actual emissions from an accidental release may not be known—certainly it is unlikely that it would be measured with sampling equipment. The EPA believes that there will be relatively few substances that are regulated under section 112(r) and not regulated elsewhere under the Act. Additionally, the amount of emissions of such substances is likely to be small enough that they would be insignificant for purposes of calculating the presumptive minimum amount to cover permit program costs.

The proposal was also modified so as to allow States relying on the $25/tpy presumptive minimum to exclude from the calculation insignificant quantities of actual emissions not required to be in a permit application pursuant to §70.5(c). The EPA could not justify requiring States to include such emissions in the presumptive minimum calculation given the administrative burden of collecting the necessary information for fees purposes, and the insignificant fees that a State would be required to collect if these insignificant levels of emissions were included. To the extent that actual emissions must be included in the calculation of the $25/tpy presumptive minimum, they need not be measured using the same methods as might be required to determine whether a source is complying with an underlying applicable requirement.

Section 502(b)(3) provides that States relying on the $25/tpy presumptive minimum must base this computation upon each “regulated pollutant (for presumptive fee calculation)” and defines this for fee purposes only in terms of criteria pollutants (except CO), pollutants regulated under section 111 or 112, and VOC. No exemption is created for such pollutants which a particular source emits but for which the source is not in fact subject to a specific regulatory requirement. On the other hand, no fees are required from other “regulated air pollutants” as defined more expansively in §70.2 in making the $25/tpy test.

4. Fees From Phase I Acid Rain Sources

The proposal interpreted section 408(c)(4) of the Act as prohibiting EPA, but not the States, from collecting emissions-related fees during 1995 through 1999 from affected sources under section 404. Some industry commenters maintained that this prohibition extends to both States and EPA. After reanalysis of the statutory provision, EPA concludes that the stronger reading is that during 1995 through 1999 section 408(c)(4) precludes EPA and the States from using fees to support a title V program when these fees are related to emissions from affected units under section 404.

5. State Fee Schedules

The final part 70 regulations clarify that States have a great deal of discretion in using the fee schedule to allocate permit program costs among part 70 sources. Even if the State relies on the $25/tpy presumptive minimum, the State fee schedule does not need to assess fees at $25/tpy. The State is not required to assess fees on any particular basis and can use application fees, service-based fees, emissions fees based on either actual or allowable emissions, other types of fees, or any combination thereof.

It should be clarified that State fee programs can provide for the assessment of fees on the basis of emissions of regulated air pollutant. The exclusion of three categories of regulated air pollutants (carbon monoxide and certain pollutants regulated under sections 112(r) and 602 of the Act) applies solely to how the $25/tpy presumption with respect to aggregate program revenue adequacy is to be calculated. States electing to assess fees for emissions of any of the regulated air pollutants, including those in the three categories referenced above, are fully authorized to do so. All fee revenues from those programs will be recognized for purposes of determining program adequacy.

J. Section 70.10—Federal Oversight and Sanctions

1. Geographic Application of Sanctions

The proposal indicated, in accordance with section 502(d) and (j), that sanctions are applicable if a permitting authority fails to submit an approvable operating permit program or fails to implement an approved program. The proposal did not specify the geographical application of sanctions. State and local agency commenters felt that in the event a partial program for a local agency is granted full approval in a State, the local agency should not be penalized if the State fails to meet its permit program obligations for the remainder of the State. If sanctions are to be applied, they should not be applied in the local agency jurisdiction where a program is adequately being implemented. Conversely, the local agency may be found to not be administering or enforcing its program and be subject to sanctions. The State may have an approved program for the remainder of the area within the State and should not be penalized for failure of the local agency to meet its obligations.

The Administrator agrees with this concern and the stipulation is added to §70.10 that sanctions are applicable only to the geographic area covered under the program which has not been submitted or is not being adequately administered or enforced. Any other area of the State covered by an approved program that is being adequately implemented will not be affected by sanctions.

2. Discretionary Application of Sanctions

Proposed §70.10(a)(2) stated that EPA will apply sanctions within 18 months after the date required for program submittal. Section 502(d)(2)(A) states that, where a State has failed to submit a permit program by the required date, EPA has discretion within the first 18 months of that date to apply sanctions. Section 70.10(a)(2) has been corrected to more accurately reflect the intent of the Act. Similarly, §70.10(b)(3) has been amended to more accurately reflect the intent of section 502(l)(1) that EPA has discretion whether to apply sanctions within the first 18 months after making a finding that a State is not adequately administering or enforcing a program.

3. Withdrawal of Approval of Part 70 Program

Section 70.10(c) sets out criteria for withdrawal of part 70 program approval, such as failure of the permitting authority to enforce the requirements of the part 70 program and the terms and conditions of part 70 permits. The final regulations now add in §70.10(c)(1)(ii)(E) that failure to act in a timely way on applications for permits, permit renewals, and permit revisions is grounds for withdrawal of approval of the part 70 program. This addition is simply a recognition of the importance and benefits of the permitting program.
If large numbers of permits are allowed to lapse and sources continue to operate without a permit because they have submitted a timely and complete application or permits are not updated in a timely manner to reflect the current status of the source, all the benefits of the permitting program such as increased certainty for sources and enhanced enforcement are lost. Therefore, EPA has added this as a basis for withdrawal of part 70 program approval. The final rule also clarifies that EPA may withdraw a program in whole or in part.

