by section analysis under part 7007.0150, subpart 4.

The first sentence of subitem (3) requires information as mandated by 40 CFR § 70.3(c)(ii). The second sentence provides more detail on the type of information being asked for. It is reasonable to require this information because it has a direct bearing on the dispersion rates of emitted pollutants, and therefore on the effect of emissions on the ambient air. The information is also necessary to help determine permitting applicability.

The first sentence of subitem (4) requires information mandated by 40 CFR § 70.3(c)(iii). The second sentence clarifies that the application shall provide potential emissions, which are reasonable to require because so many applicable requirements, and the terms of this proposed chapter, are based on potential emissions. The third sentence requiring the inclusion of what the emission limits would be under applicable requirements is consistent with the general requirement that applicants know the applicable requirements to which they are subject. It also enhances the efficiency of permit review and drafting.

Subitem (5) requires that the permittee provide information, including how the calculation was made, on actual emission rates unless the permittee has just submitted an emissions inventory as required by part 7019.0105, which would provide the same information. It is reasonable to require information on actual emissions rates because it helps the MPCA determine applicable requirements, ambient air impacts, and options in permit drafting.

Subitem (6) requires information mandated by 40 CFR § 70.5(c)(3)(iv).

Subitem (7) requires the information mandated by 40 CFR § 70.5(c)(3)(v). It also requires the applicant to provide the design operating efficiency of the air pollution control equipment, which is reasonable because it directly effects actual emissions, and because the permit may need to address this. Applicants are required to identify on-site control equipment not in use because, upon completion of a currently planned MPCA rule requiring use of all on-site control equipment, this equipment will need to be exempted by the permit. This information also helps in determining potential emissions under the permit. And the inclusion of the control efficiency is necessary to demonstrate compliance.

Subitem (8) requires the information mandated by 40 CFR § 70.5(c)(3)(vi).

Subitem (9) requires the information mandated by 40 CFR § 70.5(c)(3)(vii).

Subitem (10) requires the information mandated by 40 CFR § 70.5(c)(3)(viii).

Item D of subpart 2 requires the applicant to include information regarding applicable requirements and test methods as mandated by 40 CFR § 70.5(c)(4), with some additional specificity provided for clarification. The application manual which the MPCA intends to publish will include a checklist to assist applicants in determining which applicable requirements and test methods may apply to them, as per the request of the workgroup.

Item E of subpart 2 requires information mandated by 40 CFR § 70.5(c)(5). The second sentence is added because the MPCA recognizes that it may be difficult for the applicant to predict what information will fall into this category.

Item F of subpart 2 requires the information mandated by 40 CFR § 70.5(c)(6).

Items G and H allow the applicant to take advantage of two of the federally-mandated options often referred to as "operational flexibility." A major underlying principle of the 1990 Amendments to the CAA is that the permit program should allow reasonable flexibility to permitted sources:

> The operational flexibility provision contained in Title V must be implemented carefully and fairly so that a source can respond quickly to changing business opportunities while, at the same time, the permitting authority is assured that the source will meet all the applicable requirements." Preamble to 40 CFR Part 70, 57 Fed. Reg. p. 32255.

The federal rules allow two types of trading, one which states must provide and one which the states may provide if allowed in their SIP. 40 CFR § 70.4(b)(12)(ii) and (iii). Item G allows applicants to participate in the type of trading which states must provide, namely, emissions trading for the purposes of complying with a federally-enforceable emissions cap established in the permit independent of or more strict than otherwise applicable requirements. Item G requires information mandated by 40 CFR § 70.4(b)(12)(iii). The proposed rule does not allow the other type of trading because the Minnesota SIP currently does not provide for it.

Part 70 requires the state program submittal to include a provision ensuring that all alternative operating scenarios identified by the source are allowed by the permit. 40 CFR §§ 70.4(d)(3)(xi) and 70.6(a)(9). This requires the source to plan ahead for the five years the permit will be in effect. Item H implements this requirement.

Part 70 allows states to issue permits authorizing operation in more than one location during the term of the permit, under certain circumstances. 40 CFR § 70.6(e). Item I allows the applicant to request such a permit.

Part 70 requires sources subject to it to submit compliance plans and schedules with their applications. The proposed rule does not impose the detailed compliance requirements of Part 70 on state permits, but does require applicants for state permits to describe their compliance status under item J. It is reasonable to require this information from state sources to assist the MPCA in tracking compliance and bringing noncomplying sources into compliance. It is reasonable not to require a complete compliance plan from state sources because the sources in question are typically smaller than Part 70 sources, and requiring a complete compliance plan could be unduly burdensome. This provision is also reasonable because it allows the state more flexibility in dealing with these noncompliance issues.

Item K incorporates the compliance plan requirements of 40 CFR § 70.5(c)(8), imposing them only on Part 70 sources. The proposed rule requires a statement of the status at the time of application, and a schedule for remedying anything with which the source is out of compliance at the time of application. This is in contrast to the federal requirement which applies at the time of permit issuance. It is reasonable to impose this requirement at the time of application, because otherwise the applicant is forced to guess when the permit will be issued, and to determine what its compliance status will be then. During the transition period, the lapse between application and issuance could be years, making it particularly difficult to project compliance status. Moreover, if the source is out of compliance at the time it applies with any law enforced by the MPCA, the MPCA has an interest in knowing that immediately so it may begin steps to bring the source back into compliance.

Item K, subitem (1) requires applicants to include in the description of the methods used to determine compliance, required by 40 CFR § 70.5(c)(9)(ii), information about air pollution control equipment operation and maintenance. This is reasonable because such operation and maintenance is crucial to proper operation of control equipment, and therefore to the proper estimation of emissions. This subitem also requires the applicant to identify any past modifications which should have been subject to new source review but were not. This is reasonable because the source cannot currently be in compliance without conducting that new source review retro-actively to ensure that the modification meets applicable requirements. It is reasonable to specify that requirement here because applicants might easily overlook the need to conduct a review of past modifications to determine current compliance status.

Item L requires Part 70 applicants to propose a progress report schedule if they are subject to a compliance schedule or if they are required to monitor more than every six months. This implements the requirements of 40 CFR §§ 70.5(c)(8)(iv) and 70.6(a)(3)(iii)(A). The MPCA is not imposing this requirement on sources required to obtain state sources they are not subject to the compliance schedule requirement nor to as stringent reporting requirements.

Item M requiring a proposed schedule for submission of at least annual compliance certifications implements the requirements of 40 CFR § 70.5(c)(9(iii). It is only imposed on Part 70 sources because, while state sources are required to submit compliance certifications, they may be less often than annually.

Item N requires the applicant to state its compliance status under the Minnesota Toxic Pollution Prevention Act and with respect to the toxic chemical release form requirements of federal law. These laws are not applicable requirements, so the requirements of item K do not apply. It is reasonable for the MPCA to require applicant to provide this information in order to foster compliance with these environmental programs. Also, given the expanding role of the MPCA in toxics regulation, it has an interest in ensuring that sources have studied their toxic emissions to the full extent required by law, so that it is better able to provide the information required by the MPCA.

c. Subpart 3. Application Certification

Subpart 3 requiring that a responsible official certify the application and other submittals for truth, accuracy and completeness is required by 40 CFR § 70.5(d). This subpart applies the requirement to both owners and operators, if they are different, because both parties are subject to the permitting requirements of Part 70 and this chapter, and are jointly subject to most applicable requirements. This approach is consistent with the existing requirements of Minn. Rules pts. 7001.0060, item D and 7001.0070.

d. Subpart 4. Title IV Source Application

Subpart 4 imposes special requirements on sources subject to the acid rain provisions of Title IV of CAA, as required by 40 CFR §§ 70.5(c)(8)(v) and 70.5(c)(10).

e. Subpart 5. Environmental Review

Subpart 5 requires the applicant to include in the application any environmental review statement or worksheet required by state or federal law. This is consistent with existing state law at Minn. Rules pt. 7001.0050, item G, and with the purpose of the environmental review requirements, which are designed to allow government decisionmakers to consider a broad overview of the environmental impacts of a project before they take action. The last sentence recognizes that the environmental review process may be very lengthy, and allows applicants to request the MPCA to begin processing a permit application while the process is underway. While the timelines of part 7007.0750 will not be triggered until the complete application is filed, the MPCA will still be subject to the rules of the Environmental Quality Board requiring final action on a permit application within 90 days of determining the adequacy of a final environmental impact, in most cases. Minn. Rules pt. 4410.2900.

11. 7007.0550 CONFIDENTIAL INFORMATION

a. Subpart 1. Confidential Information

This part notifies readers of the provisions of existing law that will govern how and whether they may obtain confidential treatment of submitted information. It is reasonable to provide this information because permit applications frequently must include information which applicants wish to keep confidential as trade secrets or for other reasons.

12. 7007.0600 COMPLETE APPLICATION AND SUPPLEMENTAL INFORMATION REQUIREMENTS

a. Subpart 1. Complete Application

Subpart 1 reflects the requirements of 40 CFR § 70.5(a)(2) regarding completeness of an application.

b. Subpart 2. Duty to Supplement or Correct Application

Subpart 2 reflects the requirements of 40 CFR § 70.5(b) regarding the applicant's duty to supplement or correct an application.

13. 7007.0650 WHO RECEIVES AN APPLICATION

a. Subpart 1. Application Submittal

Subpart 1 specifies who receives a permit application and how many must be submitted. It is reasonable to require two copies of all applications because the applications will be reviewed by both the permitting unit and the compliance and enforcement units of the MPCA Air Quality Division. It is reasonable that the MPCA may request additional copies for the EPA administrator, affected states, and other governmental entities reviewing the application, or to require the applicant to send applications to them directly, because these parties have a right to review the applications under Part 70 or other laws. 40 CFR § 70.8(a)(1). Other governmental entities with a legal right to review the application may include, for example, Indian tribes, Canadian provinces, or U.S. federal land managers with rights under treaties or federal new source review programs.

b. Subpart 2. Computerized Application Submittal.

Subpart 2 allows the submission of information in appropriate computer-readable form to promote efficient processing of the information, and to allow the MPCA to more efficiently share the information with EPA. See 40 CFR § 70.8(a)(1). While the MPCA may allow fewer printed copies of the application under these circumstances, the certification must still be on paper because it must include the responsible official's signature.

14. 7007.0700 COMPLETENESS REVIEW

a. Subpart 1. Completeness Determination

Subpart 1, item A provides that the MPCA shall acknowledge the receipt of an application, other than a minor amendment application, in writing within one week of receiving it. The workgroup thought this would be beneficial to applicants to ensure that the permit application was received by the MPCA, and to let the applicant know when the 60 day review period begins.

Item B implements the completeness determination requirements of 40 CFR §§ 70.5(a)(2) and 70.7(a)(4). The last sentence is provided to prevent any suggestion that the MPCA loses its authority to obtain additional information from the applicant after the completeness determination.

Many members of the workgroup expressed concern about the MPCA taking 60 days for the completeness review. From a business competiveness standpoint, timeliness in receiving a permit is very important; it is one of many factors weighed in deciding where to locate a business. The work group suggested a 30 day review period for completeness determination of a permit application.

At the March 22 public comment hearing, the Chamber of Commerce proposed that the completeness review period be 15 days, asserting that this is sufficient time to determine completeness if the review process is simplified, the application form is clear and the application manual is precise in clarifying exactly what constitutes a complete application.

The EPA originally called for a 30 day review period, but changed the length to 60 days in their final draft. The EPA believes that 60 days is a reasonable time for completeness review; applications for major sources often involve hundreds of individual units and review may not be possible in a shorter time period. Preamble to 40 CFR Part 70, 57 Fed. Reg. p. 32272. The MPCA concurs with the EPA that 60 days is an appropriate timeframe for completeness review.

Item C requires the MPCA to identify incomplete portions of the application discovered during the completeness review. This is reasonable because if the MPCA does not notify the applicant that additional information is needed, the permit will be automatically deemed complete under item A after 60 days.

Item D allows the MPCA to request additional information if it is determined to be needed after the application has been determined or deemed to be complete. This provision is consistent with 40 CFR §§ 70.5(a)(2) and 70.7(b), and is reasonable because, given the complexity of many applications, the need for additional information may not be discovered until well into the review process. It is reasonable for the MPCA to consult with the applicant before establishing a deadline for a response to determine a reasonable response period considering source-specific factors. The last sentence of item D is provided because without it, the source may not have sufficient incentive to provide the additional information. Since the source has already commenced the modification, the MPCA has an interest in ensuring that the permit authorizing the modification is not unduly delayed.

Item E, clarifying that requests for administrative amendments are not covered by items A and B, is reasonable because a written request for an administrative amendment is not an application, and completeness determinations are required by Part 70 only for applications. The MPCA has chosen not to extend items A and B to such requests because, given the minor nature of most administrative amendments, it is not worth the administrative effort that would be required.

15. 7007.0750 APPLICATION PRIORITY AND ISSUANCE TIMELINES

a. Subpart 1. Prioritization of Applications

Subpart 1, providing that the MPCA shall give priority to applications for construction or modification, implements the requirements of 40 CFR § 70.7(a)(3). It applies to all construction and modification, not just projects subject to new source review, because delaying any such project may have economic consequences to the applicant.

b. Subpart 2. Application Processing and Issuance Deadlines

Subpart 2 provides the timelines for permit issuance, amendment, or reissuance. Part 70 generally requires the MPCA to take final action in each application for a new permit, major amendment, or permit reissuance within 18 months of receiving the complete application. 40 CFR § 70.7(a)(2). Industry representatives have strongly urged the MPCA to reduce the 18 month review period to six months, at workgroup meetings and at the March 22 public comment hearing. They based this request on the regulated community's need to remain competitive in the national and international markets. Quicker permit processing allows industry to respond more quickly to changing market demands. They also stressed the issuance deadlines should be based on the typical case and not the most controversial case.

