Operational Flexibility
- Allows sources to make certain changes without a permit revision

Operational Flexibility
- Mandatory
  - Authority to contravene permit terms not supported by the underlying rule, as long as emission limits are not exceeded
  - Permit terms which allow for trading of emissions increases and decreases to comply with the Federally enforceable emissions cap
- Optional
  - Authority to trade emissions increases and decreases if such trading is allowed by the applicable SIP

Alternative Operating Scenarios
(The Basis of Operational Flexibility)
- Increases and decreases in number of shifts
- Changes in type and size of equipment
- Increases or decreases in material throughput rates
- Changes in the types of material used in production process

What Scenarios Must the Permit Contain?
- Reasonably anticipated operating scenarios
- Identified by the source in its application
- As approved by the permitting authority

What is in the Permit
- Terms to ensure each alternative meets applicable requirements and Part 70
- Shield may apply to scenarios

What is an Off Permit Change
- Changes not addressed or prohibited by the permit
- Changes not subject to:
  - Title I Modifications
  - Title IV Acid Rain Requirements
How to Make Off Permit Change

- Contemporaneous notice to authority and EPA
- Record kept at facility of changes subject to an applicable requirement and emissions resulting from change

Federal & State Enforcement Against Off Permit Changes

- Any prohibition of off permit changes enforceable as a matter of State law only

PERMIT CHANGES

Permit Revisions

- Administrative permit amendment [70.7(d)]
- Minor permit modification [70.7(e)(2)]
- Group processing of minor permit modifications [70.7(e)(3)]
- Significant modifications [70.7(e)(4)]

Administrative Permit Amendment

- Types of changes: [70.7(d)]
  - Typographical errors
  - Change name, address, phone number, or similar
  - More frequent monitoring or reporting
  - Change in ownership with transfer agreement, if no other permit change needed

Admin. Permit Amendment - 2

- Types of changes: [70.7(d)]
  - New source review (NSR) permit enhanced to provide process equivalent to one of modification tracks and compliance requirements equivalent to Section 70.6
  - Other types approved by EPA
- Shield may apply to NSR permit enhanced to significant modification track
- Permit revised within 60 days
  - Source makes change immediately
  - No public process, affected state review required
  - EPA gets notice, but no review
**Minor Permit Modification - Principles**

- Maintains current law
  - Current law allows small emissions increases under PSD/NSR program. MPM allows same increases - even adds review.
  - "Stacking of MPM's" not allowed - maintains current policy
- Provides adequate review
  - 90-day State review, 45-day EPA review, after change

**MPM - Principles - 2**

- No shield - if change denied, source returns to original permit. Must comply with applicable requirements.
- Allows small changes without unreasonable delay
  - Ability to make small changes quickly was common industry theme
- Protects compliance terms of permit
  - Only insignificant monitoring changes allowed through MPM - no relaxations

**MPM - Principles - 3**

- Flexible approach to expeditious processing
  - States must adopt "expeditious procedures" - may use EPA's model or one that provides equivalent streamlining
  - States may require more process

**Minor Permit Modification - Gatekeepers [70.7(e)(2)(i)]**

- Can not use MPM for:
  - Significant changes to monitoring, reporting, recordkeeping
  - Title I modifications
  - Case-by-case emission limits, such as 112(g) modifications or RACT equivalency, or source-specific determinations of ambient impacts, visibility or increment analysis

**MPM - Gatekeepers - 2**

- Can not use MPM for:
  - permit terms with no applicable requirement that source takes to avoid an applicable requirement, such as:
    - federally enforceable emissions cap to avoid Title I modifications, or
    - early reductions limit
- Can not use MPM for: [70.7(e)(2)(i)]
  - Violations of applicable requirements

**MPM - Gatekeepers - 3**

- Changes required by State to be processed as significant
- May be used for:
  - Insignificant monitoring changes
  - Changes using market-based programs that explicitly allow MPM process
Minor Permit Modification - Process [70.7(e)(2)(ii)-(v)]

- How source makes changes
  - Files a complete application describing change, requesting MPM procedure, and certifying that change qualifies
  - Application includes suggested draft permit
  - Receives "qualified exemption" from original permit. Exemption lost if source fails to comply with proposed permit.

