

RULE 1304. PART 70 OPERATING PERMITS – ISSUANCE, RENEWAL, MODIFICATION AND REOPENING
(Adopted 11/09/1993, revised 1/18/2001, 10/18/2018)

A. Applicability

The provisions of this rule shall apply to permit issuances, renewals, modifications or reopenings for any Part 70 source.

B. Exemptions

No exemptions apply to permit issuances, renewals, modifications and reopenings required under this rule.

C. Definitions

For purposes of this rule, definitions listed in Rule 1301, Part 70 Operating Permits – General Information, shall apply.

D. Requirements – General

Permit issuances, renewals, modifications and reopenings shall be carried out in accordance with the following provisions and with other applicable provisions of Regulation XIII:

1. Permit Issuances, Renewals and Significant Modifications

a. Timely Submission of Applications

Any Part 70 source required to obtain a Part 70 permit shall submit an application for such permit in the following manner:

- i. For any Part 70 source that is required to obtain a Part 70 permit on the effective date of this rule, an application for a Part 70 permit shall be submitted to the District, with a copy sent to the Environmental Protection Agency, Region IX.
- ii. For any Part 70 source that becomes subject to the requirement to obtain a Part 70 permit based on Rule 1301.C “Part 70 Source - 1.b, 1.c, 2 and 6 categories,” after the effective date of Rule 1301, and provided the source was operated prior to the date on which such source becomes subject to the requirement to obtain a Part 70 permit, an application for a Part 70 permit shall be submitted to the District, with a copy sent to the Environmental Protection Agency, Region IX, by no later than 12 months after such source becomes subject to such requirement.
- iii. For any Part 70 source, including a new or modified source, that becomes subject to the requirement to obtain a Part 70 permit after the effective date of Rules 1301 through 1305, except a source subject to Section D.1.a.ii of this rule, an application for a Part 70 permit shall be submitted to the District, with a copy sent to the Environmental Protection Agency, Region IX, prior to commencing operation of those portions of the source that caused the source to become subject to the requirement to obtain a Part 70 permit.
- iv. For any Part 70 source that is requesting a significant permit modification, an application for a Part 70 permit shall be submitted to the District, with a copy sent to the Environmental Protection Agency, Region IX, prior to operating such source pursuant to the modification. Where an existing Part 70 permit would

prohibit such construction or change in operation, the Part 70 source must obtain a permit revision prior to commencing operation.

- v. For any Part 70 source that is applying for renewal/reissuance of a Part 70 permit, an application for a Part 70 permit shall be submitted to the District, with a copy sent to the Environmental Protection Agency, Region IX. Part 70 sources shall submit an application for permit renewal two years and six months after the date of issuance of the initial Part 70 permit or subsequent permit renewals. The District may approve a later submittal date, but in no case shall the time period for a renewal application exceed four years and six months from the date of issuance.
- vi. Applications from acid rain sources for initial phase II acid rain permits shall be submitted to the District with a copy sent to the Environmental Protection Agency, Region IX, by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

b. Completeness Determinations

The Control Officer shall provide written notice to an applicant regarding whether or not a Part 70 permit application is complete. Unless the Control Officer requests additional information or otherwise notifies the applicant that the application is incomplete within 60 days after receipt of such application, the application shall be deemed complete.

c. Action on Applications

The Control Officer shall take final action on each complete Part 70 permit application within the following time frame:

- i. For applications for an initial Part 70 permit, the Control Officer shall take final action:
 - (A) On at least one-third of all initial applications, no later than one (1) year after the effective date of the Environmental Protection Agency approval of Rules 1301 through 1305; and
 - (B) On at least two-thirds of all initial applications, no later than two (2) years after the effective date of the Environmental Protection Agency approval of Rules 1301 through 1305; and
 - (C) On all initial applications, no later than three (3) years after the effective date of the Environmental Protection Agency approval of Rules 1301 through 1305.
- ii. For any complete application for a Part 70 permit that contains an early reduction demonstration pursuant to Section 112(i)(5) of the Clean Air Act and its implementing regulations, the Control Officer shall take final action no later than nine months after receipt of such complete application.
- iii. For any application for a Part 70 permit for a phase II acid rain source, the Control Officer shall take final action in accordance with the deadlines in Title IV of the federal Clean Air Act and its implementing regulations and 40 Code of Federal Regulations Part 72.
- iv. Except for applications listed pursuant to Sections D.1.c.i, D.1.c.ii and D.1.c.iii of this rule, and applications for significant modifications, the Control Officer

shall take final action on an application no later than 18 months after the receipt of such complete application.

