

**EPA**

Office of Air and Radiation  
Office of Air Quality Planning and Standards

---

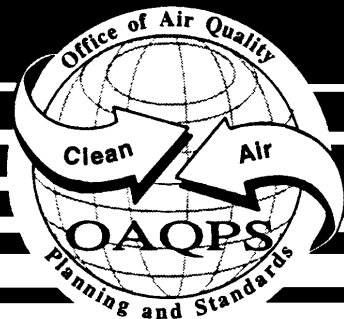
December 2011

# **DRAFT SUPPORTING STATEMENT FOR THE PART 71 FEDERAL OPERATING PERMIT PROGRAM**

prepared by

Jeff Herring, Environmental Scientist  
Air Quality Policy Division  
Operating Permits Group

EPA # 1713.10



---

## Executive Summary

Title V of the Clean Air Act requires each State to develop and submit to EPA for approval an operating permit program that meets the requirements of title V. Where a State fails to submit an approvable program, title V requires EPA to implement a program instead. [See § 502(d).] Moreover, EPA must implement a program in any area where a State, local or tribal program is not effective, including in Indian country, certain areas offshore where the Outer Continental Shelf Lands Act (OCS) and Deepwater Port Act (DWPA) applies, and in any location with an approved part 70 program, where EPA has made a finding that the program is deficient and EPA takes over permitting responsibilities. Also, EPA issues individual title V permits in situations where there is an approved part 70 program, but EPA has objected to the issuance of a particular permit, and the State has failed to resolve the objection. For any existing rule, § 3507(g) of the Paperwork Reduction Act limits how long a Director may approve a collection of information to 3 years.

On September 12, 2007, OMB approved the ICR renewal for part 71 (OMB number 2060-0336, EPA tracking # 1713.06) for 36 months (it was scheduled to expire on September 30, 2010). On April 22, 2009, OMB approved a revision to the previously approved collection related to the final rule for Flexible Air Permits (EPA tracking # 1713.09) and as part of this approval OMB extended the expiration date of the ICR to April 30, 2012. This ICR is a renewal of the September 2007 ICR.

Table E-1 displays the expected annual burden and the expected change in annual burden for sources, permitting authorities, and the Federal government for implementation of the part 71 Operating Permits Program under Title V of the Clean Air Act between May 2012 and April 2015. This ICR represents an overall increase in expected burden of over 38 percent for respondents (sources) and 32 percent for permitting authorities compared to that reported in the 2007 ICR.

**TABLE E-1  
BURDEN CHANGE FROM 2007 ICR TO CURRENT ICR (in hours)**

|                            | Average Annual Burden<br>in 2007 ICR Renewal | Average Annual Burden<br>in Current ICR Renewal | Difference |
|----------------------------|--|---|------------|
| <b>Sources</b>             | 27,218                                       | 37,413  | 10,195     |
| <b>PA (Tribe)</b>          | N/A  | 1,318   | N/A        |
| <b>Federal (PA)</b>        | 12,372                                       | 15,066  | 4,011      |
| <b>Federal (Oversight)</b> | N/A  | 24  | N/A        |
| <b>TOTAL</b>               | 39,591                                       | 53,820  | 14,229     |

In 2007 ICR renewal (EPA tracking # 1703.06), the Agency estimated the annualized burden to part 71 sources at 27 thousand hours. The current ICR estimates the annualized burden to sources at about 37 thousand hours, primarily due to an increase in the number of sources subject to permitting. The 2007 renewal included 123 sources, while this update expects 174 sources, including Indian country sources, OCS sources<sup>1</sup>, DWPA sources,<sup>2</sup> sources subject to permitting due to the GHG Tailoring rule, and any part 70 sources with unresolved EPA objections. Thus, there is an increase in respondent (source) burden in this renewal compared to the 2007 renewal due to changes in our estimate of the number of permitted sources. This increase is due to increased economic activity, which the existing regulations are designed to accommodate, rather than due to any changes in information collection requirements. This increased estimate better reflects the actual numbers of sources and activities under part 71 during the period. There were no changes necessary to the part 71 forms to accommodate the two previous rule changes and the part 71 forms are not being changed as part of this renewal.

**CONCLUSION: This ICR represents an INCREASE IN BURDEN FOR SOURCES, relative to the prior ICR.**

<sup>1</sup> Certain oil and natural gas exploration and development sources, such as drill ships and drilling platforms, and alternative energy projects (e.g., wind and wave energy projects) located offshore under the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 et seq.; 43 U.S.C § 1501 et seq.

<sup>2</sup> Certain oil and liquefied natural gas (LNG) terminals or ports located offshore under the Deepwater Port Act, 33 U.S.C. § 1501 et seq.

Although Tribes had authority to seek delegation of part 71 permitting at the time of the last ICR renewal, none had done so, so that renewal identified EPA as the only permitting authority. This ICR identifies EPA and one delegate agency, the Navaho Nation, as permitting authorities because, since the last ICR renewal, EPA entered into a delegation agreement with the Navaho Nation for them to assume responsibility for 14 existing part 71 sources located within the exterior boundaries of their delegated program area in Indian country -- EPA will continue to act as the permitting authority for the remaining 160 part 71 sources included in this renewal. Also related to the delegation agreement with the Navaho Nation, EPA will perform some program oversight activities (similar to the oversight EPA performs for states with approved part 70 programs), which will be tracked separately in this ICR. It is possible that additional Indian tribes may seek delegation for part 71 in the future but it is unlikely that any new delegation agreements would be approved and effective before this new renewal ICR is scheduled to expire.

In the 2007 renewal, EPA estimated its annualized burden at 12 thousand hours, while this update predicts about 15 thousand hours annually, divided between EPA and the delegate agency. This increase in permitting authority burden is due to the same reasons as sources: an increase in the number of sources expected to be permitted, which is primarily due to an increase in the estimate of the number of offshore oil and gas exploration sources and alternate energy projects (under OCS rules) and offshore liquefied natural gas (LNG) terminals (under DWPA rules). This translates into an increase in permitting authority burden of about 32 percent compared to the 2007 ICR renewal.

Since the 2007 renewal, EPA promulgated two new regulatory revisions that apply to both part 70 and part 71: the Flexible Air Permits Rule<sup>3</sup> and the GHG Tailoring rule<sup>4</sup>. OMB has previously approved ICR changes related to these rules under EPA tracking numbers 1587.10, 1703.09<sup>5</sup> and EPA tracking # 1587.11<sup>6</sup> and these changes are updated as part of this analysis. The first rule resulted in a net reduction in burden for a large number of existing sources, while the second resulted in an increase in burden for a modest number of newly subject sources and small increases in burden for a large number of existing sources. In this analysis these two rule changes have resulted in nearly offsetting decreases and increases in burden compared to the baseline analysis (the term baseline analysis used here refers to the analysis performed for the 2007 ICR renewal, which did not account for the Flexible Air Permits and GHG Tailoring rules). For this ICR renewal, we first calculate burden by updating the analysis performed for the 2007 ICR renewal, then we account for the recently OMB-approved changes related to the Flexible Permits and Tailoring rules just prior to calculating the bottom line burden and costs for this renewal ICR. In the way, it is easier for the reader to see the relative changes in burden from the 2007 baseline and changes attributable to the two recent rule revisions.

---

<sup>3</sup> Operating Permit Programs, Flexible Air Permits Rule, Final Rule (74 FR 51418, October 6, 2009).

<sup>4</sup> Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, Final Rule (75 FR 31514, June 3, 2010).

<sup>5</sup> Information Collection Request for Changes to the Part 70 Operating Permit Regulations, the Part 71 Operating Permits Regulations, and the Parts 51 and 52 Prevention of Significant Deterioration Regulation and Non-Attainment New Sources Review Regulations for Flexible Air Permits, November 2008 (EPA tracking numbers 1587.10 and 1703.09).

<sup>6</sup> Information Collection Request for State Operating Permit Regulations (40 CFR part 70) Change Justification, EPA tracking # 1587.11.

---

## Table of Contents

|           |   |            |
|-----------|---|------------|
|           | <b>Executive Summary.....</b>   | <b>E-1</b> |
| <b>1.</b> | <b>Identification of the Information Collection.....</b>                                      | <b>1</b>   |
| <b>2.</b> | <b>Need and Use of the Collection.....</b>  | <b>5</b>   |
| <b>3.</b> | <b>Non-Duplication, Consultation, and Other<br/>Collection Criteria.....</b>                  | <b>7</b>   |
| <b>4.</b> | <b>The Respondents and the Information Requested.....</b>                                     | <b>11</b>  |
| <b>5.</b> | <b>The Information Collected - Collection Methodology<br/>and Information Management.....</b> | <b>15</b>  |
| <b>6.</b> | <b>Estimating the Burden and Cost of the Collection.....</b>                                  | <b>17</b>  |
|           | <b>Attachment 1</b>   |            |
|           | <b>The Statutory Requirements for Respondent<br/>Information .....</b>                        | <b>31</b>  |
|           | <b>Attachment 2</b>   |            |
|           | <b>February 9, 2007 Federal Register Notice.....</b>  | <b>43</b>  |

---

# 1 Identification of the Information Collection

## 1.1 Title

This analysis is titled: “Draft Supporting Statement for the Part 71 Federal Operating Permit Program” It fulfills the Agency's requirements under the Paperwork Reduction Act (PRA) to determine, report, and periodically update the regulatory burden associated with the Federal Operating Permits Program, codified in title 40 of the Code of Federal Regulations (40 CFR) part 71. It has been assigned EPA tracking number ICR # 1713.10 and OMB tracking number 2060-0336.

**EPA TRACKING  
NUMBER:  
1713.10**

**OMB TRACKING  
NUMBER:  
2060-0336**

## 1.2 Description

The part 71 program is a Federal operating permit program implemented by EPA (or a delegate agency) for sources located in areas where there is no State, local or Tribal program, such as in Indian country, offshore areas where the OCS and DWPA regulations apply, where there is a deficient State or local (part 70) permit program, and where EPA has objected to a particular part 70 permit and taken over permitting because the state failed to adequately resolve the objection. Title V of the Clean Air Act imposes on State or local permitting authorities (agencies), the duty to develop, administer and enforce operating permit programs which comply with title V and requires EPA to administer and enforce a permit program when State, local, or Tribal agencies do not establish such a program, or where they establish such a program but they fail to perform their duties consistent with title V. Section 502(b) of the Act requires EPA to promulgate regulations setting forth provisions under which State, local, or tribal agencies will develop operating permit programs and submit them to EPA for approval. Pursuant to this section, EPA promulgated 40 CFR part 70 on July 21, 1992 (57 FR 32250) which specifies the minimum elements of State operating permit programs.

