

permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(iv) *Emission units and part 71 sources.*

(A) For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(B) For any nonmajor source subject to the part 71 program, the permitting authority shall include in the permit all applicable requirements applicable to emissions units that caused the source to be subject to the part 71 program.

(2) *Permit duration.* The permitting authority shall issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources. Notwithstanding this requirement, the permitting authority shall issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years. The permit shall state when the source's application for renewal must be submitted to the permitting authority consistent with § 71.5.

(3) For affected sources, a permit condition prohibiting any affected unit from emitting sulfur dioxide in excess of any allowances that the affected unit lawfully holds under title IV of the Act or 40 CFR parts 72 through 78.

(i) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(ii) No limit shall be placed on the number of allowances held by the unit. The unit may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(iii) Any such allowance shall be accounted for according to the procedures established in regulations 40 CFR parts 72 through 78.

(4) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit.

(5) Provisions stating the following:

(i) The source must comply with all conditions of the part 71 permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance,

or modification; or for denial of a permit renewal application.

(ii) *Need to halt or reduce activity not a defense.* It shall not be a defense for a source in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iii) The permit may be modified, revoked, reopened and reissued, or terminated for cause. The filing of a request by the source for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(iv) The permit does not convey any property rights of any sort, or any exclusive privilege.

(v) The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit or to determine compliance with the permit, including copies of records required to be kept by the permit. The source may assert a claim of confidentiality consistent with section 114(c) of the Act and 40 CFR part 2 with respect to any such requested information.

(vi) A schedule of compliance does not sanction noncompliance with the applicable requirement on which it is based.

(6) A provision to ensure that a part 71 source pays fees to the permitting authority consistent with the fee schedule in § 71.9.

(7) *Emissions trading.* A provision stating that no permit revision shall be required under any economic incentives, marketable permits, emissions trading or other similar programs or processes approved in an implementation plan or other applicable requirement authorizing such changes to be provided for in the permit and where the permit provides for such changes.

(8) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the permitting authority. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating. Provided that each of the alternative scenarios available for a particular unit

is monitored in a way that yields objective, contemporaneous measurement and recordation of relevant emissions or parameters and that the means of measurement are sufficiently different for each of the scenarios that the contemporaneous record reveals the scenario under which the source was operating when the record was made, no further notice to the permitting authority is required. Otherwise, the permit shall require that when any change is made between alternative scenarios, the permittee at the beginning of the following week shall place in regular mail to the permitting authority notice of such change(s) between scenarios, which could consist of a copy of the relevant portion of the on-site log indicating the scenario(s) under which the source operated during the previous week;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions under each such operating scenario; and

(iii) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this part.

(9) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of any emissions trade. Such terms and conditions:

(i) Shall include all terms required under paragraphs (a) and (c) of this section to ensure compliance;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions that allow such increases and decreases in emissions; and

(iii) Must meet all applicable requirements and the requirements of this part.

(b) *Federally-enforceable requirements.* All terms and conditions in a part 71 permit, including any provisions designed to limit a source's potential to emit, shall be enforceable by the Administrator and citizens under the Act.

(c) *Compliance requirements.* All part 71 permits shall contain testing, monitoring, reporting, recordkeeping and compliance certification requirements sufficient to assure compliance with the terms and conditions of the permit consistent with the following provisions of this section. Any document (including reports) required to be submitted by a part 71 permit shall contain a certification by a