4. EPA Issuance of Initial Permits

The proposal in § 70.10(b)(8) stated that the EPA could issue or deny the permit where the State has failed to act in a timely manner. Upon further review of the language and structure of the Act, EPA has decided to eliminate this provision in the final rule. Where initial permit issuance is concerned, section 502(e) is clear in stating that EPA shall suspend the issuance of permits upon approval of a State program. Where the permitting authority has failed to act in a timely manner on applications for permit renewal, EPA may revoke and reissue the permit as provided for in § 70.7.

K. Section 70.11—Requirements for Enforcement Authority

This section ensures that the basic framework for effective enforcement of title V permits will be in place in each State with an approved part 70 program. Section 70.11 contains specific requirements for enforcement authority consistent with those contained in 40 CFR 123.27 for the NPDES program with appropriate adjustments to conform to the Clean Air Act. No significant changes to the proposed § 70.11 for defining minimum requirements for State programs are contained in the final rules. However, EPA specifically encourages additional enforcement authority with respect to the two areas discussed below.

The EPA encourages State and local permitting authorities to have administrative enforcement authority similar to section 113(d) of the Act, although it is not required by § 70.11. Having administrative enforcement authority in addition to judicial enforcement authority has many advantages. First, administrative cases generally have lower forum costs and are effective for minor or straightforward violations. Reliance on the judiciary for all enforcement actions may cause significant delays in pursuing enforcement actions considering how overburdened State and Federal judiciaries are. For both these reasons, more violations may be pursued if the permitting authority has administrative enforcement authority.

The EPA also recommends that State and local enforcement authorities consider as criminal penalties not only fines, but also incarceration. Such a penalty will be an inducement for State law enforcement officials to undertake environmental criminal cases that may otherwise have to be prosecuted by Federal enforcement authorities.

V. Administrative Requirements

A. Docket

The docket for this regulatory action is A-90-33. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

1. To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and

2. To serve as the record in case of judicial review (except for interagency review materials). The docket is available for public inspection at EPA’s Air Docket, which is listed under the ADDRESSES section of this document.

B. Office of Management and Budget (OMB) Review

Under Executive Order 12291 (E.O. 12291), EPA must judge whether a regulation is “major,” and therefore subject to the requirement “to the extent permitted by law” to prepare a Regulatory Impact Analysis (RIA) in connection with each major rule. Major rules are defined as those likely to result in the following:

1. An annual effect on the economy of $100 million or more.
2. A major increase in costs or prices for consumers or industries.
3. Significant adverse affects on competition, employment, investment, productivity, innovation, or international trade.

Although some States already have operating permit programs including fee provisions, the incremental cost of this regulation is not small. The national estimate of incremental annualized cost for the operating permit programs required by section 502(b)(3) of title V exceeds $100 million. Consequently, a Regulatory Impact Analysis has been prepared.

Given the mandate within title V to develop this regulation, the Agency has taken steps to provide for the timely accomplishment of title V requirements. In following the implementation principles mentioned in section II, EPA has allowed flexibility in permit design, in use of general permits to expedite the review process for certain smaller sources, and in the phase-in implementation of certain requirements. The Agency has thus attempted to reduce overall societal cost and any adverse economic impact associated with meeting the environmental objectives of title V. In addition, with permit fee revenue collections from subject sources State and local agencies will have the resources to develop and implement an accountable and enforceable operating permit program.

The draft RIA was made available for public comment as part of the May 10, 1991, proposal. In response to comments received, the RIA was revised to incorporate greater clarity and detail with respect to the numbers of sources affected and costs incurred. Certain costs related to paperwork burdens were increased as a result in both the RIA and the ICR (described below). The new estimate for the annualized direct cost to 34,000 major sources and permitting agencies is $528 million.

This estimate includes some costs that are due to existing State and local regulations, and are not attributable to this rule. It excludes, however, costs associated with permitting 350,000 nonmajor air toxic sources that were included in the Proposed Initial List of Categories of Sources under section 112(c)(1) of the Clean Air Act Amendments. Under today’s final rules, States may temporarily defer permit requirements for these sources. The EPA encourages States to issue temporary exemptions. If no such exemptions were granted, and if all of these sources were required to obtain general permits, then the direct cost to sources and permitting agencies would increase by about $79 million annually. Use by the States of specific permits, rather than the general permits that the EPA believes are normally appropriate for these nonmajor air toxic sources, will also raise costs unnecessarily. The EPA estimates that use of specific rather than general permits would at least triple the permitting costs to each source. The EPA projects that if, for example, 25 percent of the nonmajor air toxic sources are not granted deferrals, then actions by the States to require specific rather than general permits would raise cost to sources and permitting agencies by about $68 million annually. Finally, to
the extent that the EPA has underestimated the cost of obtaining specified permits, and to the extent that States require permitting for nonmajor air toxic sources using specific permits (rather than general permits), the direct costs could be increased as much as a billion dollars annually. The EPA encourages States to consider cost differences between specific and general type permits. The EPA recommends that States allow sources to use the type of permit that achieves the requirements of title V at lowest cost. The EPA believes the general permit would normally be appropriate for the nonmajor air toxic sources that are not granted exemptions.

