



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA-HQ-OAR-2016-0194; FRL-10004-56-OAR]

RIN 2060-AS61

Revisions to the Petition Provisions of the Title V Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is revising its regulations to streamline and clarify processes related to submission and review of title V petitions. This final rule implements changes in three key areas: method of petition submittal to the agency, required content and format of petitions, and administrative record requirements for permits. In the first area, the EPA is establishing an electronic submittal system as the preferred method of submittal, with specified email and physical addresses as alternate routes to submit petitions. By doing so, the agency anticipates (and has already seen) improved tracking of petitions. To help petitioners in preparing their petitions, as well as the EPA in reviewing and responding to petitions, the EPA is finalizing its proposal to incorporate certain content and format requirements into the regulations, codifying practices that the EPA has described in prior orders responding to petitions and the preamble to the proposal for this rule. Finally, the EPA is requiring permitting authorities to prepare a written response to comments (RTC) document if significant comments are received during the public participation process on a draft permit, and requiring that the RTC, when applicable, be sent to the agency with the proposed permit and necessary documents including the statement of basis for its 45-day review. This change is anticipated to provide more complete

permit records during the EPA's 45-day review period for proposed permits, the 60-day petition window, and the EPA's review of any petition submitted, and thus reduce the likelihood that the Administrator will grant a petition because of an incomplete permit record.

DATES: The effective date of this final rule is **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action, identified by Docket ID No. EPA-HQ-OAR-2016-0194. All documents in the docket are listed in the <http://www.regulations.gov> website. Although listed in the index, some information might not be publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically in <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For further general information on this action, contact Ms. Carrie Wheeler, Office of Air Quality Planning and Standards (OAQPS), Air Quality Policy Division, U.S. EPA, Mail Code C504-03, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; by telephone at (919) 541-9771; or by email at wheeler.carrie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected directly by the revisions to the EPA's regulations include anyone who may submit a title V petition on a proposed title V permit prepared by a state, local or tribal title V permitting authority pursuant to its EPA-approved title V permitting program.

Entities also potentially affected by this rule include state, local and tribal permitting authorities responsible for implementing the title V permitting program. Entities that may be interested in, though not directly affected by, this rule include owners and operators of major stationary sources or other sources that are subject to the title V permitting requirements, as well as the general public who would have an interest in knowing about title V permitting actions and associated public hearings but do not intend to submit a petition.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this Federal Register document will be posted at the regulations section of our Title V Operating Permits website, under Regulatory Actions, at <https://www.epa.gov/title-v-operating-permits/current-regulations-and-regulatory-actions>.

C. How is this document organized?

The information presented in this document is organized as follows:

- I. General Information
 - A. Does this action apply to me?
 - B. Where can I get a copy of this document and other related information?
 - C. How is this document organized?
- II. Background for Final Rulemaking
- III. Summary of the Final Rule Requirements
 - A. Petition Submission
 - 1. Petition Submission to the EPA
 - 2. Required Copies of the Petition to the Permitting Authority and Applicant
 - B. Required Petition Content and Format
 - 1. Required Petition Content
 - 2. Required Petition Format
 - C. Administrative Record Requirements
 - 1. Response to Comments
 - 2. Statement of Basis
 - 3. Correction to Incorrect Reference
 - 4. Commencement of the EPA 45-day Review Period
 - 5. Notification to the Public
 - D. Documents that May Be Considered in Reviewing Petitions
- IV. Responses to Significant Comments on the Proposed Rule

- A. Electronic Submittal System for Petitions
 - 1. Summary of Proposal
 - 2. Summary of Comments
 - 3. EPA Response
- B. Required Petition Content and Format
 - 1. Summary of Proposal
 - 2. Summary of Comments
 - 3. EPA Response
- C. Administrative Record Requirements
 - 1. Summary of Proposal
 - 2. Brief Summary of Comments
 - 3. EPA Response
- D. Documents that May Be Considered in Reviewing Petitions
 - 1. Summary of Proposal
 - 2. Summary of Comments
 - 3. EPA Response
- V. Implementation
- VI. Determination of Nationwide Scope and Effect
- VII. Environmental Justice Considerations
- VIII. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
 - C. Paperwork Reduction Act (PRA)
 - D. Regulatory Flexibility Act (RFA)
 - E. Unfunded Mandates Reform Act (UMRA)
 - F. Executive Order 13132: Federalism
 - G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
 - I. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
 - J. National Technology Transfer and Advancement Act
 - K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
 - L. Congressional Review Act (CRA)
 - M. Determination Under CAA Section 307(d)
- IX. Statutory Authority

II. Background for Final Rulemaking

Title V of the CAA establishes an operating permit program. Section 505 of the CAA requires permitting authorities to submit each proposed title V permit to the EPA Administrator (“Administrator”) for review for a 45-day period before issuing the permit as final. The

Administrator shall object to issuance of the permit if the Administrator determines that the permit contains provisions that are not in compliance with the applicable requirements under the CAA. If the Administrator does not object to the permit during the 45-day EPA review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to take such action (hereinafter “title V petition” or “petition”).¹ As the EPA explained in proposing the initial title V regulations, the title V petition opportunity serves an important purpose because title V permits are frequently complex documents, and given the brevity of the agency review period there may be occasions when the EPA does not recognize during that review period that certain permit provisions are not in compliance with applicable requirements of the Act. 56 FR 21751 (May 10, 1991). Following more than 20 years of experience with title V petitions, and taking into account feedback from various stakeholders, the agency proposed changes to 40 CFR part 70 that were intended to provide clarity and transparency to the petition process and to improve the efficiency of that process. 81 FR 57822 (August 24, 2016).

In that proposed rule, the EPA discussed five key areas, each of which was anticipated to increase stakeholder access to and understanding of the petition process and aid the EPA’s review of petitions. First, the EPA proposed regulatory provisions that provide direction as to how petitions should be submitted to the agency. Second, the EPA proposed regulatory provisions that describe the expected format and minimum required content for title V petitions. Third, the proposal required that permitting authorities respond in writing to any significant comments received during the public comment period for draft title V permits, and to provide that response and statement of basis with the proposed title V permit to the EPA for the agency’s

¹ The procedural requirements for title V petitions are addressed in section 505(b)(2) of the CAA and in 40 CFR 70.8(d) of the current implementing regulations.

45-day review period.² Fourth, guidance was provided 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 Clean Air Act (CAA or Act). Fifth, to increase familiarity with the post-petition process, the preamble presented 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. The agency did not propose to take any action in connection with the fourth and the fifth areas. Rather, the discussion on those topics was provided purely for purposes of increasing public awareness.³

This final rulemaking notice does not repeat all the discussion from the proposal, but interested readers are referred to the preamble of the proposed rule for additional background and for the discussion on the fourth and fifth areas, which are not discussed further in this notice.

III. Summary of the Final Rule Requirements

This section provides a summary of the requirements of the final rule. Further discussion of these requirements, including implementation and summaries of our responses to significant comments received on the proposed rule, are provided in subsequent sections. In this final action, three of the key areas mentioned in Section II of this document are addressed: requirements related to the submission of petitions; required petition content and format; and administrative

² The term “statement of basis” is not defined in the CAA or in 40 CFR part 70; however, it is often used to refer to the requirement in 40 CFR 70.7(a)(5) for a permitting authority to provide a statement that sets forth the legal and factual basis for the permit conditions. Permitting authorities may call it “statement of basis” or may choose alternate language to identify this document.

³ Additionally, in the interest of transparency and clarity, the preamble included a discussion of certain prior interpretations and applications of the title V provisions. The agency did not propose to change or solicit comment on these prior interpretations or applications, but rather, it repeated the information as a convenience for the public.

record requirements for proposed permits submitted to EPA for review. First, the EPA is finalizing a regulatory provision requiring that petitioners use one of three identified methods for petition submittal, with a preference for petitions to enter the agency through the electronic submittal system. Second, petition content and format requirements are being changed to describe the information expected by, and necessary for, the agency to effectively review a claim of permit or permit process deficiency. Third, the EPA is finalizing a requirement for permitting authorities to respond in writing to significant comments (when such comments are received during the public comment period). The permitting authority must provide certain documents including the statement of basis and (when applicable) the written response to comment document along with the proposed permit for the EPA's 45-day review period. To provide additional clarity and transparency around the petition process, the agency is also finalizing the proposed regulatory text describing the documents that may be considered when reviewing title V petitions. Finally, as described below in this preamble the EPA intends, where practicable, to make key dates publicly available on the EPA Regional Web sites (i.e., the end of the agency's 45-day review period and the end of the 60-day period in which a petition can be submitted).

A. Petition Submission

1. Petition Submission to EPA

As proposed, the EPA is adding a new provision to part 70 that requires petitions to be submitted using one of three methods listed in the new § 70.14, using specific information provided on the title V petitions Web site. Petitioners are encouraged to submit title V petitions through the electronic submittal system, the agency's preferred method. The EPA has developed an electronic submittal system for title V petitions through the Central Data Exchange (CDX), and information on how to access and use the system is available at the title V petitions Web site:

<http://www.epa.gov/title-v-operating-permits/title-v-petitions>. While the current electronic submittal system was designed using CDX, the EPA recognizes that adjustments to the system or an entirely different electronic submittal system may be needed in the future. Therefore, the title V petitions Web site will provide access to the designated electronic submittal system in use at any given time, which will remain the primary and preferred method for receiving title V petitions. The electronic submittal system allows for a direct route to the appropriate agency staff, and it also provides immediate confirmation that the EPA has received the petition and any attachments.