Currently, the average time for permit issuance ranges from three to 18 months (or longer) depending on the complexity of the facility and the controversy sparked by the application. New sources and major modifications are given top priority. The MPCA does not believe it is possible, because of staff limitations, to act on all permits within a six month timeframe. While many permits can be acted on in that time frame, the MPCA believes that the deadlines must reflect not the average issuance period but, because the deadlines are legally enforceable, the longest reasonable period final action may take. Even if only a small percentage of applications cannot be acted upon within the stated timeframes, the MPCA would be exposing itself to many resource-draining lawsuits. This would make it more difficult to act on other applications in a timely way, and ultimately the MPCA's application processing priorities could be determined by who has the resources to sue, rather than on other more equitable grounds.

In items A and B the MPCA is committing to shorter timeframes for the issuance of permits. MPCA believe it is reasonable to commit itself to the shorter deadlines outlined, because when a permit is considered noncontroversial (as outlined in subitems (1), (2), and (3) of items A and B, the MPCA can act on applications immediately after the 45-day EPA review period is completed.

Item D allows the MPCA to extend the issuance deadlines in this subpart by the number of days over 30 which it takes the applicant to provide additional information. This is reasonable because 40 CFR § 70.5(b) requires a source to "promptly" submit supplemental information it becomes aware of after the permit application is deemed complete. Members of

the work group suggested the word promptly be defined. The MPCA defines promptly in this context as less than 30 days. While more than 30 days may be provided under part 7007.0700, subpart D, the MPCA will be able to postpone the issuance deadline as a result.

A provision of this sort is particularly important given that the MPCA's program combines both the construction and operating authorizations in one permit, and given that it is establishing more stringent deadlines than federal laws. The combination of construction and operating authorizations in one permit means that the MPCA will be reviewing new source review applications during the limited period allowed, which was not contemplated by federal law. It also means the MPCA is more likely to have to request the applicant to provide a substantial amount of information after the initial completeness determination. The shorter issuance deadlines, which the MPCA is imposing upon itself, means that it is even less able to absorb long periods where it is simply waiting for the applicant to complete or correct its application.

This item also allows the MPCA to extend the deadlines at the request of the applicant. This is reasonable because the deadlines are primarily for the protection of the applicant. This provision could be used to provide greater flexibility for an applicant to allow it to, for example, change its application to reflect certain changes in the planned modification, without having to start the process over by submitting a new, revised application.

Item E reflects the requirements of 40 CFR § 70.7(a)(2).

c. Subpart 3. Final Action

Subpart 3 defines the term "final action" for purposes of determining whether the MPCA has met the deadlines in this part, and for purposes of obtaining judicial review. Failure to act is deemed a denial of the application, as required by 40 CFR § 70.4(b)(3)(xi). This subpart requires the resubmittal of a revised permit or application to the EPA consistent with the requirement that the MPCA submit to the EPA the permit it proposes to issue. 40 CFR § 70.8(a)(1).

d. Subpart 4. Transition Period.

Subpart 4 provides that the timelines set forth in subpart 2 do not apply to applications processed during the three year period following EPA program approval. The state is not required by federal law to meet these deadlines, but is required to take action on applications at a rate of one-third each year, resulting in action on all permits required by Part 70 within the three years. 40 CFR §§ 70.4(b)(11) and 70.7(a)(2). Given the enormous workload faced by the MPCA during the transition period, it is reasonable to delay application of the issuance timelines until after it is over.

e. Subpart 5. Modification Installation and Operation Permits

Subpart 5 allows the MPCA to issue to a source a permit that authorizes the construction and operation of a single modification, even though the permit for the entire facility has not been issued. Generally, the MPCA will seek to issue an operating permit first,

and to amend it as the source seeks to modify its facility, rather than to issue permits in a piecemeal fashion. However, the MPCA recognizes that in many cases this could result in a burdensome and unnecessary delay to the source, and this will be particularly true during the three year period after EPA review when the MPCA is trying to issue operating permits for all Part 70 sources in the state and before it is subject to the issuance timelines of subpart 2. This subpart gives the MPCA the option of issuing more narrow permits as necessary to allow facilities to progress with modifications while they await the operating permit which will cover the entire facility. The conditions in items A, B and C help ensure compliance with the application deadlines, and ensure that this provision will only be used when the applicant needs it and when the MPCA has enough information to use it. This subpart reflects and continues the current practice of the permit program.

f. Subpart 6. Construction of Units Subject to New Source Performance Standards

The first two sentences of subpart 6, item A, allow construction, modification, or reconstruction of an affected facility under 40 CFR § 60.2 (Standards for Performance for New Stationary Sources; Definitions), upon written approval by the MPCA. This provision is reasonable because affected facilities under 40 CFR Part 60, have specific construction and compliance requirements, and therefore a construction permit is not required of an affected facility which meets the criteria contained in 40 CFR Part 60. This provision also is reasonable because it provides for a streamlined method for a permittee to make a modification at the affected facility, while ensuring compliance through the requirement to comply with 40 CFR Part 60 requirements. The requirement for MPCA approval is reasonable because it allows the MPCA to verify that the application is for the construction, modification, or reconstruction of an affected facility.

The last sentence of subpart 6, item A, prohibits the operation of an affected facility until a permit is obtained under this chapter. 40 CFR Part 60 actually allows for construction and operation when modifying, constructing, or reconstructing an affected facility. However, 40 CFR Part 60 was written before a national permit program (40 CFR Part 70) was developed. This provision is reasonable in order to comply with the requirement that all Part 70 sources operate in compliance with an operating permit after the time when a timely application is due. 40 CFR § 70.7(b). Because this provision is intended to apply both during and after the transition period, and to sources that already have permits under this chapter, it follows that no operation should commence until after the permit is issued. This provision ensures that operating conditions consistent with this rule are incorporated prior to operation of the new, modified, or reconstructed source.

Subpart 6, item B, outlines the procedure for the issuance of an authorization to construct an affected facility by the MPCA. The procedure requires the MPCA to issue the authorization to construct or an explanation why the authorization will not be granted within 60 days. The 60 days period is reasonable because it allows the MPCA to verify the applicability of the application before construction is started, and the time period is consistent with the amount of time given to the MPCA in determining completeness under part 7007.0700.

Subpart 6, item C, notifies the applicant that the provision for allowing the construction of affected sources as described in item A does not apply to changes subject to requirements under Part C (Prevention of Significant Deterioration of Air Quality) or Part D (Plan Requirements for Nonattainment Areas) of CAA. This provision is reasonable because specific construction and compliance requirements are not included in Parts C and D, like they are under 40 CFR Part 60, and because Parts C and D prohibit construction prior to obtaining a new source review permit. Therefore, a specific procedure for making changes under Parts C and D was developed and is discussed in subpart 7 below.

Subpart 6, item D, is reasonable because it warns the applicant that this subpart does not relieve them of any applicable requirements of Minn. Stat. ch. 116D (Environmental Policy Act), and is consistent with the notice given under part 7007.0150, subpart 3.

g. Subpart 7. Two-Stage Issuance of Permits Subject to Federal New Source Review

Subpart 7, outlines a procedure by which the MPCA can separate applicable preconstruction requirements under Part C (Prevention of Significant Deterioration of Air Quality) or Part D (Plan Requirements for Nonattainment Areas) of CAA from operating permit requirements of this chapter. Furthermore, this provision allows the MPCA to authorize construction of the proposed change after the requirements of Parts C and D are fulfilled. This subpart is reasonable because it gives the MPCA flexibility to issue a construction authorization as soon as the requirements of Parts C and D are fulfilled and to still meet the requirements of Part 70. If there are no changes to the permit conditions under item B, the MPCA will be able to provide the benefit of earlier construction, using the same permit, and thereby saving administrative resources.

In general, subparts 6 and 7 are the MPCA's efforts to address the main concern raised by industry, which was to allow construction to start as soon as possible. The provisions in subpart 6 and 7 give the MPCA the maximum amount of flexibility to issue construction authorizations as soon as practicable.

16. 7007.0800 PERMIT CONTENT

a. Subpart 1. Scope

Subpart 1, requiring the permit to specify the authority for each condition, is mandated by 40 CFR § 70.6(a)(1)(i). The last sentence of this subpart is to make it clear that this part outlines minimum permit requirements, but that the MPCA may impose additional and stricter ones too.

b. Subpart 2. Emission Limitations and Standards

The first sentence of subpart 2 is mandated by 40 CFR § 70.6(a)(1). In the second sentence of subpart 2, the MPCA extends into the proposed rule the provision of existing law at Minn. Rules pt. 7001.0150, subp. 2. The third sentence is mandated by 40 CFR 70.6(a)(ii).

c. Subpart 3. Emission Units Covered by Permit

The first sentence of subpart 3 establishes the general rule that permits will cover any unit to which an applicable requirement applies, or which the MPCA believes it needs to cover to protect human health and the environment. This scope of coverage for Part 70 permits follows from the requirement at 40 CFR § 70.6(a)(1) that the permit include conditions necessary to ensure compliance with all applicable requirements, and is required for major Part 70 sources by 40 CFR § 70.3(c)(1). Generally, no applicable requirements apply, the unit need not be included in the permit. However, the MPCA may also cover a unit in a permit, even if no applicable requirement applies to that unit, for purposes of protecting human health and the environment. This is consistent with the MPCA's authority under subpart 2 to address human health and the environment, and with existing law. Minn. Rules pt. 7001.0150, subp. 2.

The exception in the second sentence of subpart 3 is reasonable because for these sources, the only reason a permit is needed is to ensure compliance with federal regulations, so only the relevant units need to be addressed. The third sentence, regarding fugitive emissions, is mandated by 40 CFR § 70.3(d).

d. Subpart 4. Monitoring

Subpart 4 provides that the permit shall include the monitoring requirements mandated by 40 CFR § 70.6(a)(3)(i). Items B and C of this subpart distinguishes between Part 70 and state . Part 70 permits must meet all the requirements of 40 CFR § 70.6 (a)(3)(i). State permits need only include such monitoring if the MPCA determines it is necessary on a case by case basis considering the described factors. The Part 70 monitoring requirements do not apply to these permits, leaving the MPCA with discretion to decide what monitoring is required. Given how onerous monitoring can be, and given that it is not always warranted, it is reasonable to allow the MPCA to consider its merit on a case by case basis.

e. Subpart 5. Recordkeeping

Subpart 5 provides that the permit shall incorporate all the applicable requirements related to recordkeeping as mandated by 40 CFR § 70.6(a)(3)(ii). Item B of this subpart describes a recordkeeping requirement imposed by parts 7007.1250 and 7007.1350, which allow insignificant modifications and modifications which contravene certain permit terms, but require concurrent recordkeeping. It is reasonable to add that requirement here so that all recordkeeping requirements can be located in the same place in the permit.

f. Subpart 6. Reporting

Subpart 6 provides that the permit include reporting requirements as specified in Part 70, and continues the requirements of current state rules. Item A, stating when a "deviation" or noncompliance must be reported, is an amalgam reflecting the requirements of 40 CFR § 70.6(a)(3)(iii)(B) and Minn. Rules pt. 7001.0150, subp. 3, items K and L. Combining the two sets of requirements, which address the same subject, allows the MPCA to meet federal requirements and remain consistent with the current law, which will continue to apply in the non-air permit context.

Item B of subpart 6, requiring progress reports, combines the requirements of 40 CFR §§ 70.6(a)(3)(iii)(A) and 70.6(c)(4). Item C of subpart 6, requiring periodic compliance certification, combines the requirements of 40 CFR §§ 70.6(c)(5)(i), (iii) and (iv), and 70.5(c)(9).

g. Subpart 7. Prohibition on Exceedance of Allowance

Subpart 7, applying to acid rain sources regulated under Title IV of CAA, is mandated by 40 CFR § 70.6(a)(4).

h. Subpart 8. Fee Requirement

Subpart 8, providing that the permit shall require payment of annual fees due under Minn. Rules pt. 7002.0025, is mandated by 40 CFR § 70.6(a)(7).

i. Subpart 9. Additional Compliance Requirements

Subpart 9 lists the elements that all permits shall contain with respect to compliance, as mandated by 40 CFR § 70.6(c)(2). Item A, subitem (3), specifying that reasonable times for inspection include any time the stationary source is operating, is necessary to avoid any implication that the MPCA may not inspect a source during evening or weekend hours. The MPCA needs to retain the ability to make such inspections to ensure that sources continue to comply during those hours.

j. Subpart 10. Emission Trading

Subpart 10 provides for emissions trading as mandated by 40 CFR § 70.4(b)(12)(iii). The limitations in the second sentence of item A reflect the requirements of the first sentence of 40 CFR § 70.4(b)(12). The language of item A, subitem (2) is intended to ensure that the trades are in compliance with all applicable requirements, as required by Part 70, Id., and 40 CFR § 70.6(a)(10).

k. Subpart 11. Alternative Scenarios

Subpart 11 provides for inclusion of alternative scenarios in a permit as mandated by 40 CFR §§ 70.6(a)(9).

l. Subpart 12. Operation in More Than One Location

Subpart 12 allows sources to operate in more than one place during the course of the permit, as allowed by 40 CFR § 70.6(e). It is reasonable to allow sources to operate in more than one place as long as the MPCA can assure compliance with applicable requirements in each location. This subpart adds a requirement that the permit specify the geographic areas in which the source is authorized to operate, and requires 20 days notice of each move instead of 10. Both provisions are needed to ensure that the source does not worsen pollution problems in areas such as nonattainment areas. In addition, the 20 day requirement is mandated in the Part 70 rule.

m. Subpart 13. Permit Duration

Subpart 13 requires permits to specify their duration, in partial fulfillment of 40 CFR § 70.6(a)(2). Part 7007.1050, Duration of Permits, addresses this requirement more directly.

n. Subpart 14. Operation of Control Equipment

Subpart 14, requiring that permits issued by the MPCA shall specify operating and maintenance requirements for each piece of control equipment at the stationary source, is reasonable because the control efficiency of the equipment, and therefore the source's ability to comply with emission limits, is directly related to the proper operation and maintenance of control equipment.

o. Subpart 15. Terms to Include in Reissuance

Subpart 15, requiring the permit to identify the terms that must be included in reissuance of the permit, is reasonable to ensure that the terms which the MPCA is obliged to include in a reissued permit, such as Title I conditions, can be easily identified when reissuance occurs.

p. Subpart 16. General Conditions

Subpart 16 provides the general conditions that must be included in all permits. It satisfies the requirements of 40 CFR § 70.6(a)(6) and continues the general conditions from existing law at Minn. Rules pt. 7001.0150, subp. 3. Items A through F establish general conditions required by 40 CFR § 70.5(a)(5) and (6). Items G through O are a continuation of existing law at Minn. Rules pt. 7001.0150, subp. 3, items A, B, D, F, G, H, J, N and O, with minor amendments to adapt them to the context of the proposed rule. (Other general conditions of the existing rule have not been included in this subpart because they are covered elsewhere in the proposed rule.) The last sentence of item K of the proposed rule includes a new sentence explicitly prohibiting tampering with monitoring devices to make the item consistent with the existing criminal provisions of Minn. Stat. § 609.671, subd. 9(2).