**1.2.1 Federal Program Where There Is No State, Local or Tribal Program**

Pursuant to regulations promulgated by EPA on February 19, 1999 (64 FR 8,247) EPA has authority to establish part 71 programs within Indian country, and EPA began administering the program in Indian country on March 22, 1999. Since many Indian tribes lack the resources and capacity to develop operating permit programs under part 70, EPA will administer and enforce part 71 programs in the areas that comprise Indian country in order to protect the air quality of areas under tribal jurisdiction.

The EPA intends to protect tribal air quality through the development of implementation plans, permits programs and direct assistance to tribes in developing comprehensive and effective air quality management programs. The EPA will consult with tribes to identify their particular needs for air program development assistance and will provide ongoing assistance as necessary. There are approximately 130 sources in Indian country with permits at the beginning of the ICR period and we expect to permit an additional 6 such sources by the end of this ICR period (April 2015). This is an increase from the last ICR renewal, due to an increase in the estimate of the number of major sources expected in Indian country.

EPA is the permitting authority for sources located beyond 25 miles (40 km) of the States' seaward boundaries under the Outer Continental Shelf Lands Act (OCS sources), and the provisions of part 71 apply to the permitting of those sources, as well. Using data from the Department of the Interior, Bureau of Ocean Energy Management, EPA estimates that there are currently 6 OCS sources with part 71 permits and as many as 9 additional OCS sources that may seek part 71 permits during the period of this ICR renewal. Our estimates of the number of OCS sources has changed through the years but there has been increasing interest in developing offshore oil and gas and alternative energy resources and because of this better information has recently become available. Thus, this is a change from the last ICR update, where EPA assumed there might be up to 3 OCS sources.

Deepwater Port sources (DWPA sources) are fixed or floating structures that are located beyond State seaward boundaries, intended for the



transportation, storage and handling of oil or natural gas (offshore LNG terminals) and alternative energy projects. An offshore source may be either an OCS or a DWPA source – it may not be both. Because DWPA sources are required to be treated as if they are located in an “area of exclusive federal jurisdiction within a State,” EPA must issue the title V permit for them [see § 1518(a)(1) of the DWPA]. Note that the previous ICR estimated 1 DPA source and 3 seeking permits for a total of 4 such sources. Using updated data from the U.S. Coast Guard, Deepwater Ports Standards Division, EPA estimates we have issued 6 permits to such sources by the beginning of the ICR period and that we will issue as many as 10 additional part 71 permits to such sources by the end of this ICR renewal, bringing the total included in this analysis up to 16.

### **1.2.2 Federal Program as a Backstop for Deficient State Programs**

Section 502(i)(4) of the Act requires EPA to promulgate, administer, and enforce a title V program if EPA makes a determination that a State or local permitting authority is not adequately administering or enforcing their EPA-approved title V permitting program. This requirement is implemented through regulations promulgated by EPA on July 1, 1996 (61 FR 34,202), specifically by §§ 71.4(c) and 71.10(b)(1). The process described in these regulations can take up to 2 years after a formal finding by EPA published in the Federal Register that the State part 70 program is deficient in its implementation or enforcement (this notice is called a “notice of deficiency” or “NOD”).

For the 3-year period covered by this ICR, it is unlikely that any State or local permitting program under part 70 will be replaced by a part 71 program administered by EPA, and thus this ICR renewal does not include such scenarios. There are currently no NODs in place at this time and due to the maturity of the part 70 programs we believe it is unlikely EPA will take over all additional part 70 permits in this manner during the period of this ICR.

### **1.2.3 Federal Program for Deficient State Permits**

Section 505(c) of the Clean Air Act provides that if a permitting authority fails to submit a permit to EPA that satisfies an EPA objection, then the EPA shall issue a permit that meets the requirements of the Act. The

part 71 rules implement this provision by providing that if the State or local permitting authority fails to satisfy an EPA objection to a part 70 permit then EPA shall issue a part 71 permit instead. There is currently 1 part 70 source that has been issued a part 71 permit for this reason and we do not expect any additional part 71 sources for this reason during the period of this ICR.

---

## **2 Need and Use of the Collection**

- 2.1 Need / Authority for the Collection** When EPA is the permitting authority under title V, a source subject to the program must prepare an application and submit it within 1 year of becoming subject (section 503). EPA must then issue the permit within 18 months of receiving a complete application (section 503(c)) and thereafter administer (including revising, reopening, and enforcing the permit terms, as needed) and renew such permits at no more than 5-year intervals (section 502(b)(5)). Sources must periodically (no less often than annually) certify that they are in compliance with applicable requirements and promptly report deviations from permit requirements to the permitting authority (section 503(b)(2)), and permits are required to set forth requirements for sources to conduct monitoring and reporting to assure compliance with permit terms and conditions (section 504(b)). The permit and all information submitted by a source shall be available for public review except for confidential information which will be protected from disclosure (section 503(e)), and the public shall be given public notice of, and an opportunity for comment on, permit actions (section 502(b)(6)). A copy of sections 502 through 504 of title V of the Act are in Attachment 1.
- 2.2 Practical Utility / Users of the Data** For EPA to carry out its required oversight function of reviewing proposed permits and permit revisions and assuring adequate implementation of the program, it must have available to it information on permit applications and issuance, permit revisions and renewals, and source data reports. The burden estimates included in this ICR provides emissions, source, and control information for the title V program.
- 2.3 Caveats and Considerations** The information included in this ICR is based upon the best data available to the Agency at this time. However, inconsistencies in permitting authority reporting techniques, incomplete data sets, and sampling limitations imposed upon the Agency by the Paperwork Reduction Act necessitated a certain amount of extrapolation and “best-guess” estimations by permitting authority and Agency experts. Consequently, the reader should not consider the conclusions to be an exact representation of

the level of burden or cost that will occur during the three years of this ICR. Instead, this ICR should be considered a directionally correct assessment of the impact the Federal Operating Permit Program will have over the next three years.

Throughout this ICR, the reader will observe estimated values that show accuracy to the single hour or dollar. However, reporting values at the single unit level can be misleading. In most situations, the proper way to present estimated data would be to determine an appropriate level of precision and truncate values accordingly, usually in terms of thousands or millions of units. For instance, a spreadsheet generated estimation of \$5,456,295 could be presented in the text as \$5.5 (millions) or \$5,456 (thousands). One problem with such an approach is the loss of data richness when the report contains a mixture of very large and very small numbers. Such was the case with this ICR, where source values are consistently in the millions and Federal values in the tens of thousands. Consequently, to avoid the loss of information through rounding, this ICR reports all values at the single unit level and reminds the reader that there is no implied precision inherent in this style of reporting.

---

### **3 Non-Duplication, Consultation, and Other Collection Criteria**

**3.1 Non-Duplication** The need for the data required by the part 70 and part 71 operating permits programs has been well documented in prior ICRs for both programs. While much of the information requested under this ICR existed prior to the creation of the operating permits program, an operating permit is a compilation of existing requirements; the purpose being to bring all requirements applicable to a source into one document. The intent of this compilation is to (1) resolve any questions of applicability at the time of permit issuance, (2) provide certainty to sources as to their obligations, and (3) provide the public access to a source's obligations and compliance status. The Agency cannot ignore its requirement for such previously existing information under this ICR since consolidation of the information into the operating permit and providing public access is the whole purpose of the statute. To the extent that similar information was previously collected (e.g., State permits under State plans), the program may replace those activities and avoid duplication of efforts.

**3.2 Public Notice Requirements** For any existing rule, § 3507(g) of the PRA limits the length of time for which the Director may approve a collection of information to 3 years.

On September 12, 2007, OMB approved the ICR renewal for part 71 (OMB number 2060-0336, EPA tracking # 1713.06) for 36 months (it was scheduled to expire on September 30, 2010). On April 22, 2009, OMB approved a revision to the previously approved collection related to the final rule for Flexible Air Permits (EPA tracking # 1713.09) and as part of that approval OMB extended the expiration date of the ICR to April 30, 2012. This ICR is a renewal of the September 2007 ICR.

Except for information collection in notices of proposed rules or those exempted under the emergency processing provisions of 44 U.S.C. § 3507(j), the PRA requires EPA to solicit comment on each proposed information collection, including the renewal or modification of any existing ICR. On February 9, 2007 (72 FR 6233) EPA published a notice soliciting comment on an analysis of burden for the part 71 program for the 3-year period of this ICR (i.e., July 1, 2007 to June 30, 2010). A copy

of the February 2007 notice is included in this ICR as Attachment 2. No public comments were received.

### **3.3 Consultations**

The current ICR was prepared using data on the numbers of sources and permits that are updated on a semiannual basis by each of EPA's ten Regional Offices. It is these EPA Regional Offices where the part 71 permitting activities are carried out by EPA. The actual rates of permit issuance and permit renewal are reported by the Regional Offices into an EPA database every six months. The 3 or 4 years of data in this database was reviewed for purposes of estimating existing sources and permits and the backlog of initial and renewal permits.

The previous ICR discussed three consultative activities that we believed would provide additional details on the burden associated with this program. They include a series of title V program evaluations, a request of the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) permitting authorities (now called the National Association of Clean Air Agencies or NACAA) to provide their experiences on title V burden, and an external taskforce on title V.

The first activity is a series of comprehensive permit program evaluations for most of the nation's 112 title V operating permitting programs. These evaluations, now completed, did not result in quantitative data that would cause us to make any major changes to the burden and cost assumptions we have used in the past for these ICRs, but they did result in information generally consistent with past responses to surveys we have received from State and local agencies and that are consistent with the assumptions we make in this ICR. However, the information resulted in a minor change in assumptions we incorporated into the 2007 ICR and we include these assumption in this ICR renewal.

The second activity was a request to review EPA's burden hour assumptions by members of NACAA's subcommittee on permitting. During a conference call with them, EPA received input on the draft ICR

renewal for part 70 released for public comment. Consistent with NACAA's input during that consultation, changes were made to burden estimates for certain activities performed by EPA when it is the permitting authority under title V. Also, consistent with NACAA's concerns, changes were made to the 2007 ICR and these changes are also carried forward in this ICR renewal.