The EP an and provisions ICR for the following five years (years 4–8), during which initial title V permits will be issued. Estimates for years 4–8 have been provided for informational purposes. EPA will be able to make better estimates of permit issuance costs for years 4–8 after State and local title V programs are reviewed and approved. It should be noted that the proposed ICR only addressed years 4–8, not the first three years after promulgation. Since the Act allows State and local agencies two years after promulgation of EPA regulations to submit programs to EPA, and it allows EPA a year to review and approve such programs, it was assumed in the final ICR that only permitting authorities will experience administration burden during years 1–3.

The analysis of years 4–8 in the final ICR has been updated to respond to comments received. The revised ICR incorporates several additional activities, including activities related to requirements for public notices, public hearings, permit revisions, and permit reopenings. The addition of these new activities, along with the additional analysis of burden hour estimates by a group of permitting experts from the private and government sectors, has resulted in increased burden hour and cost estimates for permitting authorities and sources. For years 4–8, total annual cost estimates for permitting authorities have increased from $15 to $160 million, and for sources these estimates have increased from $115 million to $352 million annually. In regard to guidance for general permits, EPA has projects underway to develop model general permits for specified source categories.

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the Federal Register. The burden to all 112 State and local permitting authorities for this collection of information during the first three years after EPA promulgates the part 70 regulations, is estimated to be 1,544,880 hours equating an annual average of 5,788 hours per permitting agency. This includes time for rule interpretation, analysis and/or revision to legislative authority, analysis and/or development of regulations, and development of a fee demonstration, standard application form, and a transition plan.
Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Chief, Information Policy Branch (PM-223Y), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked “Attention: Desk Officer for EPA.”

The information collection requirements contained in 40 CFR part 70 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them.

Dated: June 25, 1982.

William K. Keilby, Administrator.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended by adding a part 70 as set forth below.

PART 70—STATE OPERATING PERMIT PROGRAMS

Sec.

70.1 Program overview.

70.2 Definitions.

70.3 Applicability.

70.4 State program submittals and transition.

70.5 Permit applications.

70.6 Permit content.

70.7 Permit issuance, renewal, reopenings, and revisions.

70.8 Permit review by the EPA and affected States.

70.9 Fee determination and certification.

70.10 Federal oversight and sanctions.

70.11 Requirements for enforcement authority.

Authority: 42 U.S.C. 7401 et seq.

§ 70.1 Program overview.

(a) The regulations in this part provide for the establishment of comprehensive State air quality permitting systems consistent with the requirements of Title V of the Clean Air Act (Act) (42 U.S.C. 7401 et seq.). These regulations define the minimum elements required by the Act for State operating permit programs and the corresponding standards and procedures by which the Administrator will approve, oversee, and withdraw approval of State operating permit programs.

(b) All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements.

While title V does not impose substantive new requirements, it does require that fees be imposed on sources and that certain procedural measures be adopted especially with respect to compliance.

(c) Nothing in this part shall preclude a State, or interstate permitting authority, from establishing additional or more stringent requirements not inconsistent with this Act. The EPA will approve State program submittals to the extent that they are not inconsistent with the Act and these regulations. No permit, however, can be less stringent than necessary to meet all applicable requirements. In the case of Federal intervention in the permit process, the Administrator reserves the right to implement the State operating permit program, in whole or in part, or the Federal program contained in regulations promulgated under title V of the Act.

(d) The requirements of part 70, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or modified in regulations promulgated under title IV of the Act (acid rain program).

(e) Issuance of State permits under this part may be coordinated with issuance of permits under the Resource Conservation and Recovery Act and under the Clean Water Act, whether issued by the State, the U.S. Environmental Protection Agency (EPA), or the U.S. Army Corps of Engineers.

§ 70.2 Definitions.

The following definitions apply to parts 70. Except as specifically provided in this section, terms used in this section remain the meaning accorded them under the applicable requirements of the Act. Act means the Clean Air Act as amended, 42 U.S.C. 7401 et seq.

Affected source shall have the meaning given to it in the regulations promulgated under title IV of the Act.

Affected States are all States:

1. Whose air quality may be affected and that are contiguous to the State in which a part 70 permit, permit modification or permit renewal is being proposed for or

2. That are within 50 miles of the permitted source.

Affected unit shall have the meaning given to it in the regulations promulgated under title IV of the Act.

Applicable requirement means all of the following as they apply to emissions units in a part 70 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates):

1. Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter;

2. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D of the Act;

3. Any standard or other requirement under section 111 of the Act, including section 111(d);

4. Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

5. Any standard or other requirement of the acid rain program under title IV of the Act or the regulations promulgated thereunder;

6. Any requirements established pursuant to section 504(b) or section 114(c)(3) of the Act;

7. Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

8. Any standard or other requirement for consumer and commercial products, under section 135(e) of the Act;

9. Any standard or other requirement for tank vessels under section 135(f) of the Act;

10. Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a title V permit and

12. Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

Designated representative shall have the meaning given to it in section 402(20) of the Act and the regulations promulgated thereunder.

Draft permit means the version of a permit for which the permitting authority offers public participation under § 70.7(h) or affected State review under § 70.8 of this part.

Emissions allowable under the permit means a federally enforceable permit...
term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

Emissions unit means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. This term is not meant to alter or affect the definition of the term “unit” for purposes of title IV of the Act.

The EPA or the Administrator means the Administrator of the EPA or his designee.

Final permit means the version of a part 70 permit issued by the permitting authority that has completed all review procedures required by §§ 70.7 and 70.8 of this part.