- v. Review of the majority of significant permit modification applications shall be completed within nine (9) months after the receipt of a complete application.
- vi. All permit renewal applications from a Part 70 source shall be subject to the same procedures that apply to the initial permit issuance application, including those for public participation and Environmental Protection Agency, public and affected state review.
- vii. For all permit issuances, renewals and significant modifications, no final permits shall be issued by the District unless the "Public Notification" procedures listed in Section D.6 of this rule and the "Environmental Protection Agency and Affected State Notification" procedures outlined in Section D.8 of this rule have been implemented.

2. Administrative Permit Amendment

- a. An applicant shall submit an application for an administrative permit amendment prior to implementing the requested change. An applicant may implement the changes addressed in an application for an administrative permit amendment immediately after the submission of such application to the District.
- b. The Control Officer shall take final action on any request for an administrative permit amendment within 60 days after receipt of such request. No Environmental Protection Agency, public or affected state review is required prior to taking this final action.
- c. Administrative permit amendments for purposes of the acid rain portion of a Part 70 permit shall be governed by 40 Code of Federal Regulations Part 72.

3. Minor Permit Modifications

a. Application Submittal

An applicant for a minor Part 70 permit modification shall submit to the District and the Environmental Protection Agency, Region IX, an application for such modification prior to implementing such change. An applicant may implement the changes addressed in an application for a minor permit modification immediately after the submission of such application to the District and the Environmental Protection Agency. After the source makes the proposed change and before the District takes action on the application, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions shall be enforced against it.

b. Action on Applications

The Control Officer shall take final action on an application for a minor Part 70 permit modification within 90 days of receipt of such application or within 15 days after the Environmental Protection Agency's 45-day review period, whichever is later. Also, the Control Officer shall not take this action until after the Environmental Protection Agency's (45-day) review period or until the Environmental Protection Agency has notified the District that it will not object to the permit modification, whichever is first. Under this final action, the Control Officer shall:

- i. Issue the permit modification as proposed; or
- ii. Deny the permit modification application; or
- iii. Determine the proposed permit modification does not meet the minor permit modification criteria and should be reviewed under the significant permit action procedures; or
- iv. Revise the draft permit modification and transmit the new proposed permit to the Environmental Protection Agency.

4. Non-Federal Minor Permit Change

a. Application Submittal

An applicant for a non-federal minor permit change shall submit an application for such change prior to implementing such change. An applicant shall submit such application to the District and shall provide a copy of the application to the Environmental Protection Agency, Region IX. An applicant may implement the changes addressed in an application for a non-federal minor permit change upon submission of such application to the District.

b. Action on Applications

The Control Officer shall take final action on an application for a minor non-federal Part 70 permit modification within 90 days of receipt of such application. Under this final action, the Control Officer shall:

- i. Issue the permit modification as proposed; or
- ii. Deny the permit modification application; or
- iii. Determine the proposed permit change does not meet the non-federal minor permit change criteria and should be reviewed under the significant permit action procedures or minor permit modification procedures.

5. Environmental Protection Agency Objection

The Control Officer shall not issue a final Part 70 permit to an applicant if the Environmental Protection Agency objects to the issuance of such permit in writing within 45 days of the receipt of a copy of the District's proposed permit and all necessary supporting information.

6. Public Notification

a. Electronic Notice: The Control Officer shall provide notice of and opportunity to review the proposed decision to issue a permit to operate in accordance with the requirements in this section, for initial permits, renewal of permits, significant permit modifications, and reopenings for cause:

- i. The Control Officer shall provide electronic notice ("e-notice") by posting the notice prominently on the public notice section of the District's public website, for the duration of the public comment period. The public comment period shall provide at least 30 days from the date of publication for the public to submit written comments regarding such preliminary decision. This method shall be used for all draft permits subject to notice under this section.
- ii. The notice shall provide the following information:
 - (A) Identification of the affected facility;
 - (B) The name and address of the permittee;

