MEMORANDUM

SUBJECT: Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs under Title V

FROM: Stephen D. Page, Director
Office of Air Quality Planning and Standards

TO: Regional Air Division Directors, Regions 1 − 10

The attached guidance is being issued in response to the Environmental Protection Agency Office of Inspector General's (OIG) 2014 report regarding the importance of enhanced EPA oversight of state, local, and tribal[1] fee practices under title V of the Clean Air Act (CAA).[2] Specifically, this guidance reflects the EPA's August 22, 2014, commitment to the OIG in response to OIG's Recommendation 1 to "assess our existing fee guidance and to re-issue, revise, or supplement such guidance as necessary" (we refer to the attached guidance as the "**updated fee schedule guidance**"). The EPA's response to the OIG's other recommendations are being issued concurrently in a separate memorandum and guidance concerning title V program and fee evaluations ("title V evaluation guidance").[3]

Title V of the CAA and 40 CFR part 70 contain the minimum requirements for operating permit programs developed and administered by air agencies, including requirements that each program issue operating permits to certain facilities (facilities that are "major sources" of air pollution and certain other facilities) and that each program charge fees ("permit fees") to these facilities to fund the permit program. These operating permits are intended to identify all federal air pollution control requirements that apply to a facility ("applicable requirements") and to require the facility to track and report compliance pursuant to a series of recordkeeping and reporting requirements. Section 502(b)(3) of the CAA requires each air agency to collect fees "sufficient to cover all reasonable (direct and indirect) costs required to develop and administer" its title V permit program.[4] The 40 CFR part 70 regulations

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[1] As used herein, the term "air agency" refers to state, local, and tribal agencies.
[2] *Enhanced EPA Oversight Needed to Address Risks from Declining Clean Air Act Title V Revenues*; U.S. EPA Office of the Inspector General. Report No. 15-P-0006, October 20, 2014 ("OIG Report").
[3] *Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70*, Stephen D. Page, Director, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, to Regional Air Division Directors, Regions 1 – 10, [INSERT DATE] ("title V evaluation guidance"). See the EPA's title V guidance website at *https://www.epa.gov/title-v-operating-permits/title-v-operating-permit-policy-and-guidance-document-index*.
[4] 42 U.S.C. § 7661a(b)(3)(A).

establish the minimum program requirements for operating permit programs, including requirements for fees to be administered by air agencies with approved part 70 programs.[1]

On August 4, 1993, the EPA issued a memorandum, commonly referred to as the "1993 fee schedule guidance," to provide initial guidance on the Agency's approach to reviewing fee schedules for part 70 programs.[2] Since that time, the EPA has issued a number of memoranda and a final rule[3] that have touched upon, revised, or clarified certain topics contained in the 1993 fee schedule guidance.[4] The attached updated fee schedule guidance provides additional direction on how the EPA interprets the title V permit issuance and fee collection activities, as well as discussion of other fee requirements for air agencies. In addition to the memoranda and final rule noted above, the updated fee schedule guidance includes numerous changes to remove outdated regulatory provisions and focuses on the review of existing part 70 programs, rather than on initial program submittals.[5]

The updated fee schedule guidance sets forth updated principles, which will generally guide the EPA's review of part 70 fee programs. These updates are consistent with the fee requirements of title V and part 70, as well as prior guidance on fee requirements. Accordingly, these updates do not themselves provide substantively new fee guidance or create any inconsistencies with fee requirements or prior fee guidance.

The development of this guidance included outreach and discussions with stakeholders, including the EPA Regions, the National Association of Clean Air Agencies, and the Association of Air Pollution Control Agencies.

If you have any questions concerning the updated fee schedule guidance, please contact Juan Santiago, Associate Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, at (919) 541-1084 or *santiago.juan@epa.gov*.

Attachments:
1. Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs under Title V
2. Attachment A – List of Guidance Relevant to Part 70 Fee Requirements
3. Attachment B – Example Presumptive Minimum Calculation

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[1] 40 C.F.R. § 70.9.

[2] *See Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs under Title V*, John S. Seitz, Director, OAQPS, U.S. EPA, to Air Division Directors, Regions I-X (August 4, 1993) ("1993 fee schedule guidance") at page 1. Note that there was an earlier document on this subject that was superseded by the 1993 fee schedule guidance.

[3] *See* the October 23, 2015, final rule, *Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Utility Generating Units,* 80 FR 64510, 64633 (Section XII.E "Implications for Title V Fee Requirements for GHGs").

[4] A list of the relevant title V fee-related guidance memoranda is included as Attachment A.