The third activity falls under the purview of the Clean Air Act Advisory Committee. A taskforce (known as title V taskforce) was convened to hear testimony from industry, State government and environmentalists on the performance of title V programs and to identify elements of the programs that are working well or poorly. The taskforce effort resulted in a list of recommendations to EPA on changes to policy and rulemakings to make the permit programs more effective; they did not result in any quantitative data on burden and cost of permitting, thus, this effort did not result in any data useful for purposes of this ICR. (See <http://www.epa.gov/oar/oaqps/permits/taskforce.html>)

### **3.4 Effects of Less Frequent Collection**

In general, collection of the information included in this ICR occurs once per activity (e.g., permit application or permit issuance). Periodic activities include a semi-annual compliance monitoring data report and an annual compliance certification from each source required by section 503(b)(1) and (2), respectively, of the Act. EPA has no leeway to require less frequent reporting.

### **3.5 General Guidelines**

The CAA requires retention of all monitoring data and support information and all permit applications, proposed permits, and final permit records for a period of 5 years. These records are necessary to fulfill the intent of title V to assure compliance with applicable requirements. Questions regarding the obligations of a source and its status of compliance can be resolved through such records.

### **3.6 Confidentiality**

All information related to the permitting of sources under this program and related to compliance monitoring is required by section 503(e) of the Act to be subject to public review at all times. Information entitled to

protection under 114(c) of the Act may be required to be submitted directly to EPA. Such information will be stored in EPA's Confidential Business Information office.



---

## 4 The Respondents and the Information Requested

**4.1 Respondents** Respondents to this information collection come from sources located where EPA is the permitting authority [e.g., in Indian country, offshore (OCS and Deepwater Ports sources), and where there are unresolved EPA objections to part 70 permits]. For the purposes of this ICR, the Agency identified the following existing part 71 sources: 130 in Indian country, 6 OCS sources, 6 DWPA sources, and 1 source due to unresolved objection of a part 70 permit. There may also be by the end of the period covered by this ICR up to an additional 6 permits issued due to economic growth in Indian Country, up to 9 additional OCS sources and up to 10 additional DWPA sources subject to permitting under part 71. EPA assumes there is one source subject to part 71 because of an EPA objection to part 70 permits (assuming the State will not adequately resolve the objection). The Regulatory Impact Assessment (RIA) for the GHG Tailoring rule estimated there would be up to 552 new sources nationally due solely to emissions of GHG, and for purposes of this ICR renewal, we estimate there will be up to 6 new GHG sources subject to part 71. Thus, this analysis includes a total of 143 sources currently with part 71 permits and an increase of 31 new sources over the ICR period for a permitted total of 174 sources by the end of the ICR period (April 2015).

For this update, EPA is not assuming that we will take over any entire State permitting programs due to findings of program deficiencies. All NODs for State programs have been resolved to EPA's satisfaction and no part 71 permits were issued in response to such programs deficiencies in the interim. Also, at this time EPA has no active NODs and we believe it unlikely that we will be issuing any permits for this reason during the period covered by this ICR renewal.

**SIC and NAICS Codes for Part 71 Sources in Indian Country  
(as of 10/30/06)**

| <b>SIC Code</b> | <b>NAICS Code</b> |
|-----------------|-------------------|
| 1021            | 212234            |
| 1221            | 212111            |
| 1311            | 211111            |
| 1321            | 211112            |
| 1389            | 213112            |
| 2421            | 321               |
| 2431            | 32191             |
| 2436            | 321212            |
| 2493            | 321219            |
| 2819            | 325               |
| 2842            | 325612            |
| 2875            | 325314            |
| 2879            | 32532             |
| 2899            | 325               |
| 3341            | 331               |
| 3354            | 331316            |
| 4911            | 2211              |
| 4922            | 48621             |
| 4925            | 22121             |
| 4953            | 562               |
| 4961            | 22133             |
| 5171            | 42271             |
| 7011            | 7211              |
| 9711            | 92811             |

**4.2 Information Requested**

All activities associated with EPA issuance of operating permits are information collection activities and are reflected in this ICR. The following are lists of the data items submitted by sources and permitting authorities for ICR purposes under part 70. These activities represent the Agency's best representation of the burdens experienced by sources and permitting authorities for part 70 and 71 requirements.

#### **4.2.1 Required Data Items**

**Under Operating Permits rules, the following data items must be submitted by permitting authorities to the EPA:**

1. Applications for permits, permit revisions, and permit renewals
2. Draft / proposed permits, permit revisions, or permit renewals
3. Final permits
4. Annual reports of enforcement activities
5. Semi-annual reports on compliance monitoring

For this analysis, the submittals above are only necessary for the small fraction of permit handled by the one delegate agency (14 permits). The majority of permits will be issued, implemented, and enforced by the EPA as permitting authority (160 permits).

**Under Operating Permit rules, the following data items must be submitted by sources to permitting authorities:**

1. Applications for permits, permit revisions, and permit renewals
2. Semi-annual periodic monitoring reports
3. Annual compliance certification reports

When the Agency is the permitting authority, sources submit these data directly to the EPA, when there is a delegate agency, these data will be submitted directly to the delegate agency. Attachment 1 includes these statutory requirements for reference purposes.

---

## 5 The Information Collected – Collection Methodology and Information Management

### 5.1 Collection Methodology and Management

For the part 71 program, when EPA is the permitting authority, EPA will receive data from sources in much the same manner as that established for sources reporting to State and local agencies under part 70. Thus, when EPA is the permitting authority, we will retain copies of each permit application (including any application for permit modification), each draft permit, and each final permit. When a delegate agency is the permitting authority, the delegate agency will receive copies of these documents.

### 5.2 Small Entity Flexibility

Title V provides few ways to mitigate the effects of operating permit regulations on small entities. Under section 502(a) of the Act, the Agency has exempted or deferred applicability of title V to most non-major source categories (up to 50,000 small sources) for which compliance with title V will be impracticable, infeasible, or unnecessarily burdensome. (For example, see a recent final rule, 70 FR 75320, December 19, 2005, which exempted a large number of small sources.) The Agency has not analyzed how many of these non-major sources will be small businesses, but believes that a large percentage may fall under that definition.

In accordance with the analytical requirements established under the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA), the Agency has determined that, because this ICR represents a increase of burden due to a change in EPA estimate concerning the number of permits expected to be issued, which better reflects actual implementation experience, rather than any new information collection requirements, thus there are no adverse effects to be identified *vis a vis* small entities and small businesses.

### 5.3 Collection Schedule

Items identified in section 4.2.1 are listed below with their schedule for submission.

#### **Sources** (submitted to permitting authority):

- New permit applications are due within 1 year after a source becomes subject to the program
- Permit revision applications are submitted by a source when it wishes to make a change to its permit. There is no schedule for

these submissions in that they are triggered by modifications by the source

- Permit renewal applications are due at least 6 months prior to expiration of the permit
- Semi-annual periodic monitoring reports are due to be submitted to the permitting authority twice a year on dates specified by the permitting authority
- Annual compliance certification reports are due annually on a date specified by the permitting authority

## 6 Estimating the Burden and Cost of the Collection

### 6.1 Estimating the Number of Respondents

Table 1 lists all of the affected sources subject to permitting by EPA included in this analysis and the date they begin being subject to permitting by EPA.

**There are 174 affected sources in this ICR:**

**136 Sources in Indian Country**

**15 Offshore Sources under the OCS**

**16 Offshore Sources under the DWPA**

**1 Source due to EPA Objections to Part 70 Permits**

**6 Sources due to the GHG Tailoring Rule**

**TABLE 1  
IMPLEMENTATION SCHEDULE FOR SOURCES PERMITTED BY EPA**

|                | Indian Country Sources | OCS Sources | DWPA Sources | Due to EPA Objection | GHG Tailoring Sources |
|----------------|------------------------|-------------|--------------|----------------------|-----------------------|
| May 1, 2012    | 130                    | 6           | 6            | 1                    | 0                     |
| April 30, 2013 | 2                      | 3           | 3            | 0                    | 2                     |
| April 30, 2014 | 2                      | 3           | 3            | 0                    | 2                     |
| April 30, 2015 | 2                      | 3           | 4            | 0                    | 2                     |
| <b>Total</b>   | <b>136</b>             | <b>15</b>   | <b>16</b>    | <b>1</b>             | <b>6</b>              |

During three years of this ICR, the Agency will manage 136 sources in Indian country, up to 15 OCS sources, up to 16 Deepwater Port sources, up to 1 permit issued because of EPA objection to a part 70 permit and up to 6 GHG Tailoring sources.

The EPA has issued 105 part 71 permits to the 143 sources that will be subject to EPA permitting by May 1, 2012. Thus, at the beginning of this ICR, there will be a backlog of 38 existing sources that have not yet received their initial permits. (These sources have submitted their initial permit applications, so this ICR includes no burden for preparation of these applications.) The Agency projects that the backlogged permits will all be issued during the 3 years of this ICR, 12 in the first year and 13 each in years 2 and 3.

As shown in Table 1, EPA projects that 31 new sources will become subject to EPA permitting during the course of this ICR (6 new Indian country sources, 9 OCS sources, 10 DWPA sources, and 6 due to the GHG Tailoring rule). We calculate the burden for these sources to include all the activities associated with obtaining an initial permit.

Also during the period of this ICR, a number of part 71 permits will have to be renewed. (The term of a part 71 permit is 5 years.) The EPA estimates that there will be 15 backlogged permit renewals by May 1, 2012 when this ICR begins. In addition, we estimate that another 63 part 71 permits will be nearing expiration and have to be renewed during the period of this ICR. The Agency projects that these 78 permit renewals will be issued in equal numbers each year (i.e., 26 renewals per year).

## **Description of Part 71 Permitting Activities**

The following describes the information collection activities required of sources, permitting authorities (whether EPA or a delegate agency) and EPA when overseeing a delegate agency. In all cases, the activities listed for source-level activities match those for sources under the part 70 operating permits programs and the activities for the permitting authority (Whether EPA or a delegate agency) match those for State and local permitting authorities under the part 70 program.

### **PERMITTING AUTHORITY ACTIVITIES**

1. **Program administration:** Responding to inquiries about the program, developing internal and external program guidance, developing rules, forms, and other mechanisms to implement the program, planning, attending program training, permit fee collection, providing source training, attending meetings and conferences, providing public education, and other program related activities.
2. **Permit application review,** including discussions with a source concerning the completeness of the permit application, review of applications for completeness and technical approach, and requests for additional information, when necessary.
3. **Draft permit preparation,** including contact with the source to clarify the specific requirements that apply, drafting the “statement of basis,” drafting gap-filing monitoring, when necessary, and drafting permit terms and conditions to reflect existing requirements.
4. **Comment period notification:** Providing notice to the public, and affected States of the comment period on a draft permit (for initial permit issuance, permit renewal and significant permit

modification). Affected State notification is also required for minor permit modification.

