

(iii) When the period of control or recovery device operation is less than 4 hours in an operating day, and more than 1 hour during the period of operation does not constitute a valid hour of data due to insufficient monitoring data.

(iv) Monitoring data are insufficient to constitute a valid hour of data as used in paragraphs (d)(1)(ii) and (iii) of this section, if measured values are unavailable for any of the 15-minute periods within the hour. For data compression systems approved under § 65.162(d)(4), monitoring data are insufficient to calculate a valid hour of data if there are less than four data values recorded during the hour.

(2) One excused excursion for each control device or recovery device for each semiannual period is allowed.

(3) The following excursions are not violations and do not count as excused excursions:

(i) Excursions which occur during periods of startup, shutdown, and malfunction, when the source is being operated during such periods to minimize emissions in accordance with § 65.3(a)(3).

(ii) Excursions which occur due to failure to collect a valid hour of data during periods of startup, shutdown, and malfunction, when the source is being operated during such periods in accordance with § 65.3(a)(3).

(iii) Excursions which occur during periods of nonoperation of the regulated source or portion thereof, resulting in cessation of the emissions to which monitoring applies.

(4) Nothing in paragraph (d) of this section shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this part.

(5) Paragraph (d) of this section applies to emission points and control devices for which continuous monitoring is required by this subpart, and to alternatives to continuous monitoring systems such as provided in § 65.162(d)(3) and (d)(4). Paragraph (d)(3) of this section also applies to emission points and control devices which are not subject to continuous monitoring requirements, such as inspections of the closed vent system.

(e) *Alternative monitoring parameter.*

An owner or operator may request approval to monitor control, recovery, halogen scrubber, or halogen reduction device operating parameters other than those specified in this subpart by following the procedures specified in § 65.162(e).

[65 FR 78285, Dec. 14, 2000, as amended at 71 FR 20472, Apr. 20, 2006]

§ 65.157 Performance test and flare compliance determination requirements.

(a) *Performance tests and flare compliance determinations.* Where §§ 65.145 through 65.155 require, or the owner or operator elects to conduct, a performance test of a nonflare control device or a halogen reduction device, or a compliance determination for a flare, the requirements of paragraphs (b) through (d) of this section apply.

(b) *Prior test results and waivers.* Initial performance tests and initial flare compliance determinations are required only as specified in this subpart.

(1) Unless requested by the Administrator, an owner or operator is not required to conduct a performance test or flare compliance determination under this subpart if a prior performance test or compliance determination was conducted using the same methods specified in § 65.158, and either no process changes have been made since the test or the owner or operator can demonstrate to the Administrator's satisfaction that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(2) Individual performance tests and flare compliance determinations may be waived upon written application to the Administrator per § 65.164(b)(3) if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, or the source is being operated under an extension of compliance under 40 CFR part 63, or a waiver of compliance under 40 CFR part 61, or the owner or operator has requested an extension of compliance under 40 CFR part 63, or a waiver of compliance under 40 CFR part 61, and the Administrator is still considering that request.

(3) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notification is given to the owner or operator of the source.

(c) *Performance tests and flare compliance determinations schedule.* Except as specified in paragraphs (c)(1)(viii), (c)(1)(ix), (c)(1)(x), and (c)(1)(xi) of this section, unless a waiver of performance testing or flare compliance determination is obtained under this section or the conditions of another subpart of this part, the owner or operator shall perform such tests specified in the following:

(1) Unless a waiver of performance testing or flare compliance determination is obtained under this section or the conditions of another subpart of this part, the owner or operator shall perform such tests specified in the following:

(i) Within 180 days after the effective date of a relevant standard for a new source that has an initial startup date before the effective date of that standard; or

(ii) Within 180 days after initial startup for a new source that has an initial startup date after the effective date of a relevant standard; or

(iii) Within 180 days after the compliance date specified in a referencing subpart for an existing source or within 180 days after startup of an existing source if the source begins operation after the effective date of the relevant 40 CFR part 63 emission standard; or