17. 7007.0850 PERMIT APPLICATION NOTICE AND COMMENT

a. Subpart 1. Technical Support Document

Subpart 1 states that MPCA shall develop a statement setting forth the legal and factual basis for the draft permit conditions. This is mandated by 40 CFR § 70.7(a)(5).

b. Subpart 2. Public Notice and Comment

Subpart 2, item A, subitem (1) explains what notice the MPCA will give the public before issuing, reissuing, or making a major amendment to any Part 70 permits. These provisions implement the requirements of 40 CFR § 70.7(h)(1). Subitem (1)(b) was added to the federal requirements so that the public would have one place where they could check for notices, instead of scanning all the local newspapers or being on a general mailing list.

Subpart 2, item A, subitem (2) details the information which the notice shall contain, as required by 40 CFR § 70.7(h)(2).

Subpart 2, item A, subitem (3) implements the 30-day notice requirement of 40 CFR § 70.7 (h). It makes public comments received under this subpart subject to the requirements of existing law at Minn. Rules pt. 7001.0110 so that they will include the information most relevant to the MPCA in the most helpful format. This is a continuation of existing state rules applicable to air permits, and it makes comments received pertaining to air permits in the future subject to the same requirements as those received pertaining to other types of permits issued by the MPCA.

Subpart 2, item A, subitem (4) implements the recordkeeping requirement of 40 CFR § 70.7(h).

In subpart 2, item B the MPCA describes when it will follow the procedures of item A, subitems (1) to (3), for state permits. The MPCA proposes to follow these procedures before every issuance and reissuance of a state permit, in order to make all state permits federally enforceable, as discussed in the section IV.A.4. of this SONAR addressing the reasonableness as a whole of the rule. In the case of major amendments to state permits, the MPCA proposes following these procedures only if the major amendment establishes or changes a permit term designed to limit the application of a federal requirement, or if it authorizes a Title I modification, and if the EPA requires the MPCA to provide the Notice. This is reasonable because these types of major amendments change or establish the provisions which the EPA is most interested in making sure are federally enforceable.

Subpart 2, items C and D require the MPCA to give public notice of minor, moderate or major amendments to state permits if the MPCA has specific reason to believe that there is significant public opposition to the proposed amendment. As a general matter, public notice for such amendments would not be required (except as specified in item B), because the presumably minimal amount of public interest in the amendment would not justify the additional work and delay of following the public notice procedures. However, where the

MPCA is aware of significant public opposition to an amendment, the presumption of minimal public interest does not apply. These provisions will allow members of the public who are interested in the amendment to present their viewpoint to the MPCA. This would not only give the MPCA the benefit of these viewpoints while it considers the application, but would provide for a means of resolving disputes over amendments that is more timely and efficient than judicial challenge. If a judicial challenge were to occur nonetheless, it would be based on a much more complete administrative record.

Subpart 2, item D, subitem (2) limits the MPCA's ability to subject a proposed minor amendment to judicial review to the first 15 days after the application is filed, so that the applicant may take advantage of the ability to proceed with the modification after that point (as allowed by part 7007.1450, subpart 7) free of the risk that it will be interrupted for this purpose. If the applicant has proceeded with the modification in the few days between when it is allowed to proceed and before the 15 days lapses, it will be required to cease construction. This is reasonable because it makes the public comment period, and any requested public meeting or hearing, more meaningful if work is not proceeding on the modification. It is reasonable for the MPCA to consult with the source before requiring it to cease construction so that it can minimize disruption to the source.

Similarly, the MPCA will not be able to make a proposed moderate amendment subject to the public notice provisions after it has issued a letter of approval authorizing construction. By the time such a letter is issued, the MPCA will have had reasonable time to determine whether it needs to invoke the authority of this item. After it is sent, the recipient is entitled to assume that it may proceed with construction without risk of having to stop for purposes of public review.

Subpart 2, item E provides an easily accessible and easily maintained list through which interested parties can be kept informed of ongoing permitting activities in cases where a formal public notice procedure is not required.

c. Subpart 3. Requests for Meetings and Hearings

Part 70 requires the MPCA to provide an opportunity for a public hearing on a draft permit, permit reissuance, or major amendment to a permit. 40 CFR § 70.7(h). Subpart 3 satisfies this requirement by allowing the public to take advantage of any of three existing types of hearings: contested case hearings, public informational meetings, and meetings of the MPCA Board. Making these options available is a continuation of existing state law applicable to air permits under Minn. Rules pts. 7000.0500, subp. 6, 7001.0120, and 7001.0130, and is consistent with the options that will continue to be available to the public regarding other type of permits issued by the MPCA.

d. Subpart 4. Additional Procedures for Permits Containing Title I Conditions

This subpart is reasonable because it notifies the public and assures EPA that additional permitting requirements will have to be compiled where Title I conditions are present.

18. 7007.0900 REVIEW OF PART 70 PERMITS BY AFFECTED STATES

As mandated by 40 CFR § 70.8(b), this part requires the MPCA to give notice of each draft Part 70 permit to any affected state on or before the date the notice is given to the public.

19. 7007.0950 EPA REVIEW AND OBJECTION

a. Subpart 1. Review by EPA

Subpart 1, under which the MPCA shall provide to the Administrator a copy of each proposed and final permit, is mandated by 40 CFR § 70.8(a) for Part 70 permits. The MPCA proposes complying with this requirement for state permits too in order to make them federally enforceable, as discussed in the section IV.A.4 of this SONAR addressing the reasonableness of this rule as a whole.

b. Subpart 2. EPA Objection

Subpart 2, allowing EPA to veto a proposed permit within 45 days, is required for Part 70 permits by 40 CFR § 70.8(c). It is applied to state permits as well to make them federally enforceable. The grounds upon which the EPA may object to Part 70 permits are set forth in 40 CFR § 70.8(c).

c. Subpart 3. Public Petitions to the Administrator Regarding Part 70 Permits

Subpart 3, regarding public petitions to the EPA objecting to a Part 70 permit, is mandated by 40 CFR § 70.8(d). The MPCA does not propose extending this provision to state permits because no such petition process is required to make state permits federally enforceable, and no such process is provided for under federal law.

d. Subpart 4. Additional Procedures for Permits Containing Title I Conditions

Subpart 4 is reasonable because it notifies the public and assures EPA that the MPCA does not see these provisions as a substitute for other provisions requiring EPA review of Title I conditions.

20. 7007.1000 PERMIT ISSUANCE AND DENIAL

a. Subpart 1. Preconditions for Issuance

Subpart 1, establishing preconditions for issuance, is drafted to meet the requirements of Part 70 and to continue the provisions of the existing state rule. Items A through E establishes the preconditions mandated by 40 CFR § 70.7(a)(1)(i) through (v). Items E, G, and H reflect preconditions currently existing at Minn. Rules pt. 7001.0140, subp. 1. Item F was added because the EPA has not approved the MPCA's authority to issue variances from any federally enforceable requirement, including SIP provisions.

b. Subpart 2. Grounds for Denial

Subpart 2 establishes the grounds for denying a permit. Items A through F continue the provisions of the existing state rule at Minn. Rules pt. 7001.0140, subp. 2. Item C slightly deviates from the existing provision (at Minn. Rules pt. 7001.0140, subp. 2, item C) by explicitly stating that submitting false or misleading information is grounds for permit denial only if it was done "knowingly." This change is to make it clear that the common event of false information being unwittingly submitted is not grounds for denial of the permit. Item F is broader than the existing provision (at Minn. Rules pt. 7001.0140, subp. 2, item G) to include failure to pay a penalty under any enforceable document as grounds for denial of the permit. Existing law only addresses failure to pay penalties assessed by an administrative penalty order (APO); it is even more important that failure to pay other types of penalties, which will typically be larger and based on more serious violations than those assessed by APOs, should be grounds for denial of the permit.

c. Subpart 3. No Default Issuance

Subpart 3, preventing default issuance, is required by 40 CFR § 70.8(e).

21. 7007.1050 DURATION OF PERMITS

a. Subpart 1. Part 70 Permits

The provisions of subpart 1 establishing the general rule that Part 70 permits will expire in five years complies with the requirements of 40 CFR 70.6(a)(2) which allows most Part 70 permits to be issued for lengths up to five years, and affected sourced permits to be issued for exactly five years. The five year duration is also consistent with existing law at Minn. Rules pt. 7001.0150, subp. 1. The provision allowing the MPCA to issue shorter permits with the permittee's consent is useful because, due to the requirement to issue all permits within a three year period, the MPCA could be faced with a situation where every five years the MPCA would face three years where it was doing all the reissuances, and two years where it was not doing any reissuances. This provision, along with many other factors, will allow the MPCA to spread its workload out more evenly across future years. Some permittees may consent to shorter permits because, for example, they are planning modifications and would need to amend their permit in fewer than five years anyway.

b. Subpart 2. State Permits

Subpart 2 makes state permits nonexpiring, except as provided in subpart 5. This deviation from existing law is reasonable in light of the expanded workload the MPCA will face under the new permitting program. Sources required to obtain a state permit will be the less environmentally significant sources, and do not require a Part 70 permit. In order to minimize MPCA time spent on such sources, and maximize the time available for the Part 70 sources, the MPCA is proposing to generally make these permits nonexpiring. MPCA staff believe that making state permits non-expiring is consistent with the effort to streamline the permit program through concentrating efforts on the permitting of major sources. By requiring the source to obtain a state non-expiring permit the MPCA will continue to conduct a

detailed evaluation of state sources. However, evaluation will be conducted on a one-time basis. This subpart is reasonable because it provides for a streamlined effort in the permitting of non-major sources, allowing the MPCA to concentrate additional resources and effort on the permitting of major sources. In addition, the MPCA is given the authority to require that an expiring permit be issued to a state source, if a determination is made under subpart 5 below.

c. Subpart 3. General Permits

Subpart 3 applies to general permits the same rationale applied to the individual permits discussed in the first two subparts, because a general permit is merely an alternative form of permit available to permittees and the MPCA. If the general permit covers any Part 70 sources, it will expire in five years. If not, it will not automatically expire for the same reasons that state permits will not automatically expire.

d. Subpart 4. Title I Conditions

Subpart 4 makes the Title I conditions of the permit permanent. As discussed in section IV.B.3. of this SONAR, Title V of CAA imposes a new set of federal requirements on top of those already imposed on states and sources under Title I of CAA. The MPCA proposes to incorporate all the requirements of Title I of CAA into the permits issued under this chapter.

Most provisions of Title I of CAA can be incorporated relatively smoothly into Title V permits, such as new source performance standards and hazardous air pollutant requirements. 42 U.S.C. §§ 7411 and 7412. However, other provisions of Title I are more difficult to integrate into Title V permits because EPA has interpreted federal law to say that expiring permit conditions are not sufficient vehicles to implement these requirements. Rather, they must be reflected in permanent permits or some other enforceable document that does not expire, such as an administrative order. In contrast, all Title V operating permits are required to terminate a certain number of years after issuance, at which time the source's right to operate also terminates. 40 CFR §§ 70.6(a)(2), 70.7(c).

The provisions of Title I that must be reflected in nonexpiring documents are those described in the definition of Title I conditions in part 7007.0100: namely, (1) requirements under the new source review programs, (2) any site-specific requirements necessary to achieve attainment with ambient air quality standards incorporated into a SIP, and (3) requirements assumed to avoid being subject to new source review. In order to accommodate the different demands of Titles I and V of CAA without having to issue separate permits, the MPCA proposes to issue permits under this rule which would have some expiring conditions and some permanent ones.

e. Subpart 5. Expiring State and General Permits

Subpart 5 sets out the circumstances under which the MPCA would make an exception to its general rule that state permits, and general permits applying only to state sources, will not expire. The first justification for making a permit expire, in item A is reasonable because

it will give the MPCA a routine opportunity to look more closely at the compliance status of the source every five years. The grounds in items B and C are reasonable because under these circumstances a nonexpiring permit is more likely to become outdated.

f. Subpart 6. Effect of Permit Expiration

Subpart 6 provides that a permit expiration terminates the sources' right to operate. This provision is required for Part 70 permits by 40 CFR § 70.7(c)(ii). This subpart applies the same restriction to state permits to avoid confusion and inconsistency, and because the provision creates a strong incentive for permittees to submit applications for reissuance on time. However, because most state permits will not expire, it will have limited application to state permits.