### **SOURCE-SPECIFIC ACTIVITIES**

1. **Permit application preparation**, including internal meetings, permitting authority discussions, management and legal department involvement, responsible official certification, contractor services
2. **Draft permit development**: Interaction with the permitting authority on draft permit development
3. **Gap-filling development**: Development of periodic monitoring gap-filling, if applicable
4. **Public hearing participation**
5. **Operate gap-filling periodic monitoring**: Operation of monitoring equipment and the taking and keeping of records, where necessary
6. **Monitoring reports**: Preparing semi-annual monitoring data reports, including data analysis, responsible official certification, and report submission (annual burden for both reports). Includes preparing and submitting annual compliance certification
7. **Permit revisions**: Preparing applications for permit revisions
8. **Permit renewal**: Preparing permit renewal applications
9. **Other activities associated with permit renewal**, including discussions with permitting authority and public hearing participation

### **EPA OVERSIGHT ACTIVITIES**

- **Review proposed permits** and permit revisions to determine if they provide for compliance with all applicable requirements.
- **Review monitoring** provisions of proposed permits or permit revisions to see if they contain applicable requirements or to add periodic monitoring if needed.
- **Consult** with the delegate agency on any problems detected in the proposed permit or permit revision including interaction related to fact finding on permit petitions.
- **Other Program Oversight**: review annual reports of enforcement activities, program evaluation, development of formal EPA



responses to public petitions, and review changes to delegated programs.

## 6.2 Estimating Burden

The following tables show the burden estimates for each activity described above. These burden estimates are all taken from the approved ICR for the part 70 program. Table 2 displays the expected source burden for when either EPA or a delegate agency is the permitting authority. Burden means the total time, effort, and financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The Agency derived its estimates in Tables 2 and 3 from previous consultations with fewer than nine respondents from the regulated community on the burdens and costs of the permit programs, data collected by EPA from permitting authorities on the numbers of permits issued, renewed, and modified in the course of program administration, and based on our analysis of data submitted within the context of state and local permitting program evaluations. In the initial ICR for part 71, the Agency assumed sources are indifferent (from an effort perspective) between reporting to the Federal government and reporting to a State permitting authority.<sup>7</sup> Consequently, Table 2 is the same for both part 70 and this ICR.

---

<sup>7</sup> May, 1995, United States Environmental Protection Agency, Part 71 Information Collection Request, p 19.

**TABLE 2  
SOURCE BURDEN BY ACTIVITY**

| <b>ACTIVITY</b>   | <b>BURDEN PER SOURCE OR PERMIT</b> |
|---|------------------------------------|
| Prepare Initial Permit Application  | 300 hrs                            |
| Draft Permit Interaction  | 40 hrs                             |
| Gap-filling Monitoring Development (50% of permits)   | 40 hrs                             |
| Public Hearing Participation (2% of permits)  | 10 hrs                             |
| Operate Gap-filling Periodic Monitoring (50% of permits)  | 200 hrs / yr                       |
| Prepare Monitoring Reports and Compliance Certification   | 80 hrs / yr                        |
| Permit Revisions<br>Significant Permit Modifications (10% of Permits)<br>Minor Permit Modifications (50% of Permits)<br>Administrative Amendments (50 % of Permits) | 80 hrs<br>40 hrs<br>8 hrs          |
| Prepare Permit Renewal Application  | 200 hrs                            |
| Other Permit Renewal Activities   | 20 hrs                             |

Table 3 displays the expected burden for all of the specific tasks necessary for any permitting authority (EPA or delegate agency) and table 4 for EPA oversight of delegate programs.

**TABLE 3  
PERMITTING AUTHORITY BURDEN BY ACTIVITY**

| <b>ACTIVITY</b>   | <b>PART 71 BURDEN PER PERMIT OR PROGRAM</b>          |
|---|--|
| Program Administration  | 3,500 hrs / PA / yr                                  |
| Initial Permit Application Review   | 100 hrs / permit                                     |
| Draft Permits Preparation   | 150 hrs / permit                                     |
| Comment Period Notification   | 10 hrs / permit                                      |
| Hold Public Hearings (2% of permits)  | 100 hrs / hearing                                    |
| Analyze Public Comments (2% of permits)   | 40 hrs / permit                                      |
| Permit Issuance   | 8 hrs / permit                                       |
| Permit Revision<br>Significant Permit Modification<br>Minor Permit Modification<br>Administrative Amendment | 90 hrs / permit<br>30 hrs / permit<br>5 hrs / permit |
| Permit Renewal  | 90 hrs / permit                                      |
| Review Reports:<br>Monitoring (2 reports / yr)<br>Compliance Certification                                  | 10 hrs / permit<br>5 hrs / permit                    |

**TABLE 4  
EPA ACTIVITIES (OVERSIGHT OF DELEGATE AGENCY)**

| <b>ACTIVITIES</b>   | <b>BURDEN HOURS PER PERMIT / PROGRAM</b>    |
|---|---|
| Review Proposed Permits*<br>New Permits<br>Significant Permit Modifications<br>Minor Permit Modifications       | 20 / permit<br>8 / revision<br>1 / revision |
| Consultation<br>New Permits (25%)<br>Significant Permit Modifications (25%)<br>Minor Permit Modifications (25%) | 8 / permit<br>8 / permit<br>1 / permit      |
| Program Oversight   | 50 / program / year                         |
| Review the Annual Enforcement Activity Reports  | 10 / report                                 |

\* Includes the burden for review of periodic monitoring

## 6.3 Estimating Wages

### 6.3.1 Estimating Source Costs

Historically, the Agency had assumed 70% of all source burden categories would be performed in-house, with the remaining 30% delegated to contractors.<sup>8</sup> However, this renewal incorporates the previous ICR re-assessment of that assumption, which is based on allocation of contractor support for only the initial permit application task. This analysis assumes one-third of the source's initial permit application preparation would be performed by contracted labor. The remainder of the source's tasks would be done entirely in-house.

In the 2000 ICR renewal, EPA determined source wage rates based on data from the 1997 Statistical Abstract of the United States, adjusted to 1999 dollars using the Employment Cost Index (ECI). The Agency estimated the total hourly cost of in-house labor using the wage rates for technical support staff (at full time), administrative staff (at one-eleventh time), and administrative support staff (at one-eighth time), adding in the costs for benefits, sick leave/vacation, and general overhead. The resulting hourly cost was \$32 per hour for in-house labor. In the 2004 ICR renewal, EPA calculated an updated hourly cost for in-house labor using the same methodology. At that time, the hourly cost was \$34 per hour.

For the 2007 ICR renewal, the Agency was unable to duplicate the methodology used in 2000 and 2004 because the Bureau of the Census has changed the data reported in the Statistical Abstract of the United States. Instead, EPA updated the hourly cost for in-house labor by adjusting the 2004 value (in 2003 dollars) to 2006 dollars using the ECI for white-collar workers in private industry. Then in the change justification for the GHG Tailoring rule, we adjusted the wage rates based on an index for December 2007 relative to December 2006 for private industry workers, management, professional, and related workers, as contained in the U.S. Department of Labor, Bureau of Labor Statistics, Employment Cost Index Historical Listing: Current Dollar March 2001-March 2009. This calculation resulted in an hourly cost of \$39 for in-house labor for sources as detailed below in Table 5.

---

<sup>8</sup> United States Environmental Protection Agency, Regulatory Impact Analysis and Regulatory Flexibility Act Screening for Operating Permits Regulations, EPA-450/2-91-011, June 1992, pp. 16-17.

**TABLE 5**  
**DETERMINATION OF SOURCE IN-HOUSE and Contractor BURDEN COSTS**

$$Cost_{2007} = Cost_{2006} * ECI_{2007\ factor}$$

$$ECI_{2007\ factor} = \$37.83 / hour * \frac{107.1 - 103.8}{103.8} * 0.03179$$

In-hour Cost<sub>2007</sub> = \$37.83 /hour x 1.032 = \$39.03/hour

Contractor Cost 2007 = \$143/hour x 1.032 = \$147.58/hour

For contracted labor, operating permit management and reporting require the same skills employed by the EPA's consultants. For the 2000 ICR, as an estimation of a source's consulting costs, the Agency averaged the fully loaded cost of three environmental contractors at the PL 2 (secretarial support), PL 3 (technical), and PL 4 (administration) levels, applying the methodology employed below in Table 6 for establishing a Federal and PA FTE wage rate. The fully loaded hourly cost calculated at that time for Industry-hired consultants is \$268 (1999 dollars). Therefore, the hourly rate for preparing the initial permit application was set at \$111 for the 2000 ICR (1/3 of \$268 plus 2/3 of \$32). All other source tasks were estimated using the in-house hourly cost of \$32 per hour.

Because of the confidential nature of the values used to estimate contractor hourly costs, the exact methodology was not documented in the 2000 ICR. As a result, for the 2004 ICR renewal EPA used the ECI to update the hourly cost for preparing initial permit applications, calculating a value of \$131 per hour. For the 2007 ICR renewal, EPA used the same approach. The Agency used the methodology detailed above in Table 5, except that we started with the value in 1999 dollars (\$111 per hour) and used the ECI for 1999 (146.9) in place of the ECI for 2003. This resulted in an hourly cost for preparing an initial permit application of \$143. All other source tasks are estimated at the in-house hourly cost of \$38 per hour, as discussed above. In December 2010 for purposes of calculating the wage rates for purposes of the ICR change justification for the GHG tailoring rule, EPA calculated the

wage rates for in-house and contractor wages as shown in Table 5, which resulted in an in-house wage rate of \$39/hour and a contractor rate of \$148/hour. We use these wage rate assumptions in this analysis.

### 6.3.2 Estimating PA and Agency Costs

Historically, the Agency applied a \$34 per hour rate for Federal and State full time employee (FTE) wage rates. During the development of the ICR for the part 71 Federal Operating Permit Regulations, the Agency was instructed by the Office of General Council (OGC) to compute more accurate estimations of these hourly costs. To determine the appropriate hourly wage to apply for each respondent burden estimation, OGC instructed the Agency to assume the appropriate FTE rate to apply would be a GS-11 Step 3, fully loaded to account for overhead, benefits, and all other appropriate costs. To fully incorporate the cost of that FTE's support staff and managerial costs, the Agency also assumed one-eleventh of a manager's time (at a GS-13, Step 3 level), and one-eighth of a secretary's time (at a GS-6, Step 6 level). Applying the same process for this ICR renewal, the Agency has determined the appropriate cost of Federal and delegate permitting authority burden at \$46 per hour. Table 6 displays the calculation of this rate.