There are two other acceptable methods for submitting a title V petition listed in 40 CFR 70.14. First, the petition may be submitted to the agency through the email address designated for that purpose on the title V petitions Web site. The current email address for this purpose is: *titlevpetitions@epa.gov*. This address was originally established as an alternative method for use in instances when the electronic submittal system is not available, and the agency anticipates that this type of electronic submission would primarily be used if a petitioner experiences technical difficulty when trying to submit a petition through the electronic submittal system. Second, the new § 70.14 provides for submission of a petition in paper to a designated physical address. The EPA is providing this alternative because it recognizes that there may be situations in which electronic submission is not feasible. The agency anticipates that this alternative would mainly be used by petitioners without access to the Internet at the time of petition submittal. The current address designated for submission of paper petitions (by mail or by courier) is: U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, Operating Permits Group Leader, 109 T.W. Alexander Dr. (C504-05), Research Triangle Park, NC 27711. Additional

information on these alternative methods for submittal is available at the title V petitions website.

As described in our responses to comments in Section IV of this document, the EPA is making this change to improve the tracking of petitions and to reduce confusion for petitioners. The agency strives to make the submittal system easy to use and to provide to petitioners automatic receipts that give assurance a petition was received within the required time frame. Since the public comment period for the proposal closed, all title V petitions entering the agency that the EPA is aware of have been electronically received through the CDX system or *titlevpetitions@epa.gov*. Some duplicate paper copies have also been sent to the new physical address. The regulatory text at § 70.14 finalized in this action explains that once a petition and any attachments have been successfully submitted using one method (e.g., once an automatic receipt is received through the CDX system), duplicate copies should not be submitted via another method. Duplicate submissions are unnecessary, and if petitioners only submit a petition using one method, it will expedite the administrative process and improve the EPA's efficiency in reviewing petitions. Consistent with the discussion in the proposal, the regulatory revisions finalized in this action also provide that the agency is not obligated to consider petitions submitted through any means other than the three identified in this rule.

2. Required Copies of the Petition to the Permitting Authority and Applicant

The EPA is also finalizing a revision to the part 70 regulations to add language to 40 CFR 70.8(d) that requires the petitioner to provide copies of its petition to the permitting authority and the permit applicant. Section 505(b)(2) of the Act already contains this requirement, but it was not previously specified in the part 70 regulations. This revision now fills that gap in the regulations.

B. Required Petition Content and Format

1. Required Petition Content

As proposed, the EPA is revising part 70 to require standard content that must be included in a title V petition, laying out the agency's expectations with more specificity to assist petitioners in understanding how to make their petitions complete and to enhance the EPA's ability to review and respond to them promptly. Under the revisions finalized in this action, a new section of the title V part 70 regulations, 40 CFR 70.12, adds the following list of required elements:

- Identification of the proposed permit on which the petition is based.⁴ A petition would be required to provide the permit number, version number, or any other information by which the permit can be readily identified. In addition, the petition must specify whether the relevant permit action is an initial issuance, renewal, or modification/revision, including minor modifications/revisions.
- Identification of Petition Claims. Any issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with the applicable requirements under the Act or requirements under part 70. Any argument or claim the petitioner wishes the EPA to consider in support of each issue raised must be contained within the body of the petition or in an attachment, provided that the body of the petition provides a specific citation to the referenced information in the attachment and an explanation of how that information supports the claim. In determining whether to object, the Administrator will not consider information

⁴ The proposed permit is the version of the permit the permitting authority forwards to the EPA for the agency's 45-day review under CAA section 505(b)(1). A proposed permit may be for any of the following permit actions: initial permit, renewal permit, or permit modification/revision.

incorporated into the petition by reference. The EPA is finalizing this requirement because merely incorporating by reference an argument or claim presented elsewhere (for example, in comments offered during the public comment period on a draft permit, or, as another example, in claims raised in a different title V petition) is generally not sufficient to demonstrate that the Administrator must object to a particular title V permit. Yet, without such a requirement, petitioners might be tempted to rely on such incorporation rather than fully presenting the claim to the agency in the petition with an adequate demonstration of why an objection is appropriate to the particular permit at issue. The full presentation of claims in the petition should help expedite the administrative process and improve the EPA's efficiency in reviewing petitions. However, petitions may and should still provide citations to support each claim presented in the petition (e.g., citations to caselaw, statutory and regulatory provisions, or portions of the permit record), along with an explanation of how the cited material supports the claim, as needed. For each claim raised, the new § 70.12 provides that the petition must identify the following:

- The specific grounds for an objection, citing to a specific permit term or condition where applicable.
- The applicable requirement under the CAA or requirement under part 70 that is not met. The term “applicable requirement” of the CAA for title V purposes is defined in 40 CFR 70.2. Note that under that definition, the term “applicable requirement” includes only requirements under the Clean Air Act, and does not include other requirements (e.g., under the Endangered Species Act or the Clean Water Act) to which a source may be subject.

- An explanation of how the term or condition in the proposed permit, or relevant portion of the permit record or permit process, is not adequate to comply with the corresponding applicable requirement under the CAA or requirement under part 70.
- If the petition claims that the permitting authority did not provide for the public participation procedures required under 40 CFR 70.7(h), the petition must identify specifically the required public participation procedure that was not provided.
- Identification of where the issue in the claim was raised with reasonable specificity during the public comment period provided for in 40 CFR 70.7(h), citing to any relevant page numbers in the public comment as submitted and attaching the submitted public comment to the petition. If the grounds for the objection were not raised during the public comment period, the petitioner must demonstrate that it was impracticable to raise such objections within the period unless they arose after such a period, as required by section 505(b)(2) of the Act and 40 CFR 70.8(d).
- Unless the exception under CAA section 505(b)(2) and 40 CFR 70.8(d) discussed in the immediately preceding bullet applies, the petition must identify where the permitting authority responded to the public comment, including the specific page number(s) in the document where the response appears, and explain how the permitting authority's response to the comment is inadequate to address the claimed deficiency. If the written RTC does not address the public comment at all or if there is no RTC, the petition should state that.

In addition to including all specified content, it is important that the information provided in the petition or any analysis completed by the petitioner also be accurate. However, including all the required content would not necessarily result in the Administrator granting an objection on any particular claim raised in a petition. For example, a petitioner could include all the required information but not demonstrate noncompliance, or the petition might point to a specific permit term as not being adequate to comply with a standard established under the CAA, but the EPA may determine that the standard does not apply to the source.

CAA Section 505(b)(2) and the implementing regulations at 40 CFR 70.8(d) provide for a 60-day window in which to file a title V petition, which runs from the expiration of the EPA's 45-day review period. A petition received after the 60-day petition deadline is not timely; therefore, it is important that the agency have sufficient information to determine if a petition was timely filed. Timeliness may be shown by the electronic receipt date generated upon submittal of the petition through the agency's electronic submittal system, the date and time the emailed petition was received, or the postmark date generated for a paper copy mailed to the agency's designated physical address.⁵ It is helpful, but not required, for the petition to provide key dates, such as the end of the public comment period provided under 40 CFR 70.7(h) (or parallel regulations in an EPA-approved state, local or tribal title V permitting program), or the conclusion of the EPA's 45-day review period for the proposed permit.

⁵ The agency notes that it does not generally expect that petitioners would need to include additional information in the petition itself to demonstrate that the petition was timely submitted, as the electronic receipt date from the electronic submittal system, the receipt date on the email submission, or the postmark date generated for a paper copy mailed to the agency's designated physical address should generally be sufficient to determine whether a submission was timely. However, if the petitioner wishes to provide additional explanation regarding a petition's timeliness, they may do so in the petition.

The use of incorporation by reference of other documents, in whole or in part, into petitions has created inefficiencies in the EPA's review of such petitions. As noted earlier in this section, under "identification of petition issues" in the new mandatory content requirements, the EPA requires any claim or argument a petitioner wishes the EPA to consider in support of an issue raised as a petition claim to be included in the body of a petition, or if reference is made to an attachment, the body of the petition must provide a specific citation to the referenced information and an explanation of how the referenced information supports the claim. Merely incorporating a claim or argument into a petition by reference from another document is inconsistent with the petitioner's demonstration obligations under the statute and would extend the petition review time as the agency spends time searching for and then attempting to decipher the petitioner's intended claim. In the EPA's experience, where claims have been incorporated by reference it is typically not clear that the specific grounds for objection have been adequately presented by the petitioner, which could lead to the EPA denying because the petition has failed to meet the demonstration burden. Relatedly, petitioners have sometimes used incorporation by reference to include comments from a comment letter in a petition, but a comment letter alone would typically not address a state's response to the comment. *See, e.g. In the Matter of Consolidated Environmental Management, Inc. – Nucor Steel Louisiana*, Order on Petition Numbers VI-2010-05, VI-2011-06 and VI-2012-07 (January 30, 2014) at 16 (noting that the "mere incorporation by reference . . . without any attempt to explain how these comments relate to an argument in the petition and without confronting [the State's] reasoning supporting the final permit is not sufficient to satisfy the petitioner's demonstration burden"). In practice, the EPA has found that the incorporation of public comments or other documents by reference into a petition can lead to confusion concerning the rationale for the petitioner's arguments, as it is

frequently unclear which part of the comment or document is incorporated, how it relates to the particular argument in the petition, and the precise intent of the incorporation. In addition, the incorporation of comments or other documents by reference increases the agency's review time, as the EPA would have to review more than one document in an attempt to fully determine the argument that a petitioner is making.