MPM - Process - 2

- Make change while application is pending
- Review Process
  - Public review not required
  - Review by State, EPA, and affected States - after change occurs
  - Up to 90-day State review, 45-day EPA review

MPM - Timing [70.7(e)(2)(iii)-(v)]

- Within 5 days of application, State notifies EPA and affected States
- May issue permit after EPA's 45-day review expires, or after EPA notice that it will not object

MPM - Timing - 2

- 90 days after receipt, or 15 days after EPA's review ends, whichever is later, Permitting Authority:
  - Issues modification as proposed
  - Denies the application
  - Finds that request fails to meet criteria for MPM, or
  - Revises draft permit and sends EPA new proposed permit

Group Processing of Minor Permit Modifications [70.7(e)(3)]

- "De Minimis" emissions threshold
  - State may set its own threshold levels
  - If State does not set levels, EPA's levels apply

- Gatekeepers
  - Same as MPM - no significant monitoring changes, no Title I modifications, etc.
  - Changes are collectively below threshold level

Group Processing of MPM - 2

- Quarterly review by EPA and affected States
  - Except: if changes collectively exceed threshold, submit in 5 days
- Same enforcement protection as MPM
  - No shield, and if permit denied, source returns to terms of original permit
**Significant Modifications**

*70.7(e)(4)]*

- Any permit change not an MPM or administrative amendment
  - Significant monitoring changes
  - Relaxations of reporting and recordkeeping
- Full review process
  - Same review process as applies to permit issuance and renewal
  - Except: permitting authority completes most reviews in 9 months
- State may allow permit shield

**Permit Modifications and the Permit Shield**

<table>
<thead>
<tr>
<th>Category of Modification</th>
<th>Can Permit Shield Apply</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operational Flexibility</td>
<td>Yes</td>
</tr>
<tr>
<td>Off Permit</td>
<td>No</td>
</tr>
<tr>
<td>Administrative</td>
<td>Yes</td>
</tr>
<tr>
<td>Minor</td>
<td>No</td>
</tr>
<tr>
<td>Significant</td>
<td>No</td>
</tr>
</tbody>
</table>

**Reopenings for Cause** *70.7(f)]*

- Permit must be reopened when:
  - New requirements apply to major sources and 3 or more years remain before permit is due to expire. Complete the reopening 18 months after new requirement promulgated.
  - Reopening not required if effective date of requirement is beyond expiration date of permit.
- Permit must be reopened when:
  - New requirements apply to acid rain sources

**Reopenings for Cause - 2**

- State or EPA finds material mistake or inaccurate statement made in establishing permit terms
- State or EPA finds reopening is necessary to assure compliance with applicable requirements (example - reopen to include compliance plan)

**Reopenings for Cause - 3**

- Reopenings follow permit issuance process
  - Same review process used for permit issuance and renewal - public, EPA, and affected State review
  - Review those parts of permit being reopened
  - At least 30-day notice to source prior to reopening
  - State may allow permit shield

**Reopenings by EPA** *70.7(g)]*

- EPA may find "cause exists" to reopen
  - Reasons for reopening are those in Section 70.7(f)
- Process takes at least 9 months
  - EPA notifies permitting authority and permittee that cause exists
  - In 90 days, State sends EPA a proposed finding to terminate, modify, revoke or reissue permit. EPA may extend deadline 90 days. If State fails to send finding, EPA reopens.
Reopenings by EPA - 2

- 90-day EPA review of finding
- Permitting authority has 90 days to resolve EPA objection and terminate, modify, or revoke and reissue permit. If State fails to resolve objection, EPA reopens.
  - If EPA reopens permit:
    - 30-day notice to permittee
    - Opportunity to comment and a hearing

PERMIT FEES

Purpose of the Fee System

- Cost recovery mechanism built into 1990 CAAA
- Relationship to Section 105 grants