**TABLE 6  
DETERMINATION OF FEDERAL AND PERMITTING AUTHORITY BURDEN COSTS**

|  |                    |
|--|--------------------|
| Annual Salary of Permit Staff, GS 11 Step 3 (FY 07 Schedule)*      | \$50,106.00        |
| Annual Cost of Supervisory Staff, GS 13 Step 3 (FY 076 Schedule )* | \$71,415.00        |
| Factor (1/11)  | <u>0.09</u>        |
|  | \$6,427.35         |
| Annual Cost of Admin. Support Staff, GS 6 Step 6 (FY 06 Schedule)* | \$33,322.00        |
| Factor (1/8)   | <u>0.13</u>        |
|  | <u>\$4,331.86</u>  |
| Annual Applicable Salary of Permit Staff                           | \$60,865.21        |
| Benefits (at 16%)  | \$9,738.43         |
| Sick Leave/Vacation (at 10%)                                       | \$6,086.52         |
| General Overhead   | <u>\$18,511.67</u> |
| Total Cost Per FTE   | \$95,301.83        |
| Total Hourly Cost (Total Per FTE divided by 2,080 hours per year)  | \$45.77            |

\* <http://www.opm.gov/oca/06tables/html/ga.asp>, January 4, 2007

## **6.4 Estimating Costs for Permitting Authorities**

### **6.4.1 Estimating Source Costs**

Table 7 lists the burden categories, expected number of occurrences for each, and the associated burden and costs for sources when EPA or a delegate agency is the permitting authority. The quantities in the “affected permits” column are from direct assessments of the 174 permits expected to be administered during the period covered by this ICR (143 Indian country sources, 15 OCS sources, 16 DWPA sources, 1 due to EPA objection, and 6 due to the GHG Tailoring rule). Each activity in Table 7 is based on the burden estimates from Table 2. Tables 7 and 8 contain the baseline analysis (does not account for OMB-approved changes due to the Flexible Air Permits and GHG Tailoring rules). The assumptions in these tables are based on the assumptions detailed in the attachments to the ICR renewal for the part 70 state operating permit programs.

**TABLE 7  
3-YEAR BURDEN AND COST OF SOURCES**

| <b>ACTIVITY</b>  | <b>BURDEN PER PERMIT (HOURS)</b> | <b>RATE PER HOUR</b> | <b>AFFECTED PERMITS</b>                           | <b>TOTAL THREE-YEAR BURDEN (HOURS)</b>                           | <b>TOTAL THREE-YEAR COSTS (\$2007)</b>            |
|--|----------------------------------|----------------------|---|--|---|
| Initial Permit Application   | 300                              | \$148                | 31  | 9,300  | 1,329,900   |
| Draft Permit Interaction   | 40                               | \$39                 | 69  | 2,760  | 104,880   |
| Gap Filling Monitoring Development (50% of permits)                    | 40                               | \$39                 | 35  | 1,380  | 52,440  |
| Public Hearing Participation (2% of permits)                           | 10                               | \$39                 | 1   | 14   | 524   |
| Operate Gap Filling Monitoring (50% of permits)                        | 200                              | \$39                 | year 1 53<br>year 2 64<br>year 3 75               | year 1 10,600<br>year 2 12,800<br>year 3 <u>15,000</u><br>38,400 | 402,800<br>486,400<br><u>570,000</u><br>1,459,200 |
| Prepare Monitoring Reports and Compliance Certifications (all permits) | 80                               | \$39                 | year 1 105<br>year 2 127<br>year 3 150            | year 1 8,400<br>year 2 10,160<br>year 3 <u>12,000</u><br>30,560  | 319,200<br>386,080<br><u>456,000</u><br>1,161,280 |
| Permit Revisions   |                                  | \$39                 |   |  |   |
| Significant Permit Mods (10% of existing permits)                      | 80                               |                      | year 1 11<br>year 2 13<br>year 3 <u>15</u><br>39  | year 1 880<br>year 2 1,040<br>year 3 <u>1,200</u><br>3,120       | 33,440<br>39,520<br><u>45,600</u><br>118,560      |
| Minor Permit Mods (50% of existing permits)                            | 40                               |                      | year 1 53<br>year 2 64<br>year 3 <u>75</u><br>192 | year 1 2,120<br>year 2 2,560<br>year 3 <u>3,000</u><br>7,680     | 80,560<br>97,280<br><u>114,000</u><br>291,840     |
| Admin Amendments (50% of existing permits)                             | 8                                |                      | year 1 53<br>year 2 64<br>year 3 <u>75</u><br>192 | year 1 424<br>year 2 512<br>year 3 <u>600</u><br>1,536           | 16,112<br>19,456<br><u>22,800</u><br>58,368       |
| Revision Subtotal  |                                  |                      |   | <u>9,184</u>   |   |
| Renewal Permit Application   | 200                              | \$39                 | 78  | 15,600   | 592,800   |
| Other Renewal Activities   | 20                               | \$39                 | 78  | 1,560  | 59,280  |
| <b>TOTALS</b>  |                                  |                      |   | 111,910  | 5,229,072   |

### 6.4.2 Estimating Permitting Agency Costs

Table 8 lists the burden categories for permitting authorities (EPA and delegate agency), the expected number of permits involved, and the expected cost for each category, based on the burden estimations from Table 3. Since the burden per activity assumptions and wage rates are the same for EPA and delegate agencies we will show all sources in this table and later we will pro rate the total to show the burden for each permitting authority.



**TABLE 8  
3-YEAR BURDEN AND COST OF PERMITTING AUTHORITIES**

| <b>ACTIVITY</b>                             | <b>Burden Hours per Permit**</b> | <b>Affected Permits or Programs</b> | <b>Total 3-Year Burden (Hours)</b> | <b>Total 3-Year Cost (\$2007)*</b> |
|---|----------------------------------|-------------------------------------|------------------------------------|------------------------------------|
| Program Administration                      | 3,500 per year                   | 1                                   | 10,500                             | \$483,000                          |
| Permit Application Review                   | 100                              | 31                                  | 3,100                              | \$142,600                          |
| Draft Permit Preparation                    | 150                              | 69                                  | 10,350                             | \$476,100                          |
| Comment Period Notification                 | 10                               | 69                                  | 690                                | \$31,740                           |
| Public Hearing (by Hearing) (2% of permits) | 100                              | 1                                   | 100                                | \$4,600                            |
| Analyzing Public Comments (2% of permits)   | 40                               | 1                                   | 40                                 | \$1,840                            |
| Permit Issuance                             | 8                                | 69                                  | 552                                | \$25,392                           |
| Permit Revisions                            |                                  |                                     |                                    |                                    |
| Significant (10% of permits)                | 90                               | 39                                  | 3,510                              | \$161,460                          |
| Minor (50% of permits)                      | 30                               | 192                                 | 5,760                              | \$264,960                          |
| Administrative (50% of permits)             | 5                                | 192                                 | <u>960</u>                         | <u>\$44,160</u>                    |
| Revision Subtotal                           |                                  |                                     | 10,230                             | \$470,580                          |
| Permit Renewals                             | 90                               | 78                                  | 7,020                              | \$322,920                          |
| Review Monitoring / Compliance Reports      |                                  |                                     |                                    |                                    |
| Year 1                                      | 15                               | 105                                 | 1,575                              | \$72,450                           |
| Year 2                                      | 15                               | 127                                 | 1,905                              | \$87,630                           |
| Year 3                                      | 15                               | 150                                 | <u>2,250</u>                       | <u>\$103,500</u>                   |
|   |                                  |                                     | 5,730                              | \$263,580                          |
| <b>Totals</b>                               |                                  |                                     | <b>48,312</b>                      | <b>\$2,222,352</b>                 |

\* The wage rate applied was \$46 per hour, see Section 6.3.2 Estimating PA and Agency Costs for details.

\*\* Units are per permit except program administration (per PA) and public hearings (per hearing)

Concerning EPA oversight of the delegate agency, past experience with part 70 suggests that this function averages about 2 hours per source per year on an aggregate basis. In the case of this delegate agency, all of these permits were previously issued by EPA prior to the approval of the delegation agreement and the delegation agreement does not provide for any new permits to be issued by the Nation. Thus EPA believes the assumption of 2 hours per source will be appropriate due to the reduced scope of the programs and the small number of permits involved. As a result, EPA's baseline estimate of the burden to oversee the delegate agency will be approximately 84 hours for 3 years or 28 hours per year and the costs about \$3.9 thousand and \$1.3 thousand, respectively.

### 6.4.3 Accounting for OMB-Approved ICR Changes since the Last Renewal

Since the approval of the 2007 ICR renewal, EPA has promulgated several rules which have affected the burden and cost of title V permitting, the Flexible Air Permits and the GHG Tailoring rule. The Office of Management and Budget (OMB) has approved ICR change requests for both of these rules, EPA tracking numbers 1703.09 and 1587.11, respectively; however, this is the first ICR renewal that will address the two regulatory changes at the same time and update them for their current stage of implementation.

The Flexible Air Permits (FAP) rule, promulgated during the term of the last ICR renewal, revised part 70 to provide for permits that allow for upfront approval for changes in order to avoid formal submittal and processing of significant permit modifications (SPM) and minor permit modifications (MPM) during the term of the permit. The FAP rule did not increase the number of sources subject to title V permitting and it only applies to a relatively small number of new and existing sources that would need to get a permit anyway. While there is typically an increased burden to put the flexible provisions in the permit, once added, they allow the source to avoid permit modifications (MPM) on a recurring, open-ended basis, resulting in an overall decrease in burden over the long term.

Tables 7 and 8 show the baseline burden of issuing and implementing FAP permits, while tables 9-11 show the incremental burden compared to the baseline attributable to these permits. There are burden increases for issuing new Tier 2 permits and burden decreases for avoided modifications for all Tier 1 and 2 permits expected by the end of the ICR period. The burden for EPA oversight is related to reviewing and consulting with the delegate agency on modifications that occur solely due to GHG (usually related to combustion sources).

The EPA estimated in the FAP ICR that 5 percent of the total number of existing sources would obtain a comprehensive flexible permit (a “Tier 1” permit) and that an additional 10 percent of all existing sources and new sources would seek simpler flexible permits (“Tier 2” permits). The FAP ICR assumed all existing sources would be issued Tier 1 and 2 permits during the period of that ICR, and that there would be no new Tier 1 permits

needed after that period ended. Thus, for this ICR period, we estimate that only new Tier 2 permits will be issued.

