

# Air Pollution Training Institute

## Final Exam Answer Sheet 2000



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**40 CFR**  
**Part 70**  
**(Title V)**



# Federal Register

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Tuesday  
July 21, 1992

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Part II

## Environmental Protection Agency

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40 CFR Part 70

Operating Permit Program; Final Rule

**ENVIRONMENTAL PROTECTION  
AGENCY**
**40 CFR Part 70**
**[FRL-4152-9]**
**RIN 2060-AD16**
**Operating Permit Program**
**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is promulgating a new part 70 of chapter I of title 40 of the Code of Federal Regulations (CFR).

Title V of the Clean Air Act (Act) Amendments of 1990, Public Law 101-549, enacted on November 15, 1990, requires EPA to promulgate regulations within 12 months of enactment that require and specify the minimum elements of State operating permit programs. This new part 70 contains these provisions. It requires States to develop, and to submit to EPA, programs for issuing operating permits to major stationary sources (including major sources of hazardous air pollutants listed in section 112 of the Act), sources covered by New Source Performance Standards (NSPS), sources covered by emissions standards for hazardous air pollutants pursuant to section 112 of the Act, and affected sources under the acid rain program.

Title V establishes timeframes for developing and implementing the State permit programs. Within 3 years of enactment (i.e., no later than November 15, 1993), States must submit proposed permit programs to EPA for approval. The EPA must act to approve or disapprove a State program within 1 year of submittal by the State to EPA. In some cases, EPA can grant programs an interim approval for a period of up to 2 years. If a State fails to submit a fully-approvable program within the 3-year period (or by the end of the interim approval period), EPA will apply specific sanctions pursuant to the provisions of title V and, in any event, must establish a Federal program 2 years after the end of the 3-year program submittal period. Sources subject to the part 70 program must submit complete permit applications within 1 year after a State program is approved by EPA (including an interim approval) or, where the State program is not approved, within 1 year after a program is promulgated by EPA. In the case of new sources, complete permit applications would generally be due 12 months after the source commences operation, unless the permitting authority sets an earlier deadline.

Part 70 sources must obtain an operating permit addressing all applicable pollution control obligations under the State implementation plan (SIP) or Federal implementation plan (FIP), the acid rain program, the air toxics program, or other applicable provisions of the Act (e.g., NSPS). Sources must also submit periodic reports to the State and EPA, as appropriate, concerning the extent of their compliance with permit obligations. The permit, permit application, and compliance reports will be available to the public, subject to any applicable confidentiality protection procedures similar to those contained in section 114(c).

In the proposal, EPA discussed issues connected with the regulations that will govern EPA's issuance of title V permits. The EPA will address these issues further when the Agency proposes Federal regulations.

**DATES:** The regulatory amendments announced herein take effect on July 21, 1992. This promulgation, however, does not affect the date by which States are to submit full permit programs to EPA for approval. The submittal deadline is set by section 502(d)(1) as 3 years after enactment of the Act Amendments of 1990. The deadline for full program submittal, therefore, is set by the Act as November 15, 1993. A slight variation to this rule can occur if EPA grants a program interim approval. An interim approval will be accompanied by a list of revisions or modifications necessary for the program to be fully approved. The State will then have until 6 months prior to the end of the interim approval to submit the program corrections, even though the November 15, 1993 date may have passed.

**ADDRESSES:**
**Docket**

Supporting information used in developing the proposed and final rules is contained in Docket No. A-90-33. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address listed below. A reasonable fee may be charged for copying. The address of the EPA Air Docket is: Room M-1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Michael Trutna (telephone 919/541-5345) or Kirt Cox (telephone 919/541-5399), Mail Drop 15, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Management

Division, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are in the following format:

- I. Background and Purpose
- II. Implementation Principles
- III. Summary of Final Rules
- IV. Discussion of Regulatory Changes
  - A. Section 70.1—Program Overview
  - B. Section 70.2—Definitions
  - C. Section 70.3—Applicability
  - D. Section 70.4—State Program Submittals and Transition
  - E. Section 70.5—Permit Applications
  - F. Section 70.6—Permit Content
  - G. Section 70.7—Permit Issuance, Renewal, Reopenings, and Revisions
  - H. Section 70.8—Permit Review by EPA and Affected States
  - I. Section 70.9—Fee Determination and Certification
  - J. Section 70.10—Federal Oversight and Sanctions
  - K. Section 70.11—Requirements for Enforcement Authority
- V. Administrative Requirements
  - A. Docket
  - B. Office of Management and Budget (OMB) Review
  - C. Regulatory Flexibility Act Compliance
  - D. Paperwork Reduction Act

This preamble is organized to meet the needs of readers who want just an overview of the operating permit program and for readers who want a detailed discussion of the changes made to the proposed regulations to result in today's final rulemaking.

The first section provides background on the amendments to the Act establishing an operating permit program, the purposes of that action, and the expected benefits. The information is useful to anyone seeking any level of information on the operating permit program.

The second section mentions the principles EPA has followed while developing the regulations. These implementation principles and the positions on associated issues were discussed in detail in the May 10, 1991, preamble.

Section III of the preamble provides a summary of the requirements of the regulations being promulgated today.

A discussion of the regulatory changes from the proposed requirements is in section IV. In the preamble of the May 10, 1991, proposal, EPA explained the basis for its various proposed positions. Where the proposed regulations have not been changed in the final rules, EPA continues for the most part to rely on the rationale provided in the proposal notice. Where the regulations have changed in more than a minor way, this preamble states

the basis and purpose for the final regulations, including the reasons for the change. A separate document providing more detailed responses to comments on the proposal will be placed in the docket. The design of section IV follows the flow of the final part 70 regulations.

The final section (section V) contains the administrative requirements accompanying Federal regulatory actions. These include the topics listed in the preamble outline above.

The preamble includes many citations (e.g., § 70.6) to refer the reader to more detail or to the origin of certain requirements. These citation sections will not be followed by their origin such as "of this preamble" or "of title V." Rather, the reader can recognize the origins of the sections by their nature:

- A. Sections of the preamble begin with a Roman numeral.
- B. Sections of title V of the Act are in the 500's.
- C. Sections of the proposed regulations range from 70.1 to 70.11.
- D. Sections of the Act are referenced by a three-digit number, such as 112 and 408.

E. Sections of existing EPA regulations generally are preceded by "40 CFR."

This preamble makes frequent use of the term "State," usually meaning the State air pollution control agency which would be the permitting authority. The reader should assume that use of "State" also applies, as defined in section 302(d), to the District of Columbia and territories of the United States, and may also include reference to a local air pollution agency. These agencies can either be the permitting authority for the area of their jurisdiction or assist the State or EPA in implementing the title V permitting program. In some cases, the term "permitting authority" is used and can refer to both State and local agencies when the local agency directly issues permits or assists the State in issuing permits. The term "permitting authority" may also apply to EPA where the Agency is the permitting authority of record.