22. 7007.1100 GENERAL PERMITS

a. Subpart 1. Criteria

The first sentence of subpart 1 establishes the criteria under which a general permit may be issued. The MPCA is allowed to issue general permits, and to establish the criteria for them, under 40 CFR § 70.6(d)(1). The criteria described are consistent with existing state rules at Minn. Stat. § 7001.0210, subp. 2. The second sentence makes the tool of the general permit more flexible by allowing the state to use it to cover only specific portions of a source, instead of an entire one. This is reasonable because many sources may share similar units, or similar types of control equipment, and it would be efficient for the MPCA to regulate the common portions using general permits. The third sentence of is mandated by 40 CFR § 70.6(d)(1).

The MPCA is currently issuing general permits to several categories of sources under the existing state rule; this part will allow the MPCA to continue and expand the use of this very efficient regulatory tool. The use of general permits will help reduce the current MPCA backlog of permit applications. Individual permits will not have to be written for similar sources that have similar permitting requirements. Instead, a model general permit will be developed for a particular source and than applied to like sources. The MPCA is currently looking at several categories of sources for general permits, including: diesel generators, boilers, printing operations, sand and gravel pits, asphalt plants and grain elevators.

b. Subpart 2. Public Participation

Subpart 2 imposes generally the same public participation requirements on general permits as on Part 70 permits, as required by 40 CFR § 70.6(d)(1), with a few noted exceptions that logically follow from the nature of the general permit. Publication in the State Register instead of newspapers is required, because general permits will generally apply statewide; newspaper publication would require placing a notice in too many newspapers. The requirement to state the geographic area to which the permit applies continues an existing provision of Minn. Rules pt. 7001.0210, subp 5.

c. Subparts 3 and 4. EPA and Affected State Review; Issuance in General

Subpart 3 imposes EPA and affected state review requirements, on general permits when the individual permits otherwise required for the source would be subject to those provisions. Subpart 4 imposes the other provisions of this chapter on general permits in the same manner. This is reasonable because the general permit is an alternative form of permitting subject to the same requirements as individual permits whenever feasible.

d. Subpart 5. Application

Subpart 5 regarding application requirements satisfies the requirements of 40 CFR § 70.6(d)(2).

e. Subpart 6. Issuance of a General Permit to a Stationary Source

Subpart 6, allowing the MPCA to issue general permits to specific sources without additional public notice, is explicitly allowed by 40 CFR § 70.6(d)(2). This is reasonable because all the conditions of the permit have already been subject to public review under subpart 2, and additional public review would offer little new information and unduly delay the issuance of the general permits. The list provided for in the second sentence of this subpart gives the public information about who is receiving general permits without the delay in issuance.

f. Subpart 7. Permit Shield

This provision is reasonable because it is required by 40 CFR § 70.6 (d)(1).

23. 7007.1150 WHEN A PERMIT AMENDMENT IS REQUIRED

a. Subpart 1. Scope; Requirement to Get a Permit Amendment

Subpart 1, item A provides an outline to the reader of when and how changes can be made to a permit. Subpart 1 also warns the reader that Title I modifications can only be made under part 7007.1500 (major permit amendments). Lastly subpart 1, item A notifies the reader what part describes how emission changes should be calculated. This part is reasonable because it is the first section concerning modifications, and it will give the reader a road map for what parts contain what modification procedures.

The first sentence of subpart 1, item B notifies the reader that no modification is allowed at a permitted facility unless it is allowed under parts 7007.1250, 7007.1350, 7007.1450, or 7007.1500. The second sentence establishes the requirement that administrative amendments be made under part 7007.1400. The sentences are reasonable because they establish the threshold requirements to get permit amendments, if needed.

The last sentence of subpart 1, item B, states that if a change is not defined as a modification under the definition of modification, then the change does not require a permit amendment. This provision is reasonable because, as discussed in the analysis of part

7007.0100, subpart 15, MPCA staff defined modification in such a way as to include the types of changes which the MPCA believes should be accompanied by amendments (including all changes considered Title I modifications). Therefore, changes not constituting a modification are not required to comply with the modification procedures of this chapter.

The first three sentences of subpart 1, item C, inform the permittee of a notification procedure that is required prior to the installation of pollution control equipment, or the replacement of identified units with other units that emit the same or less, at a stationary source. Under this type of change the emissions would actually decrease under the installation of a new pollution control equipment unit, and decrease or stay the same under the replacement of a unit. This provision is reasonable because, since the changes would fall outside of the definition of modification, the MPCA would not otherwise be notified. The MPCA needs notification for the following two reasons:

A. the installation or replacement needs to be reflected in a permit in order to give inspectors an accurate picture of the facility through the permit; and

B. the installation or replacement may trigger new or different monitoring, recordkeeping, or reporting requirements, resulting in the need to change the permit.

The procedure outlined is essentially the same as the one required by EPA prior to certain changes that contravene a permit term, discussed in part 7007.1350. It is reasonable to require the same procedure as one already required to avoid confusion. This procedure also imposes minimal red tape and delay on the source, which is appropriate, because the MPCA does not want to discourage such environmentally beneficial behavior as that described in this item.

If new monitoring, recordkeeping, or reporting requirements are triggered, the MPCA shall initiate an amendment under the administrative amendment procedures of part 7007.1400, or if necessary, such as when a permittee objects to the use of part 7007.1400, under the major amendment procedures of part 7007.1500. It is reasonable to require this so that permits may reflect all applicable requirements.

The second to the last sentence of subpart 1, item C, warning the permittee not to use the procedure for installation of control equipment or replacement of a unit if the action constitutes a modification, is to avoid confusion about which procedure to follow if the change is described under this item but is also defined as a modification. This may happen because, for example, under the new source review programs a change may be considered a modification because future potential emissions exceed past actual emissions, even though both potential and actual emissions are being reduced by the change.

The last sentence of subpart 1, item C, is reasonable because it informs the permittee that the changes described in this subpart are not violations of a permit term, if the proper notice is provided. Without this sentence, the removal of one emissions unit and its replacement with another one that does not meet the description of the unit identified in the permit could be a violation of the permit (although this change could also be allowed under

part 7007.1350, which requires the same notification procedures). It is reasonable for the MPCA to allow such changes without requiring a permit amendment, however, because they benefit the environment.

Item D emphasizes two important limitations on all the parts that follow. The first limitation, that nothing should be read to allow a modification that would violate an applicable requirement, is reasonable because a primary goal of Title V and this proposed chapter is to ensure that sources comply with applicable requirements. Moreover, the MPCA does not have the authority to allow violations of applicable requirements through a permit amendment. The second limitation, that nothing should be read to allow the violation of a permit condition (except as provided in parts 7007.1350 and 7007.1450, subp. 8), is reasonable because it warns the reader that the changes a source may make are limited not just by applicable requirements and this chapter, but also by the terms of the permit itself. A change may be allowed by applicable requirements and this chapter, but violate a permit term, in which case an amendment would be required.

Item E is reasonable because certain types of modifications, or other changes which might not be considered modifications (like increased hours of operation), might push a source over a threshold from not needing a permit to needing one, or from needing a state permit to needing a Part 70 permit. This item makes it clear that before crossing that threshold, the source must obtain the appropriate permit. This is reasonable because otherwise the rule might be read to allow a source to cross into a new permitting category without satisfying the procedural requirements attached to that category. The second sentence is reasonable because it avoids two unintended implications of the first sentence.

24. 7007.1200 CALCULATING EMISSION CHANGES FOR PERMIT AMENDMENTS

a. Subpart 1. How to Calculate Emissions Changes

The first paragraph of subpart 1, describes how the permittee is to calculate emission increases when making a modification to a permit. The MPCA modeled the method of calculation used in this subpart after the NSPS method located in 40 CFR § 60.14. Currently, the EPA employs two main types of calculation methods under Title I. One method, used to determine if a modification is subject to new source review, involves comparing the future potential emissions of a source in tpy, with its past actual emissions in tpy. The other method, used for the NSPS program, compares the emissions rate before and after the change at the maximum physical capacity of the source in kilograms/hour.

The MPCA chose to base its method of calculation on the less complex of the two commonly used methods, which gives the MPCA and the permittee a higher degree of certainty regarding which category of modification procedures the permittee is required to follow. (The MPCA's method expresses emissions in pounds instead of kilograms because pounds is the standard unit that emission factors are expressed in). Also, using a method of calculation in lbs/hr instead of tons/year is easier to enforce; the MPCA can look at a snapshot of hourly maximum emissions before and after the change, instead of trying to determine what yearly emissions have been and would be. Finally, the tons/year method used by the new

source review program in most cases compares future potential emissions to past actual emissions. Because potential emissions are usually much higher than actual emissions, this method results in finding an increase in emissions even when the change would result in less, sometimes far less, pollution to the air. The MPCA considers this method of calculation overly conservative for its purposes in this rule (though, of course, it will continue to apply this method as required by federal law when implementing the new source review programs).

The third sentence of subpart 1 allows the consideration of physical and operational limitations on emissions, both before and after the change, if the limitations are or will be automatically required by applicable requirements, or existing permit terms, or if they are integral to the process. For example, if a source's permit limits its hourly fuel consumption rate, and that limit would continue to apply even after the change is made (for example, if the fuel limit is for the total facility), then that limit may be considered when calculating both the pre-change and post-change emission rates. The same is true of limits established by applicable requirements. It is reasonable to consider these types of limitations when determining whether a change increases emissions because, since the limitations are enforceable by law or necessary by design, the MPCA can be confident they will not be exceeded.

Subpart 1, item A, describes the location of emission factors to be used when calculating emission changes. This provision is reasonable because it gives the permittee direction to where the latest emission factors can be found, or it allows the MPCA to specify where the emission factors are located which are found to be superior to EPA Publication No. AP-42. In the future, the MPCA plans to develop a bulletin board system, so that permittees can call via computer modem and review information concerning the best available emission factors for a particular source.

Subpart 1, item B, provides the permittee with acceptable alternate methods of evaluating what impact a change has on emission increases. This provision is reasonable because, depending on the type of change proposed, the permittee may not be able to calculate emissions using the procedure outlined in subpart 1. The MPCA deviates from the NSPS calculation method here by stating in the second sentence that tests may only be used to establish pre-change emissions rates, from which post-change emission rates may be calculated. This provision is reasonable because otherwise the method would wrongly suggest that a permittee could test its emissions, make the proposed change, and then retest its emissions to determine if it should obtain a permit amendment for the change it just made. The decision on whether a change will cause an increase in emissions must be made before the change is made.

Subpart 1, item C, provides a warning to the permittee calculating a change in emissions that the method of calculating emissions under this part will not provide the required information to determine if the change constitutes a Title I modification. It is reasonable to provide this warning to prevent permittees from concluding that as long as no increase is shown using this method, the change must not be a modification.

Some workgroup members expressed concerns that the method of emission calculations required under this part would be a burden, because the permittee may have to calculate emissions using the method described in this part as well as calculating emissions using the method required to determine if the change is a Title I modification. Only those sources which are major NSR sources will need to calculate Title I emission changes. Therefore, using this approach to calculating emission modifications, and then following up with the warning noted in subpart 1, item C, is reasonable because it is less burdensome in a majority of cases and the calculated emission rate is more easily enforced in a permit.

25. 7007.1250 INSIGNIFICANT MODIFICATIONS

a. Subpart 1. When an Insignificant Modification Can be Made

The first sentence of subpart 1 gives the permittee an introduction to this part and authorizes sources to make the two types of insignificant activities described in this subpart without obtaining an amendment.

Subpart 1, item A, allows an insignificant activity modification to be made without a permit amendment if the specific change is on the insignificant activity list located in part 7007.1300. The reasonableness of this part is discussed under part 7007.1300 below.

(1) Reasonableness of Developing an Insignificant Activity Thresholds Table

Subpart 1, item B allows insignificant modifications to occur under this part, if the emission increase is below the thresholds listed in Table 1 located in 7007.1250, subpart 1, hereafter referred to as Table 1. The thresholds were developed in an effort to supplement the specific list of insignificant activities located in part 7007.1300. The main purpose for developing the insignificant modification option is to streamline the use of permittee and staff resources, by eliminating the need for permit amendments for the least environmentally significant changes. Allowing these types of modifications minimizes unnecessary paperwork for both sources and the MPCA, and reduces the need for sources to conduct analysis of all emissions sources regardless of the amount involved.

Exempting the smallest types of changes from full-fledged regulatory attention is supported by the decision in Alabama Power vs. Costle, 636 F.2d 323 (D.C. Cir. 1979), where the court found that emissions from certain small modifications and emissions of certain pollutants at new sources could be exempted from some or all PSD review requirements on the grounds that such emissions would be de minimis. The EPA relies on the Alabama Power de minimis doctrine to justify exempting insignificant activities from having to be fully described in permit applications, see Preamble to part 70, 57 Fed. Reg. p. 32284, and the same reasoning applies to exempting them from needing a permit amendment. The MPCA realizes that it would be impossible to specifically list every insignificant activity. Therefore, it was reasonable to develop a list of thresholds for the pollutants listed in Table 1.

Pollutants regulated under 42 U.S.C. § 7412 (hazardous air pollutants) were not listed in Table 1, because the EPA is in the process of determining its own de minimis thresholds for them. Once the EPA de minimis thresholds are promulgated, the MPCA intends to amend this rule to include them in Table 1.

(2) Reasonableness of the Insignificant Activity Thresholds Listed in Table 1

The insignificant activity thresholds listed in Table 1 represent 25 percent of the threshold for moderate permit amendments which are listed in part 7007.1450, subpart 2. Those thresholds, in turn, are based on "significance" levels set forth in PSD regulations, translated into pounds per hour, as discussed in the analysis of part 7007.1450. The MPCA believes the listed thresholds are reasonably conservative; by focusing on emissions in pounds per hour the MPCA is able to protect ambient air on an hourly as well as yearly basis. This approach is also consistent with one of the primary goals of the proposed rule, which is to concentrate more resources on major sources and major changes, by reducing resources focused on relatively small sources and small modifications. In the MPCA's judgment, the effect of such modifications on the environment is low enough that MPCA resources are better spent focusing more closely on larger modifications.