The EPA intends this change to help ensure that petitions received clearly state the main points in the petition, and if petitioners want to support their claim with attachment of additional materials, that they cite to the information in the attachment with an explanation as to why they are citing to it. The full presentation of claims in the petition is anticipated to help expedite the administrative process and improve the EPA's efficiency in reviewing petitions. However, petitions may and should still provide citations to support each claim presented in the petition (e.g., citations to caselaw, statutory and regulatory provisions, or portions of the permit record), along with an explanation of how the cited material supports the claim, as needed. To illustrate, the EPA provided an example claim in the proposal, and this still serves as a concise and effective presentation of a hypothetical claim that includes all pieces of required content, including citations to two exhibits. *See* 81 FR 57836 (August 24, 2016).

For further transparency and clarity, the EPA reiterates from the proposal that some types of information are not necessary to include when preparing an effective petition. In doing so, the EPA hopes to ease the effort associated with preparing a petition while promoting succinctness. For example, while a petitioner needs to cite to the legal authority supporting its specific claim, a petition does not need to include background or history on general aspects of the CAA. If a petitioner wishes to include additional information for an alternate purpose unrelated to the

EPA's review of the specific petition claim, the EPA recommends appending this information to the petition as a separate document and identifying the purpose for which it is provided.

As described in our responses to comments in Section IV of this document, commenters generally supported the regulatory text the EPA is finalizing in 40 CFR 70.12. A few commenters requested clarity on particular elements such as timeliness and the inclusion of information within the body of the petition, and in response the agency revised the regulatory text and supplemented the descriptions in this preamble with additional information that may provide further explanation as to the expectations for petitions. The EPA anticipates that these mandatory petition content requirements will help petitioners to succinctly focus their claims and present them effectively. Further, it will likely decrease the instances in which the Administrator denies a petition because the petitioner did not provide an adequate demonstration.

2. Required Petition Format

In this final rule, the EPA requires the use of a standard format that follows the same order as identified in the previous section regarding the list of required petition content. Regulatory language to this effect is included in the new provision, 40 CFR 70.12. The EPA anticipates this standard organization will reduce review time as the general location of specific details will now be the same in every petition received. These format requirements may help petitioners better understand what is, and what isn't, necessary in an effective title V petition.

Most commenters addressed content and format together; only two commenters submitted supportive comments specifically focused on format only. Therefore, the EPA addressed relevant comments on both content and format in Section IV of this document and is finalizing the formatting requirements as proposed.

C. Administrative Record Requirements

1. Response to Comments

Under the existing 40 CFR 70.7(h)(5), a permitting authority is required to keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill the obligation under CAA section 505(b)(2) to determine whether a title V petition may be granted. This provision also currently requires that such records be available to the public. As proposed, the EPA is revising 40 CFR 70.7 and adding new regulatory language that requires that a permitting authority also respond in writing to significant comments received during the public participation process for a draft title V permit.⁶ Such responses can be (and often are) prepared and collected together in one RTC document, which can be made available to the public in various ways, such as by posting on the permitting authority's website.

Significant comments in this context include, but are not limited to, comments that concern whether the title V permit includes terms and conditions addressing federal applicable requirements and requirements under part 70, including adequate monitoring and related recordkeeping and reporting requirements. It is the responsibility of the permitting authority to determine, in the first instance, if a comment submitted during the public comment period on a draft permit is significant.

2. Statement of Basis

The statement of basis document, which describes the legal and factual basis for the permit terms or conditions, is a necessary component for an effective permit review. The existing regulations in place prior to today's action required permitting authorities to send this "statement

⁶ The EPA is aware that many permitting authorities elect to respond to all comments. While the EPA does not require permitting authorities to respond to all comments (but rather all *significant* comments), the Agency does not intend to discourage permitting authorities from that practice.

of basis” to the EPA and “to any other person who requests it” but did not identify a particular time frame for doing so. 40 CFR 70.7(a)(5) (2018). In most situations, the permitting authority makes the statement of basis document available for the public comment period on the draft permit, for the EPA’s 45-day review period, and during the 60-day petition period. To address any occasions where it may be absent during these steps in the permit issuance process, the EPA is finalizing new language in the part 70 regulations that reaffirms its importance and requires its inclusion at all points in the permit review process for every permit. To that end, the EPA is revising 40 CFR 70.4(b), 70.7(h) and 70.8(a) to specifically identify that the statement of basis document is a required document, to be included during the public comment period and the EPA’s 45-day review period.⁷ Commenters suggested the originally proposed language be changed, as the “statement of basis” is not a term defined under 40 CFR 70.2. Therefore, in this final rule, the EPA has revised the new regulatory text to refer to “the statement required by §70.7(a)(5) (sometimes referred to as the ‘statement of basis’)”

3. Correction to Incorrect Reference

In this final rule, the EPA is also amending 40 CFR 70.4(b) to correct a reference. The regulations at 70.4(b) address the requirements for initial state submissions for part 70 operating permit programs, with 70.4(b)(3) requiring that the submission include a legal opinion that demonstrates that the state has adequate legal authority to carry out several listed functions. One of those functions relates to public availability of certain information for title V permitting. Specifically, the existing language in 40 CFR 70.4(b)(3)(viii) read: “Make available to the public any permit application, compliance plan, permit, and monitoring and compliance, certification report pursuant to section 503(e) of the Act, except for information entitled to confidential

⁷ The text in 40 CFR 70.7(a)(5) remains unchanged.

treatment pursuant to section 114(c) of the Act. The contents of a part 70 permit shall not be entitled to protection under section 115(c) of the Act.” However, the parallel statutory provision in CAA section 503(e) refers to section 114(c) of the Act, not 115(c), stating that: “The contents of a permit shall not be entitled to protection under section 7414(c) of this title.” Consistent with the focus of 40 CFR 70.4(b)(3)(viii), CAA section 114(c) pertains to the availability of records, reports, and information to the public, whereas CAA section 115(c) is a reciprocity provision for a statutory section addressing endangerment of public health or welfare in foreign countries from air pollution emitted in the United States. Therefore, the EPA is revising the citation in the last sentence of 40 CFR 70.4(b)(3)(viii) to correctly refer to section 114(c) of the Act to ensure the regulations comport with CAA section 503(e).

4. Commencement of the EPA 45-Day Review Period

The agency considers both the statement of basis and the written RTC (where applicable) to be integral components of the permit record. Having access to these critical documents during the EPA’s 45-day review period should improve the efficiency of the agency’s review. Further, such access also ensures that these documents are completed and available during the petition period under CAA section 505(b)(2). Therefore, the EPA is revising part 70 to require that any proposed permit that is transmitted to the agency for its 45-day review must include both the statement of basis and the written RTC (where applicable) among the necessary information as described in 40 CFR 70.8.

While many permitting authorities use a sequential review process, in which the public comment period (which typically lasts 30 days) closes before the proposed permit is sent to the EPA for its 45-day review, other permitting authorities conduct the public comment period and 45-day EPA review period concurrently for some permits, particularly in situations where the

permitting authority does not anticipate receiving significant public comments on the draft permit. This process is commonly referred to as “concurrent” (or “parallel”) review. This final rule now distinguishes between the two review processes by identifying the different document(s) required for each.

For sequential review, the permitting authority must submit the necessary documents including the statement of basis and a written RTC (if a significant comment was received during the public comment period) with the proposed permit as described in 40 CFR 70.8(a)(1) and 40 CFR 70.8(a)(1)(i). The Administrator’s 45-day review period for this proposed permit will not begin until all such materials have been received by the EPA.

For concurrent review, the permitting authority must submit the necessary documents including the statement of basis with the proposed permit to begin the EPA’s 45-day review, per 40 CFR 70.8(a)(1) and 40 CFR 70.8(a)(1)(ii). Because the public comment period is not yet complete, the written RTC is not required at this time. However, if a significant public comment is received during the public participation process, the Administrator will no longer consider the submitted permit a proposed permit. In such instances, the permitting authority will need to consider those comments, make any necessary revisions to the permit or permit record, prepare a written RTC, and submit the revised proposed permit to the EPA with the RTC, the statement of basis, and any other required supporting information, with any revisions that were made to address the public comments, in order to start the EPA’s 45-day review period.

5. Notification to the Public

Because the 60-day petition period runs from the end of the EPA’s 45-day review period, and the date a proposed permit is received by the EPA has not always been apparent, the petition deadline has sometimes been unclear to members of the public who might be interested in

submitting petitions. To date, the agency has encouraged permitting authorities to provide notifications to the public or interested stakeholders regarding the timing of proposal of permits to the EPA, for example by making that information available either online or in the publication in which public notice of the draft permit was given. The EPA continues to encourage this practice. In addition, the agency intends to post when a proposed permit is received and the corresponding 60-day deadline for submitting a petition on the EPA Regional Office Web sites where practicable. However, the responsibility for ensuring that a petition is timely submitted ultimately rests with the petitioner, so stakeholders should feel free to contact the relevant staff in the appropriate EPA Regional Office if they have questions about the timing of the petition process for draft permits of interest to them.