Fees Recover all Direct and Indirect Costs

- Broad versus narrow interpretation of indirect
- Mandated cost recovery for:
  - Reviewing and acting on permit applications
  - Implementing and enforcing permit terms
  - Emissions and ambient monitoring
  - Preparing regulations and guidance
  - Modeling, analyses, and demonstrations
  - Preparing inventories and tracking emissions

Other Costs to Recover

- Program development
- Program administration/ maintenance/ overhead
- Fee invoicing and collection
- Certain SIP development activities
- Information management (pro rata share)
- Small business assistance programs under Title V
- Training (all Title V related training and a prorated share of other types of training)

Cost excluded from Fees

- Mobile source/natural source costs
- Court costs and other enforcement action costs
Fee Basics

Actual Emissions
or
Permitted Emissions

Actual Emissions

- **Advantage**
  - Possible economic incentive for reducing emissions if control costs < $/ton fee
- **Disadvantages**
  - Potential to over/under charge due to inaccuracy of emissions inventories
  - Possibility of fraud
  - Varying fees — hard to budget
  - No incentive to reduce legal potential to emit

Permitted Emissions

- **Advantage**
  - Early calculation of fees to allow budgeting
  - Incentive to reduce unneeded potential to emit
- **Disadvantage**
  - Permitted emission limit is not always clear (consider operational flexibility)
  - No economic incentive to reduce actual emissions

Emissions Excluded from Fee Calculations

- Carbon monoxide
- Emissions of any regulated pollutant over 4000 tpy
- Substances regulated solely under Section 112(r) of CAA (accidental releases)
- Substances regulated solely under Section 602 of CAA (stratospheric ozone)
- Insignificant quantities
- Acid rain sources

Presumptive Minimum Fee

- Standard by which aggregate fee rate is initially judged
- Starts at $25/tpy (1990 dollars)
- Adjusted annually for inflation (CPI)
  - Adjusted August 31 each year
  - $29.05 as of August 1996

Types of Fees

- Application --- fee to apply
- Emissions ------- fee on emissions
- Service --------- fee to complete a permitting action
Emission Fees
- "Fair share" cost based on proportion of emissions
- Offers economic incentive for emission reductions
- May vary by pollutant

Service Fees
- Actual cost of doing business
- Pay as you go/pay on use
- Increased fairness/higher complexity

FEE DEMONSTRATION

The Fee Demonstration
- Presumptive minimum fee
  - $25/ton
  - 1990 dollars
  - Annual adjustment by CPI
- If less than presumptive minimum, or if challenged
  - Accurate estimation of costs
  - Accurate inventory
  - Fee revenue adequately supports program costs

Conditions Requiring Fee Demo
- Charging less than presumptive minimum
- Adequacy of fee structure is challenged

Elements of Fee Demo
- Adequate identification of permitting activities
- Proper Accounting of cost of activities
- Accurate emissions inventory
- Allocation of costs among sources/emissions
**Restriction on Fee Revenue**
- Retained by Air Agency
- Permitting related activity only

**EPA Oversight of the Permit Program**
- Non-approvable permit program
- Inadequate administration and enforcement

**SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND COMPLIANCE ASSISTANCE PROGRAM**

**Program Elements**
- Small Business Assistance Program (SBAP)
- Small Business Ombudsman
- Compliance Advisory Panel

**Small Business Assistance Program (SBAP)**
- Provides technical and compliance assistance
- Promulgated in a SIP revision
- Funded by Title V fees

**Major Elements of SBAP**
- Mechanism for developing and collecting information
- Pollution prevention assistance
- Compliance assistance
- Notice of rights
- Notice of obligations
- Consideration of modification requests
Small Business Ombudsman
- Represents the interest of small businesses in rule development
- Provides assistance to small businesses

Compliance Advisory Panel
- Oversees SBAP
- Monitors compliance with relevant legislation

Source Eligibility to Receive Assistance
- Section 507(c) of CAA
- Permitting authority option to add or exclude