Subpart 1 requires use of the method of calculation set forth in part 7007.1200, which is reasonable for reasons discussed in the analysis of that section. This subpart also includes a warning to readers that modifications may be considered insignificant under this subpart, but still be Title I modifications under federal law. This is because different means of calculating increases are being used. It is useful to warn the reader of this here because a reader might reasonably assume otherwise.

b. Subpart 2. Insignificant Activity Modifications Exclusions

Subpart 2 outlines modifications which may not be made under the insignificant activity modification procedure. Item A is reasonable because, given that Part 70 prohibits the use of the minor permit modification procedures for Title I modifications, it would also prohibit the use of this subpart, which is less stringent, for those modifications. 40 CFR § 70.7(3)(2)(i)(5). Item B is reasonable because the only changes allowed that could violate a permit term are those described in part 7007.1350, and only following the procedures described there. Item C is reasonable to ensure that this rule would not purport to allow something that federal law prohibits. Item D is reasonable because otherwise, sources could divide larger projects into many smaller ones to take unfair advantage of this provision.

c. Subpart 3. Record Keeping Requirements

Subpart 3 outlines records that permittee is required to keep when making an insignificant activity change. When making an insignificant modification the permittee is not required to notify the MPCA, except when exceeding the threshold requirement of subpart 4. The permittee is simply required to keep a contemporaneous record of changes made under this part. This subpart is reasonable because the changes covered by it are insignificant enough that contemporaneous notification is not required. However, it is important that

records be kept so that the source may list the insignificant activities which require listing under part 7007.0500, subpart 2, item C, subitem (2), when it applies for reissuance of its permit. Contemporaneous records are also important so that the source may keep track of when it is required to provide notice under subpart 4, and so that the MPCA can ascertain that the modifications made under this subpart are not part of a single project. Finally, such records are important so that inspectors can determine, when inspecting a site, the changes that have been made under this part.

d. Subpart 4. Agency Notification Required

Subpart 4 outlines a procedure requiring notice to the MPCA when the permittee makes a change which, when aggregated with other changes in the same period, would exceed four times the insignificant threshold level. The procedure is reasonable because the notice allows for MPCA verification that a Title I modification has not been triggered. This is important because the thresholds are set at one quarter of the PSD significance levels (translated into pounds per hour), and modifications by major stationary sources increasing emissions above that level could be Title I modifications for which a major amendment would be required. This notice is also important because it allows the MPCA to review the changes which occurred under this part to ensure they are not part of a single project.

e. Subpart 5. Determination of a Single Project

Subpart 5 requires a permittee making more than one modification under this part to determine that the projects are not part of a single larger project. This provision is reasonable because without it a source could breakdown a modification into smaller parts in an effort to circumvent more restrictive amendment procedures.

f. Subpart 6. Enforcement Action

Subpart 6, warning the permittee that if it makes a mistake in determining that a change qualifies as a modification under this part the MPCA may take enforcement action, is reasonable because only the permittee is in a position to determine whether its actions qualify under this part. It must therefore assume the risk of misinterpretation.

26. PART 7007.1300. INSIGNIFICANT ACTIVITIES LIST

a. Subpart 1. Insignificant Activities

Part 70 allows states to adopt a list of insignificant activities which need not be described in detail on permit applications. 40 CFR § 70.5(c). The MPCA has developed such a list, as set forth in this part. It serves the dual purpose of identifying the sorts of activities and units that need not be described in the permit application, and of identifying the sorts of modifications that do not warrant a permit amendment. In both cases the goal is the same: to minimize the time spent by the MPCA (and sources) on insignificant emissions sources, so that more attention may be directed to the important ones.

The insignificant activities list developed in this part is largely a result of MPCA staff review of a list of insignificant activities proposed in a publication entitled "State Permit Programs" by the industry group Clean Air Implementation Project. The proposed list of the Clean Air Implementation Project is included as Exhibit 7. The MPCA approved for listing in this part activities which the MPCA knows to have de minimis emissions. All other activities were left out of this part, pending further consideration and possible rulemaking. This method of determining what insignificant activities to list in the rule is reasonable because it is based on MPCA experience regulating the listed activities. The insignificant activity thresholds located in part 7007.1250, subpart 1, Table 1 were developed specifically to allow insignificant modifications which were not identified on the list, making it less important to make this list comprehensive.

The public is specifically invited to submit additional information to the MPCA during the comment period of this rule regarding why additional activities should be placed on the list, or why activities on the list should be taken off. The public is hereby notified that the MPCA may add to the list in the final adoption of this rule, and that activities listed in part 7007.1300 are under particular consideration for inclusion.

The MPCA received comments from industry concerning the definition of laboratory contained in subpart 3.G. The comments noted the definition for laboratory should be more clearly stated, so that small scale activities such as teaching demonstrations would be included as insignificant activities. The MPCA agrees with this comment and has reflected the change in the proposed rule. Industry also commented that activities related to research and development laboratories (R&D Labs) should be included as insignificant activities by further expanding the definition of laboratory under subpart 3.G. The MPCA does not agree with this comment because in CAA, 42 U.S.C. § 7412(c)(7), R&D labs are specifically called out as a category for which the Administrator is to develop standards. Therefore, the MPCA has specifically not listed R&D labs as an insignificant activity. The MPCA will address R&D labs as suggested by guidance from the Administrator, when the guidance becomes available.

b. Subpart 2. Insignificant Activities Not Required to be Listed

Subpart 2 contains a list of insignificant activities which do not have to be listed in the permit application. The list in subpart 2 is reasonable because MPCA staff have determined that the activities are unlikely to impact overall emissions in the permittee's applicability analysis, and historically they have not been counted in determining applicability under state or delegated federal programs.

c. Subpart 3. Insignificant Activities Required to be Listed

The list in subpart 3 includes activities which need to be listed in a permit application for the following reasons:

- EPA requires under 40 CFR § 70.5(c) that certain types of insignificant activities which are included because of size or emission levels be listed in a permit application; and

- Insignificant activities listed in subpart 3 may in some circumstances impact the applicability analysis. For example, if a source is close enough to a threshold for a certain pollutant which would require a more restrictive permit, the MPCA could request the permittee to calculate emissions for the specific pollutant for activities under this subpart. This is reasonable because EPA requires it under 40 CFR § 70(c), and because the MPCA may need to evaluate some insignificant activities in circumstances where the source is just below a permit threshold.

The reasons for dividing this list into two subparts is further discussed in the analysis of Section IV.B.3. of this SONAR.

27. 7007.1350. CHANGES WHICH CONTRAVENE CERTAIN PERMIT TERMS

a. Subpart 1. Applicability

Subpart 1 allows permittees to make the described changes without a permit amendment. This provision is mandated by 40 CFR § 70.4(b)(12)(i) and by CAA itself at 42 U.S.C. § 7661a(b)(10). Part 70 does not affirmatively state what kind of permit terms may be contravened under this provision, but rather what kinds may not be contravened, implying that all others may be violated if the proper procedure is followed. The MPCA has similarly written this provision by describing what it does not cover instead of what it does.

Item A, preventing use of this provision to contravene permits related to monitoring, etc., is mandated by Part 70 through the definition of "Section 502(b)(10) changes" in 40 CFR § 70.2. (This is the term used by EPA to describe this category of changes, derived from the section of the 1990 Amendments where they are originally mandated.) Item B, preventing the use of this provision to exceed emission limits, is mandated by 40 CFR § 70.4(b)(12)(i). Item E, preventing the use of the provision to make Title I modifications, is mandated by 40 CFR § 70.4(15). Item F, preventing the use of the provision to make changes subject to Title IV, if prohibited by federal rules is reasonable to avoid a potential conflict between state and federal law.

Items C and D were included by the MPCA to help preserve the integrity of the permitting process. Item C, preventing the use of this provision to violate permit terms limiting hours of operation, work practices, etc., derives from item B. Since these terms are frequently used as proxies for actual emission limits, or as ways to ensure emission limits are being met, it is reasonable to protect these terms from violation under this subpart. Item D, allowing the MPCA to identify certain terms which may not be violated under this subpart, is reasonable because there may be terms crucial to ensuring compliance with applicable requirements or to ensure that public health and the environment are protected, that are not already listed in this subpart. This provision allows the MPCA to identify and protect those terms.

b. Subpart 2. Modification Procedure

Subpart 2 explains the procedures for making changes under this part. The procedure contained in this subpart satisfies the requirements of 40 CFR § 70.4(b)(12)(i). It also requires a responsible official to certify that the change qualifies under this subpart and to explain how, which is reasonable to minimize the likelihood that this provision would be abused.

c. Subpart 3. Enforcement Action

Subpart 3 warns the permittee that if a mistake is made by the permittee in determining that a change qualifies under this part, then the MPCA may take enforcement action. It is reasonable that the risk of misinterpreting this provision should fall on the permittee, because the MPCA will only have seven days notice of the proposed change. This is not sufficient time to review whether the change truly qualifies under this subpart, and of course the MPCA does not formally approve the change as it does through a permit amendment. Moreover, placing the risk of misinterpretation on the permittee ensures that the permittee will be careful in its use of this provision.

28. 7007.1400. ADMINISTRATIVE PERMIT AMENDMENTS

a. Subpart 1. Administrative Permit Amendments Allowed

Subpart 1 outlines what types of changes can be made to a permit using the administrative amendment procedure. The types of changes allowed under this part are stated in items A through H of the rule, and the reasonableness for each is discussed below. The permittee is required to initiate administrative amendments if the events in items B and E are occurring. This option for amending permits is allowed for the types of changes, and using the procedures, described by 40 CFR § 70.7(d). It also allows the MPCA to seek EPA program approval for additional similar types of changes.

Subpart 1, item A, allowing typographical errors in a permit to be corrected, is allowed by 40 CFR § 70.7(d)(1)(i). This item is reasonable because it allows for a streamlined effort for making a permit technically correct.

Subpart 1, item B, allows administrative changes to the permit for changing the name of a contact person, phone number, or mailing address listed in the permit or a similar minor administrative change. This item, allowed by 40 CFR § 70.7(d)(1)(ii), is reasonable because it allows for a streamlined effort for making a permit technically correct.

Subpart 1, item C, this provision allows use of administrative amendments to require more restrictive monitoring, recordkeeping, or reporting requirements. Subpart 2 requires that this type of amendment only be made using the administrative amendment process if the permittee consents. This provision is reasonable because it allows for a streamlined process to be used for implementing more restrictive requirements when the permittee consents to such a change. This provision includes, and expands upon, the type of amendment described in 40 CFR § 70.7(d)(1)(iii).

Subpart 1, item D, allows the MPCA to administratively amend a permit to eliminate a requirement which applies to emissions which are no longer emitted. This provision is reasonable because in allows for a streamlined process to be used for changing a permit to reflect current conditions at a source, and to eliminate conditions that have become meaningless.

Subpart 1, item E, allows for an ownership change to be initiated through an administrative amendment, provided that the written agreement verifying the transfer of responsibility has been submitted to the MPCA. The provision contained in this item is reasonable because the administrative amendment process provides for the most streamlined method to incorporate a change to a permit, needed to reflect a change in ownership. This provision is allowed by 40 CFR § 70.7(d)(1)(iv).

Subpart 1, item F, allows the incorporation of existing preconstruction review requirements into an operating permit. The option for this provision is provided for in 40 CFR § 70.7(d)(v). Since a requirement of a permit that has undergone preconstruction review has already been subject to public and EPA scrutiny, it is reasonable to incorporate it into an operating permit with the minimum amount of additional process. Because the MPCA is proposing an integrated permit process resulting in the issuance of permits covering both preconstruction and operating requirements, this provision will seldom be used.

Subpart 1, item G, allows for an administrative amendment to be used to clarify a permit term. The provision in this item is intended to be used when the MPCA and the permittee agree that a clarification of a permit term is required or would be helpful. The provision contained in this item is reasonable because the administrative amendment process provides for a streamlined method to incorporate a clarification to a permit term.

Subpart 1, item H, allows the MPCA to extend deadlines under this part, but if the deadlines are established by an applicable requirement, the MPCA may only extend the deadline if specifically delegated authority to do so by the Administrator. This provision would be useful in many circumstances, such as when a stack testing deadline must be delayed due to unpredictable Minnesota weather conditions. The provision contained in this item is reasonable because it lets the MPCA approve, without excessive procedure and delay, scheduling changes that it considers to be warranted. This approach is consistent with the general goal of Title V, and this proposed rule, to provide flexibility and reduce paperwork when it does not threaten the environment or the integrity of the program to do so.

b. Subpart 2. Initiating an Administrative Amendment

Subpart 2 provides a procedure for the MPCA as well as the permittee to initiate an administrative amendment. When a permittee initiates a request, a formal application is not required, however the permittee is required to give an explanation of the amendment required and the reason the amendment is required. The MPCA is required under this subpart to give the permittee 30 days prior notice before starting an administrative amendment process if the amendment would subject the permittee to additional requirements. This allows the permittee to object to the use of the administrative process. This procedure satisfies the requirements of

40 CFR § 70.7(d)(3), and reasonably ensures that the administrative amendments will be made based on the necessary information without imposing unnecessary procedural requirements. It is reasonable to allow the MPCA to initiate such amendments, because the MPCA has an interest in making sure its permits are complete and correct. It is reasonable to allow the permittee to object to the use of this process, because it is intended to be used only for non-controversial type amendments.

c. Subpart 3. Timeline for Final Action

Subpart 3, providing a 60 day period for final action without public notice or affected state review, is consistent with the suggested process and timeline in 40 CFR § 70.7(d)(3)(i). It is reasonable to provide a short process without outside review because the non-substantive nature of most of the amendments allowed under this part would be of no interest to the EPA, affected states, or the public. The only substantive amendments allow the MPCA to impose additional monitoring-type requirements on the permittee, and if the permittee consents there is no reason not to use this streamlined process to incorporate the requirements into the permit.

d. Subpart 4. Part 70 Administrative Amendment Submitted to EPA

Subpart 4 requires the MPCA to submit a copy of the amended Part 70 permit to the EPA, as required by the Administrator. Amended state permits are not required by this provision to be submitted to the Administrator. This subpart is required by 40 CFR § 70.7(d)(3)(ii) for administrative amendments to Part 70 permits.

e. Subpart 5. Provisions to Which Permit Shield Applies

Subpart 5 is reasonable because 40 CFR Part 70.7(d)(4) specifically provides that the permit shield may only apply to preconstruction review requirements added by administrative amendments under subpart 1, item F.

f. Subpart 6. Acid Rain Provision

Subpart 6 is reasonable because 40 CFR § 70.7(d)(2) specifically requires that administrative permit amendments to an affected source be governed by regulations promulgated under Title IV of CAA.

g. Subpart 7. When Permittee May Make Change

The first sentence of subpart 7 is reasonable because it allows the permittee to make an administrative amendment change immediately after a request is received as provided for in 40 CFR § 70.7(d)(3)(iii). The second sentence of subpart 7, requiring a new owner's or operator's compliance with the terms of the source's permit, is reasonable as a condition of allowing the transfer of the source to new owners and operators prior to issuance of the amendment. Without this sentence, the new owner or operator would not be legally bound to comply with the terms of the current permittee's permit.