D. Documents That May Be Considered in Reviewing Petitions

Questions regarding what can be or is considered during the petition review may have left stakeholders uncertain as to what to provide for the EPA's consideration during its review of a petition. At proposal, the EPA tried to address some of those concerns with new regulatory text under 40 CFR 70.13. With some minor revisions intended as clarification, the agency is now finalizing the text, which indicates that information considered generally includes the administrative record for the proposed permit, and the petition, including the petition attachments. The administrative record for a particular proposed permit includes the draft and proposed permits; any permit applications that relate to the draft or proposed permits; the statement required by §70.7(a)(5), sometimes referred to as the 'statement of basis'; any comments the permitting authority received during the public participation process on the draft permit; the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; and all

materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority made available to the public according to §70.7(h)(2). If a final permit is available during the agency's review of a petition on a proposed permit, that document may also be considered as part of making a determination whether to grant or deny the petition.

The EPA sometimes refers to resources outside the petition and the administrative record for the proposed permit to more fully evaluate whether there is a demonstrated flaw in the permit, permit record, or permit process. For example, the EPA may refer to statements the agency made at the time of the 1992 operating permit program final rule, or to statements made in prior relevant title V response orders. Other examples might include statements made by the agency when finalizing or revising new source performance standards for a particular source category, or requirements in an approved state implementation plan or approved title V program that might apply to the source's permit in question. However, the petition review process generally focuses primarily on the administrative record for the proposed permit and on the petition itself as the new regulatory text in 40 CFR 70.13 explains.

IV. Responses to Significant Comments on the Proposed Rule

The EPA received 30 comments on the proposed rule. In this section, we summarize the major comments and our responses. For details on all comments and our responses, please refer to the RTC document in the docket for this rulemaking.

A. Electronic Submittal System for Petitions

1. Summary of Proposal

The EPA proposed regulatory language that encouraged the use of the agency's electronic submittal system for title V petitions. Alternative methods for submittal were also identified in the proposed rule, including a designated email address and a specific physical

address listed in the proposal and on the title V petition Web site. Relatedly, the EPA also proposed a revision to 40 CFR 70.8(d) to require the petitioner to provide copies of its petition to the permitting authority and the permit applicant in order to make the language consistent with the language in section 505(b)(2) of the Act.

2. Summary of Comments

Ten commenters supported the centralized petition intake via the electronic submittal system. In addition, two commenters suggested identifying at least one physical address within the Code of Federal Regulations for when agency websites might be down, while another commenter cautioned against being too specific in the regulations as systems, names, or addresses may change. As the database was functional at the time of proposal, one commenter submitted a petition and suggested improvements for the database. This commenter recommended modifying the database to provide an electronic receipt that states the date of submission to both those who electronically file a public petition, and to the relevant EPA personnel. The commenter further noted experiencing some difficulty with the email system while submitting a title V petition before the close of the comment period on the proposed rule.

No adverse comments were received regarding the new language proposed for 40 CFR 70.8(d) to require a petitioner to provide copies of its petition to the permitting authority and permit applicant.

3. EPA Response

We appreciate commenter support for the electronic submittal system and the alternate methods for submittal we identified. We agree with the comments noting that these changes reduce confusion, both for petitioners submitting petitions and well as for agency personnel in trying to locate a submitted petition. Further, we agree with those commenters that view this

specification of methods as a streamlining measure – it is more efficient to track petitions when they enter the agency through one of the three direct routes, and these changes help ensure that the staff providing an initial review of petitions can access them in a timely manner.

The EPA recognizes the concerns regarding database and email functionality identified by one commenter. Upon reviewing the comment, agency staff tested and adjusted the database to ensure that automatic notification of receipt was functional. The EPA intended the system to generate automatic receipts at submittal, and thanks the commenter for bringing the issue to our attention so that it could be addressed. However, we do not understand either comment as objecting to the proposed changes to the regulatory text to require use of one of the three identified submission methods. Rather, the EPA takes these comments as providing constructive feedback to make the available systems more useful.

Since the public comment period on the proposal closed, all title V petitions entering the agency have been electronically received through the CDX system or *titlevpetitions@epa.gov*. Though the agency noted at proposal that there is no need to submit petitions through more than one method, several petitioners sent a duplicate paper copy to the specified physical address – these were also successfully received. We recognize that these petitioners may have opted to send petitions through more than one method to ensure timely delivery while this rulemaking was in the proposal stage; now that we are finalizing these changes, the EPA continues to promote the submittal of petitions through the electronic submittal system and reiterates the agency's preference that only one method of submission be used for a petition to reduce the confusion and inefficiencies that can arise from duplicate submissions.

The agency disagrees with commenters that suggest a specific physical address should be listed in the Code of Federal Regulations and agrees with the comment that cautioned against

providing too much specificity in the regulations as systems, names, or addresses may change. While we understand that there are instances where electronic systems may be down, they are not likely to be unavailable for the entire 60-day petition period. Further, if such information were printed in the Code of Federal Regulations and an update needed to be made, the EPA would need to prepare notification of that change to be published; in the meantime, potential petitioners may be submitting petitions through the outdated information printed in the Code of Federal Regulations as the change is being processed. This could create confusion, cause delays, and add to agency printing costs.

As noted earlier, since proposal the agency has received all petitions through either the CDX database or *titlevpetitions@epa.gov*, with some duplicate petitions sent to the specified physical address. This further supports our decision not to list a specific physical address in the Code of Federal regulations, as the process appears to now be working smoothly for both petitioners and the agency.

B. Required Petition Content and Format

1. Summary of Proposal

To assist the public with preparing their petitions, as well as to assist the EPA in review of petitions, the agency proposed to establish key mandatory content that must be included in title V petitions. These proposed requirements were based on statutory requirements under CAA section 505(b)(2) and aspects of the demonstration standard as interpreted by the EPA in numerous orders responding to title V petitions. The agency's proposal would require that any information a petitioner wanted considered in support of an issue raised as a petition claim be included in the body of the petition because information incorporated by reference into a petition would not be considered. The EPA also proposed to establish format requirements to further

assist the agency in its review process. To illustrate how the material that would be required under the proposed regulatory revisions could be presented succinctly and effectively, the agency included an “example claim.” Further, the EPA solicited comment on questions regarding whether it should impose page limits on title V petitions.

2. Summary of Comments

Nine commenters generally supported the proposal for content and formatting requirements as a means to provide more consistency in petition submissions, with some suggested changes. However, two commenters opposed the changes because they believed the proposal was too restrictive and created additional barriers to public engagement in the process. A couple of commenters were also concerned about the potential restrictiveness of the proposal to disregard information incorporated only by reference into petitions, and the proposed requirement that “all pertinent information in support of each issue raised as a petition claim shall be incorporated within the body of the petition.” Finally, of the ten commenters that provided responses to the questions posed by the EPA regarding page limits, only two commenters supported such a measure.

3. EPA Response

Commenters generally supported the proposed new content and format requirements and the EPA is largely finalizing those as proposed. The content that will now be required by the agency is consistent with statements and conclusions that the EPA previously made in title V petition orders and summarized in the proposal, and it is the key information the EPA focuses on when reviewing petition claims of potential title V permitting deficiencies. Detailing the specific information necessary for evaluating a petition claim should increase public transparency and understanding of the title V petition and review process; thus, the EPA disagrees with the

commenters that found the content and format requirements to be too restrictive and unduly burdensome. Incorporating this information into the regulatory text means that petitioners can consult the regulations to determine what content and format is required for petitions, rather than needing to discern the EPA's practices and preferences on these key points from responses to prior title V petitions. The EPA anticipates that these mandatory petition content requirements and standard formatting will, thus, help petitioners to succinctly focus their claims and present them effectively. Further, the EPA expects these requirements to reduce the instances in which petitioners fail to provide an adequate demonstration because they are not aware of the weight the EPA puts on particular information when reviewing petition claims. With these changes, the EPA anticipates receiving petitions that more clearly articulate the petition claims and the basis for them, focusing on key information, including the alleged deficiency in the permit or permit process; the applicable requirements under the CAA or requirements under 40 CFR part 70 that are in question; where the issue was raised during the public comment period (or a demonstration as to why it was impracticable to do so or that the grounds for the objection arose after the public comment period closed); how the state responded to the comment; and why the state's response allegedly does not adequately address the issue.

Regarding the proposed requirement that "all pertinent information in support of each issue raised as a petition claim shall be contained within the body of the petition," the agency recognizes the concern raised by a commenter that requiring "all" such information to be included in the petition itself may occasionally be too rigorous a standard. The EPA's original intent was to receive petitions that clearly state main points in the petition, and if petitioners want to support their claim with additional attachment materials, in the petition they could cite to the information in the attachment with an explanation as to why they are citing to it. To illustrate, the

EPA provided an example claim in the proposal, and this still serves as a good indication of a concise and effective presentation of a hypothetical claim that includes all pieces of required content, including citations to two exhibits. *See* 81 FR 57836 (August 24, 2016). To address the commenter concern and provide additional clarity on expected content, the agency is revising the regulatory text to read “[a]ny arguments or claims the petitioner wishes the EPA to consider in support of each issue raised must be contained within the body of the petition.”