#### I. Background and Purpose

Title V was added to the Act on November 15, 1990, and introduces an operating permit program. It requires that EPA, within 12 months of enactment, promulgate regulations setting forth provisions under which States will develop operating permit programs and submit them to EPA for approval. The EPA proposed these regulations to be codified in a new part 70 of chapter I of title 40 of the CFR on May 10, 1991 [56 FR 21712]. The

comment period for that action ended on July 9, 1991. Approximately 500 public comments were received on the proposal during the comment period. Copies of these comments appear in the docket for this action listed above under *Docket*. The following four public hearings were held on the proposal: June 4 and 5, 1991, in Washington, DC; June 8, 1991, in Chicago, Illinois; June 24, 1991, in San Francisco, California; and July 1, 1991, in Dallas, Texas.

The significant changes to the regulations resulting from public comments are contained in this preamble. A summary of all public comments, transcripts of the public hearings, and the response of EPA to all the significant comments are contained in a technical support document.

Sources subject to the permitting requirements of part 70 (part 70 sources) must obtain an operating permit; States must develop and implement the program; and EPA, after promulgating today's permit program regulations, must review each State's proposed program and oversee the State's efforts to implement any approved program, including reviewing proposed permits and vetoing improper permits. When a State fails to adopt and implement its own approvable program, EPA must apply sanctions against the State or the relevant jurisdiction and ultimately also develop and implement a Federal permit program.

The addition of such a permitting program makes the Act more consistent with other environmental statutes, including the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA), both of which have permit requirements. The part 70 regulations have been designed to minimize the disruption to current State efforts by offering as much flexibility as is provided by the law. The program can also help implement market-based control strategies using improved monitoring and emissions tracking.

While title V generally does not impose substantive new requirements, it does require that fees be imposed on sources and that certain procedural measures be followed, especially with respect to determining compliance with underlying applicable requirements. The program will generally clarify, in a single document, which requirements apply to a source and, thus, should enhance compliance with the requirements of the Act. Currently, a source's obligations under the Act (ranging from emissions limits to monitoring, recordkeeping, and reporting requirements) are, in many cases, scattered among numerous provisions of the SIP or Federal regulations. In

addition, regulations are often written to cover broad source categories, therefore, it may be unclear which, and how, general regulations apply to a source. As a result, EPA often has no easy way to establish whether a source is in compliance with regulations under the Act.

The title V permit program will enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements. Increased source accountability and better enforcement should result. The program will also greatly strengthen EPA's ability to implement the Act and enhance air quality planning and control, in part, by providing the basis for better emission inventories.

Another benefit of the title V permit program is that it provides a ready vehicle for the States to administer significant parts of the substantially-revised Federal air toxics program and the new acid rain program. This enhances EPA's ability to oversee all programs under the Act. Specifically, the Act requires that States use the permit system to administer the air toxics program. In addition, States will be responsible for reviewing and issuing permits to implement the second phase of the acid rain program (with permitting activities beginning in 1996) and will play a significant role in ensuring compliance with the acid rain regulations promulgated under title IV of the Act.

Finally, an important benefit is that the permit program contained in these regulations will ensure that States have resources necessary to develop and administer the program effectively. In particular, the permit fees provisions of title V will require sources to pay the cost of developing and implementing the permit program. To the extent the fees are based on actual emission levels, the fees will create an incentive for sources to reduce emissions.

The EPA expects that this rule will promote several objectives which the Agency believes are essential to the long term success of environmental programs: market-based programs, coordination of control programs across media, and pollution prevention.

**Market-Based Programs:** The EPA is committed to using market-based principles to achieve the greatest level of environmental protection at the least cost. The title V operating permit program will lay the critical foundation for pursuing market-based programs under the Clean Air Act beyond the acid rain program under title IV, which

already provides for marketable emission allowances within an operating permit system. Before the permit program, there was no ready vehicle for quantifying and accounting for Federal air pollution control requirements at a particular facility. With a title V permit, those control requirements can be quantified by a facility, the first step in establishing the currency necessary for a market-based system. Moreover, title V permits will establish monitoring and compliance requirements which are essential to make a market system accountable.

**Cross-Media Coordination:** Of the major regulatory statutes EPA implements, the Act alone did not have a permit program as the basic vehicle for applying source-specific control requirements at regulated facilities. As a result, EPA could not readily include air pollution requirements in its efforts to coordinate control requirements across media. Now that EPA has available to it permits which reflect the requirements under the CWA, RCRA, and the Act, it will be easier to coordinate those programs in the future.

Part of the cross-media coordination EPA hopes to achieve using title V permits is a comparison of the relative impact of control requirements across media and risk-based analysis of the impact of pollution control requirements. Clearly, EPA must faithfully implement the requirements in each of its regulatory programs, but EPA hopes increasingly to balance control requirements across media according to risk-based analyses to the extent the relevant statutes provide EPA with flexibility. In the future, such comparisons across media will provide the information critical to an ongoing evaluation of EPA's regulatory programs, and may provide the basis for transforming the more media-specific structure of the Agency's programs into a more unified program that addresses the greatest risk first.

**Pollution Prevention:** Title V permits will also lead air pollution sources and regulatory agencies to evaluate their air pollution control strategies, both on a source-specific basis and across the regulatory program. Implementing title V presents an opportunity to pursue strategies that avoid pollution, rather than control it, and that eliminate pollution, rather than shift it from one medium to the other. Indeed, a cross-media analysis should highlight opportunities to avoid pollution shifting.

**II. Implementation Principles**

The passage of the Act amendments of 1990 was a major accomplishment in the protection of public health and the

environment in the United States. The Act sets forth ambitious goals which can only be achieved through effective and expeditious implementation by EPA and State and local governments. Today's rulemaking is one of the first of several important actions that EPA will be taking to accomplish its rule development responsibilities under the Act. The EPA in designing its May 10, 1991 proposal identified several principles to guide the design and implementation of title V regulations and related programs. These principles, which were discussed extensively in the proposal, were thought to be necessary to preserve the legislative intent underlying the content of title V. The EPA intends that these principles be appropriately incorporated into all aspects of program development and implementation by both States and EPA. In particular, EPA will employ them when it is responsible for developing rules, overseeing State or local agency programs and permits, or issuing permits.