29. 7007.1450. MINOR AND MODERATE PERMIT AMENDMENTS

This part describes two types of streamlined permit amendment procedures, minor and moderate amendments. The MPCA is required by 40 CFR § 70.7(e)(1) to provide "adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications." Part 70 sets forth two processes, one for "minor modifications" and one for "significant modifications," which would satisfy this requirement, but EPA allows states to "develop different types of review procedures that match the procedural elements to the significance of the change." Preamble to Part 70, 57 Fed. Reg. p. 32280. Part 70 sets forth the minimum procedures that EPA would approve. Id.

The MPCA has therefore set out to establish in this part (and in part 7007.1500) amendment procedures that are no less stringent than the procedures of Part 70, that vary based on the significance of the proposed amendment, and that still meet the federal requirement to be streamlined and expeditious. The procedures outlined below are also reasonable because it allows the MPCA to focus resources on major modifications.

Changes which the EPA would allow under the category of "minor modifications" have been divided into minor and moderate amendments in this part. Changes which the EPA considers "significant modifications" are handled as major amendments in the next part.

a. Subpart 1. Minor and Moderate Amendments Exclusions

Subpart 1 states specific exclusions that prohibit the use of the minor and moderate amendment procedures outlined in this part. Part 70 requires the types of amendments described in item A to be made using the significant modifications process, so they have been excluded from this part. 40 CFR § 70.7(e)(4); 57 Fed. Reg. pp. 32288 - 32289. Items B through D reflect the exclusions from the minor modification process set forth in 40 CFR § 70.7(e)(2)(i)(3) through (5). Item E is allowed by 40 CFR § 70.7(d)(2)(i)(6). It is reasonable to include in this rule because it allows the MPCA to determine, and justify through rulemaking, that certain types of permit provisions are too important to be changed through streamlined methods.

b. Subparts 2 and 3. Minor and Moderate Amendment Applicability

Subparts 2 and 3 together make up the category which EPA entitles minor permit modifications under 40 CFR § 70.7(e)(2). The combining of subparts 2 and 3, as outlined under the EPA minor permit modification approach, would result in all modifications which are not insignificant modifications under part 7007.1250 or major modifications under part 7007.1500 being included in one category. For example, a modification increasing emissions of NOX, SO2, or VOCs by 2.5 pounds per hour[3] which equals at most 11 tpy, would be treated the same way as, under certain circumstances, a modification that would

[3]This amount is slightly above what would be considered an insignificant amount under part 7007.1250, subpart 1.

increase emissions of those pollutants by 249 tons per year.[4] It is reasonable to establish a stricter category of amendment review procedures that would provide for additional MPCA review for modifications on the higher end of this broad spectrum, more closely matching the process required with the environmental significance of the proposed requirement.

In subpart 2, the MPCA proposes establishing the moderate permit amendment thresholds listed in 7007.1450, subpart 2, Table 2 (Table 2) as a means of clearly distinguishing between the more and less significant amendments. The thresholds were established by starting with the thresholds which EPA has already determined to represent criteria pollutant increases significant enough to warrant PSD review when made by major stationary sources. 40 CFR § 52.21(b)(23):

NOX - 40 tons/year
SO2 - 40 tons/year
VOCs - 40 tons/year
PM-10 - 15 tons/year
CO - 100 tons/year
LEAD - .5 tons/year

The MPCA then translated these numbers into pounds per hour, assuming continuous year-long operation. Using pounds per hour is reasonable because it allows the MPCA to use the calculation method set forth in part 7007.1200, which it wishes to use for the reasons stated in the analysis of that section.

The MPCA anticipates that the moderate amendment category will not commonly be used by sources that are major stationary sources under PSD regulations and which operate continuously all year, because if the increase exceeds the levels in Table 2, it probably also exceeds the significance thresholds of the PSD regulations, making the change a Title I modification which must be made under the part 7007.1500. However, the establishment of this category provides an important and reasonable opportunity for the MPCA to review the proposed modifications that for whatever reason are making changes not defined as Title I modifications, but which should not be considered "minor."

Subpart 2 includes a warning to readers similar to the one provided in part 7007.1250, subpart 1, and for the same reasons discussed in the analysis of that section.

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[4]This scenario assumes that a source, in an attainment area, is currently a major source under these rules (such as one emitting more than 100 tpy of a criteria pollutant or 10 tpy of a toxic pollutant) but is not a major stationary source under PSD regulations at 40 C.F.R. § 52.21(b)(1)(i). Because it is not major under PSD regulations, an increase in emissions would not be deemed a Title I modification unless it increased potential emissions by more than 250 tpy.

The dividing of this category into the minor and moderate permit amendment categories allows the MPCA to develop a more restrictive review procedure under the moderate permit amendment process. The reasonableness of the more restrictive moderate permit amendment procedure is discussed under subpart 7 below.

c. Subpart 4. Minor and Moderate Application Requirements

Items A, B, C, and E of subpart 4, establishing the process for obtaining a minor and moderate amendment, are reasonable because they are required by 40 CFR § 70.7(e)(2)(ii). Subpart 4, item D, requires a permittee making a modification under this part to certify that the project is not part of a larger project. This provision is reasonable because without it a source could breakdown a modification into smaller projects in an effort to circumvent the more restrictive moderate or major permit amendment procedures. The MPCA describes what it considers to be a single project in part 7007.1250.

d. Subpart 5. EPA Notification

Subpart 5, regarding notice to EPA and affected states, is required under 40 CFR § 70.7(e)(2)(iii).

e. Subpart 6. EPA Review

Subpart 6 requires a 45 day period during which EPA can review and object to the issuance of a permit amendment to a Part 70 permit under this part. This subpart is reasonable because it is required under 40 CFR § 70.7(e)(2)(iv).

f. Subpart 7. When Permittee May Make the Proposed Modification

Subpart 7, item A allows the permittee to make a proposed modification seven working days after the MPCA receives the permit amendment application. Part 70 would allow the MPCA to allow these modifications to be made immediately after the application is filed. 40 CFR § 70.7(e)(2)(v). The MPCA believes it is reasonable to require a delay of seven working days from the date the application is received. This delay would give the MPCA a limited opportunity to prevent the most obvious abuses of this provision, without imposing a serious delay on the applicant. The MPCA thinks this is particularly reasonable given that the smallest of modifications will be allowed under the insignificant modification provisions of part 7007.1250 without any delay at all.

The moderate permit amendment category in subpart 7, item B, establishes a more stringent process by requiring written MPCA authorization before construction can begin. The MPCA believes this delay is reasonable because the modifications in question are by definition more significant, warranting more MPCA review. The delay gives the MPCA a better opportunity to determine whether the modification qualifies as a moderate amendment before authorizing construction. In contrast to the situation for minor modifications, where the MPCA can relatively quickly verify whether the projected increase falls below the moderate amendment category (which is determined by Table 2), the MPCA needs more time to

determine whether or not a modification falls below the major amendment category (which requires reviewing many factors). Preventing construction until written authorization is provided, but not allowing operation until the permit is issued, strikes a reasonable balance which gives the MPCA some control over moderate amendments, but does not impose the delays that are warranted for major amendments.

g. Subpart 8. Permittee's Risk in Commencing Construction

The first three sentences of subpart 8, requiring the permittee to comply with its proposed permit terms but allowing the MPCA to enforce existing permit terms if the permittee does not comply with proposed permit terms, is required by 40 CFR § 70.7(d)(2)(5).

The last two sentences of subpart 8 notify the permittee that when construction is commenced before a permit amendment is authorized by the MPCA, the permittee assumes all risk of losing any investment made. Subpart 8 also warns that the permittee's potential financial loss will not be considered by the MPCA in deciding whether to approve or deny the minor or moderate permit amendment. This provision is reasonable because the MPCA does not have a complete opportunity under the minor and moderate permit amendment process, to determine whether the proposed amendment meets the criteria of a minor and moderate permit amendment. Therefore, the MPCA has to retain the ability to deny an application under this subpart, at whatever cost, up to the time the amendment is issued.

h. Subpart 9. Permit Shield Does Not Apply

Subpart 9 prohibits the permit shield, as defined in 7007.1800, from applying to changes made under this part. This subpart is reasonable because it is required under 40 CFR § 70.7(e)(2)(vi).

30. 7007.1500. MAJOR PERMIT AMENDMENTS

a. Subpart 1. Major Permit Amendment Required

Subpart 1 states that any modification which does not qualify as a modification under another provision of this chapter is required to follow the major amendment procedure. This category is modeled after the "significant permit modifications," which the MPCA cannot be less stringent than, at 40 CFR § 70.7(e)(4)(i). Items A through E repeat the items already listed in part 7007.1450, subpart 1, so that the reader does not have to flip back to that part to understand the major types of amendments for which the procedures of this part are required. The reasonableness of this list was discussed in the analysis of part 7007.1450.

b. Subpart 2. Major Amendment Application Requirements

Subpart 2 states that the application requirements for a major permit amendment shall be the same as an application for a new or renewed permit. This subpart is reasonable because it is required under 40 CFR § 70.7(e)(4)(ii).

c. Subpart 3. Agency Processing Procedures

Subpart 3 states that the application processing requirements for a major permit amendment shall be the same as the processing requirements for a new or renewed permit application. This subpart is reasonable because it is required under 40 CFR § 70.7(e)(4)(ii). The second sentence, regarding the process applicable to major amendments for state permits, allows the MPCA to issue such amendments without following the public notice and comment procedures for certain types of major amendments to state permits. The reasonableness of this is discussed in the analysis of part 7007.0850, subpart 2, item B.

d. Subpart 4. Permit Shield Applies

Subpart 4 states that the permit shield as defined in part 7007.1800, applies to a major permit amendment. This subpart is reasonable because a major permit amendment is required to go through a complete review by the MPCA, EPA, affected states, and the public. It is therefore just as reasonable to provide a permit shield for these amendments as for the rest of the permit. The reasonableness of the permit shield in general is discussed in the analysis of part 7007.1800.

31. 7007.1600 PERMIT REOPENING AND AMENDMENT BY MPCA

a. Subpart 1. Mandatory Reopening

Subpart 1 describes the circumstances when the MPCA must reopen and amend a permit, in compliance with the requirements of 40 CFR § 70.7(f)(1).

b. Subpart 2. Discretionary Reopening

Subpart 2 describes the circumstances when the MPCA may, at its discretion, reopen and amend a permit. It continues the provisions of existing law at Minn. Rules pt. 7001.0170, items A through F.

c. Subpart 3. Reopening Procedures

Subpart 3, establishing the procedures for revocation or reopening, implements the requirements of 40 CFR § 70.7(f)(2). It also allows the MPCA to initiate changes under the administrative permit amendment process at part 7007.1400, which is reasonable because the MPCA will often be the first to discover mistakes that could be corrected through an administrative amendment. If the permittee objects to the MPCA's use of the administrative amendment process, the MPCA would have to proceed under the major amendment process according to part 7007.1400, subpart 2.

32. 7007.1650 PERMIT REOPENING BY EPA

This part provides that the Administrator may reopen Part 70 permits as provided in 40 CFR § 70.7(g). It is reasonable to refer the reader directly to 40 CFR § 70.7(g), where the EPA establishes its rights in this regard.

33. 7007.1700 PERMIT REVOCATION BY AGENCY

a. Subpart 1. Permit Revocation Without Reissuance

Subpart 1, providing the circumstances when the MPCA may revoke a permit without reissuance, continues the provisions of existing law at Minn. Rules pt. 7007.0180. Some members of the work group objected to the inclusion of item C, allowing revocation if the MPCA finds that the facility endangers human health and the environment, suggesting that this language be replaced with, "the MPCA finds that the permitted facility is in violation of MPCA rules." The MPCA has chosen to retain this language for the sake of consistency with part 7001.0180, and because the MPCA's job is not only to enforce the rules, but also to protect human health and the environment.

b. Subpart 2. Revocation Procedures

Subpart 2 provides the procedures for revoking a permit. This is a continuation of the language in existing law at Minn. Rules pt. 7001.0190, subp. 4, but allows the MPCA to provide less than 30 days notice in the event of emergency. This change is reasonable because is allows the MPCA to best fulfill its obligations to protect the environment, and makes the provision consistent with subpart 3 of part 7007.1600, which in turn incorporates the provisions of 40 CFR § 70.7(f)(3).