Table 9, 10, and 11 lists the burden categories, the number of estimated occurrences, and the expected costs, based on the burden estimations made in the previous OMB-approved ICR change worksheet for the Flexible Air Permits rule. Our assumptions for the mix of activities expected to occur under this rule has changed compared to the change worksheet due to the normal evolution of the program. Also, the number of affected permits has changed because of different estimates of the number of existing part 71 permits over the period.

**TABLE 9  
3-YEAR INCREMENTAL BURDEN AND COST OF THE FAP RULE FOR SOURCE ACTIVITIES**

| ACTIVITY                             | Burden Hours per permit | Rate per hour | Affected permits | Total Burden (Hours) | TOTAL COST (2007) |
|--------------------------------------|-------------------------|---------------|------------------|----------------------|-------------------|
| Tier 1 – 5 MPM Avoided per year      | -40                     | \$39          | 5                | -3,150               | -\$122,850        |
| Tier 1 - 1 SPM Avoided every 5 years | -80                     | \$39          | 5                | -240                 | -\$9,360          |
| Tier 2 – New Permit                  | 60                      | \$148         | 7                | 420                  | \$62,160          |
| Tier 2 – 1 MPM Avoided per year      | -40                     | \$39          | 11               | -1,320               | -\$51,480         |
| <b>TOTAL</b>                         |                         |               |                  | -4,290               | -\$121,530        |

**TABLE 10  
3-YEAR INCREMENTAL BURDEN AND COST OF THE FAP RULE FOR PERMITTING AUTHORITY ACTIVITIES**

| ACTIVITY                             | Burden Hours per permit | Rate per hour | Affected permits | Total Burden (Hours) | TOTAL COST (2007) |
|--------------------------------------|-------------------------|---------------|------------------|----------------------|-------------------|
| Tier 1 – 5 MPM Avoided per year      | -30                     | \$46          | 5                | -2,363               | -\$108,675        |
| Tier 1 - 1 SPM Avoided every 5 years | -90                     | \$46          | 5                | -270                 | -\$12,420         |
| Tier 2 – New FAP Permit issued       | 45                      | \$46          | 7                | 315                  | \$14,490          |
| Tier 2 – 1 MPM Avoided per year      | -30                     | \$46          | 11               | -990                 | -\$45,540         |
| <b>TOTAL</b>                         |                         |               |                  | -3,308               | -\$152,145        |

**TABLE 11  
3-YEAR INCREMENTAL BURDEN AND COST OF THE FAP RULE FOR EPA OVERSIGHT ACTIVITIES**

| <b>ACTIVITY</b>                             | <b>Burden Hours per permit</b> | <b>Rate per hour</b> | <b>Affected permits</b> | <b>Total Burden (Hours)</b> | <b>TOTAL COST (2007)</b> |
|---|--------------------------------|----------------------|-------------------------|-----------------------------|--------------------------|
| <b>Tier 1 – 5 MPM Avoided per year</b>      | -1                             | \$46                 | 1                       | -21                         | -\$966                   |
| <b>Tier 1 - 1 SPM Avoided every 5 years</b> | -8                             | \$46                 | 1                       | -8                          | -\$368                   |
| <b>Tier 2 – New Permit</b>                  | 8                              | \$46                 | 0                       | 0                           | \$0                      |
| <b>Tier 2 – 1 MPM Avoided per year</b>      | -1                             | \$46                 | 3                       | -8                          | -\$386                   |
| <b>TOTAL</b>                                |                                |                      |                         | -37                         | -\$1,720                 |

The GHG Tailoring Rule, also promulgated during the term of the last ICR, “tailors” the requirements of the Clean Air Act to limit the number of facilities that would otherwise be required to obtain title V permits solely due to their emissions of Greenhouse Gases (GHG). Prior to the Tailoring Rule there were no requirements for sources to consider GHG emissions in their title V permit applications or permits and there were no applicable requirements related to GHG to put into title V permits. We are currently in Step 2 of the implementation schedule of the Tailoring Rule and EPA assumes that there are about 552 GHG sources subject to Title V during this step and that all of these sources will be issued single source permits (non-general permits). For part 71, we estimate there will be up to 6 new sources subject solely due to GHG emissions.

The baseline burden of permitting GHG sources is shown in tables 7, 8 and 9, while tables 12-14 show the incremental burden compared to the baseline for addressing GHG emissions in permits. The incremental GHG burden is shown in Tables 12, 13 and 14 below. Note that EPA assumes the burden for issuing new GHG permits is the same as non-GHG permits, so there is no incremental burden for new permit issuance included in the tables below.

Specifically, included in the tables below is the incremental burden for sources and permitting authorities alike to address GHG in all new non-GHG permits (including backlog sources), the burden of permit modifications solely related to GHG (based on the number of NSR actions

involving GHG included the NSR ICR), the burden of addressing GHG in all existing non-GHG permits when they undergo minor permit or significant modification procedures, and the burden of addressing GHG in 80 percent of all permit renewals. For EPA, the additional incremental burden is for reviewing and consulting with delegate agency authorities on minor and significant modifications that occur solely due to GHG.<sup>9</sup>

Tables 13, 14 and 15 lists the burden categories, the number of estimated occurrences for each item, and the expected costs for each, based on the burden estimations made in the previous OMB-approved ICR change worksheet for the GHG Tailoring rule. Compared to the change worksheet for this rule, these tables have been updated to reflect new estimates of existing permits and the mix of activities expected to occur due to the expected evolution of the program.

**TABLE 12  
3-YEAR INCREMENTAL BURDEN AND COST OF THE GHG TAILORING RULE FOR SOURCE ACTIVITIES**

| ACTIVITY  | Burden Hours per permit | Rate per hour | Affected permits | Total Burden (Hours) | TOTAL COST (2007) |
|---|-------------------------|---------------|------------------|----------------------|-------------------|
| Prepare Application (add GHG to non-GHG permit) | 34                      | \$148         | 34               | 1,156                | \$171,088         |
| Modification due to GHG                         | 43                      | \$39          | 30               | 1,290                | \$50,310          |
| Modification to address GHG to non-GHG permit   | 4                       | \$39          | 231              | 924                  | \$36,036          |
| Address GHG at Renewal                          | 20                      | \$39          | 62               | 1,248                | \$48,672          |
| <b>TOTAL</b>                                    |                         |               |                  | 4,618                | \$306,106         |

**TABLE 13  
3-YEAR INCREMENTAL BURDEN AND COST OF THE GHG TAILORING RULE FOR PERMITTING AUTHORITY ACTIVITIES**

| ACTIVITY  | Burden Hours per permit | Rate per hour | Affected permits | Total Burden (Hours) | TOTAL COST (2007) |
|---|-------------------------|---------------|------------------|----------------------|-------------------|
| Prepare Application (add GHG to non-GHG permit) | 43                      | \$46          | 34               | 1,462                | \$67,252          |
| Modification due to GHG                         | 40                      | \$46          | 30               | 1,200                | \$55,200          |
| Modification to address GHG in non-GHG permit   | 4                       | \$46          | 231              | 924                  | \$42,504          |
| Address GHG at Renewal                          | 9                       | \$46          | 62               | 562                  | \$25,834          |
| <b>TOTAL</b>                                    |                         |               |                  | 305,937              | \$190,790         |

<sup>9</sup> Note we did not include administrative permit modifications because there is no requirement for EPA review for these and they do not involve substantive changes.

**TABLE 14  
3-YEAR INCREMENTAL BURDEN AND COST OF THE GHG TAILORING RULE FOR EPA OVERSIGHT  
ACTIVITIES**

| ACTIVITY                           | Burden Hours per permit | Rate per hour | Affected permits | Total Burden (Hours) | TOTAL COST (2007) |
|------------------------------------|-------------------------|---------------|------------------|----------------------|-------------------|
| Review Modification due to GHG     | 8                       | \$46          | 2                | 16                   | \$736             |
| Consult on Modification due to GHG | 8                       | \$46          | 1                | 8                    | \$368             |
| <b>TOTAL</b>                       |                         |               |                  | 24                   | \$1,104           |

**6.4.5 Capital and O&M Costs**

There are no expected capital or O&M costs for this ICR. Moreover, the regulations do not mandate the purchase of any capital equipment, nor do they require any O&M procedures. Although EPA does not have separate estimates for capital and O&M costs, we believe past input from State permitting authorities on the burdens of part 70 programs may have considered such costs within their estimates for the burden of program activities (e.g., the costs of obtaining computers to aid in program administration).

**6.4.6 Bottom Line Burden Hours and Cost**

Table 15 shows the calculation of the bottom line burden for the 3-year period and table 16 shows the bottom line cost for the 3-year period, accounting for OMB-approved changes related to the Flexible Air Permits and GHG tailoring Rules (these changes were previously approved by OMB subsequent to the 2007 ICR renewal). Table 17 shows the overall bottom line burden and cost for this renewal ICR (incorporating the totals from tables 15 and 16). Note that we separated the burden and cost for EPA and the delegate agency as permitting authorities in these tables based on the prorated share of permit each administers.