Fugitive emissions are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

General permit means a part 70 permit that meets the requirements of § 70.6(d).

Major source means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons) under common control) belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(1) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or other lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, “major source” shall have the meaning specified by the Administrator by rule.

(2) A major source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of burning more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfuric acid plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xx) Coal-fueled boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Coal-fueled electric steam electric plants of more than 500 million British thermal units per hour heat input; or

(xxvii) All major stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category;

(3) A major stationary source as defined in part D of title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as “marginal” or “moderate,” 50 tpy or more in areas classified as “serious,” 25 tpy or more in areas classified as “severe,” and 30 tpy or more in areas classified as “extreme”; except that the references in this paragraph to 100, 50, 25 and 30 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(2) or (3) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas:

(A) That are classified as “serious,” and

(B) In which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM-10) nonattainment areas classified as “serious,” sources with the potential to emit 70 tpy or more of PM-10.

Part 70 permit or permit (unless the context suggests otherwise) means any permit or group of permits covering a part 70 source that is issued, renewed, amended, or revised pursuant to this part.

Part 70 program or State program means a program approved by the Administrator under this part.

Part 70 source means any source subject to the permitting requirements of this part, as provided in § 703(a) and 703(b) of this part.

Permit modification means a revision to a part 70 permit that meets the requirements of § 707(e) of this part.

Permit program costs means all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in § 709(b) of this part (whether such costs are incurred by the permitting authority or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).
Permit revision means any permit modification or administrative permit amendment.

Permitting authority means either of the following:
(1) The Administrator, in the case of EPA-implemented programs; or
(2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under this part.

Potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term “capacity factor” as used in title IV of the Act or the regulations promulgated thereunder.

Proposed permit means the version of a permit that the permitting authority proposes to issue and forwards to the Administrator for review in compliance with §70.8.

Regulated air pollutant means the following:
(1) Nitrogen oxides or any volatile organic compounds;
(2) Any pollutant for which a national ambient air quality standard has been promulgated;
(3) Any pollutant that is subject to any standard promulgated under section 111 of the Act;
(4) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or
(5) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act, including sections 112(g), (1), and (2) of the Act, including the following:
   (i) Any pollutant subject to requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and
   (ii) Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to section 112(g)(2) requirement.

Regulated pollutant (for presumptive fee calculation), which is used only for purposes of §70.9(b)(2), means any “regulated air pollutant” except the following:
(1) Carbon monoxide;
(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance to a standard promulgated under or established by title VI of the Act; or
(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(c) of the Act.

Renewal means the process by which a permit is reissued at the end of its term.

Responsible official means one of the following:
(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
   (i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million in second quarter 1980 dollars; or
   (ii) The delegation of authority to such representative is approved in advance by the permitting authority;
(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or
(4) For affected sources:
   (i) The designated representative in so far as actions, standards, requirements, or prohibitions under title IV of the Act or the regulations promulgated thereunder are concerned; and
   (ii) The designated representative for any other purposes under part 70.

Section 502(b)(10) changes are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

State means any non-Federal permitting authority, including any local agency, interstate association, or statewide program. The term “State” also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Where such meaning is clear from the context, “State” shall have its conventional meaning. For purposes of the acid rain program, the term “State” shall be limited to authorities within the 48 contiguous States and the District of Columbia as provided in section 402(14) of the Act.

Stationary source means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act.

Whole program means a Part 70 permit program, or any combination of partial programs, that meet all of the requirements of these regulations and cover all the Part 70 sources in the entire State. For the purposes of this definition, the term “State” does not include local permitting authorities, but refers only to the entire State, Commonwealth, or Territory.

§70.3 Applicability.
(a) Part 70 sources. A State program with whole or partial approval under this part must provide for permitting of at least the following sources:
(1) Any major source;
(2) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Act;
(3) Any source, including an area source, subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of this Act;
(4) Any affected source; and
(5) Any source in a source category designated by the Administrator pursuant to this section.

(b) Source category exemptions. (1) All sources listed in paragraph (a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act, may be exempted by the State from the obligation to obtain a Part 70 permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and the
appropriateness of any permanent exemptions in addition to those
provided for in paragraph (b)(4) of this section.

(2) In the case of nonmajor sources subject to a standard or other
requirement under either section 111 or
section 112 of the Act after July 21, 1992
publication, the Administrator will
determine whether to exempt any or all
such applicable sources from the
requirement to obtain a part 70 permit at
the time that the new standard is
promulgated.

(3) Any source listed in paragraph (a)
of this section exempt from the
requirement to obtain a permit under
this section may opt to apply for a
permit under a part 70 program.

(4) Unless otherwise required by the
State to obtain a part 70 permit, the
following source categories are
exempted from the obligation to obtain a
part 70 permit:

(i) All sources and source categories
that would be required to obtain a
permit solely because they are subject
to part 60, subpart A.A.A—Standards of
Performance for New Residential Wood Heaters; and

(ii) All sources and source categories
that would be required to obtain a
permit solely because they are subject
to part 61, subpart M—National
Emission Standard for Hazardous Air
Pollutants for Asbestos, $61.145;
Standard for Demolition and
Removal.

(c) Emissions units and part 70
sources. (1) For major sources, the
permitting authority shall include in the
permit all applicable requirements for
all relevant emissions units in the major
source.

