

**EPA’s Title V Petitions Process Proposal –  
Discussion Document for Developing NACAA Comments**

**Overview:**

In August 2016, EPA issued a proposed rule to amend regulations at 40 C.F.R. Part 70 regarding the Title V petitions process, entitled “Revisions to the Petition Provisions of the Title V Permitting Program.” The proposal is intended to increase stakeholder access and understanding of the petition process and facilitate EPA’s review of petitions. The proposal was published in the *Federal Register* on August 24, 2016 (81 Fed. Reg. 57,822). Comments on the proposal are due by **October 24, 2016**.

- Proposed rule: <https://www.gpo.gov/fdsys/pkg/FR-2016-08-24/pdf/2016-20029.pdf>
- EPA fact sheet: [https://www.epa.gov/sites/production/files/2016-08/documents/petitionsrule\\_proposal\\_factsheet\\_final\\_08-15-16.pdf](https://www.epa.gov/sites/production/files/2016-08/documents/petitionsrule_proposal_factsheet_final_08-15-16.pdf)
- On September 13, 2016, EPA held a webinar for stakeholders. EPA’s slides providing a summary of the proposal are available here: [https://www.epa.gov/sites/production/files/2016-09/documents/slides\\_for\\_proposed\\_petition\\_provisions\\_webinar.pdf](https://www.epa.gov/sites/production/files/2016-09/documents/slides_for_proposed_petition_provisions_webinar.pdf)

**For Discussion by NACAA Permitting and NSR Committee for Preparation of Draft Comments:**

**I. Brief review of Title V petition process timeline under the CAA and existing regulations:**

1. The state or local permitting authority releases a draft operating permit for a minimum 30-day period of public notice and comment. The permitting authority must provide public notice of the draft permit’s availability, including description of the permit and information as to where additional information can be obtained (see current § 70.7(h) for full description).
2. The state/local permitting authority forwards the proposed permit to the EPA Administrator for a 45-day review period before issuing the permit as final.
3. If EPA determines the permit contains provisions that are not in compliance with applicable requirements under the CAA, it returns the proposed permit to the permitting authority, which must address those concerns.
4. If, at the end of the 45-day period, EPA does not object to the proposed permit, any person, within 60 days after the 45-day review period, may petition the Administrator to object to the permit. The petition does not stay the effectiveness of the permit prior to any EPA objection.

5. If EPA does object to the permit, it will modify, terminate or revoke the permit, and the state or local permitting authority may issue a revised permit that satisfies EPA's objection.

The preamble to the proposed rule reviews the timeline in more detail. It also presents information on the agency's interpretation of certain Title V provisions of the CAA and its implementing regulations regarding the steps following an EPA objection in response to a Title V petition, as previously discussed in specific Title V orders.

## II. Summary of Proposed Rule and Issues for Public Comment

### **A. Proposed regulatory changes to Part 70**

1. **Proposed administrative record requirements.** Under the current rules, the state/local permitting authority "shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his obligation..." There is no explicit requirement in the current regulations to prepare a response to significant comments document (RTC), though as EPA notes in the proposal, "under general principles of administrative law, it is incumbent upon administrative agencies to respond to significant comments raised during the public comment period." EPA's proposed changes are intended to standardize the practice of submitting a written RTC and statement of basis to EPA along with a proposed permit. They are designed to (i) ensure EPA has the state's rationale before it when reviewing a proposed permit, (ii) ensure petitioners have the entire record before them when submitting a petition, and (iii) improve efficiency of EPA's response process.

See proposed § 70.7(h) and § 70.8 (p. 57,844). Specifically, the proposal would do the following:

- a. Require the permitting authority to respond in writing to significant comments received during the public participation process for draft permit.
- b. Revisions to Part 70 would specifically identify the statement of basis document as a necessary part of the permit record throughout the permitting process.
- c. Require the RTC and statement of basis document to be included as part of the proposed permit record that is sent to EPA for its 45-day review period.
  - i. The 45-day review period would not begin until all the supporting information has been received by EPA (i.e., the proposed permit, statement of basis, and written RTC, or if no significant comments received, a statement to that effect)
- d. Require that within 30 days of sending the proposed permit to EPA, the state/local permitting authority must provide public notification that the proposed permit and RTC are available to the public, explaining how such materials may be accessed.

- i. EPA would also be required to post when a proposed permit is received and the corresponding 60-day period for submitting a petition on the EPA Regional Office websites.