Finalizing these changes to the regulatory text falls within the EPA’s inherent discretion to formulate procedures to discharge its obligations under CAA section 505(b)(2). The revisions are aimed in part at helping petitioners ensure that they are including in their petitions the necessary information to satisfy the demonstration burden. Specifically, to compel an objection by the EPA, CAA section 505(b)(2) requires the petitioner to demonstrate that a permit is not in compliance with requirements of the Act, including requirements of the applicable implementation plan. The Act does not dictate all the information that must be included or the format in which that information should be presented; nor does it address what kind of showing must be made in order to demonstrate that an objection is warranted. Courts have determined that the term “demonstrates” in CAA section 505(b)(2) is ambiguous and have accordingly deferred to the EPA’s reasonable interpretation of that term. *See, e.g., MacClarence v. EPA*, 596 F.3d 1123, 1130–31 (9th Cir. 2010) (finding the EPA’s expectation that a petition provide “references, legal analysis, or evidence” a reasonable interpretation of the term “demonstrates” under CAA section 505(b)(2)). Similar procedural requirements have been established for other EPA programs and processes, including the procedures for appeals filed with the Environmental Appeals Board. *See* 78 FR 5281 (January 25, 2013) (adopting revisions to “codify current procedural practices, clarify existing review procedures, and simplify the permit review

process”). The importance of the demonstration burden in determining whether to grant an objection in response to a petition was discussed in more detail in the proposal and in several title V orders. *See, e.g., In the Matter of Consolidated Environmental Management, Inc. – Nucor Steel Louisiana*, Order on Petition Numbers VI-2011-06 and VI-2012-07 (June 19, 2013) at 4-7.

Finally, the EPA appreciates commenters that responded to our request for comment on whether page limits should be established for title V petitions as a means of promoting concise petitions and to further facilitate efficient and expeditious review of petitions by the EPA. Commenters generally opposed setting page limits as they could unduly limit a petitioner’s ability to explain deficiencies. The agency will not be taking any action regarding page limits at this time.

C. Administrative Record Requirements

1. Summary of Proposal

The EPA proposed to revise 40 CFR 70.7 to require a permitting authority to respond in writing to significant comments received during the public participation process for a draft permit. The agency proposed a regulatory revision to 40 CFR 70.8 that would require a written RTC and the statement of basis document to be included as part of the proposed permit record that is sent to the EPA for its review under CAA section 505(b)(1). Under the proposal, if no significant comments were received during a public comment period, the permitting authority would be expected to prepare and submit to EPA for its 45-day review a statement to that effect. In addition, to stress the importance of the statement of basis document, the EPA proposed to revise 40 CFR 70.4(b), 70.7(h), and 70.8(a) to specifically identify the statement of basis document as a necessary part of the permit record throughout the permitting process. Further, the agency proposed to amend an incorrect reference in 40 CFR 70.4(b)(3)(viii) that cited to section

115(c) of the Act, rather than the correct section 114(c) of the Act. Finally, the EPA proposed to revise 40 CFR 70.7(h)(7) to require that within 30 days of sending the proposed permit to the EPA, that permitting authorities must provide notification to the public that the proposed permit and the response to significant public comments are available. Relatedly, the agency suggested another means to notify the public could be for the EPA to post when a proposed permit is received and the corresponding 60-day deadline for submitting a petition on the EPA Regional Office websites.

2. Brief Summary of Comments

Twelve commenters supported the proposed requirement that permitting authorities prepare a written RTC, while three opposed because they believe the written RTC should be optional. Commenters also expressed concern over the proposed requirement to respond to “significant” comments for various reasons. Identifying the statement of basis as a necessary part of the permit record was supported by two commenters; however, clarification was requested by three commenters, as “statement of basis” is not a defined term in the regulations. Regarding the proposed requirement to submit the RTC and statement of basis with the proposed permit, two commenters indicated support. Sixteen commenters urged the EPA to clarify that concurrent or parallel review remains permissible, given that the proposed revisions to the regulatory text could be read to preclude it.⁸ The agency interprets those comments to potentially support providing necessary information with the proposed permit if it does not prevent the practice of concurrent review. On the other hand, one commenter opposes concurrent review, asserting it is unnecessary and unworkable, in the commenter’s view. Twelve commenters opposed the

⁸ In concurrent review, also sometimes referred to as parallel review, the EPA’s 45-day review and the public comment period (which typically lasts 30 days) occur during overlapping times. For sequential review, the EPA’s 45-day review period does not begin until the public comment period ends.

proposed requirement for permitting authorities to notify the public that the proposed permit was sent to the EPA, while only one commenter supported it. Finally, eight commenters supported the agency's suggestion to post relevant dates for submitting petitions.

3. EPA Response

The EPA is finalizing the requirement to prepare a written RTC when significant comments are received on a draft permit. This requirement was based on a recommendation from the Clean Air Act Advisory Committee's (CAAAC's) Title V Task Force.⁹ Commenters generally supported this change. While three commenters did not support this new requirement because they believe it should be optional and/or could expose permitting authorities to allegations of failure to respond to comments, under general principles of administrative law, it is incumbent upon an administrative agency to respond to significant comments raised during the public comment period. *See, e.g., Home Box Office v. FCC*, 567 F.2d 935 (D.C. Cir. 1977) ("the opportunity to comment is meaningless unless the agency responds to significant points raised by the public.") The EPA has long held the view that RTCs for the proposed permit can play a critical role in the agency's formulation of a response to a title V petition on that proposed permit. *See, e.g. In the Matter of Consolidated Edison Company Hudson Avenue Generating Station*, Order on Petition Number II-2002-10 (September 30, 2003) at 8 (noting that the

⁹ In 2004, the Clean Air Act Advisory Committee (CAAAC) established a Task Force to evaluate the title V program. The 18-member panel, comprised of industry, state, and environmental group representatives, identified what Committee members believed was and was not working well. After hosting public meetings and receiving written feedback, and compiling the information with the personal experience of panel members, the Title V Task Force issued a final report that highlighted concerns and recommendations for improvement. Under Recommendation 1, the majority of Task Force members agreed that if a permitting authority receives comments on a draft permit, it is essential that the permitting authority prepare a written response to comments. *See* Final Report to the Clean Air Act Advisory Committee on the Title V Implementation Experience: Title V Implementation Experience (April 2006). The Title V Task Force Final Report is available at: <https://www.epa.gov/caaac/final-report-clean-air-act-advisory-committee-title-v-implementation-experience>.

permitting authority “has an obligation to respond to significant public comments and adequately explain the basis of its decision”). See, also, *In the Matter of Onyx Environmental Services*, Petition V-2005-1 (February 1, 2006) at 7; *In the Matter of Louisiana Pacific Corporation*, Order on Permit Number V-2006-3 (November 5, 2007) at 4-5; *In the Matter of Wheelabrator Baltimore, L.P.*, Order on Permit Number 24-510-01886 (April 14, 2010) at 7. The agency has denied petition claims where the Petitioner fails to acknowledge or react to a permitting authority’s final reasoning in the RTC. See, *In the Matter of Gallatin Fossil Plant*, Order on Permit Number 561209 (January 25, 2018) at 10. See, also, *In the Matter of Consolidated Environmental Management, Inc. – Nucor Steel Louisiana*, Order on Petition Nos. VI-2011-06 and VI-2012-07 at 7 (June 19, 2013). Thus, the EPA does not agree with the assertion by some commenters that a written response to significant comments should be optional. Moreover, it is to the benefit of the permitting authority to respond to significant comments, as it is an opportunity to further refine the permit record and/or articulate the permitting authority’s rationale for decisions made in the permitting process. As the issues raised in a title V petition must generally be raised with reasonable specificity during the public comment period, responding to public comments gives the permitting authority a chance to address any issues that may become the basis for a petition. However, if the permitting authority does not respond to such comments in writing, it may not be clear to the EPA in reviewing a title V petition whether or how the permitting authority addressed the concerns raised during the public participation process. Without the availability of the written RTC during the petition period, there may be an increased likelihood of granting a particular claim on the basis that the state provided an inadequate rationale or permit record. See, e.g., *In the Matter of Scrubgrass*

Generating Company, L.P., Order on Petition Number III-2016-5 (May 12, 2017) at 12 (granting petition claim because the permitting authority did not respond to significant comments).

Several commenters raised concerns regarding the term “significant comment,” with some suggesting that permitting authorities should be required to respond instead to all comments. The agency recognizes that a permitting authority’s obligation to respond to public comments is informed by long history of administrative law and practice and thus is not creating a new definition of this term through this rulemaking. However, in the interests of providing some guidance on how the agency understands the term, the EPA notes that its interpretation of this phrase is informed by the D.C. Circuit’s framing of the relevant inquiry in its review of regulatory actions by federal agencies. For example, that court has explained that: “only comments which, if true, raise points relevant to the agency’s decision and which, if adopted, would require a change in an agency’s proposed rule cast doubt on the reasonableness of a position taken by the agency.” *Home Box Office*, 567 F.2d at 35 n. 58 (D.C. Cir. 1977). The court has also explained that an agency’s response to public comments is critical to enable the reviewing body “to see what major issues of policy were ventilated ... and why the agency reacted to them as it did.” *Pub. Citizen, Inc. v. F.A.A.*, 988 F.2d 186, 197 (D.C. Cir. 1993). Thus, the requirement to address significant public comments is relevant to assuring the reviewing body that the agency’s decision was based on a “consideration of the relevant factors.” *Sherley v. Sebelius*, 689 F.3d 776, 784 (D.C. Cir. 2012) (quoting *Covad Commc’ns v. FCC*, 450 F.3d 528, 550 (D.C. Cir. 2006)).