(2) For any nonmajor source subject to
the part 70 program under paragraph (a)
or (b) of this section, the permitting
authority shall include in the permit all
applicable requirements applicable to
emissions units that cause the source to
be subject to the part 70 program.

(d) Fugitive emissions. Fugitive
emissions from a part 70 source shall be
included in the permit application and
the part 70 permit in the same manner as
stack emissions, regardless of whether
the source category in question is
included in the list of sources contained
in the definition of major source.

§ 70.4 State program submittals and
transition.

(a) Date for submittal. Not later than
November 15, 1993, the Governor of
each State shall submit to the
Administrator for approval a proposed
part 70 program, under State law or
under an interstate compact, meeting the
requirements of this part. If part 70 is
subsequently revised such that the
Administrator determines that it is
necessary to require a change to an
approved State program, the required
revisions to the program shall be
submitted within 12 months of the final
dates to change to part 70 or within such other
period as authorized by the
Administrator.

(b) Elements of the initial program
submission. Any State that seeks to
administer a program under this part shall
submit to the Administrator a
letter of submittal from the Governor or
his designee requesting EPA approval of
the program and at least three copies of
a program submission. The submission
shall contain the following:

(1) A complete program description
describing how the State intends to
carry out its responsibilities under this
part.

(2) The regulations that comprise the
permitting program, reasonably
available evidence of their procedurally
correct adoption, (including any notice
of public comment and any significant
comments received on the proposed part
70 program as requested by the
Administrator), and copies of all
applicable State or local statutes and
regulations including those governing
State administrative procedures that
either authorize the part 70 program or
restrict its implementation. The State
shall include with the regulations any
criteria used to determine insignificant
activities or emission levels for purposes
of determining complete applications
consistent with §70.5(c) of this part.

(3) A legal opinion from the Attorney
General for the State, or the attorney for
those State, local, or interstate air
pollution control agencies that have
independent legal counsel, stating that
the laws of the State, locality, or
interstate compact provide adequate
authority to carry out all aspects of the
program. This statement shall include
citations to the specific states,
administrative regulations, and, where
appropriate, judicial decisions that
demonstrate such authority. State
statutes and regulations cited by the
State Attorney General or independent
legal counsel shall be in the form of
lawfully adopted State statutes and
regulations at the time the statement is
signed and shall be fully effective by the
time the program is approved. To qualify
as "independent legal counsel," the
attorney signing the statement required
by this section shall have full authority
to independently represent the State
agency in court on all matters pertaining
to the State program. The legal opinion
shall also include a demonstration of
adequate legal authority to carry out the
requirements of this part, including
authority to carry out each of the
following:

(i) Issue permits and assure
compliance with each applicable
requirement and part of this part
by all part 70 sources.

(ii) Incorporate monitoring,
recordkeeping, reporting, and
compliance certification requirements
into part 70 permits consistent with
§70.6.

(iii) Issue permits for a fixed term of 5
years in the case of permits with acid
rain provisions and issue all other
permits for a period not to exceed 5
years, except for permits issued for solid
waste incineration units or municipal
waste subject to standards under
section 129(e) of the Act.

(iv) Issue permits for solid waste
incineration units combusting municipal
waste subject to standards under
section 129(e) of the Act for a period not to
exceed 12 years and review such
permits at least every 5 years. No permit
for a solid waste incineration unit may
be issued by an agency, instrumentality
or person that is also responsible, in
whole or in part, for the design and
classification or operation of the unit.

(v) Incorporate into permits all
applicable requirements and
requirements of this part.

(vi) Terminate, modify, or revoke and
reissue permits for cause.

(vii) Enforce permits, permit fee
requirements, and the requirement to
obtain a permit, as specified in §70.11.

(viii) Make available to the public any
permit application; compliance plan,
permit, and maintenance and compliance,
certification report pursuant to section
503(e) of the Act, except for information
entitled to confidential treatment
pursuant to section 114(c) of the Act.
The contents of a part 70 permit shall not
be entitled to protection under
section 114(c) of the Act.

(ix) Not issue a permit if the
Administrator timely objects to its
issuance pursuant to §70.6(c) of this
part or, if the permit has not already
been issued, to §70.6(d) of this part.

(x) Provide an opportunity for judicial
review in State court of the final permit
action by the applicant, any person who
participated in the public participation
process provided pursuant to §70.7(h) of
this part, and any other person who
could obtain judicial review of such
actions under State laws.

(xi) Provide that, solely for the
purposes of obtaining judicial review in
State court for failure to take final
action, final permit action shall include
the failure of the permitting authority
to take final action on an application for a
permit, permit renewal, or permit

revision within the time specified in the State program. If the State program
allows sources to make changes subject to post hoc review (as set forth in ¶ § 70.7(f)(2) of this part), the permitting authority's failure to take
final action within 90 days of receipt of an application requesting minor permit
modification procedures (or 180 days for modifications subject to group
processing requirements) must be
subject to judicial review in State court.

(ii) Provide that the opportunity for judicial review described in paragraph
(b)(9)(x) of this section shall be the exclusive means for obtaining judicial
review of the terms and conditions of permits, and require that such petitions
for judicial review must be filed no later than 90 days after the final permit
action, or such shorter time as the State shall designate. Notwithstanding the
preceding requirement, petitions for judicial review of final permit actions
may be filed after the deadline
designated by the State, only if they are
based solely on grounds arising after the
deadline for judicial review. Such
petitions shall be filed no later than 90
days after the new grounds for review
arise or such shorter time as the State
shall designate. If the final permit action being challenged is the permitting
authority's failure to take final action, a
petition for judicial review may be filed
time before the permitting authority
denies the permit or issues the final
permit.