- (C) The name and address of the District;
 - (D) The activity or activities involved in the permit action;
 - (E) The emissions change involved in any permit modification;
 - (F) The name, address, and telephone number of a person (or an email or website address) from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials, and all other materials available to the permitting authority (except for publicly-available materials and publications) that are relevant to the permit decision;
 - (G) A brief description of the comment procedures required by Section D.6; and
 - (H) The time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled). The Control Officer shall provide notice of any public hearing scheduled pursuant to this subsection at least 30 days prior to such hearing.
- iii. The District shall maintain a mailing list of persons who request to be notified of the Part 70 permitting activity and shall distribute (e.g., by email and/or postal service) the notice to those persons. The District shall include a link on its public website allowing interested persons to subscribe to the mailing list, and shall offer a sign-up sheet to subscribe to the mailing list at any public hearing on a draft permit. The District may update the mailing list from time to time by requesting written indication of continued interest from those listed. The District may delete from the list the name of any person who fails to respond to such a request within a reasonable timeframe.
 - iv. The District shall provide notice by other means if necessary to assure adequate notice under applicable state and federal law to the affected public.
- b. **Electronic Access:** For each permit that the District has provided e-notice for on the District's website, the District shall post (or hyperlink to) the draft permit and key permit support documents on the District's website for electronic access ("e-access") for the duration of the public comment period. Permit support documents may include the permit application, statement of basis/engineering evaluation, fact sheet, preliminary determination, final determination, and response to comments. Some information may not be publicly available (e.g., information entitled to confidential treatment pursuant to section 114(c) of the Clean Air Act or other information whose disclosure is restricted by federal law).
 - c. The Control Officer shall keep a written or electronic log containing records of the commenters and issues raised during the public participation process.
 - d. The Control Officer need only consider comments regarding a preliminary decision to grant or reissue a Part 70 permit if the comments are germane to the applicable requirements implicated by the permit action in question. Comments will be germane only if they address whether the permit action in question is consistent with all applicable requirements including those of District Regulation XIII and of federal regulations listed in 40 Code of Federal Regulations Part 70. Comments that address a portion of a Part 70 permit that would not be affected by the permit action in question would not be germane.

7. Concurrent Review

At the Control Officer's discretion, the preliminary decision and proposed operating permit may be issued concurrently for public and Environmental Protection Agency review. If public comment

results in a significant change to the permit, then the Environmental Protection Agency may require an extension of their 45-day review period.

8. Environmental Protection Agency and Affected State Notification

a. Administrative Permit Amendments

The Control Officer shall submit a copy of the revised permit to the Environmental Protection Agency.

b. Minor Permit Modifications

- i. The Control Officer shall, no later than 7 days after receipt of a complete application for a minor permit modification, provide to the Environmental Protection Agency and affected states a copy of such application.
- ii. The Control Officer shall provide to the Environmental Protection Agency and any affected state written notification of any refusal by the District to accept all recommendations that an affected state submitted for the permit. The notice shall include the District's reasons for not accepting such recommendations, and a copy of the new proposed permit modification.
- iii. The Control Officer shall provide written notice to the Environmental Protection Agency of the final decision to grant or deny a minor permit modification, along with the new final permit modification.

c. Significant Permit Actions

- i. The Control Officer shall provide to the Environmental Protection Agency, affected states and any person that requests such information a copy of any notification made pursuant to Section D.6 of this rule, and the supporting data and analysis relating to any such preliminary decision.
- ii. The Control Officer shall provide to the Environmental Protection Agency and any affected state written notification of any refusal by the District to accept all recommendations that an affected state submitted for the permit. The notice shall include the District's reasons for not accepting such recommendations. A copy of the proposed permit shall also be provided to the Environmental Protection Agency, Region IX, and the affected states at this time.
- iii. The Control Officer shall provide written notification of the final decision to grant or deny a Part 70 permit to the Environmental Protection Agency and any affected states. If applicable, a copy of the final permit shall be provided to the Environmental Protection Agency, Region IX, along with the notification.

9. Public Petitions to the Environmental Protection Agency

If the Environmental Protection Agency does not object in writing to the issuance of a Part 70 permit pursuant to Section D.5 of this rule, any person may petition the Environmental Protection Agency within 60 days after the expiration of the Environmental Protection Agency's 45-day comment period.