The agency further notes that it is the responsibility of the permitting authority to determine in the first instance whether a comment is significant. The agency is not creating a requirement to respond to all comments because it understands that some comments submitted

during the public comment process may not be relevant or material to the permitting proceeding. See *Nat'l Ass'n of Regulatory Util. Comm'rs v. F.E.R.C.*, 475 F.3d 1277, 1285 (D.C. Cir. 2007) (“The doctrine obliging agencies to address significant comments leaves them free to ignore insignificant ones.”) The agency recognizes that some permitting authorities do respond to all comments; this new requirement does not preclude that practice. To the contrary, the agency encourages that practice because it creates a clear record that the permitting authority understood and responded to each comment. In finalizing this change to require permitting authorities to respond in writing to significant comments, the EPA aims to promote more consistency among permitting authorities in meeting the minimum requirements under part 70 and to have more complete permit records for the benefit of the permitting authority, the source, the public, and the EPA.

While commenters were supportive of the revisions to the regulatory text to further highlight the importance of the statement of basis to permit records, they raised the point that “statement of basis” is not a defined term in 40 CFR 70.2. Commenters suggested instead to refer to the “statement required by §70.7(a)(5).” The EPA frequently uses the term “statement of basis” to refer to the statement required by §70.7(a)(5). To that end, the EPA will be adjusting the language to now read “the statement required by §70.7(a)(5) (sometimes referred to as the ‘statement of basis’),” for clarity.

We agree with the commenters that stated that these changes provide more access to and better understanding of permitting decisions, and provide better protection for public health. The EPA still believes the RTC (where applicable) and statement of basis are two critical documents in the administrative record for a proposed permit, and it notes that they generally provide beneficial details and explanations for terms and conditions found in the permit. When these

documents are unavailable for the EPA's 45-day review period, the EPA usually cannot provide as effective a review under CAA section 505(b)(1) as when a full administrative record, including these documents, is available during that review. Moreover, when these documents are also unavailable for the 60-day petition period, potential petitioners may be missing important information to determine whether to submit a petition or may not be able to provide a full argument in support of any issues they may raise in a petition.

Commenters raised concerns, however, with the proposed regulatory text, stating that it could be read to preclude concurrent review, a practice preferred by some permitting authorities and sources in some situations.¹⁰ As EPA noted in the preamble to the proposal, the EPA recognized that some permitting authorities run the public comment period and the 45-day EPA review period concurrently and the agency proposed regulatory text intended to make clear that this practice may continue, as long as no significant comment was received. If a significant public comment was received, the Administrator would no longer consider the submitted permit as a proposed permit. In such instances, the permitting authority would need to make any necessary revisions to the permit or permit record, and per the regulations that we proposed, submit the revised proposed permit to the EPA with the RTC and statement of basis. Moreover, this submission would need to be accompanied by any other required supporting information under 40 CFR 70.8(a)(1), and any revisions that were made to address the public comments, in order to start the EPA's 45-day review period. This reflected, and continues to reflect, the EPA's understanding of how such concurrent permitting programs should—and in most cases, do—operate.

¹⁰ As noted above, in concurrent review, also sometimes referred to as parallel review, the EPA's 45-day review and the public comment period (which typically lasts 30 days) occur during overlapping times. For sequential review, the EPA's 45-day review period does not begin until the public comment period ends.

After evaluating the regulatory text and comments, the EPA recognized that alterations to the proposed regulatory text would more clearly effectuate the agency's desired change to require RTC availability (when applicable) without slowing the permit process in situations where concurrent review is used properly. Therefore, to respond to commenters, the EPA is finalizing changes to the regulatory text that more clearly specify how the new administrative record requirement works for each of the two permit review processes:

Sequential review: the permitting authority must submit the necessary documents including the statement of basis and a written RTC (if significant comment was received during the public comment period) with the proposed permit per 40 CFR 70.8(a)(1)(i). The Administrator's 45-day review period for this proposed permit will not begin until such materials (except the final permit) have been received by the EPA.

Concurrent review: the permitting authority must submit the necessary documents including the statement of basis with the proposed permit to begin the EPA's 45-day review per 40 CFR 70.8(a)(1)(ii). However, if a significant public comment is received during the public participation process on the draft permit, the Administrator will no longer consider the submitted permit a proposed permit for purposes of its review under CAA section 505(b)(1) and its implementing regulations. In such instances, the permitting authority would need to make any necessary revisions to the permit and/or other documents in the permit record to address the comments, and submit the revised proposed permit to the EPA with the necessary documents—including the written RTC and statement of basis—in order to start the EPA's 45-day review period.¹¹

¹¹ The EPA expects that the permitting authority would withdraw the initial permit submission if significant comments are received during the public participation process on a draft permit that

The final regulatory text addresses concerns from many commenters and will still provide more complete permit records for the EPA's 45-day review period, as well as during the 60-day petition period. For example, the regulatory text clarifies that the documents in 40 CFR 70.8(a)(1), except the final permit, are required for the EPA's 45-day review. Although the final text adopted in 40 CFR 70.8(a)(1)(i) and (ii) differs from the regulatory text in the agency's proposal, it remains wholly consistent with the description of the EPA's intent for the regulation as set forth in the preamble to the proposal. *See* 81 FR at 57839.

Permitting authorities and sources that wish to conduct concurrent review will still be able to do so; in situations where no significant comments are received on a draft title V permit this may serve as a streamlining measure. Where significant comments are received on a draft permit undergoing concurrent review or for a proposed permit being reviewed sequentially, the EPA will now have the benefit of both the RTC and statement of basis along with the other necessary documents it receives under 40 CFR 70.8(a)(1). Many permitting authorities were already sending a written RTC (where applicable) and a statement of basis along with the proposed permit for the EPA's review; this change provides more consistency and clarity for all stakeholders. For the first time, the agency is addressing the appropriate use of concurrent review explicitly in the regulations, increasing the transparency around the practice. Further, this is responsive to a recommendation from the CAAAC's Title V Task Force, which stated that "it is essential that the permitting authority prepare a written response to comments" and that it should be "available to the public prior to the start of the 60-day period for petitioning the EPA

has been submitted for concurrent review. If EPA later finds that a significant comment was received and the initial permit submission is not withdrawn, the permit submission will no longer be considered a proposed permit.

Administrator to object to the permit.”¹² This revision to the part 70 rules, along with the other changes to the administrative record requirements discussed in this preamble, are within the EPA’s inherent discretion to formulate procedures to discharge its obligations under CAA sections 505(b)(1) and 505(b)(2).

The EPA is not finalizing its proposal to revise 40 CFR 70.7(h)(7) to require that within 30 days of sending the proposed permit to the EPA, that permitting authorities provide notification that the proposed permit and the RTC are available to the public. Commenters expressed concern about the proposed requirement (at times referred to in comments as “second notice”) as being burdensome and unnecessary. Further, many commenters stated that the EPA is in the best position to track the relevant dates for all parties, including potential petitioners. The agency agrees with these commenters and therefore, the EPA will, where practicable, post the agency’s 45-day review period end date, as well as the end date for the 60-day window in which a petition may be submitted on a proposed permit, on the EPA Regional Web sites. Where dates are not listed, the EPA expects that Web sites will list a point of contact (or contacts) that can provide such information when requested.¹³ The EPA continues to encourage permitting authorities to provide notifications to the public or interested stakeholders regarding the timing of proposal of permits to the EPA, for example by making that information available either online or in the publication in which the public notice of the draft permit was given.

¹² The majority of Task Force members also recommended that if a permitting authority received public comments (from anyone other than the permittee) during the public comment period, the RTC described in Recommendation 1 should be provided to the EPA for consideration during its 45-day review period. See Title V Task Force Final Report Recommendation 2 at 239.

¹³ The agency is working toward a national electronic permitting system that will have the capability to track relevant dates; however, this system will not be in operation before this final action is published. At this time, listing relevant dates or points of contact to obtain relevant dates on the EPA Regional Web sites is an effective means to convey the information to interested stakeholders.

D. Documents that May Be Considered in Reviewing Petitions

1. Summary of Proposal

The EPA proposed regulatory text (40 CFR 70.13) that described the information considered when petitions are reviewed, which generally includes, but is not limited to, the petition itself, including attachments to the petition, and the administrative record for the proposed permit. The administrative record for a proposed permit includes the draft and proposed permits; any permit applications relating to the draft or proposed permits; the statement of basis for the draft and proposed permits; the permitting authority's written responses to comments; relevant supporting materials made available to the public per 40 CFR 70.7(h)(2); and all other materials available to the permitting authority that are relevant to the permitting decision and that were made available to the public. If a final permit was available during the petition review period, that may also be considered.

2. Summary of Comments

Five comments were received regarding the proposed 40 CFR 70.13. Four of the commenters opposed the phrase "generally includes, but is not limited to" as they found it overly broad; believing that it could be interpreted to allow the EPA to consider unlimited information when reviewing a petition (particularly if it was not presented to the permitting authority first during the public comment period on a draft permit). One commenter suggested new language that would prohibit the consideration of responses or comments submitted by a permitting authority concerning the merits of a public petition when deciding whether to grant or deny that petition.