**II. Summary of Final Rules**

**A. Applicability**

The title V operating permits program requires all part 70 sources to submit permit applications to the appropriate permitting authority within 1 year of the effective date (i.e., date of EPA approval) of the State program. The operating permit program applies to the following sources:

**1. Major sources, defined as follows:**

(a) Air toxics sources, as defined in section 112 of the Act, with the potential to emit 10 tons per year (tpy), or more, of any hazardous air pollutant listed pursuant to 112(b); 25 tpy, or more, of any combination of hazardous air pollutants listed pursuant to 112(b); or a lesser quantity of a given pollutant, if the Administrator so specifies [501(2)(A)].

(b) Sources of air pollutants, as defined in section 302, with the potential to emit 100 tpy, or more, of any pollutant [501(2)(B)].

(c) Sources subject to the nonattainment area provisions of title I, part D, with the potential to emit pollutants in the following, or greater, amounts [501(2)(B)]:

	TPY
(i) Ozone (VOC and NOx): <sup>1</sup>	
Serious	50
Transport regions not severe or extreme	50
Severe	25
Extreme	10
(ii) Carbon monoxide—serious (where stationary sources contribute significantly)	50

	TPY
(iii) Particulate matter (PM-10)—serious	70

<sup>1</sup> For this purpose, title I treats volatile organic compounds (VOC) and oxides of nitrogen (NOx) sources somewhat differently. In areas qualifying for an exemption under section 182(f), NOx sources with the potential to emit less than 100 tpy would not be considered major sources under part D of title I. In areas not qualifying for this exemption, NOx sources are subject to the lower thresholds created by section 182(f). In ozone transport regions, a lower threshold of 50 tpy for VOC sources is created by section 184(b). Because section 182(f) does not refer to 184(b), the lower threshold in ozone transport regions applies to VOC sources, but not to NOx sources. Whatever its location, any 100 tpy source would be considered a major source under section 302.

<sup>2</sup> VOC only.

2. Any other source, including an area source, subject to a hazardous air pollutant standard under section 112.

3. Any source subject to NSPS under section 111.

4. Affected sources under the acid rain provisions of title IV [501(1)].

5. Any source required to have a preconstruction review permit pursuant to the requirements of the prevention of significant deterioration (PSD) program under title I, part C or the nonattainment area, new source review (NSR) program under title I, part D.

6. Any other stationary source in a category EPA designates, in whole or in part, by regulation, after notice and comment.

A major source is defined in terms of all emissions units under common control at the same plant site (i.e., within a contiguous area in the same major group, two-digit, industrial classification). Once subject to the part 70 operating permit program for one pollutant, a major source must submit a permit application including all emissions of all regulated air pollutants from all emissions units located at the plant, except that only a generalized list needs to be included for insignificant events or emissions levels. The program (including combinations of partial programs) applies to all geographic areas within each State, regardless of their attainment status. The acid rain permit program requirements, however, apply only within the contiguous 48 States and the District of Columbia.

The EPA is authorized, consistent with the applicable provisions of the Act, to exempt one or more source categories (in whole or in part) from the requirement to have a permit if the Agency determines that compliance with the part 70 regulations would be "impracticable, infeasible, or unnecessarily burdensome" [section 502(a)]. The EPA may not, however, exempt any major source or affected (i.e., acid rain) source. The EPA believes

that compliance by nonmajor sources with the permitting requirements during the early stages of the program would prove to be unnecessarily burdensome for nonmajor sources and impracticable and infeasible for permitting authorities as well. Therefore, to promote an orderly phase-in of the program, States can defer coverage temporarily for all sources which are not major. The EPA will complete a rulemaking to consider further deferral or permanent exemption for non-major sources within 5 years of the date EPA first approves a State program that defers such sources.

Any source whose obligation to obtain a permit is deferred may request a permit prior to the end of the 5-year deferral period. All deferred sources will be required to submit permit applications within 12 months after the completion of the future rulemaking, unless they are sources or source categories that receive a continued exemption (i.e., EPA determines that compliance with the permitting requirements for such categories would be impracticable, infeasible, or unnecessarily burdensome on the source categories) in the future rulemaking.

In addition, States may permanently exempt from review those nonmajor sources and source categories subject to title V solely because they are subject to the NSPS for new residential wood heaters or the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos from demolition and renovation activities. The Administrator reserves the right to grant deferral or exemption to additional nonmajor source categories when they become subject to section 112, and thereby subject to title V.

#### *B. State Permit Program Submittals and Transition*

Title V requires EPA to promulgate regulations establishing the minimum elements of a State permit program. State and local pollution control agencies or interstate compacts may implement provisions of title V, as long as all geographic areas within each State are covered by a permit program. As previously discussed, reference to the "State" will include reference to local agencies, where appropriate, which would allow granting of a partial program for a specific geographic area within a State. The EPA oversees development of State programs and enforces the obligation to implement a program in each State. Should a State fail to develop a permit program, the EPA must implement a program for that State [501(4), 502(d)(1), and 302(b)].

#### 1. Minimum Program Requirements

As required by title V, today's regulations establish the minimum elements of a State operating permit program, including the following:

- (a) Requirements for permit applications, including standard application forms and criteria for determining the completeness of applications [502(b)(1)].
- (b) Monitoring and reporting requirements [502(b)(2)].
- (c) A permit fee system [502(b)(3)].
- (d) Provisions for adequate personnel and funding to administer the program [502(b)(4)].

(e) Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act [502(b)(5)(A)].

(f) Authority to terminate, modify, or revoke and reissue permits "for cause" [502(b)(5)(D)].

(g) Authority to enforce permits, permit fee requirements, and the requirement to obtain a permit, including civil penalty authority in a maximum amount of not less than \$10,000 per day for each violation, and "appropriate criminal penalties" [502(b)(5)(E)].

(h) Authority to assure that no permit will be issued if EPA timely objects to its issuance [502(b)(5)(F)].

(i) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete and for processing applications; for public notice, including offering an opportunity for public participation, where applicable; for expeditious review of permit actions; and for State court review of the final permit action [502(b)(6)].

(j) Authority and procedures to provide that the permitting authority's failure to act on a permit or renewal application within the deadlines specified in the Act (section 503 and the deadlines for permitting under acid rain provisions in title IV) shall be treated as a final permit action solely to allow judicial review by the applicant, anyone else who participated in the public review process, and any other person who could obtain judicial review of such action under applicable law, to compel action on the application [502(b)(7)].

(k) Authority and procedures to make available to the public any permit application, compliance plan, permit, emissions or monitoring report, and compliance report or certification, subject to the confidentiality provisions similar to those of section 114(c) of the Act [502(b)(8)]; the contents of the permit itself are not entitled to confidentiality protection [503(e)].

(l) Provisions to allow operational flexibility at the permitted facility [502(b)(10)].

(m) Provisions required if a State allows sources to make certain changes that are not prohibited or addressed by the permit [502(a)].