Such petition shall be based only on issues relating to the permit that were raised during the public comment period specified pursuant to Section D.6 of this rule, unless:

- a. The petitioner demonstrates that it was impracticable to raise such issues during such public comment period; or
- b. Grounds for such petition arose after the end of such public period.

If the Environmental Protection Agency objects to the permit as a result of a petition filed pursuant to this section, the District shall not issue the permit. Notwithstanding the previous sentence, a petition does not stay the effectiveness of a permit if the permit was issued after the end of the 45-day Environmental Protection Agency comment period and prior to an Environmental Protection Agency objection.

10. Reopening of Permits for Cause

A permit shall be reopened and revised for cause as provided below:

- a. If additional applicable requirements become applicable to the Part 70 source which has an unexpired permit term of three (3) or more years, the Control Officer will reopen the permit. Such a reopening shall be completed no later than 18 months after promulgation of the applicable requirement. However, no such reopening will be required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to Rule 1304.D.1.a.v. Also, all such reopenings shall not be initiated before a notice of such intent is provided to the permittee by the Control Officer at least 30 days in advance of the date that the permit is to be reopened, except that the Control Officer may provide a shorter time period in the case of an emergency.
- b. If additional requirements become applicable to an acid rain source under the acid rain program, a Part 70 permit reopening shall be made. Upon approval by the Environmental Protection Agency, excess emissions offset plans shall be deemed to be incorporated into the permit.
- c. If the District or the Environmental Protection Agency determine that the Part 70 permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit, a permit reopening shall be made. Such reopenings shall be made as expeditiously as practicable.
- d. If the District determines that the Part 70 permit must be revised or revoked to assure compliance with any applicable requirement, or the Environmental Protection Agency determines that the Part 70 permit must be revised or revoked to assure compliance with any federally enforceable requirement, the permit shall be reopened. Such reopenings shall be made as expeditiously as practicable.

Administrative requirements to reopen and issue a permit shall follow the same procedures that apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

11. Reopenings for Cause by the Environmental Protection Agency

Procedures and time frames for permit reopenings by the Environmental Protection Agency for cause will be, as follows:

- a. The Environmental Protection Agency will notify the District and the permittee of their findings for cause, in writing.
- b. The District shall, within 90 days after receipt of such notification, forward to the Environmental Protection Agency a proposed determination of termination, modification,

or revocation and reissuance, as appropriate. The Environmental Protection Agency may extend this 90-day period for an additional 90 days if it finds that a new or revised permit application is necessary or that the District must require the permittee to submit additional information.

- c. If the Environmental Protection Agency's review of the proposed determination results in an Environmental Protection Agency objection, the District shall, within 90 days after receipt of an Environmental Protection Agency objection, resolve any such Environmental Protection Agency objection and terminate, modify, or revoke and reissue the permit in accordance with such Environmental Protection Agency objection.
- d. If the District fails to submit a proposed determination pursuant to Section D.11.b of this rule or fails to resolve any objection pursuant to Section D.11.c of this rule, the Environmental Protection Agency shall terminate, modify or revoke and reissue the Part 70 permit after taking the following actions:
 - i. The permittee shall be provided with a 30-day notice prior to the Environmental Protection Agency's final action, if any is taken.
 - ii. The permittee shall also be provided with an opportunity for comment on the Environmental Protection Agency's proposed action and an opportunity for a hearing.

12. Permit Processing Costs

All costs incurred by the District for the issuance of a Part 70 permit shall be "reimbursable costs" pursuant to District Rule 210 and shall be subject to all requirements therein. Such costs shall include requirements for the public notices, hearings, and additional permit program activities necessary to issue the Part 70 permit, but shall not include any cost for work necessitated by District requirements which are funded by the Fee Schedule of Rule 210.

E. Rule Compliance Schedule

- 1. All Part 70 sources subject to this rule, except the Outer Continental Shelf sources, shall comply with this rule on the date they become subject to the federal operating permit program as approved by the Environmental Protection Agency for the District. All Outer Continental Shelf sources shall comply with this rule either on the Environmental Protection Agency's approval date for this rule or on the date the Environmental Protection Agency delegates the Outer Continental Shelf program to the District, whichever is later. Specific dates for compliance are provided in relevant sections of this rule.

F. Effective Date of Rule

The requirements of this rule shall become effective on the date of approval by the Environmental Protection Agency.