**TABLE 15  
CALCULATION OF BOTTOM LINE TOTAL (3-YEAR) BURDEN (HOURS)**

| Respondent | Baseline | Flexible Air Permit | GHG Tailoring | TOTAL |
|------------|----------|---------------------|---------------|-------|
|            |          |                     |               |       |

|                            |         |        |       |         |
|----------------------------|---------|--------|-------|---------|
| <b>Sources</b>             | 111,910 | -4,290 | 4,618 | 112,238 |
| <b>PA (Tribe)</b>          | 3,887   | -265   | 332   | 3,954   |
| <b>Federal (PA)</b>        | 44,425  | -3,043 | 3,816 | 45,198  |
| <b>Federal (Oversight)</b> | 84      | -37-   | 24    | 71      |
| <b>TOTAL</b>               | 160,306 | -7,635 | 8,790 | 161,461 |

**TABLE 16  
CALCULATION OF BOTTOM LINE TOTAL (3-YEAR) COST (\$2007)**

| <b>Respondent</b>          | <b>Baseline</b> | <b>Flexible Air Permit</b> | <b>GHG Tailoring</b> | <b>TOTAL</b> |
|----------------------------|-----------------|----------------------------|----------------------|--------------|
| <b>Sources</b>             | \$5,229,072     | -\$121,530                 | \$306,106            | \$5,413,648  |
| <b>PA (Tribe)</b>          | \$178,810       | --\$12,172                 | \$15,263             | \$181,901    |
| <b>Federal (PA)</b>        | 2,043,542       | -\$139,973                 | \$175,526            | 2,079,095    |
| <b>Federal (Oversight)</b> | \$3,864         | -\$1,720                   | \$1,104              | \$3,248      |
| <b>TOTAL</b>               | \$7,455,288     | -\$275,395                 | \$498,000            | \$7,677,893  |

**TABLE 17  
BOTTOM LINE BURDEN AND COST (2012-2015)**

|                            | <b>Number of Affected Entities</b> | <b>Total ICR (3-Year) Burden Hour</b> | <b>Average Annual Burden Per Respondent</b> | <b>Average Annual Burden Per Source</b> | <b>Total ICR (3-Year) Cost</b> | <b>Average Annual Cost Per Respondent</b> | <b>Average Annual Cost Per Source</b> |
|----------------------------|------------------------------------|---------------------------------------|---|---|--------------------------------|---|---------------------------------------|
| <b>Sources</b>             | 174                                | 112,238                               | 215   | 215                                     | \$5,413,648                    | \$10,372                                  | \$10,372                              |
| <b>PA (Tribe)</b>          | 1                                  | 3,954                                 | 3,954                                       | 94                                      | \$181,901                      | \$181,901                                 | \$4,331                               |
| <b>Federal (PA)</b>        | 1                                  | 45,198                                | 45,198                                      | 94                                      | \$2,079,095                    | \$2,079,095                               | \$4,331                               |
| <b>Federal (Oversight)</b> | 1                                  | 71                                    | 24  | 2                                       | \$3,248                        | \$3,248                                   | \$77                                  |
| <b>Total</b>               |                                    | 161,461                               | NA  | NA                                      | \$7,677,892                    | NA  | NA                                    |

On average, the Agency estimates the 3-year cost to sources under part 71 (174 sources) at about \$5.4 million with burden hours totaling 112 thousand (37 thousand hours per year), or about 215 hours per year per source over the three years of the ICR.

The burden EPA expects to incur in its role as permitting authority under title V is estimated over the 3-year period covered by this ICR at about 45 thousand hours, or around 94 hours per source per year. The burden the one delegate permitting authority expects to incur is about 4 thousand hours or 94 hours per source. The 2007 ICR had no burden hours identified for

delegate agencies because there were no delegate agencies approved at that time. Also, the last ICR renewal identified no burden hours for EPA oversight because there were no delegate agencies for EPA to oversee.

Also, the Flexible Air Permit rule and the GHG Tailoring rule resulted in nearly offsetting decreases and increases, respectively, in burden and cost. Overall, there is a slight increase in burden for sources and permitting authorities (EPA and delegate agency) due to the GHG tailoring rule and a slight decrease for EPA in its role of overseeing the delegate agency due to the Flexible Air Permits Rule.

There are several reasons for the changes in burden in this ICR renewal relative to the 2007 ICR renewal. The most significant reason causing an increase in burden for sources and permitting authorities has been updated estimates of the number of existing sources and permits due to better data. This data shows increased economic activity occurring in areas under EPA jurisdiction, primarily due to oil and gas exploration, LNG terminals and several alternative energy development projects. Also affecting the burden estimates, but to a lesser extent, was an increase in wage rates applied to the activities of sources and permitting authorities.

Table 18 compares the burden in the previous ICR with the burden in this ICR. The approved burden level in the previous ICR was 27 thousand hours per year for sources and 12 thousand burden hours per year for Federal permitting, for a total of 40 thousand hours. This ICR estimates total annual burden at 54 thousand hours with sources accounting for 37 thousand burden hours per year. Permitting by the delegate agency accounts for about 1.3 thousand hours and permitting by EPA accounts for about 15 thousand hours. Also, federal oversight of the one delegate agency accounts for about .024 thousand hours. The change in burden from the previous ICR is primarily due to updated estimates of the number of sources and permits, rather than any new Federal mandates (the FAP and the GHG Tailoring rule were previously approved by OMB but this is the first ICR renewal to address them at the same time and update them for the current stage of implementation).



**TABLE 18  
BURDEN CHANGE (HOURS) FROM 2007 ICR TO CURRENT ICR**

|                            | <b>Average Annual Burden in 2007 ICR Renewal</b> | <b>Average Annual Burden in ICR Renewal</b> | <b>Difference</b> |
|----------------------------|--|---|-------------------|
| <b>Sources</b>             | 27,218   | 37,413                                      | 10,195            |
| <b>PA (Tribe)</b>          | N/A  | 1,318                                       | N/A               |
| <b>Federal (PA)</b>        | 12,373   | 15,066                                      | 2,693             |
| <b>Federal (oversight)</b> | N/A  | 24  | N/A               |
| <b>TOTAL</b>               | 39,591   | 53,820                                      | 14,229            |

During the 3-year period of this ICR there will be an increase in the source burden compared to the previous ICR, primarily due to an increase in economic activity in offshore areas, which the existing regulations and approved ICR are designed to accommodate. These changes are not due to any EPA actions to revise regulations or policy that have not been previously approved by OMB. In the last ICR there were 123 sources subject to administration by EPA, while this one assumes there will be 174 sources, of which 16 will be subject to delegate agency administration and 160 subject to EPA administration.

**6.6 Burden Statement**

Due to the large number of respondents, the variation in the circumstances for each respondent, and the varied nature of the activities of the program, it is impractical to attempt to delineate burden by respondent and activity. Following is the apportioned burden for each respondent, derived from the total permitting authority (i.e., EPA) hourly burden divided by the number of permitting authorities (i.e., 1), and similarly for sources.

**TABLE 19  
BURDEN STATEMENT**

|                            | <b>Number of Respondents</b> | <b>Total Annual Burden (hours)</b> | <b>Average Annual Burden per Respondent (hours)</b> |
|----------------------------|------------------------------|------------------------------------|---|
| <b>Sources</b>             | 174                          | 37,413                             | 215   |
| <b>PA (Tribe)</b>          | 1                            | 1,318                              | 94  |
| <b>Federal (PA)</b>        | 1                            | 15,066                             | 94  |
| <b>Federal (Oversight)</b> | 1                            | 24                                 | 2   |

Send comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to:

Director, Collection Strategies Division  
Office of Environmental Information 2822,  
Environmental Protection Agency  
1200 Pennsylvania Ave. NW, Washington, DC 20460

and to:

The Office of Information and Regulatory Affairs  
Office of Management and Budget  
725 17<sup>th</sup> Street, NW, Washington, DC 20503  
Attention: Desk Officer for EPA.

Include the EPA ICR number (1713.10) and OMB control number (2060-0336) in any correspondence.

## **ATTACHMENT 1**

### **THE STATUTORY REQUIREMENTS FOR RESPONDENT INFORMATION**

#### **SECTIONS 502 THROUGH 504 OF TITLE V OF THE CLEAN AIR ACT**

##### **SEC. 502. PERMIT PROGRAMS**

(a) Violations.- After the effective date of any permit program approved or promulgated under this title, it shall be unlawful for any person to violate any requirement of a permit issued under this title, or to operate an affected source (as provided in title IV), a major source, any other source (including an area source) subject to standards or regulations under section 111 or 112, any other source required to have a permit under parts C or D of title I, or any other stationary source in a category designated (in whole or in part) by regulations promulgated by the Administrator (after notice and public comment) which shall include a finding setting forth the basis for such designation, except in compliance with a permit issued by a permitting authority under this title. (Nothing in this subsection shall be construed to alter the applicable requirements of this Act that a permit be obtained before construction or modification.) The Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this Act, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.

(b) Regulations.- The Administrator shall promulgate within 12 months after the date of the enactment of the Clean Air Act Amendments of 1990 regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following:

- (1) Requirements for permit applications, including a standard application form and criteria for determining in a timely fashion the completeness of applications.
- (2) Monitoring and reporting requirements.

(3)(A) A requirement under State or local law or interstate compact that the owner or operator of all sources subject to the requirement to obtain a permit under this title 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 requirements of this title, including section 507, including the reasonable costs of -

(i) reviewing and acting upon any application for such a permit,

(ii) if the owner or operator receives a permit for such source, whether before or after the date of the enactment of the Clean Air Act Amendments of 1990, implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

(iii) emissions and ambient monitoring,

(iv) preparing generally applicable regulations, or guidance,

(v) modeling, analyses, and demonstrations, and

(vi) preparing inventories and tracking emissions.

(B) The total amount of fees collected by the permitting authority shall conform to the following requirements:

(i) The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that, except as otherwise provided in subparagraphs (ii) through (v) of this subparagraph, the program will result in the collection, in the aggregate, from all sources subject to subparagraph (A), of an amount not less than \$25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program.

(ii) As used in this subparagraph, the term "regulated pollutant" shall mean (I) a volatile organic compound; (II) each pollutant regulated under section 111 or 112; and (III) each pollutant for which a national primary ambient air quality standard has been promulgated (except that carbon monoxide shall be excluded from this reference).

(iii) In determining the amount under clause (i), the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

(iv) The requirements of clause (i) shall not apply if the permitting authority demonstrates that collecting an amount less than the amount specified under clause (i) will meet the requirements of subparagraph (A).

(v) The fee calculated under clause (i) shall be increased (consistent with the need to cover the reasonable costs authorized by subparagraph (A)) in each year beginning after the year of the enactment of the Clean Air Act Amendments of 1990 by the percentage, if any, by which

the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this clause -

(I) the Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year, and

(II) the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(C)(i) If the Administrator determines, under subsection (d), that the fee provisions of the operating permit program do not meet the requirements of this paragraph, or if the Administrator makes a determination, under subsection (i), that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under this title, collect reasonable fees from the sources identified under subparagraph (A). Such fees shall be designed solely to cover the Administrator's costs of administering the provisions of the permit program promulgated by the Administrator.

(ii) Any source that fails to pay fees lawfully imposed by the Administrator under this subparagraph shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (relating to computation of interest on underpayment of Federal taxes).

(iii) Any fees, penalties, and interest collected under this subparagraph shall be deposited in a special fund in the United States Treasury for licensing and other services, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the Agency's activities for which the fees were collected. Any fee required to be collected by a State, local, or interstate agency under this subsection shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program as set forth in subparagraph (A).

(4) Requirements for adequate personnel and funding to administer the program.