(n) Provisions to require that part 70 permits include terms and conditions addressing alternative scenarios at the permitted facility and emissions trading provided for in the underlying applicable requirement [502(b)(6)].

#### 2. State Program Development

Within 3 years of enactment, the Governor of each State shall submit to EPA a permit program meeting the requirements of title V. A State may submit its current or proposed program to EPA for approval. The Governor must also submit a legal opinion from the attorney general, attorney for those State air pollution control agencies with independent legal counsel, or the chief legal officer of an interstate agency, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out the program [502(d)(1)]. The EPA encourages prompt action by each State to evaluate the potential of its existing enabling legislation to implement title V and to take additional actions, as needed, to ensure a timely and approvable program submittal.

Several States may need new legislative authority in a number of areas in order to fulfill the requirements of the Act, including (but not limited to): Authority to charge, collect, retain, and spend adequate permit fees, and to collect civil penalties of a maximum amount of at least \$10,000 per day per violation. The EPA intends to assist States in identifying and obtaining any required new authorities.

#### 3. The EPA Review of Program Submittals

Within 1 year after receiving the State's program, EPA shall approve or disapprove it, in whole or in part. The EPA may approve the program to the extent it meets the requirements of the Act and today's regulations.

If EPA disapproves the program, or any part of it, EPA must notify the Governor of any revisions necessary for EPA approval. The State then has 180 days from this notice to revise and resubmit the program [502(d)(1)]. When EPA approves a program, EPA must suspend issuance of Federal permits, but may retain jurisdiction over permits still under administrative or judicial review [502(e)].

#### 4. Interim Program Approvals

If a program is not fully-approvable, EPA may grant interim approval to a permit program, so long as the program "substantially meets" the requirements of title V. Criteria for satisfying the "substantially meets" test include:

(a) The commitment and capability to collect fees adequate to cover the costs of the interim permitting program and the development as appropriate of the whole program;

(b) The legal authority to assure that sources subject to the interim program comply with all applicable requirements of titles I, IV, and V under the Act;

(c) Fixed permit terms not to exceed 5 years;

(d) The opportunity for public participation in appropriate permit proceedings;

(e) The opportunity for EPA to review and object to the issuance, modification, or renewal of any permit and for affected States to review such permits consistent with section 505 of the Act;

(f) The requirement that a proposed permit will not be issued if EPA objects to its issuance;

(g) Adequate procedures for enforcing permits, including penalties;

(h) Provisions for allowing operational flexibility and alternative scenarios for sources, consistent with §§ 70.4(b)(12) and 70.6(a)(9);

(i) Streamlined procedures for issuing and revising permits and determining when applications are complete; and

(j) Application and reporting forms to be used in implementing the interim program.

In the notice of final rulemaking granting interim approval, EPA must specify the changes the State must make to receive full approval. The EPA may grant interim approval, which may not be renewed, for a period of up to 2 years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permit program in the State [502 (d) (2)-(3) and (g)]. Permits issued under a program with interim approval have full standing with respect to title V, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications discussed in the following section.

#### 5. State Permit Review

As noted above [III.B.(4)], subject sources are required to submit permit applications to the permitting authority within 1 year of program approval, whether full, partial, or interim. For title

IV (acid rain) sources, however, specific superseding deadlines are provided for the submission of Phase II permit applications, which will not be due to States until January 1, 1996 [408(D)(2)]. For the initial round of permit applications, the permitting authority must establish a phased schedule for processing permit applications submitted within the first full year after program approval. This schedule must assure that the permitting authority will act on at least one-third of the permits each year over a period not to exceed 3 years after approval (interim or full) of the program [503(c)]. The EPA urges States to encourage early submittals of complete applications.

States are required to issue permits under the acid rain program by December 31, 1997 [408(D)(3)]. For most States, this deadline will coincide roughly with the second year of permit program implementation. Additionally, expedited review and issuance procedures may be required for permit applications for sources pursuing compliance extensions for early reductions of hazardous air pollutants under section 112(i)(5).

After acting on the initial round of applications, the permitting authority must from then on act on a completed application (i.e., issue or deny a permit) within 18 months after receiving the complete application. The permitting authority must establish reasonable procedures to prioritize review of permit applications, especially in the case of applications for new construction or modifications as defined in title I [503(c)].

#### C. Complete Permit Application

Each State program must establish specific criteria to be used in defining a complete permit application. A complete application is one that the permitting authority has determined to contain all the necessary information needed to begin processing the permit application. The permitting authority can determine, however, that the application becomes incomplete if the source fails to provide timely updates to the application that the permitting authority needs to issue the permit within the specified deadlines.

The permitting authority must provide notice to the source of completeness determinations. In the event that no notice is provided to the source within 60 days after receipt of the application by the permitting authority, the application shall be deemed complete.

A source which files a timely and complete application for a permit or a renewal will not be liable for failure to have a permit if the permitting authority

delays in issuing or reissuing the permit, provided this delay was not due to the applicant's failure to respond in a reasonable and timely manner to written requests from the permitting authority for additional information needed to evaluate the application. This protection also applies with respect to title V to sources requiring both new title V and certain NSR permits. These sources must have a preconstruction permit consistent with the requirements of parts C and D of title I, and must have filed a complete application for a title V operating permit within 12 months of commencing operation, unless some earlier date is required by the permitting authority. In general, a complete application must be submitted according to the transition schedule approved within the part 70 program and in a timely way for subsequent renewals. "Timely" for renewals means 6 months prior to expiration of the permit, unless some greater time is needed (not to exceed 18 months) to ensure that the terms of the permit do not lapse before they are revised or renewed.

All complete applications must contain information which identifies a source, its applicable air pollution control requirements, the current compliance status of the source, the source's intended operating regime and emissions levels, and must be certified as to their truth, accuracy, and completeness by a responsible official after making reasonable inquiry. Each permit application must, at a minimum, include a completed standard application form (or forms) and a compliance plan. The permitting authority can, however, allow the application to cross-reference relevant materials where they are current and clear with respect to information required in the permit application. Such might be the case where a source is seeking to update its title V permit based on the same information used to obtain an NSR permit or where a source is seeking renewal of its title V permit and no change in source operation or in the applicable requirements has occurred. Any cross-referenced documents must be included in the title V application that is sent to EPA and that is made available as part of the public docket on the permit action.

The compliance plan describes how the source plans to comply or achieve compliance with all applicable air quality requirements under the Act. The exact contents and detail required in the compliance plan depend on the compliance status of the source with respect to each applicable requirement. This plan must include a schedule of

compliance and a schedule for the source to submit progress reports to the permitting authority no less frequently than every 6 months where applicable. Each source must submit a compliance certification report at least once a year in which it certifies its status with respect to each requirement, and the method used to determine the status. Specific requirements for acid rain affected sources regarding compliance schedules, progress reports, and compliance certifications will be contained in regulations promulgated under title IV of the Act.

