

IBR/PSD Follow-Up Issues:

**I. IBR-generally**

Regulation No. 19	Page Number	Definitions/Subject	Reference	"As Of" Date	Condition/Term	Updated Federal Register Notice	Link to FR Notice	Revisions from Recent FR Notice	Additional Notes/Links
19.703(A)	7-3	applicable performance specifications and quality assurance procedures	40 C.F.R. Part 60, Appendix B... quality assurance procedures in 40 C.F.R. Part 60, Appendix F	App B: effective date of the federal final rule published by EPA in the Federal Register on February 27, 2014 (79 FR 11271).... App F: effective date of the federal final rule published by EPA in the Federal Register on February 27, 2014		83 FR 56720, Nov 14, 2018	<a href="https://www.govinfo.gov/content/pkg/FR-2018-11-14/pdf/2018-24747.pdf#page=1">https://www.govinfo.gov/content/pkg/FR-2018-11-14/pdf/2018-24747.pdf#page=1</a>	Updated methods and procedures for quality assurance requirements. Performance Specifications 1, 2, 3, 11, 15, and 18 for Appendix B and Procedure 1 of Appendix F revised.	Appendix B to Part 60 - Performance Specifications Appendix F to Part 60 - Quality Assurance Procedures

				(79 FR 11274)					
		source categories listed in 40 CFR Part 51 Appendix P and 40 CFR Part 60	40 C.F.R. Part 51, Appendix P or in 40 C.F.R. Part 60	Appendix P: November 7, 1986 (51 FR 40675); 40 CFR Part 60: August 30, 1992		81 FR 59808, Aug. 30, 2016	<a href="https://www.govinfo.gov/content/pkg/FR-2016-08-30/pdf/2016-19642.pdf#page=1">https://www.govinfo.gov/content/pkg/FR-2016-08-30/pdf/2016-19642.pdf#page=1</a>	Appendix P, Part 51: section 3.3, the erroneous reference to section 2.1 of Performance Specification 2 of appendix B of part 60 is corrected to section 6.1.	Appendix P to Part 51 - Minimum Emission Monitoring Requirements
						80 FR 13715, Mar 16, 2015	<a href="https://www.govinfo.gov/content/pkg/FR-2015-03-16/pdf/2015-03733.pdf#page=44">https://www.govinfo.gov/content/pkg/FR-2015-03-16/pdf/2015-03733.pdf#page=44</a>	Part 60, Subpart QQQQ—Standards of Performance for New Residential Hydronic Heaters and Forced-Air	Subpart QQQQ - Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces

									Furnaces (latest source category added to Part 60; GHGs for EGUs came a little later, but EGUs were not a newly listed source category)
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Regulation No.	Page Number	Definitions/Subject	Reference	"As Of" Date	Condition/Term	Updated Federal Register Notice	Link to FR Notice	Revisions from Recent FR Notice	Additional Notes/Links
19.804(B)	8-2	data reduction	40 CFR 60.8	2/27/2014		81 FR 59809, Aug 30, 2016	<a href="https://www.govinfo.gov/content/pkg/FR-2016-08-30/pdf/2016-19642.pdf#page=1">https://www.govinfo.gov/content/pkg/FR-2016-08-30/pdf/2016-19642.pdf#page=1</a>	Revisions to test methods, performance specifications, and testing regulations for air emission sources	

- We also need to work through Regulation 26.

## II. PSD

- 52.21(b)(3)(iii)(c)

- Not incorporated into Regulation No. 19.
- Pertains to when an increase or decrease in actual emissions is creditable

(c) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in paragraph (b)(1)(iii) of this section or it occurs at an emission unit that is located at a major stationary source that belongs to one of the listed source categories.

- 2008, Dec 19: **language added at (3)(iii)(c)**  
<https://www.govinfo.gov/content/pkg/FR-2008-12-19/pdf/E8-29998.pdf>
- Fugitive Emissions Rule  
2009, Sept 30: 2008, Dec 19 rulemaking stayed, <http://www.gpo.gov/fdsys/pkg/FR-2009-09-30/pdf/E9-23503.pdf>
- 2009, Dec 11: further stayed, <http://www.gpo.gov/fdsys/pkg/FR-2009-12-11/pdf/E9-29068.pdf>
- 2010, Mar 31: further stayed
- 2011, Mar 30: (b)(3)(iii)(c) retained as proposed  
<http://www.gpo.gov/fdsys/pkg/FR-2011-03-30/pdf/2011-6670.pdf>
- Should this be incorporated so there is no gap between what federal law requires and what state law requires? Does this provide clarity with respect to fugitive emissions or does it seem to add an additional obligation?