(5) A requirement that the permitting authority have adequate authority to:

(A) issue permits and assure compliance by all sources required to have a permit under this title with each applicable standard, regulation or requirement under this Act;

(B) issue permits for a fixed term, not to exceed 5 years;

(C) assure that upon issuance or renewal permits incorporate emission limitations and other requirements in an applicable implementation plan;

(D) terminate, modify, or revoke and reissue permits for cause;

(E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than \$10,000 per day for each violation, and provide appropriate criminal penalties; and

(F) assure that no permit will be issued if the Administrator objects to its issuance in a timely manner under this title.

(6) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

(7) To ensure against unreasonable delay by the permitting authority, adequate authority and procedures to provide that a failure of such permitting authority to act on a permit application or permit renewal application (in accordance with the time periods specified in section 503 or, as appropriate, title IV) shall be treated as a final permit action solely for purposes of obtaining judicial review in State court of an action brought by any person referred to in paragraph (6) to require that action be taken by the permitting authority on such application without additional delay.

(8) Authority, and reasonable procedures consistent with the need for expeditious action by the permitting authority on permit applications and related matters, to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 503(e), subject to the provisions of section 114(c) of this Act.

(9) A requirement that the permitting authority, in the case of permits with a term of 3 or more years for major sources, shall require revisions to the permit to incorporate applicable standards and regulations promulgated under this Act after the issuance of such permit. Such revisions shall occur as expeditiously as practicable and consistent with the procedures established under paragraph (6) but not later than 18 months after the promulgation of such standards and regulations. No such revision shall be required if the effective date of the standards or regulations is a date after the expiration of the permit term. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this title regarding renewals.

(10) Provisions to allow changes within a permitted facility (or one operating pursuant to section 503(d)) without requiring a permit revision, if the changes are not modifications under any provision of title I 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: *Provided*, That the facility provides the Administrator and the permitting authority with written notification 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.

(c) Single Permit.- A single permit may be issued for a facility with multiple sources.

(d) Submission and Approval.- (1) Not later than 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Governor of each State shall develop and submit to the Administrator a permit program under State or local law or under an interstate compact meeting the requirements of this title. In addition, the Governor shall submit a legal opinion from the attorney general (or the attorney for those State air pollution control agencies that have independent legal counsel), or from the chief legal officer of an interstate agency, that the laws of the State, locality, or the interstate compact provide adequate authority to carry out the program. Not later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part. The Administrator may approve a program to the extent that the program meets the requirements of this Act, including the regulations issued under subsection (b). If the program is disapproved, in whole or in part, the Administrator shall notify the Governor of any revisions or modifications necessary to obtain approval. The Governor shall revise and resubmit the program for review under this section within 180 days after receiving notification.

(2)(A) If the Governor does not submit a program as required under paragraph (1) or if the Administrator disapproves a program submitted by the Governor under paragraph (1), in whole or in part, the Administrator may, prior to the expiration of the 18-month period referred to in subparagraph (B), in the Administrator's discretion, apply any of the sanctions specified in section 179(b).

(B) If the Governor does not submit a program as required under paragraph (1), or if the Administrator disapproves any such program submitted by the Governor under paragraph (1), in whole or in part, 18 months after the date required for such submittal or the date of such disapproval, as the case may be, the Administrator shall apply sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a).

(C) The sanctions under section 179(b)(2) shall not apply pursuant to this paragraph in any area unless the failure to submit or the disapproval referred to in subparagraph (A) or (B) relates to an air pollutant for which such area has been designated a nonattainment area (as defined in part D of title I).

(3) If a program meeting the requirements of this title has not been approved in whole for any State, the Administrator shall, 2 years after the date required for submission of such a program under paragraph (1), promulgate, administer, and enforce a program under this title for that State.

(e) Suspension.- The Administrator shall suspend the issuance of permits promptly upon publication of notice of approval of a permit program under this section, but may, in such notice, retain jurisdiction over permits that have been federally issued, but for which the administrative or judicial review process is not complete. The Administrator shall continue to administer and enforce federally issued permits under this title until they are replaced by a permit issued by a permitting program. Nothing in this subsection should be construed to limit the Administrator's ability to enforce permits issued by a State.

(f) Prohibition.- No partial permit program shall be approved unless, at a minimum, it applies, and ensures compliance with, this title and each of the following:

(1) All requirements established under title IV applicable to "affected sources."

(2) All requirements established under section 112 applicable to "major sources", "area sources," and "new sources."

(3) All requirements of title I (other than section 112) applicable to sources required to have a permit under this title. Approval of a partial program shall not relieve the State of its obligation to submit a complete program, nor from the application of any sanctions under this Act for failure to submit an approvable permit program.

(g) Interim Approval.- If a program (including a partial permit program) submitted under this title substantially meets the requirements of this title, but is not fully approvable, the Administrator may by rule grant the program interim approval. In the notice of final rulemaking, the Administrator shall specify the changes that must be made before the program can receive full approval. An interim approval under this subsection shall expire on a date set by the Administrator not later than 2 years after such approval, and may not be renewed. For the period of any such interim approval, the provisions of subsection (d)(2), and the obligation of the Administrator to promulgate a program under this title for the State pursuant to subsection (d)(3), shall be suspended. Such provisions and such obligation of the Administrator shall apply after the expiration of such interim approval.

(h) Effective Date.- The effective date of a permit program, or partial or interim program, approved under this title, shall be the effective date of approval by the Administrator. The effective date of a permit program, or partial permit program, promulgated by the Administrator shall be the date of promulgation.

(i) Administration and Enforcement.- (1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this title, the Administrator shall provide notice to the State and may, prior to the expiration of the 18-month period referred to in paragraph (2), in the Administrator's discretion, apply any of the sanctions specified in section 179(b).



(2) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this title, 18 months after the date of the notice under paragraph (1), the Administrator shall apply the sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a).

(3) The sanctions under section 179(b)(2) shall not apply pursuant to this subsection in any area unless the failure to adequately enforce and administer the program relates to an air pollutant for which such area has been designated a nonattainment area.

(4) Whenever the Administrator has made a finding under paragraph (1) with respect to any State, unless the State has corrected such deficiency within 18 months after the date of such finding, the Administrator shall, 2 years after the date of such finding, promulgate, administer, and enforce a program under this title for that State. Nothing in this paragraph shall be construed to affect the validity of a program which has been approved under this title or the authority of any permitting authority acting under such program until such time as such program is promulgated by the Administrator under this paragraph. [42 U.S.C. 7661a]

### **SEC. 503. PERMIT APPLICATIONS.**

(a) **APPLICABLE DATE.**-Any source specified in section 502(a) shall become subject to a permit program, and required to have a permit, on the later of the following dates-

(1) the effective date of a permit program or partial or interim permit program applicable to the source; or

(2) the date such source becomes subject to section 502(a).

(b) **COMPLIANCE PLAN.**-(1) The regulations required by section 502(b) shall include a requirement that the applicant submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this Act. The compliance plan shall include a schedule of compliance, and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every 6 months.

(2) The regulations shall further require the permittee to periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the permit, and to promptly report any deviations from permit requirements to the permitting authority.

(c) **DEADLINE.**-Any person required to have a permit shall, not later than 12 months after the date on which the source becomes subject to a permit program approved or promulgated

under this title, or such earlier date as the permitting authority may establish, submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. The permitting authority shall approve or disapprove a completed application (consistent with the procedures established under this title for consideration of such applications), and shall issue or deny the permit, within 18 months after the date of receipt thereof, except that the permitting authority shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of a permit program (or a partial or interim program). Any such schedule shall assure that at least one-third of such permits will be acted on by such authority annually over a period of not to exceed 3 years after such effective date. Such authority shall establish reasonable procedures to prioritize such approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of this Act.

(d) **TIMELY AND COMPLETE APPLICATIONS.**-Except for sources required to have a permit before construction or modification under the applicable requirements of this Act, if an applicant has submitted a timely and complete application for a permit required by this title (including renewals), but final action has not been taken on such application, the source's failure to have a permit shall not be a violation of this Act, unless the delay in final action was due to the failure of the applicant timely to submit information required or requested to process the application. No source required to have a permit under this title shall be in violation of section 502(a) before the date on which the source is required to submit an application under subsection (c).

(e) **COPIES; AVAILABILITY.**-A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under section 114(c) of this Act, the applicant or permittee may submit such information separately. The requirements of section 114(c) shall apply to such information. The contents of a permit shall not be entitled to protection under section 114(c).

## **SEC. 504. PERMIT REQUIREMENTS AND CONDITIONS.**

(a) **CONDITIONS.**-Each permit issued under this title shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan.

(b) MONITORING AND ANALYSIS.-The Administrator may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this Act, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. Nothing in this subsection shall be construed to affect any continuous emissions monitoring requirement of title IV, or where required elsewhere in this Act.

(c) INSPECTION, ENTRY, MONITORING, CERTIFICATION, AND REPORTING.- Each permit issued under this title shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation under subsection (b). Any report required to be submitted by a permit issued to a corporation under this title shall be signed by a responsible corporate official, who shall certify its accuracy.

*§70.5(c) Standard applications 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 meet program needs and administrative efficiency. The forms and attachments chosen, however, shall include the elements specified below:

(1) Identifying information, including (1) company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated alternative scenario identified by the source.

(3) The following emission related information:

(i) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under this paragraph (c) of this section. The permitting authority shall require additional information related

to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to §70.9(b) of this part.

(ii) Identification and description of all points of emissions described in paragraph (c)(3)(i) of this section in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(iii) Emissions rate in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

(iv) The following information to the extent it is needed to determine to regulate emissions: Fuels, fuel use, raw materials, production rates, and operating schedules.

(v) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the part 70 source.

(vii) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the Act.)

(viii) Calculations on which the information on paragraphs (c)(3)(i) through (c)(3)(vii) of this section is based.

(4) The following air pollution control requirements:

(i) Citation and description of all applicable requirements, and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this part or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source pursuant to § 70.6(a)(9) of this part or to define permit terms and conditions implementing § 70.4(b)(12) or § 70.6(a)(10) of this part.

(8) A compliance plan for all part 70 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements.

(ii) A description as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(C) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(iii) A compliance schedule as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to and shall not sanction noncompliance with, the applicable requirements on which it is based.

(iv) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.

(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with paragraph (d) of this section and section 114(a)(3) of the Act;

(ii) A statement of methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods;

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the permitting authority; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the Act.

(d) Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

**ATTACHMENT 2**

**February 9, 2007 FEDERAL REGISTER NOTICE  
72 FR 6233**

To be added after new notice available