The minimum data elements required in all standard application forms, as well as the basic requirements for compliance plans and compliance certifications, are presented in § 70.5 of the regulations. With exception of certain Federal programs (e.g., acid rain), EPA will not specify that any particular form be used by States as long as the minimum data elements are provided to EPA. However, the Agency will encourage the use of certain model forms as a preferred way to meet the requirements of § 70.5.

Additional information may be required from some subject sources. For example, those located in nonattainment areas under part D of title I may be required to fulfill the emissions statement requirements for certain sources of VOC and NO<sub>x</sub>. Similarly, sources of hazardous air pollutants subject to section 112 which are attempting to comply with alternative emissions limits will also need to submit additional information.

#### *D. Permit Content*

The State program is required in § 70.6 to assure that permits meet all applicable requirements of the Act and include the following:

1. A fixed term, not to exceed 5 years [502(b)(5)(B)], except that affected sources under title IV must have 5-year fixed terms [408(a)] and solid waste incinerators under section 129(e) may have up to a 12-year fixed term.

2. Limits and conditions to assure compliance with all applicable requirements under the Act, including requirements of the applicable implementation plan [504(a)] and title IV.

3. A schedule of compliance (where applicable), which is defined as a schedule of remedial measures [504(a) and 501(3)].

4. Inspection, entry, monitoring, compliance certification, recordkeeping, and reporting requirements to assure compliance with the permit terms and conditions, consistent with any monitoring regulations that EPA promulgates under sections 504(b), 114.

and 504(c). Nothing in this regulation should be read to require continuous emissions monitoring in situations where it is not otherwise prescribed.

5. A provision describing conditions under which any permit for a major source with a term of 3 or more years must be reopened to incorporate any new standard or regulation promulgated under the Act [502(b)(9)].

6. Provisions under which the permit can be revised, terminated, modified, or reissued for cause.

7. Provisions ensuring operational flexibility within a permit so that certain changes can be made within a permitted facility without a permit revision, provided that the change is not a "modification" (as defined in title I of the Act), that it does not exceed the emissions allowed under the permit or under any applicable requirement, and that a notice is provided to the permitting authority at least 7 days in advance where the permit would not allow such changes [502(b)(10)]. The operational flexibility provision contained in title V must be implemented carefully and fairly so that a source can respond quickly to changing business opportunities while, at the same time, the permitting authority is assured that the source will meet all the applicable requirements of the Act.

8. A provision that nothing in the permit or compliance plan issued pursuant to title V of the Act shall be construed as affecting allowances under the acid rain program [408(b)].

9. A provision ensuring that all alternative operating scenarios identified by the source are included in the permit [502(b)(6)].

All terms and conditions in a part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act. Consistent with EPA's discretion under the Act, the final rules require the permitting authority to identify those provisions in the permit which are not required under the Act or under any of its applicable requirements (i.e., State origin only) as not being federally enforceable. Like all other permit terms, a term which the permitting authority fails to designate as not federally enforceable will not be subject to challenge after 90 days.

Section 504(f) of the Act defines the permit shield provision of title V, which enables States to provide sources with greater certainty as to their legal obligations under the Act. This section authorizes the permitting authority to provide that compliance with the permit shall be deemed compliance with all

other applicable provisions of the Act, if the applicable requirements of such provisions are included in the permit, or if the permitting authority, in acting on the permit, determines that such other provisions (which shall be referred to in such determinations) are not applicable. This determination or a concise summary thereof must be included in the permit. The EPA encourages States to employ the "permit shield" routinely to help stabilize the permit process and give greater certainty to the regulated community.

The EPA may alter the scope of the permit shield by rule. The Agency intends to prohibit use of the shield in cases where the source initiates changes that result in requirements becoming applicable to the source beyond those contained in the permit (until such changes are later incorporated into the permit). Sources seeking to obtain or renew a part 70 permit cannot be shielded from enforcement actions alleging violations of any applicable requirements (including orders and consent decrees) that occurred before, or at the time of, permit issuance. In addition, sources may not be shielded from requests for information pursuant to section 114 of the Act. The EPA has also provided that the shield will not extend to minor permit modifications (and to some changes made under the operational flexibility provisions pursuant to § 70.4(b)(12) and to most administrative permit amendments).

#### *E. Permit Issuance and Review*

Regulations concerning the processes for permit issuance, review, renewal, revision, and reopening are found in §§ 70.7 and 70.8. Briefly, these include:

##### **1. Permit Notification to EPA and Affected States**

The permitting authority must provide notice to certain States and EPA of permit applications received and proposed permits. It must submit to EPA the following:

- (a) The application for any permit, renewal, or revision, including any compliance plan, or any portion EPA determines it needs to review the application and permit effectively; and
- (b) Each proposed permit and each permit issued as a final permit by the State [505(a)(1)].

The permitting authority is required to notify all affected States of each permit application that must be forwarded to EPA. Affected States are those whose air quality may be affected and that are contiguous to the State in which the source is located, or those within 50 miles of the source. The permitting

authority must give all such States an opportunity to submit written recommendations for the permit. If the authority refuses to accept those recommendations, it must provide its reasons for refusal in writing [505(a)(2)].

The EPA may waive its own and affected States' review of permits for any category of sources, except major sources, either when approving an individual program, or in a regulation applicable to all programs. The EPA may also waive its own right to review, but maintain the requirement for a State to notify affected States [505(d)]. During Phase II of the acid rain program, the Agency does not intend to waive its own right to review affected sources under the acid rain program.

## 2. The Agency Review and State Response

The Act authorizes EPA to object to any permit that would not be in compliance with the applicable requirements of the Act. If EPA objects within 45 days after receiving either the proposed State permit or the notice that the permitting authority has refused to adopt an affected State's recommendations for the permit, the permitting authority must respond to EPA in writing. The EPA must provide the permitting authority and permit applicant a statement of reasons for the objection [505(b)(1)].

The permitting authority may not issue a valid title V permit if EPA has objected unless the permitting authority revises the permit to meet EPA's objections. The permitting authority has 90 days after EPA's objection to revise the permit. If the permitting authority fails to do so, EPA must issue or deny the permit [505(c)].

## 3. Judicial Review and Public Petition

An approvable program must provide for judicial review in State court of the permit action. Such review must be available to the applicant, anyone who participated in the public participation process, and any other person who could obtain judicial review of the action under State law [505(b)(6)].