- 52.21(b)(49) vs 19.903(C), 19.903(B) and 19.904(G)

- Definition of Subject to Regulation
- Specific language differences, is it still important to maintain these differences now that the supreme court has ruled on GHG Tailoring Rule?
- Do we want to IBR (or IBR with some exceptions) or do we want to continue to have actual language in our PSD chapter instead of referring to federal language

- Additional Global Warming Potentials have been added to Table A-1 of Subpart A of 40 CFR Part 98 <https://www.govinfo.gov/content/pkg/FR-2014-12-11/pdf/2014-28444.pdf>
  - Do references in the language of an incorporated by reference law auto-update? We think that they do. This maybe a reason certain items need to be written out.
  - Biomass issue: 2011, Jul 20: <http://www.gpo.gov/fdsys/pkg/FR-2011-07-20/pdf/2011-17256.pdf>
  - PM2.5 and PM10 emissions
  - Precursor presumptions
  - July 27, 2012 date for Section 111 and 108 in 19.903(B) was used to pull in PM2.5 but we don't use a date for Title VI or pollutants otherwise subject to regulation.
  - Maybe get rid of July 27, 2012 and more precisely refer to what we adopt in Chapter 2 for the NAAQS? This doesn't help with Section 111
  - Implications for GHG IBR versus copy and paste language trickle down to PALs
  - See word-for-word comparison doc for subject to regulation
  - 2010, Jun 3: <http://www.gpo.gov/fdsys/pkg/FR-2010-06-03/pdf/2010-11974.pdf>
- 52.21 (w)(3)
    - Shall versus may language
    - Previously administrator (or ADEQ acting as administrator) was required to grant an application for rescission if the application shows that this section would not apply to the source or modification.
    - Changes in 2016 made this discretionary
      - A. 2. REVISION TO 40 CFR 52.21(w)(3) TO CLARIFY THAT THE EPA ADMINISTRATOR DOES NOT HAVE A MANDATORY DUTY TO GRANT A RESCISSION REQUEST
      - B. A. SUMMARY OF THE EPA'S BASIS

The EPA proposed to revise 40 CFR 52.21(w)(3) to make it clear that the provision does not create a mandatory duty on the Administrator to grant a rescission request. Specifically, the EPA proposed to replace the word “shall” with the word “may” in this provision to make clear that the Administrator may deny a permit rescission request if he or she does not concur with the analysis by the permit applicant that 40 CFR 52.21 “would not apply to the source or modification.”

## 1. b. Summary of Comments

One commenter recommended that we retain the existing language in [40 CFR 52.21\(w\)\(3\)](#) as “shall” instead of “may.” The commenter believed that the existing language in the regulation provides the Administrator discretion to grant a rescission request since the “if” in that regulatory text shows that a source has the burden of proof to establish that a source is eligible for the permit rescission and there is no guaranteed EPA approval.

## 2. c. EPA Response

The EPA continues to believe that it is appropriate to change the word “shall” to “may” in this provision to clarify that the Administrator may deny a permit rescission request if he or she does not concur with the analysis by the permit applicant that [40 CFR 52.21](#) “would not apply to the source or modification.” The word “shall” is commonly used in statutes and regulations to describe a mandatory requirement. Even if other words in [40 CFR 52.21\(w\)\(3\)](#) convey that a reviewing authority has discretion to deny a request, the EPA believes the regulation should be clear. We believe it is clearer to use discretionary language that conveys the meaning more directly so one does not have to rely on context to determine the meaning. As stated in the proposal, the EPA does not believe this revision changes the meaning or intent of the existing provision, but rather clarifies the discretion held by the Administrator. Thus, the EPA is finalizing this revision in this final rule.

**2016 Nov 7:** <https://www.federalregister.gov/documents/2016/11/07/2016-26593/rescission-of-preconstruction-permits-issued-under-the-clean-air-act>

- [52.21 \(w\)\(4\)](#)
  - Changed from requirement to publish rescission in a newspaper to requirement to post on a website (Does not provide a choice)
  - <https://www.govinfo.gov/content/pkg/FR-2016-10-18/pdf/2016-24911.pdf#page=17>