3. EPA Response

The EPA understands the concerns voiced by commenters that the proposed language might be read to allow for unlimited information to be reviewed by the EPA when determining whether to grant or deny a petition. However, section 505(b)(2) of the CAA requires that a petition be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or the objections arose after such period). Based on these four comments, the EPA has removed “but not limited to” from the proposed §70.13 so that the final text states “generally includes the administrative record for the proposed permit and the petition, including attachments to the petition.” As noted in Section III.D of this document, there are instances in which the EPA would appropriately refer to resources outside the petition and the administrative record for the proposed permit to more fully evaluate whether there is a demonstrated flaw in the permit, permit record, or permit process. This final regulatory text still allows for such reference, while hopefully alleviating some commenter concerns.

The EPA also understands the concern raised by the commenter that permitting authority comments on a petition should not be considered. While at this time the agency is not adding new language to §70.13, the EPA generally focuses on the information identified in the administrative record and has highlighted when permitting authorities have the opportunity to provide information and complete the permit record. As noted in the preamble to the proposed rule, permitting authorities have at least three opportunities to provide material for the permit record and ensure that it comports with the CAA: the draft, proposed, and final permit. The EPA was and is recommending practices for permitting authorities when preparing title V permits that can minimize the likelihood that a petition will be submitted on a title V permit. For example,

they may fully address significant comments on draft permits and ensure the permit or permit record includes adequate rationale for the decisions made. *See* 81 FR 57841.

V. Implementation

The implementation section of the proposal for this rulemaking solicited comment as to whether revisions to any approved state or local programs would be necessary if the proposed revisions to the part 70 regulations were finalized. 81 FR 57842 (August 24, 2016). Five comments regarding implementation and potential state or local rule changes were received. Two commenters noted that no implementation timeline was included with the proposed rule. Another commenter stated that the proposal did not specify whether the proposed revisions would apply to permits that are undergoing public comment or EPA review at the time the rule is finalized. Finally, one state commenter indicated the rule as proposed would not require changes to its rules, while two commenters from state or local agencies indicated that state rule changes may be necessary to reflect the proposed requirements. One of the latter commenters pointed only to a “change relating to the eligibility of minor modifications for petitions” as an example of something they believed might require a state rule change. Yet the proposal regarding the availability of an opportunity to file a petition on a minor permit modification was not a proposed change in the underlying requirements but rather a proposed change to the regulatory text intended to clarify the operation of the existing regulations. *See, e.g.*, 57 FR 32283 (July 21, 1992) (addressing the availability of EPA’s 45-day review period and petition opportunities for minor permit modifications under the part 70 rules). Other than this point, these two commenters did not specify any particular aspects of the proposed revisions that might require changes to state rules.

In light of the small number of comments received indicating any potential need for state or local rule changes, the EPA anticipates that the final rule provisions can generally be implemented without changes to state or local rules. However, the agency intends to handle any necessary state or local program revisions on a case-by-case basis under 40 CFR 70.4(i). The EPA expects any permitting authority that needs to revise its rules in order to implement any of the changes in this final rule to notify its respective Regional Office and initiate the program revision process per 40 CFR 70.4(i).

The effective date of this rule is **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and the requirements in this rule will apply prospectively after that date, including for proposed permits and title V petitions. For example, the agency intends to begin applying the rules regarding petition format and content prospectively to petitions that are submitted to the EPA on or after the effective date for this rule. A significant portion of the revisions finalized in this action generally reflect current practice, and the agency is providing for 60 days between publication of this rule and the effective date in order to allow more time for stakeholders to prepare for the rule changes. Thus, the agency anticipates a transition with minimal disruption.

VI. Determination of Nationwide Scope and Effect

Section 307(b)(1) of the CAA indicates the Federal Courts of Appeal in which petitions for review of final actions by the EPA must be filed. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if: (i) the agency action consists of “nationally applicable regulations promulgated, or final action taken, by the Administrator under [the CAA]”; or (ii) such action is locally or regionally applicable, but

“such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.”

As described in this section, this final action is nationally applicable for purposes of CAA section 307(b)(1). To the extent a court finds this final action to be locally or regionally applicable, for the reasons explained in this section, the EPA finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1). This action addresses revisions to the EPA’s regulations in part 70 for operating permit programs, and these regulations apply to permitting programs across the country.

For this reason, this final action is nationally applicable or, in the alternative, the EPA finds that this action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1). Thus, pursuant to CAA section 307(b), any petitions for review of this final action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**.

VII. Environmental Justice Considerations

This final action revises the part 70 regulations to improve the title V petition submittal, review and response processes. The revision and guidance provided in the proposed rule should increase the transparency and clarity of the petition process for all stakeholders. First, the establishment of centralized petition submittal intake is expected to reduce or eliminate confusion over where to submit a petition. When using the preferred method of an electronic petition submittal through the agency’s electronic submittal system, a petitioner should also have the immediate assurance that the petition and any attachments were received. However, alternative submittal methods are still available options for members of the public, including those that experience technical difficulties when trying to submit a petition or for those that do

not have access to electronic submittal mechanisms. Second, the content and format requirements for petitions provide instruction and clarity on what must be included in a title V petition. The EPA expects this change will assist petitioners in providing all the critical information for their petitions in an effective manner, which may also increase the agency's efficiency in responding to petitions. Third, requiring permitting authorities to respond to public comments in a written document that (where applicable) is available during the 60-day opportunity to file a petition provides increased availability of information regarding permits for the public in general and petitioners specifically. This final action does not compel any specific changes to the requirements to provide opportunities for public participation in permitting nor does it finalize any particular permit action that may affect the fair treatment and meaningful involvement of all people. Based on these changes, the EPA disagrees with the commenter that stated the proposed changes would "further erode rather than advance Environmental Justice principles by making it more difficult for those who live and work near major sources of air pollution to bring deficiencies in Title V permits to EPA's attention and to effectively demand the public health protections guaranteed by the [CAA]."

When preparing for the proposed rule, the agency participated in community calls where the EPA presented a brief overview and announcement of the rulemaking effort. The EPA also held a webinar on September 13, 2016, where the agency described the title V petition process, the content of the proposed rule, and when and how to submit comments.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This action is not a significant action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0243 for the title V part 70 program. The revisions to part 70 finalized in this action fall under “Permitting Authority Activities” already accounted for in the supporting statement for the Information Collection Request (ICR). For example, the activity of “permit issuance” includes formalizing permits, placing copies of final permits on public websites, entering information into the EPA’s permit website, and providing copies to sources. In addition, “response to public comments” includes analyzing public comments and revising the draft permit accordingly when appropriate. The preparation of the RTC, where applicable, and its submittal to the EPA for its 45-day review is an action that many permitting authorities already take and can be accounted for under the existing activities in the approved program ICR.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This final rule will not impose any requirements directly on small entities. Entities potentially affected directly by this proposal include anyone that chooses to submit a title V petition on a proposed title V permit prepared by an EPA-approved state, local or tribal title V permitting authority. Other entities directly affected may include state, local, and tribal governments and none of these governments are small governments. Other types of small entities are not directly subject to the requirements of this action.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. Many permitting authorities were already preparing the RTC document, but through this rulemaking it is now a requirement. Associated costs are hard to quantify, but are anticipated to be minimal, as permitting authorities were already required to collect and consider public comments and it will be a new task for a small number of permitting authorities.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This final action codifies practices that are already undertaken by many permitting authorities. Preparing a written response to comment document is an activity already conducted by many permitting authorities, and is a practice that was recommended by the CAAAC's Title V Task Force, which was composed of various stakeholders, including states. The availability of an RTC will reduce

the likelihood of an EPA determination to grant a petition due to an inadequate rationale relied upon by a permitting authority.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federal recognized tribal governments, nor preempt tribal law. The Southern Ute Indian Tribe has an EPA-approved operating permit program under 40 CFR part 70 and could be impacted. At the proposal stage, the EPA conducted outreach to the tribes through a call with the National Tribal Air Association. Further, the agency offered to consult with the Southern Ute Indian tribe. The EPA solicited comment from affected tribal communities on the implications of this rulemaking, although none were received.

H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This final action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health and environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This rulemaking is primarily administrative and procedural in nature; it focuses on streamlining and clarifying the title V petition submittal, review, and response processes, as well as on ensuring that EPA timely receives information it needs to effectively review proposed permits and title V petitions. The regulatory revisions in this action, as well as the guidance that was provided in the preamble to the proposed rule, should increase the transparency and clarity of the petition process for all stakeholders. *See* 81 FR 57822 (August 24, 2016). The general public as well as potential petitioners are expected to benefit by having better notification of permits and review deadlines (e.g., the EPA intends, where possible to post on the EPA Regional Web sites when a proposed permit is received and the corresponding 60-day deadline for submitting a petition) and by better access to permitting decision information (e.g., the permitting authority's written response to comments). Additional information is contained in Section V of this notice.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

M. Determination Under CAA Section 307(d)

Section 307(d)(1)(V) of the CAA provides that the provisions of the CAA section 307(d) apply to “such other actions as the administrator may determine.” Pursuant to CAA section 307(d)(1)(V), the Administrator determines that this final action is subject to the provisions of CAA section 307(d).