(iv) Within 180 days after the compliance date for an existing source subject to an emission standard established pursuant to section 112(f) of the Act; or

(v) Within 180 days after the termination date of the source's extension of compliance or a waiver of compliance for an existing source that obtains an extension of compliance under 40 CFR 63.6(i) or a waiver of compliance under 40 CFR 61.11; or

(vi) Within 180 days after the compliance date for a new source, subject to an emission standard established pursuant to section 112(f) of the Act, for which construction or reconstruction is commenced after the proposal date

of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of the relevant standard established pursuant to section 112(f) of the Act (see 40 CFR 63.6(b)(4)); or

(vii) When a promulgated emission standard under 40 CFR part 63 is more stringent than the standard that was proposed (see 40 CFR 63.6(b)(3)), the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the proposal and promulgation dates of the standard shall comply with performance testing requirements within 180 days after the standard's effective date or within 180 days after startup of the source, whichever is later. If the promulgated standard is more stringent than the proposed standard, the owner or operator may choose to demonstrate compliance initially with either the proposed or the promulgated standard. If the owner or operator chooses to comply with the proposed standard initially, the owner or operator shall conduct a second performance test within 3 years and 180 days after the effective date of the standard, or after startup of the source, whichever is later, to demonstrate compliance with the promulgated standard.

(viii) If a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends to assert a claim of force majeure, the owner or operator shall notify the Administrator, in writing as soon as practicable following the date the owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline, but the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall occur as soon as practicable.

(ix) The owner or operator shall provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to

minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.

(x) The decision as to whether or not to grant an extension to the performance test deadline is solely within the discretion of the Administrator. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.

(xi) Until an extension of the performance test deadline has been approved by the Administrator under paragraphs (c)(1)(viii), (c)(1)(ix), and (c)(1)(x) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.

(2) The Administrator may require an owner or operator to conduct performance tests and compliance determinations at the regulated source at any time when the action is authorized by section 114 of the Act.

(d) *Performance testing facilities.* If required to do performance testing, the owner or operator of each new regulated source and, at the request of the Administrator, the owner or operator of each existing regulated source, shall provide performance testing facilities as specified in the following:

(1) Sampling ports adequate for test methods applicable to such source. This includes, as applicable, the following requirements:

(i) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(ii) Providing a stack or duct free of cyclonic flow during performance tests as demonstrated by applicable test methods and procedures;

(2) Safe sampling platform(s);

(3) Safe access to sampling platform(s);

(4) Utilities for sampling and testing equipment; and

(5) Any other facilities that the Administrator deems necessary for safe and adequate testing of a source.

[65 FR 78285, Dec. 14, 2000, as amended at 72 FR 48942, Aug. 27, 2007; 72 FR 73626, Dec. 28, 2007]

§ 65.158 Performance test procedures for control devices.

(a) *General procedures.* Where §§ 65.145 through 65.155 require, or the owner or operator elects to conduct, a performance test of a control device or a halogen reduction device, an owner or operator shall comply with the requirements of (a)(1) through (3) of this section, as applicable.

(1) Performance tests shall be conducted at maximum representative operating conditions for the process unless the Administrator specifies or approves alternate operating conditions. During the performance test, an owner or operator may operate the control or halogen reduction device at maximum or minimum representative operating conditions for monitored control or halogen reduction device parameters, whichever results in lower emission reduction. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(2) Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in this subpart, in each relevant standard, and, if required, in applicable appendices of 40 CFR parts 51, 60, 61, and 63 unless the Administrator allows revisions to the test methods as specified in one or more of the following five paragraphs:

(i) The Administrator specifies or approves, in specific cases, the use of a test method with minor or intermediate changes in methodology; or

(ii) The Administrator approves the use of a major change to a test method, the results of which the Administrator has determined to be adequate for indicating whether a specific regulated source is in compliance; or

(iii) Intermediate and major changes to a test method shall be validated using the applicable procedures of Method 301 of appendix A of 40 CFR part 63; or