Within 60 days after the expiration of the 45-day EPA review period, any person may petition the Administrator to veto a permit if EPA fails to object. The objections in the petition must have been raised during the public participation period on the permit provided by the State issuance process, unless the petitioner shows that it was impracticable to raise the objections at that time. The petition does not postpone the effectiveness of a permit that has been issued.

The Administrator must grant or deny a petition within 60 days after it is filed. If the permit has not been issued, EPA must issue an objection if the petitioner demonstrates to the satisfaction of the Administrator that the permit is not in compliance with the Act. If the permitting authority has already issued the permit and the petition is granted, EPA will modify, terminate, or revoke the permit, and the permitting authority may issue a revised permit only if it meets EPA's objection [505(b)(3)]. If the Administrator denies the petition, the denial is subject to review in the Federal Court of Appeals under section 307 [505(b)(2)].

Where EPA objects to a permit and the State fails to meet EPA's objection, EPA must then issue or deny the permit. The Federal Court of Appeals may review EPA's final action in issuing or denying the permit under section 307. Title V provides that EPA's objection to a permit is not subject to judicial review until EPA takes final action on the permit [505(c)].

## 4. Reopenings

Any approvable program, at a minimum, must require that the permitting authority will revise all major source permits with a remaining life of 3 or more years to incorporate applicable requirements under the Act that are promulgated after issuance of the permit. Such revisions must be made using the revision procedures that meet the requirements for permit revision and must be made within 18 months after the promulgation of the new requirement. No revision is required if the effective date of the requirement is after the expiration of the permit term [502(b)(9)]. Approvable programs also must require that the permitting authority may terminate, modify, or revoke permits for cause [502(b)(5)(D)]. "Cause," as defined in the rule, may exist when the permit contains a material mistake made in applying the emission standards or limitations, or in other permit requirements.

Phase II acid rain permits will need to be reopened to incorporate NO<sub>x</sub> provisions. Excess emission offset plans and all allowance allocations and transfers, however, must be deemed incorporated into each unit's permit, upon recordation or approval by the Administrator, without further permit revision and review.

If EPA finds that cause exists to reopen a permit, EPA must notify the permitting authority and the source. The permitting authority has 90 days after receipt of the notification to forward to EPA a proposed determination of termination, modification, or revocation

and reissuance of the permit. The EPA may extend the 90-day period for an additional 90 days if a new application or additional information is necessary. The EPA then may review the proposed determination under the review procedures of permit issuance. If the permitting authority fails to submit a determination or if EPA objects to the determination, EPA may terminate, modify or revoke and reissue the permit. The EPA must provide notice and "fair and reasonable procedures" when it terminates, modifies, or revokes and reissues a permit [505(e)].

## 5. Permit Revisions

Taking the above into account, the EPA today outlines the mechanisms for permit modification and administrative amendments that are needed to revise the part 70 permit to accommodate changes which would otherwise violate terms and conditions of the permit. While States are required to provide for expeditious permit revisions, they have considerable flexibility in doing so. The State shall provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications. States may meet their obligation by adopting the approach outlined by EPA in today's final rules or one which is substantially equivalent.

Administrative amendments are those defined in § 70.7(a) which can be accomplished by the permitting authority without public or EPA review. These permit revisions include correction of typographical errors or changes in address or source ownership. Another type of administrative amendment involves the incorporation of requirements established under State preconstruction review that meets procedural requirements that are applicable and substantially equivalent to those contained in §§ 70.7 (discussed below) and 70.8 and the compliance requirements contained in § 70.6 (e.g., monitoring, recordkeeping, reporting, and compliance certification).

The EPA's description of the most streamlined process it would approve for all other types of permit revisions is set forth in § 70.7(e). It employs two types of permit modification procedures:

- (a) Minor permit modifications, and
- (b) Significant permit modifications.

These are for changes that go beyond the activities allowed in the original permit or that increase the total emissions allowed under the permit.

The model provision contained in § 70.7(e) defines the types of permit modifications that a State could decide to process through minor permit modification procedures. They include

modifications that reflect increases in permitted emissions that do not amount to modifications under any requirement of title I an that do not meet certain other requirements. Minor permit modification procedures required that a source provide advance notice of the proposed change, but allow a change to take effect prior to the conclusion of the revision procedures.

Under EPA's model procedures for minor permit modifications, changes may be made by the source after it files a complete application with the permitting authority. The proposed modification will be available for review by EPA, affected States, and the permitting authority. The State may approve the proposed modification at any time. The EPA has 45 days from the date the Agency receives notice from the State to review the proposed modification, and the permitting authority cannot finally issue the permit until after EPA's review period has ended, or until EPA has notified the permitting authority that EPA will not object to the issuance of the permit modification, although the permitting authority may disapprove the modification prior to that time. The modification procedures must generally be completed and final action taken by the permitting authority no later than 90 days following the filing of a complete application.

The regulation also provides an opportunity for the permitting authority to modify the minor permit modification procedures to process in groups applications for changes at the lowest levels of emissions increases (as defined in the regulation). The regulation provides that a source may request in its application that changes, below a set threshold, be aggregated during a 90-day period, or until they reach the applicable threshold level, whichever comes first. These changes would then undergo the minor permit modification process, including review by the permitting authority, affected States, and EPA.

Under the minor permit modification option outlined by EPA, a source that makes a change before a permit revision has issued, does so at its own risk. It is not protected from underlying applicable requirements by any shield. It is afforded only a temporary exemption from the formal requirement that it operate in accordance with the permit terms that it seeks to change in its modification application. Should the permitting authority or EPA ultimately reject the sources proposed permit modification, the source would be subject to enforcement proceedings for any violation of these requirements. The

permit shield under § 70.6(f) does not apply to minor permit modifications issued by the permitting authority.

The other type of permit modification procedures described are for significant modifications. After receipt of an application for a significant permit modification, a permitting authority would review only the specific changes proposed in the application and their impact on the continued compliance of the part 70 source with all applicable requirements of the Act.

Sources subject to requirements of the acid rain program must hold allowances to cover their emissions of SO<sub>2</sub>. These sources will have conditions in their permits prohibiting emissions exceeding the number of allowances held. Sources holding emissions allowances under the acid rain program may buy, sell, or trade those allowances. Allowance transactions registered by the Administrator will be incorporated into the source's permit as a matter of law, without following either the permit modification or amendment procedures described above.

#### 6. Permit Renewal

Each permit is to have a fixed term not to exceed 5 years (except that permits for municipal waste combustors may have terms up to 12 years). Renewal permits are subject to the same requirements as those applying to initial permits, including the requirement for a timely and complete application and for a compliance plan and processing by the permitting authority within 18 months of a complete application.