34. 7007.1750 FEDERAL ENFORCEABILITY

a. Subpart 1. Federally Enforceable Requirements

Subpart 1, item A, stating that conditions of permits issued under the proposed rule are federally enforceable, meets the requirements of 40 CFR § 70.6(b)(1). Subpart 1, item B, describing the exceptions to the general rule of federal enforceability, meets the requirements of 40 CFR § 70.6(b)(2). Permit conditions based on the requirements of the proposed rule, such as the monitoring, reporting and certification requirements of part 7007.0800, will be federally enforceable after EPA approval of the state's Part 70 program. The terms of this part apply to Part 70 permits and to state permits, as discussed in section IV.B.4. of this SONAR.

35. 7007.1800 PERMIT SHIELD

a. Subpart 1. Description of Permit Shield

This part requires the MPCA to include a provision known as a permit shield in permits issued under this chapter. Part 70 allows states to provide this sort of shield only under specific conditions, which are reflected in item A, subitems 1 and 2. 40 CFR § 70.6(f)(1). Items B and C of this subpart reflect the requirements of 40 CFR § 70.6(f)(2) and (3). Item C also exempts from the permit shield the MPCA's emergency authorities and the MPCA's ability to seek additional information. These additional exemptions are reasonable because in the event of an emergency under Minn. Stat. § 116.11, the MPCA would need to act quickly

to protect human health and the environment, and should not be slowed down by the need to amend a permit. In regard to seeking information, the permit in no way limits the MPCA's statutory ability to obtain information, and that is worth mentioning here, along with the statement that the shield does not limit the EPA's information gathering authority, to avoid any confusion.

Item D prevents the shield from applying to conditions established through minor, moderate, and certain administrative amendments, is required by Part 70, which prevents the MPCA from applying the shield in those cases. 40 CFR § 70.7(d)(4) and (e)(2)(vi). In effect, Part 70 does not allow the application of the permit shield to any condition that was not subject to public review.

The MPCA chose to provide the permit shield to permittees so that permittees who in good faith comply with a provision of the permit which does not accurately reflect the requirements of an applicable requirement will not be subject to an enforcement action. The advantage of the permit shield to industry is that it provides a greater degree of certainty about how applicable requirements apply to a specific permitted source, which is one of the underlying goals behind issuing comprehensive permits under Title V and this chapter. Allowing Minnesota sources the benefits of the permit shield also prevents them from being at any competitive disadvantage to sources in other states with such a shield. The MPCA also agrees with and incorporates by reference the reasons set forth by the EPA in the preamble to Part 70 supporting the usefulness of a permit shield. 57 Fed. Reg. 32276 to 32278.

The limitations on the application of the shield set forth in this part minimize the likelihood that such a shield would be abused, or would prevent the MPCA from fulfilling its obligations to ensure compliance with applicable requirements and protect the environment. Proposed permits that would mistakenly interpret an applicable requirement will be reviewed by EPA and the public, where the mistakes will hopefully be spotted. The shield does not apply if the permit fails to mention the applicable requirement, so even if the applicant, the MPCA, the EPA, and the public all fail to notice the absence of an applicable requirement, it will not exempt the permittee from the obligation to comply with the applicable requirement. Of course, if the MPCA determines that a permit does misinterpret the provisions of an applicable requirement, it has the authority under part 7007.1600 to reopen and amend the permit.

Making the permit shield formal in this rule does not mark a major shift in MPCA enforcement policy. In the event of noncompliance under the circumstances described in this part, the MPCA would be unlikely to seek penalties for the noncompliance anyway.

36. 7007.1850 EMERGENCY PROVISION

a. Subpart 1. Actions Required in Emergencies

This subpart establishes an affirmative defense to noncompliance with technology-based emission limitations, as required by 40 CFR § 70.6(g). Item A defines "emergency" as required by 40 CFR § 70.6(g)(1), but specifies in the last sentence that, consistent with the other language of the definition, the MPCA may state in the permit what types of situations

will not be considered emergencies if they occur. This provision is reasonable to avoid future disputes about what types of events should trigger the defense provided by this section. By describing the situation in the permit it becomes, by the existing definition, "reasonably foreseeable," and it is on record.

Items B through E reflect the requirements of 40 CFR § 70.6(g)(2) through (5). Item F, clarifying that the MPCA retains its emergency powers under statute, is reasonable to prevent any suggestion that they are limited. The MPCA needs to retain these powers as provided by statute to protect the public and the environment.

The MPCA agrees with and incorporates by reference the reasoning of EPA set forth in the preamble to the rule regarding the usefulness of the emergency defense in the case of violations of technology based limits. 57 Fed. Reg. p. 32279.

37. AMENDMENTS TO CHAPTER 7001

Currently, virtually all permits issued by the MPCA, including air quality permits, are covered by one comprehensive permit rule at Minn. Rules ch. 7001. Because the new federally-required provisions are so detailed and unique to air permits, it would no longer be practical to keep air emission permits in the same chapter with other types of permits. The MPCA therefore proposes to amend chapter 7001 to eliminate all provisions applicable to air permits, and to cover all aspects of air permitting under the proposed chapter 7007. For this reason, the MPCA proposes deleting item I from part 7001.0020; deleting the reference to air permits in 7001.0050, item I; deleting the reference to portion of chapter 7002 that governs air emission fees from part 7001.0140, subpart 2, item F and part 7001.0180, item D; and changing the reference in part 7001.0550 to refer to air emission permits under the proposed new chapter 7007. The proposed change to part 7001.3050 is reasonable because it changes the reference to reflect the fact the energy recovery facilities will now be governed under chapter 7007, and because of the recodification of air quality rules currently underway, under chapters 7009 and 7011, instead of under the listed parts.

38. AMENDMENTS TO CHAPTER 7002

This chapter imposes air emission fees on air pollution emitters. The proposed amendment to part 7002.0005 is reasonable because is replaces references to parts of 7001 which are being deleted with a reference to chapter 7007. It references parts 7023.9000 to 7023.9050 (instead of parts 7001.1250 to 7001.1350) to incorporate the new codification of the requirements applicable to indirect source permits. It no longer references Title V of the CAA or Part 70 because these federal requirements will be reflected in chapter 7007.

The amendment to part 7002.0015, subpart 1 is reasonable because it replaces a reference to two parts of chapter 7001, which are being repealed, and to several parts of chapter 7005, which are being recodified, with the appropriate new location of the definitions in question. The amendment to part 7002.0015, subpart 2 is reasonable because it replaces a reference to parts of chapter 7001 which are being repealed with the new chapter 7007, which is taking its place. It also eliminates the reference to federal law, because those requirements are now reflected in chapter 7007.

39. AMENDMENTS TO PART 7005.0100

The addition at subpart 3a of the definition of "begin actual construction" is reasonable because it allows the MPCA to use that term as discussed in the section by section analysis of the proposed part 7007.0150, subpart 1. The wording of the definition matches the definition used in federal new source review regulations at 40 CFR §§ 51.165(a)(1)(xv) and 52.21(b)(11). It is reasonable to use this definition for consistency with these federal programs. It is reasonable to place this definition in part 7005.0100 because it may be used in air rules other than chapter 7007.

The amendment to the definition of subpart 5, "construction," is reasonable because the existing definition, which more or less incorporates the existing definition of "modification," has been the source of confusion whenever a rule provision referred to both construction and modification. Also, because the existing definition includes anything that would "result in a change in actual emissions," it requires permits or amendments even for changes that reduce emissions, or change them insignificantly. Finally, the second and third sentences are no longer necessary because they will be covered by the definition of "begin actual construction." The narrower definition of "construction," which is similar to the definition of "construction" under 40 CFR § 60.2, is more compatible with the proposed chapter 7007 (particularly given the proposed revision to the definition of "modification").

The amendment to subpart 8 corrects the existing rule to reflect a renumbering of the statute.

The reasonableness of the amendment to subpart 24a, the definition of "modification," is discussed in the section by section analysis of part 7007.0100, subpart 15. It is reasonable to move the definition to chapter 7007 because it is so lengthy, and so important to the interpretation of that chapter, that it is more convenient for the reader to have it there.

The amendment to subpart 35 corrects the existing rule to reflect a renumbering of the statute.

The amendment to subpart 35a, "potential to emit," is reasonable because the existing definition only recognizes federal enforceability in the context of permits for construction, modification, or reconstruction. The amendment reflects the fact that operating permits will now be federally enforceable under chapter 7007, and both state and Part 70 permits will be federally enforceable.

This subpart is also amended to clarify when fugitive emissions should be counted in determining potential emissions. The requirement that they generally should be included is reasonable because it reflects the requirements of 40 CFR § 70.3(d) and because other laws are built on the assumption that fugitive emissions, which can harm the environment like other emissions, have been included unless stated otherwise. Fugitives are excluded from consideration by law under certain circumstances, such as in the definition of "major source" under part 7007.0200, subpart 1, item B and under 40 CFR § 70.2. Some fugitives are excluded from having to be estimated in a permit application under part 7007.1300, subpart 2.

40. AMENDMENT TO PART 7019.0105

This part currently requires "affected facilities" as defined in part 7002.0015, subpart 2, to submit an annual inventory of their emissions. "Affected facilities" are defined as those needing air emission permits. Because the MPCA is proposing to raise the permit thresholds under part 7007.0250, fewer small emitters will need permits. If this section were not amended, that would mean that fewer small emitters would submit emission inventories.

This amendment has the effect of preventing that automatic reduction in the numbers of facilities who would submit the inventories, by requiring inventories of anyone emitting more than 25 tpy of a regulated pollutant in addition to those required to get a permit. This description basically includes anyone who needs to get a permit under the current rule, with its 25 tpy permitting thresholds, and means that the same people submitting inventories now will submit inventories under the amended inventory provision (with the exception of any sources that are currently required to get permits solely because they emit more than 25 tpy of CO).

The MPCA chose to keep most of the same facilities in the inventory because, while it is reasonable to exempt smaller facilities from the need to obtain a permit, it is possible that in the future the MPCA may need to permit these sources again, or regulate them through standards of performance. Keeping the facilities in the inventory allows the MPCA to keep track of these sources for future use.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.155, subd. 2 (1990) requires the MPCA when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

a) the establishment of less stringent compliance or reporting requirements for small businesses;

b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

c) the consolidation or simplification of compliance or reporting requirements for small businesses;

d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

e) the exemption of small businesses from any or all requirements of the rule.

The proposed rule will affect small business as defined in Minn. Stat. § 14.115 (1992). In considering revisions to the rule, MPCA has attempted to reduce the administrative burden in obtaining and operating under an air emission permit wherever possible, and particularly for small sources. Small sources are considered to be those that do not emit enough air pollution

to be subject to the requirement to get a permit under the CAA and EPA implementing regulations. The MPCA believes that small businesses are more likely to fall into the small source category than into the federally-regulated category.

MPCA has attempted to reduce the administrative burden on small sources in several ways. First, permitting thresholds in this rule are raised from a flat 25 tpy in the existing rule to 100 tpy for VOC, NOX, and CO emitters, and 50 tpy for SO2 emitters. Raising permitting thresholds will reduce the number of small sources that would otherwise be required to obtain permits and allow the MPCA to concentrate efforts on the larger emitters. Staff estimate that approximately 180 small sources will no longer be required to obtain permits. The small sources that fall below these higher thresholds will only need permits under this rule in the future: (1) because of a federal requirement, (2) because they need to take enforceable limits in order to avoid being subject to federal requirements, (3) because they have the potential to violate ambient air quality standards, (4) because they are subject to a specific federal performance standard, or (5) because MPCA has adopted a specific requirement for a certain source type. MPCA feels that these are the key reasons that a source should have a permit and that the requirement to obtain a permit could not or should not be relaxed beyond this point.

The second way that the MPCA has considered the needs of small business is by including less stringent reporting and compliance schedule submission requirements for sources that obtain "state only" permits (see parts 7007.0500, subpart 2, items J, K, L, and M, and 7007.0800, subparts 4 and 6). MPCA evaluated each of the required elements of a Part 70 permit and permit application as to whether they were appropriate for smaller state only sources. The less stringent requirements for progress reports and compliance certifications in the permit, and the reduced submissions required in the permit application were deemed appropriate for smaller sources with lower emissions and generally fewer resources.

The third way that MPCA has considered the needs of small business is through the inclusion of provisions that allow all permittees more flexibility in their operations once the permit has been obtained. The current rule requires that virtually all changes at a facility trigger the need for a permit amendment. MPCA recognizes that sources, particularly small sources, need the flexibility to make changes at their facilities rapidly if the changes involve little or no increase in emissions. In Part 7007.0800 (Permit Content) of the proposed rule, the MPCA has included provisions that allow a source to request that alternate operating scenarios, alternate locations, and emission trading provisions be included in the permit. Parts 7007.1250 and 7007.1300 allow a permittee to make changes at a permitted facility without obtaining a permit amendment if the changes do not violate a permit term and are either a listed insignificant activity or result in either a decrease in emissions or an increase in emissions below the thresholds established in the table in part 7007.1250. Part 7007.1350 allows permittees to contravene certain non-essential permit terms with appropriate notice to the MPCA. Part 7007.1450 allows permittees to make "minor" and "moderate" amendments to their permits using a streamlined amendment process, allowing quicker modifications to the facility.

In addition to these rulemaking considerations, MPCA has considered the needs of small business through the establishment of a Small Business Assistance Program and additional outreach activities. As required by the CAA, Section 507, and Minn. Stat. § 116.95 to 116.99. MPCA is in the process of establishing an assistance program specifically targeted to the needs of small business. While not required to do so by law, MPCA intends to extend the services of the program to all small businesses that need permits, and to those small businesses that do not need permits, but are affected by the air toxics provisions of Title III of the CAAA. In addition to the Small Business Assistance Program, the MPCA intends to develop a permitting manual and to provide educational seminars intended to instruct potential permittees in the requirements of the rule and how to obtain a permit if one is needed. MPCA intends to charge small businesses little or nothing for these services.