IX. Statutory Authority

The statutory authority for this final action is provided by 42 U.S.C. 7401 *et. seq.*

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 14, 2020.

Andrew R. Wheeler,
Administrator.

For the reasons stated in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

1. The authority citation for the part 70 continues to read as follows:

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

2. Section 70.4 is amended by revising paragraph (b)(3)(viii) to read as follows:

§ 70.4 State program submittals and transition.

* * * * *

(b) * * *

(3) * * *

(viii) Make available to the public any permit application, statement required by §70.7(a)(5) (sometimes referred to as the ‘statement of basis’), compliance plan, permit, and monitoring and compliance certification report pursuant to section 503(e) of the Act, except for information entitled to confidential treatment pursuant to section 114(c) of the Act. The contents of a part 70 permit itself shall not be entitled to protection under section 114(c) of the Act.

* * * * *

3. Section 70.7 is amended by revising paragraphs (h)(2) and (5) and adding paragraph (h)(6) to read as follows:

§ 70.7 Permit issuance, renewal, reopenings, and revisions.

* * * * *

(h) * * *

(2) The notice shall identify the affected facility; the name and address of the permittee; the name and address of the permitting authority processing the permit; the activity or activities

involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person (or an email or Web site address) from whom interested persons may obtain additional information, including copies of the permit draft, the statement required by § 70.7(a)(5) (sometimes referred to as the ‘statement of basis’) for the draft permit, the application, all relevant supporting materials, including those set forth in § 70.4(b)(3)(viii) of this part, and all other materials available to the permitting authority (except for publicly-available materials and publications) that are relevant to the permit decision; a brief description of the comment procedures required by this part; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled);

* * * * *

(5) The permitting authority shall keep a record of the commenters and of the issues raised during the public participation process, as well as records of the written comments submitted during that process, so that the Administrator may fulfill his obligation under section 505(b)(2) of the Act to determine whether a citizen petition may be granted, and such records shall be available to the public.

(6) The permitting authority must respond in writing to all significant comments raised during the public participation process, including any such written comments submitted during the public comment period and any such comments raised during any public hearing on the permit.

4. Section 70.8 is amended by revising paragraphs (a)(1), (c)(1), and (d) to read as follows:

§ 70.8 Permit review by EPA and affected States.

(a) *Transmission of information to the Administrator.* (1) The permit program must require that the permitting authority provide to the Administrator a copy of each permit application (including any application for significant or minor permit modification), the statement required by § 70.7(a)(5) (sometimes referred to as the ‘statement of basis’), each proposed permit, each final permit, and, if significant comment is received during the public participation process, the written response to comments (which must include a written response to all significant comments raised during the public participation process on the draft permit and recorded under § 70.7(h)(5) of this part), and an explanation of how those public comments and the permitting authority’s responses are available to the public. The applicant may be required by the permitting authority to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the permitting authority may submit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA’s national database management system.

(i) Where the public participation process for a draft permit concludes before the proposed permit is submitted to the Administrator, the statement required by § 70.7(a)(5) (sometimes referred to as the ‘statement of basis’) and the written response to comments, if significant comment was received during the public participation process, must be submitted with the proposed permit along with other supporting materials required in § 70.8(a)(1) of this part, excepting the final permit. The Administrator’s 45-day review period for this proposed permit will not begin until such materials have been received by the EPA.

(ii) In instances where the Administrator has received a proposed permit from a permitting authority before the public participation process on the draft permit has been completed, the statement required by § 70.7(a)(5) (sometimes referred to as the ‘statement of basis’) must be submitted with the proposed permit along with other supporting materials, required in § 70.8(a)(1) of this part, excepting the final permit and the written response to comments. If the permitting authority receives significant comment on the draft permit during the public participation process, but after the submission of the proposed permit to the Administrator, the Administrator will no longer consider the submitted proposed permit as a permit proposed to be issued under section 505 of the Act. In such instances, the permitting authority must make any revisions to the permit and permit record necessary to address such public comments, including preparation of a written response to comments (which must include a written response to all significant comments raised during the public participation process on the draft permit and recorded under § 70.7(h)(5) of this part), and must submit the proposed permit and the supporting material required under § 70.8(a)(1)(i) of this part, excepting the final permit, to the Administrator after the public comment period has closed. This later submitted permit will then be considered as a permit proposed to be issued under section 505 of the Act, and the Administrator’s review period for the proposed permit will not begin until all required materials have been received by the EPA.

* * * * *

(c) * * *

(1) The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part. No permit for which an application must be transmitted to the Administrator under

paragraph (a) of this section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information required under § 70.8(a)(1), including under § 70.8(a)(1)(i) or (ii) where applicable.

* * * * *

(d) *Public petitions to the Administrator.* The program shall provide that, if the Administrator does not object in writing under paragraph (c) of this section, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. The petitioner shall provide a copy of such petition to the permitting authority and the applicant. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in § 70.7(h) of this part, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the permitting authority shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the permitting authority has issued a permit prior to receipt of an EPA objection under this paragraph, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in § 70.7(g)(4) or (g)(5)(i) and (ii) of this part except in unusual circumstances, and the permitting authority may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

* * * * *

5. Add § 70.12 to read as follows:

§ 70.12 Public petition requirements.

(a) *Standard petition requirements.* Each public petition sent to the Administrator under §70.8(d) of this part must include the following elements in the following order:

(1) *Identification of the proposed permit on which the petition is based.* The petition must provide the permit number, version number, or any other information by which the permit can be readily identified. The petition must specify whether the permit action is an initial permit, a permit renewal, or a permit modification/revision, including minor modifications/revisions.

(2) *Identification of petition claims.* Any issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements under this part. Any arguments or claims the petitioner wishes the EPA to consider in support of each issue raised must be contained within the body of the petition, or if reference is made to an attached document, the body of the petition must provide a specific citation to the referenced information, along with a description of how that information supports the claim. In determining whether to object, the Administrator will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. For each claim raised, the petition must identify the following:

(i) The specific grounds for an objection, citing to a specific permit term or condition where applicable.

(ii) The applicable requirement as defined in § 70.2, or requirement under this part, that is not met.

(iii) An explanation of how the term or condition in the permit, or relevant portion of the permit record or permit process, is not adequate to comply with the corresponding applicable requirement or requirement under this part.

(iv) If the petition claims that the permitting authority did not provide for a public participation procedure required under § 70.7(h), the petition must identify specifically the required public participation procedure that was not provided.

(v) Identification of where the issue was raised with reasonable specificity during the public comment period provided for in § 70.7(h), citing to any relevant page numbers in the public comment submitted to the permitting authority and attaching this public comment to the petition. If the grounds for the objection were not raised with reasonable specificity during the public comment period, the petitioner must demonstrate that such grounds arose after that period, or that it was impracticable to raise such objections within that period, as required under § 70.8(d) of this part.

(vi) Unless the grounds for the objection arose after the public comment period or it was impracticable to raise the objection within that period such that the exception under § 70.8(d) applies, the petition must identify where the permitting authority responded to the public comment, including page number(s) in the publicly available written response to comment, and explain how the permitting authority's response to the comment is inadequate to address the issue raised in the public comment. If the response to comment document does not address the public comment at all, the petition must state that.

(b) *Timeliness.* In order for the EPA to be able to determine whether a petition was timely filed, the petition must have or be accompanied by one of the following: a date or time stamp of receipt through EPA's designated electronic submission system as described in § 70.14; a date or

time stamp on an electronic submission through EPA's designated email address as described in § 70.14; or a postmark date generated for a paper copy mailed to EPA's designated physical address.

6. Add § 70.13 to read as follows:

§ 70.13 Documents that may be considered in reviewing petitions.

The information that the Administrator considers in making a determination whether to grant or deny a petition submitted under § 70.8(d) of this part on a proposed permit generally includes the petition itself, including attachments to the petition, and the administrative record for the proposed permit. For purposes of this paragraph, the administrative record for a particular proposed permit includes the draft and proposed permits; any permit applications that relate to the draft or proposed permits; the statement required by § 70.7(a)(5) (sometimes referred to as the 'statement of basis'); any comments the permitting authority received during the public participation process on the draft permit; the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; and all materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority made available to the public according to § 70.7(h)(2) of this part. If a final permit is available during the agency's review of a petition on a proposed permit, that document may also be considered as part of making a determination whether to grant or deny the petition.

7. Add § 70.14 to read as follows:

§ 70.14 Submission of petitions.

Any petition to the Administrator must be submitted through the Operating Permits Group in the Air Quality Policy Division in the Office of Air Quality Planning and Standards,

using one of the three following methods, as described at the EPA Title V Petitions Web site: an electronic submission through the EPA's designated submission system identified on that Web site (the agency's preferred method); an electronic submission through the EPA's designated email address listed on that Web site; or a paper submission to the EPA's designated physical address listed on that Web site. Any necessary attachments must be submitted together with the petition, using the same method as for the petition. Once a petition has been successfully submitted using one of these three methods, the petitioner should not submit additional copies of the petition using another method. The Administrator is not obligated to consider petitions submitted to the agency using any method other than the three identified in this section.

[FR Doc. 2020-01099 Filed: 2/4/2020 8:45 am; Publication Date: 2/5/2020]