The source will be able to operate after expiration of the permit only if it has submitted a timely and complete application for a new permit, as mentioned in the previous discussion on complete applications. To maintain the protection afforded by having a complete application, the source applicant still must respond in a timely fashion upon written request by the permitting authority to provide additional information needed to develop and issue the permit. Should a permit expire before a source submits a timely and complete application, the source's right to operate is terminated unless and until a part 70 permit is issued by the permitting authority [503(d)]. The application must be deemed to be complete 60 days from the date of its submission to the permitting authority, unless the permitting authority has already determined that the application is not complete. In addition, consistent with the established precedent in the National Pollutant Discharge Elimination System (NPDES) program under the CWA, where the

fixed term of a permit has expired, the permitting authority must provide either that the permit remains effective or that the conditions of the permit remain enforceable until the permit is reissued, except as provided in regulations promulgated pursuant to title IV for the acid rain portions of a permit.

#### F. Fee Determination and Certification

A key requirement of State operating permit programs is that States establish an adequate permit fee program. Regulations concerning fee programs and appropriate criteria for determining the adequacy of such programs are set forth in § 70.9.

An approvable permit must require part 70 sources to pay an annual fee (or the equivalent over some other period) sufficient to cover all "reasonable (direct and indirect) costs" required to develop and administer the permit program [502(b)(3)(A)]. All fees required to be collected under title V must be used solely to support the permit program [502(b)(C)(iii)]. The EPA has ruled that these fees must cover a range of costs, including:

1. Preparing generally applicable regulations or guidance regarding implementation of the program or its enforcement.
2. Reviewing and acting upon any title V application.
3. General administrative costs of running the permit program, including information management activities to support and track permit applications, compliance certifications, and related data entry.
4. Implementing and enforcing the terms of the permit, excluding any court costs or other costs associated with an enforcement action and including adequate resources to determine which sources are subject to the program.
5. Emissions and ambient monitoring.
6. Modeling analyses and demonstrations.
7. Preparing inventories and tracking emissions.
8. Development and administration of the State small business stationary source technical and environmental compliance assistance program as it applies to the title V permitting obligations of part 70 sources [502(b)(3)(A) (i)-(vi)].

The program will be presumed adequate if it would collect in fees an amount equal to or greater than the presumptive minimum program cost, which is \$25 per ton per year (tpy) (1989 baseline) for the actual emissions of each regulated pollutant (for presumptive fee calculation). Regulated pollutants (for presumptive fee

calculation) mean all-regulated air pollutants, with the exception of carbon monoxide, pollutants subject only to section 112(r), and pollutants which are solely regulated as chlorofluorocarbons (CFC) under section 602 [502(b)(3)(B) (i) and (ii)]. In addition, the State is not required to count emissions of any pollutant from any one source in excess of 4,000 tpy [502(b)(3)(B)(iii)] or emissions that are already accounted for within the emissions of another regulated pollutant (although the State is not precluded from doing so). The State need not collect the presumptive minimum program cost if it demonstrates that a lesser amount will adequately support the direct and indirect costs of the program [502(b)(3)(B)(iv)]. Conversely, States must make a sufficient showing of fee adequacy if commenters present evidence to the Administrator during the program approval process which rebuts the presumption that \$25/tpy is adequate to support the program. The permitting authority must provide for a periodic accounting of how the required fees were used solely to support the program and how they meet the presumptive minimum described above.

The EPA interprets title V to offer permitting authorities flexibility in setting variable fee amounts for different pollutants or different source categories, as long as the sum of all fees collected is sufficient to meet the reasonable direct and indirect costs required to develop and administer the provisions of title V of the Act, including section 507 as it applies to part 70 sources. The \$25/tpy used to calculate the presumptive minimum program cost is to be increased each year according to the Consumer Price Index (CPI) at the time the index is published as defined by section 502(b)(3)(B)(v). Nothing in this section is intended to provide States any additional authority (beyond what is otherwise authorized under State law) to levy fees beyond the amount necessary to offset the program costs of title V.

Section 408(c)(4) of the Act provides that during the years 1995 through 1999, no fee shall be required to be paid under section 502(b)(3) or under section 110(a)(2)(L) with respect to emissions from any unit which is an affected unit under section 404. The Agency interprets this provision to mean that EPA may not approve part 70 programs that offset required permit program costs using emissions-based fees collected from affected units, under section 404, from 1995 to the year 2000.

If EPA determines that a State's fee program is not approvable, or that a

State is not adequately administering or enforcing an approved fee program, EPA may collect reasonable fees from permittees. Such fees shall be designed solely to cover EPA's costs of administering the Federal permit program [502(b)(3)(C)(i)]. Sources failing to pay a fee assessed by EPA must pay a penalty of 50 percent of the fee amount, plus interest [502(b)(3)(C)(ii)]. The EPA must deposit federally-collected fees, penalties, and interest in a special Treasury fund, subject to appropriation, to carry out EPA's permitting activities.

#### *G. Federal Oversight and Sanctions*

Federal activities for oversight of State operating permit programs include situations where a State fails to submit an approvable permit program, or EPA determines that a permitting authority is inadequately administering and enforcing a permit program or an approved permit fee program.

##### **1. State Failure To Submit a Program**

The EPA must apply sanctions to a State where the Governor has not submitted a program within 18 months after the deadline for submittal, or where 18 months have passed since EPA disapproved the program in whole or in part [502(d)(2)(B)]. The sanctions are the same as those in title I: A highway funding cutoff, and a two-to-one offset ratio for new or modified sources [179(b)] applicable to certain nonattainment areas. A sanction may be applied any time during the 18-month period following the date required for program submittal or program revision [502(d)(2)(A)]. The EPA must apply one of these sanctions after the above-referenced periods elapse. If the State has no approved program 2 years after the date required for submission of the program, EPA must promulgate, administer, and enforce a Federal permit program for the State [502(d)(3)].

If the EPA determines that a State's program is not approvable or that a permitting authority is not adequately administering an approved program, the EPA will promulgate a Federal permit program which the Agency will administer and enforce where the State fails to submit, correct, or implement its program. The Agency has the authority to collect reasonable fees from the permittees to cover the costs of administering the program. Any source that fails to pay fees shall be subject to additional penalties. Fees, penalties, and interest collected by the EPA will be deposited in a special U.S. Treasury fund for permitting activities and held for future appropriation.

##### **2. State Failure to Implement a Program**

Whenever EPA determines that a permitting authority is not adequately administering and enforcing a program, EPA must notify the State [502(i)(1)]. If EPA determines that the failure to administer and enforce the program persists 18 months after EPA's notice to the State, EPA must apply the same sanctions in the same manner as required for a failure to submit an approvable program [502(i)(2)]. The EPA has the option of imposing any one of the sanctions before the 18-month period has passed [502(i)(1)]. If the State has not cured the failure to administer and enforce the program within 18 months after EPA's notice, EPA must promulgate, administer, and enforce a Federal permit program within 2 years after the notice to the State [502(i)(4)].