This rule does not establish or change the underlying standards that apply to a given source.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the MPCA is required by Minn. Stat. § 116.07, subd. 6 (1992) to give due consideration to economic factors. The statute provides:

> In exercising all its powers the MPCA 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 reasonable, feasible, and practical under the circumstances.

As mentioned in the Statement of Reasonableness, MPCA's goals in crafting this rule were to meet federal requirements and to take this opportunity to streamline the permitting process to avoid future permitting backlogs. For sources required to obtain specific source permits, the effect of the rule will be an increase in the administrative burden associated with initial permit issuance balanced with a decrease in ongoing administrative costs associated with permit amendments. For sources not required to obtain Part 70 permits, costs should clearly be reduced, either because they are no longer required to obtain any permit or because a non expiring permit is issued.

The economic cost of this rule to regulated sources of air pollution will be seen in the administrative and technical costs of preparing a permit application, and the continuing costs of record keeping and reporting required by the rule. The initial administrative costs include the costs of interpreting the regulations and generating data and information needed for the first permit application. Any costs to install control equipment or otherwise comply with underlying ambient or performance standards are not costs appropriately associated with this rule.

EPA has analyzed the cost of compliance with the Operating Permit requirements of 40 CFR Part 70 in a document titled "Regulatory Impact Analysis and Regulatory Flexibility Act Screening for Operating Permits Regulations." On page 17 of this document (Exhibit 8), EPA estimates annualized costs of $22,594 for a major source that obtains a permit specific to that source, $11,373 for a major toxic source that obtains a permit specific to that source, and $154 for a source that obtains a general permit. These estimates are annualized over the first five years of the permit, and include both the initial costs to obtain the permit, and the costs of periodic reporting. EPA's $22,594 annualized figure for major sources is based upon a one time initial processing cost estimate of $54,945. Costs are expected to vary widely among sources needing Part 70 permits depending primarily on the type, complexity, and regulatory history of the individual source.

These EPA estimates are likely to greatly overestimate permitting costs for Part 70 sources in Minnesota for two reasons. First, these costs could be expected to decrease in subsequent years since the permits will last for five years and much of the information needed for an application for reissuance would already be available. Secondly, these EPA costs are estimates of the total burden on the source and not the incremental cost to obtain a Part 70 permit for a source that already has a state operating permit. Operating permits currently held by Minnesota sources are similar to Part 70 permits, requiring permittees to apply for permits every five years, to identify their emissions, to monitor emissions in many cases, to keep records, to file reports, etc. Most major sources in Minnesota that receive Part 70 permits already have a state operating permit and would therefore experience much lower incremental costs than those presented in the EPA analysis.

MPCA contracted with RUST Environment and Infrastructure (RUST) to develop a range of estimates for preparation of typical permit applications for Part 70 and "state only" specific source permits (Exhibit 9). The range of estimated application preparation costs was $8,000 to $19,000 for a Part 70 permit and $6,000 to $15,000 for a state permit. Estimates were developed for three industry types intended to represent medium sized facilities. RUST's estimates do not account for the higher costs that a complicated facility or a facility with unresolved regulatory problems might experience. The RUST estimates also do not account for the time that facility personnel might expend learning of the facility's responsibilities in preparation for the compliance certification required by the rule.

MPCA estimates that 550-1000 sources in Minnesota will need Part 70 permits because they are major criteria pollutant emitters, and that up to an additional 100-500 would need Part 70 permits because they are major toxic sources. It is difficult to estimate these numbers with precision because the number of "undiscovered" sources which should but do not currently have permits and which are not in the MPCA inventory systems is uncertain.

The MPCA estimates that the annualized cost to obtain a non Part 70 or "state only" permit will be less than that associated with a Part 70 permit for two reasons. First, as mentioned above, the up front costs associated with permit issuance are less than the Part 70 permit, because the state sources tend to be smaller, and because the application required is less comprehensive. Secondly, the state permit will be a nonexpiring permit. The up front cost for a state permit can then be amortized over a longer period. The actual duration of a

state permit will vary depending on the number and size of changes that occur at that facility and whether regulations governing the facility change. It is possible that sources receiving state specific source permits will experience lower annualized permitting costs than current costs because the permits will not expire and because, as mentioned later, the permits will likely need to be amended less often.

The rule will have benefits in terms of reduced administrative costs for sources no longer required to have permits. The MPCA estimates that approximately 180 sources that currently hold state permits will no longer need permits because of increased permit thresholds. In addition, the MPCA plans to expand its use of general permits under the new rule, particularly for those sources which receive state permits. General permits are easier to apply for and to obtain because they do not have to be tailored to the source, and are therefore cheaper for the permittee.

The rule will also have benefits for sources required to obtain specific source permits. These benefits should compensate for the additional administrative costs incurred in obtaining the permit. The benefits have been discussed in the Statement of Reasonableness. To summarize here, sources will see benefits in four general areas. First, sources will have greater operational flexibility under the new rule and can therefore make more changes without obtaining permit amendments than in the past. The rule provisions regarding modifications (Parts 7007.1250-7007.1350) allow sources the flexibility to make changes which may increase emissions, within limits, without obtaining a permit amendment. The existing rules require that a source obtain a permit amendment for virtually all changes at the facility. The rule provisions regarding permit content (part 7007.0800 subparts 10-12) allow for the inclusion of alternate operating scenarios, emission trading, and alternate locations in the new permits. This will allow sources greater flexibility during the life of the permit, but may require more up-front effort to develop the permit application.

A second benefit of the rule which will reduce future administrative costs, is that sources which must obtain amendments, can make the changes embodied in the amendment sooner than allowed by present rules. Permittees may make the modification proposed in a minor amendment seven working days after the application is received by the MPCA. Permittees may begin construction on a modification proposed in a moderate amendment before the amendment is issued. Under current rules, all changes at a facility must await the issuance of an amendment.

The third benefit which permitted sources will experience, will be more rapid turn around of permit applications. The rule includes shorter deadlines for permit and permit amendment issuance than the current rule, as well the intermediate step of a completeness determination which will provide feedback to the source within a 60 day period on shortcomings in the permit application. The issue of rapid turn around and reduction of the permitting backlog was central to the effort to streamline the permit issuance process within the constraints of the Part 70 regulations. The issuance time frames selected are the result of negotiations with the advisory committee and represent a compromise between anticipated resources available to the MPCA and industry's need to obtain permits and permit amendments in a more timely manner.

The fourth benefit which will accrue to permittees will be in the nature of the operating permit as a document which contains all requirements to which the source is subject. Having all requirements in one place should clarify the sources responsibilities during the life of the permit. In addition, the permit shield provisions of part 7007.1800 will provide a limited shield against enforcement actions for requirements properly folded into the new permits.

In addition to the rule provisions that are intended to streamline the permit issuance process, MPCA intends to reduce the burden of the new rule on the regulated community through assistance and outreach efforts and through the issuance of general permits to as many source categories as practical. In conjunction with the Small Business Assistance Program outlined in Section V, MPCA intends to devote significant resources to development of a permittee assistance manual and educational seminars. This effort should reduce the cost of permit applications by clarifying submittal requirements and otherwise facilitating the application process.

In considering the economic impacts of this rule, the MPCA did not consider the economic effect of this rule on individual industry sectors or on the state as a whole because it is difficult to identify the incremental additional cost of the rule. In addition, the sources which may see significant increases in administrative costs will be those required to obtain Part 70 permits. The MPCA has little discretion under federal law in the type of permit these sources obtain. This national uniformity of Part 70 permits should mean that a given source would incur roughly the same administrative costs in other states and therefore Minnesota sources will not be placed at a competitive disadvantage by this rule. As mentioned before, most sources which do not need Part 70 permits will experience decreased, rather than increased administrative costs.

VII. IMPACT ON AGRICULTURAL LANDS

The MPCA is required by Minn. Stat. § 14.11, subd. 2 (1992) to consider the impacts of the proposed rules on agricultural lands. The statute provides:

> If the MPCA in proposing the adoption of the rule determines that the rules may have a direct and substantial adverse impact in agricultural land in the state, the MPCA shall comply with the requirements of sections 17.80 to 17.84.

The MPCA believes that the proposed rules will not have any impact on agricultural lands because the rules do not affect agricultural operations.

VIII. IMPACT ON LOCAL PUBLIC BODIES

Minn. Stat. § 14.11, subd. 1 (1992) provides that if the adoption of a rule by MPCA will require the expenditure of public money by local bodies, the notice published by the MPCA must contain a written statement giving the MPCA's reasonable estimate of the total cost to all local public bodies in the state to implement the rule for the two years immediately following adoption of the rule if the estimated cost exceeds $100,000 in either of the two

years. "Local public bodies" means officers and governing bodies of political subdivisions of the state and other officers and governing bodies of less than statewide jurisdiction which have the authority to levy taxes.

In order to estimate the cost of this rule to local public bodies, MPCA first estimated the types of permits that public bodies would obtain under the proposed rule. In reviewing permit and emission inventory data MPCA determined that educational facilities, municipal power utilities, and waste treatment plants were the facilities owned by local public bodies that would be affected by this rule change.

There are currently approximately 75 municipally owned power utilities and waste treatment facilities in the state that should or do have air emission permits. Based on information in the MPCA's Compliance Data System, about 30 of these will need Part 70 specific source or general permits. Approximately 10 of the 75 will need state specific source permits, and the remaining 35 facilities would either be exempt from the requirement to obtain a permit in the future, or would likely qualify for a state general permit.

There are currently almost 300 schools and educational facilities in the state that appear in the MPCA Compliance Data System. It is estimated that about 25 of these facilities, colleges and universities, would need to obtain a Part 70 specific source or general permit. All of these 25 facilities, however, are outside the definition of local public body in Minn. Stat. § 14.11, subd. 1. Approximately 10 facilities will require state specific source permits largely to avoid the need for a Part 70 permit. The balance of the educational facilities would either be exempted from the requirement to obtain a permit in the future or would need a state general permit.

In order to estimate the cost to local public bodies over the two year period following adoption of this rule, MPCA assumed that the cost for those facilities that are anticipated to be exempt from the requirement to obtain a permit or that would qualify for a general permit would be minimal.

As discussed in Section VI of this SONAR, MPCA estimates that the initial cost to a medium sized facility to obtain a Part 70 permit will range from $8,000 to $19,000 and estimates that the initial cost to obtain a state specific source permit will range from $6,000 to $15,000. Multiplying these costs by the estimated 30 Part 70 and 20 state permits issued to local public bodies yields an estimated total cost ranging from $360,000 to $870,000. This amount will be distributed over the initial two years after the rule becomes effective since all permits applications are due by September 15, 1995, and the rule should be effective in October or November of 1993. The estimated annual cost for the first two years should therefore range from $180,000 to $435,000.

This estimate does not give "credit" for those sources that are newly exempted from the requirement to obtain a permit through this rule or for those permitting costs that the source would otherwise expend under the existing permit rules. If these were to be included, the net increase in burden would be much lower. In addition, as mentioned in Section VI, sources obtaining new permits under the rule will receive benefits in terms of flexibility, processing time, shields etc. that will have an economic benefit to the source in the longer term which is

difficult to quantify. It is impossible to say with certainty therefore whether the net cost of this rule to local public bodies will exceed $100,000 per year. Some sources will likely enjoy net benefits, particularly those that no longer need permits and those that obtain state non expiring permits, while others will not.

It should be mentioned that the costs associated with both the Part 70 and state sources here are largely the result of federal requirements. The state has not gone beyond federal requirements in identifying who must obtain Part 70 permits. The state source category will likely be composed largely of sources that have elected to obtain state permits rather than Part 70 permits which they would otherwise require, and are therefore afforded a benefit by doing so. It should also be mentioned again here that the proposed rule does not change the underlying regulations to which a source is subject and hence the expense of compliance with performance standards is not considered here.

IX. CONCLUSION

Based on the foregoing arguments, the proposed Minn. Rules §§ 7007.0050 to 7007.1850 and the proposed amendments to existing law are both needed and reasonable.

X. LIST OF WITNESSES AND EXHIBITS

A. Witnesses

In support of the need and reasonableness of the proposed rules, the following witnesses will testify at any hearing that may take place in regard to these proposed rules:

1. Andrew Ronchak: Mr. Ronchak will testify on the general need for the reasonable of the proposed rules.

2. John Seltz: Mr. Seltz will be available to testify on the general need for and reasonableness of the proposed rules, and particularly on the small business considerations and the MPCA's consideration of economic factors.

3. Carolina Schutt: Ms. Schutt will be available to testify on the general need for and reasonableness of the proposed rules, and particularly, on the MPCA's permit review and issuance process.

4. Ann Foss: Ms. Foss will be available to testify on the general need for and reasonableness of the proposed rules, and particularly on compliance requirements of current state law and the proposed rule.

5. Elizabeth Henderson: Ms. Henderson will be available to testify on the general need for and reasonableness of the proposed rules, and particularly on the regulation of hazardous air pollutants.

6. Dennis Becker: Mr. Becker will be available to testify regarding the computer modeling used by the MPCA in determining permitting thresholds.

The MPCA has not solicited witnesses from outside the MPCA to testify in support of the proposed rules.

B. Exhibits

1	Title V of the 1990 Clean Air Act Amendments.
2	40 CFR Part 70
3	Impact of Increasing State Permit Thresholds
4	Hazardous Air Pollutants Fact Sheet
5	Modeling Data
6	SIC Code Workload Analysis
7	Clean Air Implementation Project - Insignificant Activities List
8	EPA - Regulatory Impact Analysis
9	Letter From RUST Environmental

Dated: May 25 , 1993

CHARLES W. WILLIAMS
Commissioner