(xiii) Ensure that the authority of the State/local permitting Agency is not
used to modify the acid rain program
requirements.

(4) Relevant permitting program
documentation not contained in the
State regulations, including the
following:
(i) Copies of the permit form(s),
application form(s), and reporting
form(s) the State intends to employ in its
program; and
(ii) Relevant guidance issued by the
State to assist in the implementation of its
permitting program, including criteria
for monitoring source compliance (e.g.,
inspection strategies).

(5) A complete description of the
State's compliance tracking and
enforcement program or reference to
any agreement the State has with EPA
that provides this information.

(6) A showing of adequate
authority and procedures to determine within 60-
days of receipt whether applications
(including renewal applications) are
complete, to request such other
information as needed to process the
application, and to take final action on
complete applications within 18 months of the
date of their submittal, except for
initial permit applications, for which the
permitting authority may take up to 3
years from the effective date of the
program to take final action on the
application, as provided for in the
transition plan.

(7) A demonstration, consistent with
§ 70.5, that the permit fees required by
the State program are sufficient to cover
permit program costs.

(8) A statement that adequate
personnel and funding have been made
available to develop, administer, and
enforce the program. This statement
shall include the following:
(i) A description in narrative form of
the scope, structure, coverage, and
processes of the State program.
(ii) A description of the organization
and structure of the agency or agencies
that will have responsibility for
administering the program, including the
information specified in this paragraph.
If more than one agency is responsible
for administration of a program, the
responsibilities of each agency must be
talented, and the procedures for
coordination must be set forth, and an
agency shall be designated as a "lead
agency" to facilitate communications
between EPA and the other agencies
having program responsibility.
(iii) A description of the agency staff
who will carry out the State program,
including the number, occupation, and
general duties of the employees. The
State need not submit complete job
descriptions, a full list of every employee
carrying out the State program.
(iv) A description of applicable State
procedures, including permitting
procedures and any State
administrative or judicial review procedures.
(v) An estimate of the permit program
costs for the first 4 years after approval, and a
description of how the State plans
to cover those costs.
(vi) A commitment from the State to
submit, at least annually to the
Administrator, information regarding the
State's enforcement activities including,
but not limited to, the number of
criminal and civil, judicial and
administrative enforcement actions
either commenced or concluded; the
penalties, fines, and sentences obtained
in those actions; and the number of
administrative orders issued.
(10) A requirement under State law
that, if a timely and complete
application for a permit renewal is
submitted, consistent with § 70.5(a)(2),
but the State has failed to issue or deny
the renewal permit before the end of the
term of the previous permit, then:
(i) The permit shall not expire until
the renewal permit has been issued or
mentioned and any permit issued that may
be granted pursuant to § 70.8(f) may
extend beyond the original permit term
until renewal; or
(ii) All the terms and conditions of the
permit including any permit shield that
may be granted pursuant to § 70.8(f)
shall remain in effect until the renewal
permit has been issued or denied.

(11) A transition plan providing a
schedule for submittal and final action on
initial permit applications for all part
70 sources. This plan shall provide that:
(i) Submittal of permit applications by
all part 70 sources (including any
sources subject to a partial or interim
program) shall occur within 1 year after
the effective date of the permit program;
(ii) Final action shall be taken on at
least one-third of such applications
annually over a period not to exceed 3
years after such effective date;
(iii) Any complete permit application
containing an early reduction
demonstration under section 112(i)(5)
of the Act shall be acted on within 9
months of receipt of the complete
application; and
(iv) Submittal of permit applications
and the permitting of affected sources
shall occur in accordance with the
deadlines in title IV of the Act and the
regulations promulgated thereunder.

(12) Provisions consistent with
paragraphs (b)(12)(i) through (iii) of this
section to allow changes within a
permitted facility without requiring a
permit revision, if the changes are not
modifications under any provision of
title I of the Act and the changes do not
exceed the emissions allowable under
the permit (whether expressed therein
as a rate of emissions or in the terms of
total emissions): Provided, That the
facility provides the Administrator and
the permitting authority with written
notification as required below in
advance of the proposed changes, which
shall be a minimum of 7 days, unless
the permitting authority provides in its
regulations a different time frame for
emergencies. The source, permitting
authority, and EPA shall attach each
such notice to their copy of the relevant
permit. The following provisions implement this requirement of an
approvable part 70 permit program:
(i) The program shall allow permitted
sources to make section 502(b)(10)
changes without requiring a permit
revision, if the changes are not
modifications under any provision of
title I of the Act and the changes do not
exceed the emissions allowable under
the permit (whether expressed therein
as a rate of emissions or in terms of total
emissions).

(A) For each such change, the written
notification required above shall include
a brief description of the change within
the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(B) The permit shield described in § 70.6(f) of this part shall not apply to any change made pursuant to this paragraph (b)(12)(i) of this section.

(ii) The program may provide for permitted sources to trade increases and decreases in emissions in the permitted facility, where the applicable implementation plan provides for such emissions trades without requiring a permit revision and based on the 7-day notice prescribed in this paragraph (b)(12)(ii) of this section. This provision is available in those cases where the permit does not already provide for such emissions trading.

