



**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF AIR POLLUTION CONTROL**

Davy Crockett Tower, 7th Floor
500 James Robertson Parkway
Nashville, TN 37243

APC-SIP-G-03- Counting Federal Standards for Title V Base Fee Permit - 08262024

DRAFT Guidance on Counting Federal Air Quality Standards when a Standard Allows for Compliance with Another Standard when Determining Title V Base Fees

DISCLAIMER: This document is guidance only and does not create legal rights or obligations. Agency decisions in any particular case will be made applying applicable laws and regulations to the specific facts.

EFFECTIVE DATE:

Signatures:

Division Director

Reviewer – Office of General Counsel

Reviewer – Environmental Fellow

Preparer – Division Deputy Director

PURPOSE

The purposed of this guidance is to clarify how to identify the number of applicable federal air quality standards used to determine a facility’s major source or Paragraph 11 source (hereafter “Title V”) base fees, when the subject facility has the option of complying with an alternate federal air quality standard in lieu of the normally applicable standard. This guidance also clarifies how to count federal air quality standards when determining a source’s Title V base fee when a federal standard requires a facility to comply with a separate federal standard.

BACKGROUND

On November 9, 2023, the Air Pollution Control Board approved revisions to Tennessee Air Pollution Control Regulation (TAPCR) 1200-03-26-.02, which became effective on March 3, 2024, and revised the Title V base fee from a flat \$6,000 to a base fee that is based on the number of federal air quality standards to which a facility is subject. The pertinent revised rule language contained in TAPCR 1200-03-26-.02(9)(d)1. is quoted below:

- (d) 1. Notwithstanding the fee rates established by parts 2 and 4 of this subparagraph, a responsible official of any source subject to this paragraph shall pay an annual base fee which shall be calculated in accordance with subparts (i) through (iii) of this part. This base fee shall be paid in addition to the annual emission fee established by subpart 2(iii) of this subparagraph. The fee rates required by this part effective July 1, 2022, continue to apply until July 1, 2024.
- (i) The base fee shall be determined by the number of federal air quality standards to which a major source or Paragraph 11 source is subject. The following federal air quality standards shall be considered if the standards have been incorporated into a permit issued to the facility under the provisions of Chapter 1200-03-09 or have been incorporated into Chapter 0400-30-38 or Chapter 0400-30-39:
- (I) Standards of Performance for New Stationary Sources as codified in 40 C.F.R. part 60, excluding subparts A, B, Ba, C, Cb, Cc, Cd, Ce, Cf, AAA, DDDD, FFFF, MMMM, and UUUUa.
- (II) National Emission Standards for Hazardous Air Pollutants as codified in 40 C.F.R. part 61, excluding subpart A.
- (III) National Emissions Standards for Hazardous Air Pollutants as codified in 40 C.F.R. part 63, excluding subparts A, B, C, D, E, OO, PP, QQ, RR, SS, TT, UU, VV, and XX.
- (ii) If a facility is subject to 40 C.F.R. part 60 subpart IIII or JJJJ, or 40 C.F.R. part 63 subpart ZZZZ or CCCCCC and is only subject to that subpart for air contaminate sources that are not required to be included in a permit in accordance with paragraph (4) of Rule 1200-03-09-.04, then such subpart shall not be included when determining the number of federal air quality standards that a source is subject.
- (iii) The base fee is determined in accordance with the following table:

Number of federal air quality standards	Base Fee
0	\$10,000
1	\$15,000
2 to 3	\$20,000

4 to 5	\$30,000
6 to 10	\$40,000
11 to 20	\$50,000
21 and up	\$75,000

TAPCR 1200-03-26-.02(9)(d)1.

Many Title V facilities are subject to multiple federal air quality standards, and in some cases an applicable standard allows or requires the facility to comply with one standard (standard A) by complying with the second (standard B). In these cases, compliance with standard B satisfies all requirements of standard A. Thus, other than complying with standard B, a facility has no compliance obligations under standard A. Under these circumstances, the facility should only count standard B when tabulating the number of federal air quality standards used to determine the base fee.

EXAMPLES

Three examples provided below consider: (1) 40 C.F.R. 63 Subpart MMMM, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products; (2) 40 C.F.R. 63 Subpart PPPP, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products; and (3) 40 C.F.R. 63 Subpart ZZZZ, National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

Example 1.

Subpart MMMM includes the following provision at 40 C.F.R. § 63.3881(d):

If your facility meets the applicability criteria in § 63.3081(b) of the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (40 C.F.R. part 63, subpart IIII), and you perform surface coating of metal parts or products that meets both the applicability criteria in § 63.3082(c) and the applicability criteria of the Surface Coating of Miscellaneous Metal Parts and Products (40 C.F.R. part 63, subpart MMMM), then for the surface coating of any or all of your metal parts or products that meets the applicability criteria in § 63.3082(c), you may choose to comply with the requirements of subpart IIII of this part in lieu of complying with the Surface Coating of Miscellaneous Metal Parts and Products NESHAP. Surface coating operations on metal parts or products (e.g., parts for motorcycles or lawnmowers) not intended for use in automobiles, light-duty trucks, or other motor vehicles as defined in § 63.3176 cannot be made part of your affected source under subpart IIII of this part.

Example 2.

Subpart PPPP contains a similar provision at 40 C.F.R. § 63.4481(d):

If your facility meets the applicability criteria in § 63.3081(b) of the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII) and you perform surface coating of plastic parts or products that meets both the applicability criteria in § 63.3082(c) and the applicability criteria

of this subpart, then for the surface coating of any or all of your plastic parts or products that meets the applicability criteria in § 63.3082(c), you may choose to comply with the requirements of subpart IIII of this part in lieu of complying with this subpart. Surface coating operations on plastic parts or products (e.g., parts for motorcycles or lawnmowers) not intended for use in automobiles, light-duty trucks, or other motor vehicles as defined in § 63.3176 cannot be made part of your affected source under subpart IIII of this part.

In the case of Examples 1 and 2, if the facility chooses to comply with Subpart IIII in lieu of Subparts MMMM and/or PPPP, only Subpart IIII should be counted when determining the base fee provided that choice is reflected in the facility’s air quality permit.

Example 3.

Subpart ZZZZ includes the following provision, in pertinent part, at 40 C.F.R. § 63.6590(c):

An affected source that meets any of the criteria in paragraphs (c)(1) through (7) of this section must meet the requirements of this part by meeting the requirements of 40 C.F.R. part 60 subpart IIII, for compression ignition engines or 40 C.F.R. part 60 subpart JJJJ, for spark ignition engines. No further requirements apply for such engines under this part.

In the case of Example 3, the facility is required to comply with 40 C.F.R. 60 Subpart IIII or JJJJ in lieu of Subpart ZZZZ. In these situations, only Subpart IIII or Subpart JJJJ, whichever is applicable, should be counted when determining the base fee.

The approach described in the above examples should be used in all other situations when: (i) a federal air quality standard allows for or requires a facility to comply with one standard (standard B) in lieu of another standard (standard A), **AND** (ii) the facility chooses to comply with standard B, **AND** (iii) that choice is either— a) contained in the facility’s Title V operating permit or in a construction permit issued to the facility **OR** b) if compliance with standard B is required by standard A.

In situations where facilities are subject to two federal air quality standards (i.e., standard A and standard B) and one of the standards (i.e., standard A) gives the option to comply with the other federal air quality standard (e.g., standard B) to meet **part of** the requirements of the standard in question (i.e., standard A), then both federal air quality standards (A and B) shall be counted.

REVISION HISTORY TABLE

Revision Number	Date	Brief Summary of Change
0	[TBD]	Original Document