Issues for comment:

- *Comments are specifically requested on the proposed regulatory language requiring preparation of a written RTC (see p. 57,844, § 70.7(h)).*
- *Should EPA require both the written RTC and statement of basis to be included in the record sent with the proposed permit to EPA for the 45-day review period?*
- *What would be the best method(s) for proposed permits to be made available so that the public is aware when a proposed permit is received by EPA for its 45-day review?*
- *Would any changes to state rules and programs be necessary if the proposal to notify the public of a proposed permit having been sent to EPA is finalized?*
- *What are the practices of permitting authorities that conduct concurrent review of a draft/proposed permit; in particular, what processes or steps should be followed to allow for concurrent review, even if the permitting authority is not aware of whether or not it will receive comment on the permit when it is initially submitted to EPA?*
- *Is it necessary and appropriate for the rules to ensure the statement of basis is available at all stages of the permit issuance process, or would including this in fewer provisions be adequate (and if so, which ones).*

2. **Required petition content and format.** The current rules provide little information on what a Title V petition must or should contain. The proposed additions are intended to provide direction to petitioners and are expected to result in petitions that are more concise and clear and that contain all the key relevant material for EPA's review. EPA considers it to be the petitioner's burden to "demonstrate" that a permit does not comply with applicable requirements of the CAA, and these changes are also intended to help them meet the demonstration burden.

See the proposed § 70.12 (p. 57,845). Specifically, EPA is proposing that all future petitions must:

- a. Identify the proposed permit on which the petition is based
  - i. Including permit number, version number and/or any other necessary information
  - ii. Must specify whether the permit is an initial permit, renewal, or modification
- b. Demonstrate the petition was filed on time
  - i. Such as: electronic receipt, date/time stamp from email, or postmark date

- c. Identify petition claims. For each claim raised:
- i. Identify the specific deficiency in the permit, permit record or permit process, citing to a specific permit term or condition where applicable
  - ii. Identify the applicable requirement under the CAA or part 70 that is not being met
  - iii. Explain how the term/condition(s) in the permit, or corresponding information in the permit record, are not adequate to comply with the corresponding requirement
  - iv. Identify where the issue was raised with reasonable specificity during the public comment period, and/or explain why this requirement does not need to be met for a specific issue per language in 505(b)(2)
  - v. Identify where the permitting authority responded to the public comment and explain how the permitting authority's response to the comment is insufficient to address the deficiency
    1. If the RTC does not address the public comment at all, or if there is no RTC, the petition should state that

In addition, EPA is proposing:

- d. EPA will not consider information incorporated by reference – all pertinent information in support of each issue raised as a petition claim must be included with the petition itself
- e. Use of a standard format, following the required order of information.

Issues on which EPA is requesting comment:

- *Seeking comment on all aspects of the proposed mandatory petition content, including the requirement to include all key information, arguments and analysis in the petition rather than incorporating it by reference.*
- *Should the petition format follow the same order as the proposed list of required content?*
- *Should the regulations require copies of the petition to be provided to the permitting authority and the permit applicant?*
- *Should page limits be established for Title V petitions, as a means of promoting concise petitions and facilitate efficient and expeditious review?*
- *If a page limit is established, what would be an adequate number of pages? 15-20 or 20-30 excluding attachments? Something else?*

**3. Submission of petitions (§ 70.14).** The existing rules require petitions to be sent to the “Administrator.” Currently, there is confusion as to where, exactly, a Title V petition should be submitted. EPA’s proposed changes are expected to allow for more accurate tracking of petitions and increase EPA’s efficiency and effectiveness in responding to petitions.

See proposed § 70.14 (p. 57,846). Specifically, EPA is proposing to require petitions, together with all attachments, to be submitted using one of three methods: (1) electronic submission through the designated CDX submission system on EPA's Title V petitions website—this is identified in the proposed rule language as EPA's "preferred" method; (2) to EPA's designated email address listed on that website; or (3) paper submission to the EPA address listed on the website.

Issues on which EPA is requesting comment:

- *Is it appropriate for EPA to designate the electronic submittal system as the preferred method for submitting petitions, while offering two alternative methods that can be used in case of technical difficulties?*
- *Are the proposed regulatory revisions necessary, or could the same effect be achieved through instructions in the preamble and on the website?*
- *What, if any outreach methods or training materials would assist users with submitting petitions through the CDX system?*

**B. "Recommended Practices Guidance"**

In addition to the proposed regulatory changes, the proposal's preamble provides guidance in the form of "recommended practices" for various stakeholders to help ensure Title V permits have complete administrative records and comport with the requirements of the CAA.

**1. Recommended practices for permitting authorities**

- a. Consulting with the appropriate EPA Regional Office as needed on key aspects of the permit before the draft permit stage, especially if the permit is expected to be highly visible or contested.
- b. On a case-by-case basis, considering whether a particular draft permit warrants outreach to the community.
- c. On a case-by-case basis, considering whether it is appropriate to provide for a public participation opportunity on a revised draft permit.
- d. Fully addressing significant comments on draft permits and ensuring the permit or permit record includes adequate rationale for the decisions made.

**2. Recommended practices for sources:**

- a. Submitting permit applications that include all information required under the approved title V permit program.
- b. Consulting with the permitting authority when any discrepancy or inaccuracy is identified in the permit, at any stage of the permitting process.
- c. Promptly providing any updates to the permit application to the permitting authority.

- d. If public comments identify an issue in the draft permit, contacting the permitting authority to make revisions to address the concern before the permit is proposed to the EPA.
- e. Timely responding to inquiries from the permitting authority at each stage in the permitting process, including the draft, proposed, and final stages.