(A) Under this paragraph (b)(12)(ii) of this section, the written notification required above shall include such information as may be required by the program in the applicable implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and that provide for the emissions trade.

(B) The permit shield described in § 70.6(f) of this part shall not extend to any change made under this paragraph (b)(12)(ii) of this section. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.

(iii) The program shall require the permitting authority, if a permit applicant requests it, to issue permits that contain terms and conditions, including all terms required under § 70.8 (a) and (c) of this part to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicability procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The permitting authority shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

(A) Under this paragraph (b)(12)(iii) of this section, the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(B) The permit shield described in § 70.6(f) of this part may extend to terms and conditions that allow such increases and decreases in emissions.

(13) Provisions for adequate, streamlined, and reasonable procedures for expeditions review of permit revisions or modifications. The program may meet this requirement by using procedures that meet the requirements of § 70.7(e) or that are substantially equivalent to those provided in § 70.7(e) of this part.

(14) If a State allows changes that are not addressed or prohibited by the permit, other than those described in paragraph (b)(15) of this section, to be made without a permit revision, provisions meeting the requirements of paragraphs (b)(14) (i) through (iii) of this section. Although a State may, as a matter of State law, prohibit sources from making such changes without a permit revision, any such prohibition shall not be enforceable by the Administrator or by citizens under the Act unless the prohibition is required by an applicable requirement. Any State procedures implementing such a State law prohibition must include the requirements of paragraphs (b)(14) (i) through (iii) of this section.

(i) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(ii) Sources must provide contemporaneous written notice to the permitting authority and EPA of each such change, except for changes that qualify as insignificant under the provisions adopted pursuant to § 70.5(c) of this part. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

(iii) The change shall not qualify for the shield under § 70.6(f) of this part.

(iv) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from the change.

(15) Provisions prohibiting sources from making, without a permit revision, changes that are not addressed or prohibited by the part 70 permit, if such changes are subject to any requirements under title IV of the Act or are modifications under any provision of title I of the Act.

(16) Provisions requiring the permitting authority to implement the requirements of §§ 70.6 and 70.7 of this part.

(c) Partial programs. (1) The EPA may approve a partial program that applies to all part 70 sources within a limited geographic area (e.g., a local agency program covering all sources within the agency's jurisdiction). To be approvable, any partial program must, at a minimum, ensure compliance with all of the following applicable requirements, as they apply to the sources covered by the partial program:

(i) All requirements of title V of the Act and of part 76;

(ii) All applicable requirements of title IV of the Act and regulations promulgated thereunder which apply to affected sources; and

(iii) All applicable requirements of title I of the Act, including those established under sections 111 and 112 of the Act.

(2) Any partial permitting program, such as that of a local air pollution control agency, providing for the issuance of permits by a permitting authority other than the State, shall be consistent with all the elements required in paragraphs (b) (1) through (16) of this section.

(3) Approval of any partial program does not relieve the State from its obligation to submit a whole program or from application of any sanctions for failure to submit a fully-applicable whole program.

(4) Any partial program may obtain interim approval under paragraph (d) of this section if it substantially meets the requirements of this paragraph (c) of this section.

(d) Interim approval. (1) If a program (including a partial permit program) submitted under this part substantially meets the requirements of this part, but is not fully approvable, the Administrator may be rule grant the program interim approval.

(2) Interim approval shall expire on a date set by the Administrator (but not later than 2 years after such approval), and may not be renewed. Sources shall
become subject to the program according to the schedule approved in the State program. Permits granted under an interim approval shall expire at the end of their fixed term, unless renewed under a part 70 program.

(iii) The EPA will grant interim approval to any program if it meets each of the following minimum requirements:
(iii) The program must provide for collecting permit fees adequate for it to meet the requirements of § 70.9 of this part.

(ii) Applicable requirements. The program must provide for adequate authority to issue permits that assure compliance with the requirements of paragraph (c)(1) of this section for those major sources covered by the program.
(v) Fixed term. The program must provide for fixed permit terms, consistent with paragraphs (b)(3) (iii) and (iv) of this section.

(iv) Public participation. The program must provide for adequate public notice of and an opportunity for public comment and a hearing on draft permits and revisions, except for modifications qualifying for minor permit modification procedures under § 70.7(e) of this part. The EPA shall conduct the public participation as a part of its State review.

(v) EPA review and State review. The program must allow EPA an opportunity to review each proposed permit, including permit revisions, and to object to its issuance consistent with § 70.8(c) of this part. The program must provide for affected State review consistent with § 70.8(b) of this part.

(vi) Permit issuance. The program must provide that the proposed permit shall not be issued if EPA objects to its issuance.

(vii) Enforcement. The program must contain authority to enforce permits, including the authority to assess penalties against sources that do not comply with their permits or with the requirement to obtain a permit.

(viii) Operational flexibility. The program must allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the act and the changes do not exceed the emissions allowable under the permit, consistent with paragraph (b)(12) of this section.

(ix) Streamlined procedures. The program must provide for streamlined procedures for issuing and revising permits and determining expeditiously after receipt of a permit application or application for a permit revision whether such application is complete.

(x) Permit application. The program shall submit to EPA the copies of the permit application and reporting form(s) that the State will use in implementing the interim program.