#### *H. Required Enforcement Authority*

Section 70.11 sets forth the enforcement authority required for an approvable part 70 program. It requires permitting authorities to have authority to seek and impose civil penalties and criminal fines as well as injunctive relief.

#### *I. Permit/SIP Relationship*

The SIP remains the basis for demonstrating and ensuring attainment and maintenance of the national ambient air quality standards (NAAQS). The permit program collects and implements the requirements contained in the SIP as applicable to the particular permittee. Since permits must incorporate emission limitations and other requirements of the SIP, all SIP provisions applicable to a particular source will be defined and collected into a single document. The applicable requirements in the permit would include any recent SIP changes, whether as a result of a State or local SIP revision or of a FIP action by EPA. The EPA intends to assist in the implementation of the permit program through the use of model permits for numerous source categories, including model general permits as discussed below in section I.V.F. addressing general permits.

As previously discussed, title V affords significant operational flexibility. The relationship between title V permits and SIP's is a key factor in determining the extent to which operational flexibility is available to sources, since each permit, in part, must assure compliance with the applicable implementation plan. The EPA recognizes that it will take time to complete the transition from a regulatory system where SIP's are the

primary tool for implementing and enforcing the Act. to one where operating permits ultimately assume primary responsibility for implementation and enforcement.

The EPA is considering what means will aid in ensuring a smooth transition to increasingly general, and thus more flexible, SIP's, which may allow permits rather than the SIP's to specify the details of how SIP limits and objectives apply to subject sources. In particular, EPA will be seeking to develop information in the following areas:

1. The most efficient ways of implementing requirements of SIP's through permits, such as moving detail from SIP's to permits;
2. Flexible ways for sources to demonstrate compliance with reasonably available control technology (RACT) limits, such as through the use of protocols for defining equivalency or through the development of equivalency determinations in the permitting process (as discussed below); and
3. Expanded use of emissions trading and marketable permits to achieve SIP objectives as well as providing a stable accounting mechanism for tracking and enforcing emissions reductions at a source.

The EPA encourages the development of more flexible SIP's. For example, in the final rule, § 70.6(a)(8) provides that no permit revision is required for emission trades in economic incentive or marketable permit programs, providing that the permit contains a program or process for implementing the trade. Thus, a SIP containing a generic trading rule and a replicable procedure for implementing the rule through a permit may allow trading to occur without a permit revision, provided the permit contains the replicable procedure. This is similar to the way in which permits allow sources to shift among alternate scenarios that were initially provided for in the permit. If States choose to implement trading in this manner, the provisions of the permit allowing the trades must incorporate all of the procedural protections contained in the underlying SIP.

As discussed in the section on operational flexibility, States may also elect to develop SIP's that set forth trading and compliance provisions that sources could use to comply with SIP limits after 7-days notice. The SIP would have to include compliance requirements and procedures for the trade which are sufficiently specific to demonstrate compliance. Such provisions can prove useful to sources in cases where permits do not already provide for emission trades.

#### *J. New Source Review/Title V Relationship*

Decisions made under the NSR and/or PSD programs [e.g., best available control technology (BACT)] define certain applicable SIP requirements for the title V source. The permitting authority is required to have reasonable procedures and resources to assign priority to action on permits for new construction or modification [503(c)].

Under today's final rule State and local permitting authorities have the option, but not a mandate, to integrate requirements determined during preconstruction review with those required under title V. Such integration would be consistent with the previously stated implementation goals of combining programs and building on existing State programs which typically have already accomplished such integration at the State level. As discussed above, if NSR is integrated with the procedural and compliance-related requirements contained in §§ 70.6, 70.7, and 70.8 (including opportunity for EPA and affected State review), an existing title V permit can be administratively revised to reflect the results of the integrated NSR process.

#### *K. Small Businesses*

The EPA has given serious consideration in this rulemaking to minimizing any undue impacts on small businesses. Accordingly, except for acid rain sources and municipal waste incinerators, EPA has allowed States to temporarily defer the title V permitting obligation of all nonmajor sources which would have been otherwise subject to title V provisions. This deferral will continue for such categories of nonmajor sources until the Agency has completed a rulemaking to consider whether a permanent exemption, continued deferral, or applicability of the permit program would be appropriate. In addition, States can exempt from review on a permanent basis those nonmajor sources and source categories which are subject to title V solely because they are subject to NSPS for new residential wood heaters and the NESHAP for asbestos demolition and renovation activities.

For those small businesses still required (or opting) to obtain a permit, and for other appropriate source categories, EPA is promoting the use of general permits where possible. A general permit is a single permitting document which can cover a category or class of many similar sources. Public participation and EPA and affected State review must be provided by the permitting authority before issuing a

general permit [504(d)], but not when the individual sources subsequently submit requests for coverage and are evaluated for a permit reflecting the terms of the general permit. The permit issuance process for eligible sources can thus be greatly simplified, which substantially reduces the administrative burden on both sources and the permitting authority.

Section 507 requires States to establish a small business stationary source technical and environmental compliance assistance program. The program must be adopted as part of the SIP consistent with sections 110 and 112. The States must submit the proposed program within 2 years after enactment of title V [507(a)]. The State must also establish a Compliance Advisory Panel to monitor implementation of the program [507(e)].

The State or EPA may reduce any fee required under the Act for small business stationary sources [507(f)]. When developing regulations or control technique guidelines (CTG) which require CEMS, EPA must consider the appropriateness of requiring CEMS at such sources. This provision does not apply to CEMS under the acid rain provisions of title IV [507(g)]. The EPA must also consider the size, type, and technical capabilities of such sources and economic feasibility of the regulations when developing a CTG [507(h)].

#### *L. Relationship With Section 112 (Air Toxics)*

The operating permit program will implement standards issued under section 112 as it existed prior to the Act amendments of 1990, as well as future standards to be promulgated under section 112 as it was revised by the Act amendments of 1990 which describe requirements for the use of maximum achievable control technology (MACT), generally available control technology (GACT), and any technology used to reduce unreasonable residual risk. As noted earlier, a major source under section 112 is defined as any stationary source (or group of stationary sources), located in a contiguous area and under common control, which has the potential to emit 10 tpy or more of any hazardous air pollutant, 25 tpy or more of any combination of these pollutants, or a lesser quantity of a given pollutant if the Administrator so specifies.

The State permit program submittal is required to contain a legal opinion affirming the adequacy of existing legal authority to implement and enforce section 112 provisions. Each title V permit must in part assure compliance