(x) Alternative scenarios. The program submittal must include provisions to insure that alternate scenarios requested by the source are included in the part 70 permit pursuant to § 70.6(a)(9) of this part.

(c) EPA review of permit program submittals. Within 1 year after receiving a program submittal, the Administrator shall approve or disapprove the program, in whole or in part, by publishing a notice in the Federal Register. Prior to such notice, the Administrator shall provide an opportunity for public comment on such approval or disapproval. Any EPA action disapproving a program, in whole or in part, shall include a statement of the revisions or modifications necessary to obtain full approval. The Administrator shall approve State programs that conform to the requirements of this part.

(1) Within 80 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete enough to warrant review by EPA for either full, partial, or interim approval. If EPA finds that a State’s submission is complete, the 1-year review period (i.e., the period of time allotted for formal EPA review of a proposed State program) shall be deemed to have begun on the date of receipt of the State’s submission. If EPA finds that a State’s submission is incomplete, the 1-year review period shall not begin until all the necessary information is received by EPA.

(2) If the State’s submission is materially changed during the 1-year review period, the Administrator may extend the review period for no more than 1 year following receipt of the revised submission.

(3) In any notice granting interim or partial approval, the Administrator shall specify the changes or additions that must be made before the program can receive full approval and the conditions for implementation of the program until that time.

(i) Program revisions. Either EPA or a State with an approved program may initiate a program revision. Program revision may be necessary when the relevant Federal or State statutes or regulations are modified or supplemented. The State shall keep EPA apprised of any proposed modifications to its basic statutory or regulatory authority or procedures.

(1) If the Administrator determines pursuant to § 70.10 of this part that a State is not adequately administering the requirements of this part, or that the State’s permit program is inadequate in any other way, the State shall revise the program or its means of implementation to correct the inadequacy. The program shall be reissued within 180 days, or such other period as the Administrator may specify, following notification by the Administrator, or within 2 years if the State demonstrates that additional legal authority is necessary to make the program revision.

(2) Revision of a State program shall be accomplished as follows:

(a) The State shall submit to the EPA an interim approval or partial approval, as defined in § 70.4 of this part, to incorporate the revisions.

(b) The EPA shall issue a notice in the Federal Register summarizing the proposed change and
provide a public comment period of at least 30 days.
(iii) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Act.
(iv) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the Federal Register. Notice of approval of nonsubstantial program revisions may be given by a letter from the Administrator to the Governor or a designee.
(v) The Governor of any State with an approved part 70 program shall notify EPA whenever the Governor proposes to transfer all or part of the program to any other agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until the revision has been approved by the Administrator under this paragraph.
(3) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General’s statement, program description, or such other documents or information as he determines are necessary.
(i) Sharing of information. (1) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction and at a form specified by the Administrator, including computer-readable files to the extent practicable. If the information has been submitted to the State under a claim of confidentiality, the State may require the source to submit this information to the Administrator directly. Where the State submits information to the Administrator under a claim of confidentiality, the State shall submit that claim to EPA when providing information to EPA under this section. Any information obtained from a State or part 70 source accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter.
(2) The EPA will furnish to States with approved programs the information in its files that the State needs to implement its approved program. Any such information submitted to EPA under a claim of confidentiality will be subject to the regulations in part 2 of this chapter.
(k) Administration and enforcement. Any State that fails to adopt a complete, approvable part 70 program, or that EPA determines is not adequately administering or enforcing such program shall be subject to certain Federal sanctions as set forth in § 70.160 of this part.
§ 70.5 Permit applications.
(a) Duty to apply. For each part 70 source, the owner or operator shall submit a timely and complete permit application in accordance with this section.
(1) Timely application. (i) A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting agency may establish.
(ii) Part 70 sources required to meet the requirements under section 112(f) of the Act, or to have a permit under the preconstruction review program approved into the applicable implementation plan under part C or D of title I of the Act, shall file a complete application to obtain the part 70 permit or permit revision within 12 months after commencing operation or on or before such earlier date as the permitting authority may establish.
Where an existing part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.
(iii) For purposes of permit renewal, a timely application is one that is submitted at least 6 months prior to the date of permit expiration, or such other longer time as may be approved by the Administrator to ensure that the term of the permit will not expire before the permit is renewed. In no event shall this time be greater than 18 months.
(iv) Applications for initial phase II acid rain permits shall be submitted to the permitting authority by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.
(2) Complete application. The program shall provide criteria and procedures for determining in a timely fashion when applications are complete. To be deemed complete, an application must provide all information required pursuant to paragraph (c) of this section, except that applications for permit revision need supply such information only if it is related to the proposed change. Information required under paragraph (c) of this section must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. The program shall require that a responsible official certify the submitted information consistent with paragraph (d) of this section. Unless the permitting authority determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in § 70.7(a)(4) of this part. If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source’s ability to operate without a permit, as set forth in § 70.7(b) of this part, shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.
(3) Confidential information. In the case where a source has submitted information to the State under a claim of confidentiality, the permitting authority may also require the source to submit a copy of such information directly to the Administrator.
(b) Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.
(c) Standard application form and required information. The State program under this part shall provide for a standard application form or forms. Information as described below for each emissions unit at a part 70 source shall be included in the application. The Administrator may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule approved pursuant to § 70.9 of this part. The permitting authority may use discretion in developing application forms that best