[5] At this time, all air agencies have EPA-approved part 70 programs. It is conceivable that additional part 70 program submittals will be received in the future for a number of Indian tribes, and, if so, the EPA will work closely with the tribes to assist them with identifying activities which must be included in costs related to the program submittal and to meet other fee requirements of part 70.

DISCLAIMER

These documents explain the requirements of the EPA regulations, describe the EPA policies, and recommend procedures for sources and permitting authorities to use to ensure that title V fee schedules and fee evaluations are consistent with applicable regulations. These documents are not a rule or regulation, and the guidance they contain may not apply to a particular situation based upon the individual facts and circumstances. The guidance does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. The use of non-mandatory language such as "guidance," "recommend," "may," "should," and "can," is intended to describe the EPA policies and recommendations. Mandatory terminology, such as "must" and "required," is intended to describe controlling requirements under the terms of the Clean Air Act and the EPA's regulations, but the documents do not establish legally binding requirements in and of themselves.

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Updated Guidance on EPA Review of
Fee Schedules for Operating Permit Programs under Title V

The purpose of this document and the attachments is to provide guidance on the Environmental Protection Agency's (EPA's) review of fee schedules for operating permit programs under 40 CFR part 70 (part 70), the regulations that set minimum requirements for permit programs administered by state, local, and tribal air agencies (referred to here as, "air agencies"), authorized under title V of the Clean Air Act (CAA or Act). This document updates and clarifies the previous fee schedule guidance issued by the EPA on August 4, 1993, (the "1993 fee schedule guidance").[1] This updated fee schedule guidance clarifies which permit program costs must be included in an analysis to demonstrate that adequate fees are collected to fund all part 70 program costs. The guidance also discusses other fee-related requirements for air agencies. The updated fee schedule guidance focuses on the costs of program implementation, rather than on the costs of initial program development (as was the case for the 1993 fee schedule guidance).

I. General Principles for Review of Title V Fee Schedules

Section 502(b)(3)(A) of the Act requires operating permit programs to fund all "reasonable direct and indirect costs" of the permit programs through fees collected from "part 70 sources"[2] and requires the fees to be sufficient to cover all reasonable permit program costs.[3] The terms "fee schedule" and "permit fees" are sometimes used interchangeably to describe the fees that an air agency charges to part 70 sources to fulfill this requirement.[4] Section II of this guidance provides an explanation of the term "direct and indirect costs" and a detailed explanation of specific permit program activities to be included in costs for the purpose of analyzing whether the permit fees are sufficient to cover all the permit program costs.

The fees collected under a part 70 program are classified as "exchange revenue" or "earned revenue" in governmental accounting guidance because a good or service (e.g., a permit) is provided by a governmental entity in exchange for a price (e.g., a permit fee).[5] Also, governmental accounting guidance provides that only revenue classified as "exchange revenue" should be compared to costs to

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[1] *See Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs under Title V*, John S. Seitz, Director, OAQPS, U.S. EPA, to Air Division Directors, Regions I-X (August 4, 1993) ("1993 fee schedule guidance").

[2] The term "part 70 sources" is defined in 40 CFR § 7.2 to mean "any source subject to the permitting requirements of this part, as provided in 40 CFR §§ 70.3(a) and 70.3(b) of this part." Thus, a source is a part 70 source prior to obtaining a part 70 permit if the source is subject to permitting under the applicability provisions of 40 CFR § 70.3.

[3] *See* 40 CFR § 70.9(a).

[4] The fee schedule is typically included in the regulations that the air agency uses to implement part 70; it is a component of the part 70 program. The fee schedule (and other elements of an air agency's regulations for part 70) can vary significantly across air agencies.

[5] *See* Statement of Recommended Accounting Standards Number 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting*, issued by the Federal Accounting Standards Advisory Board (FASAB) ("FASAB No. 7") at page 2. *See also* Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998), issued by the Governmental Accounting Standards Board (GASB) at pages 1-4 ("GASB No. 33").

determine the overall financial results of operations for a period.[6] This means that legislative appropriations, taxes, grants,[7] fines and penalties, which are generally characterized as "nonexchange revenue,"[8] should not be compared to part 70 program costs to determine if permit fees are sufficient to cover costs.

Any fee required by part 70 must "be used solely for permit program costs" (in other words, the fees must not be diverted for non-part 70 purposes).[9] Many air agencies transfer fees that are in excess of program costs for a particular year into accounts to be used for part 70 purposes in another year when there is expected to be a fee shortfall, and this is an acceptable practice. However, if title V fees are transferred for uses not authorized by part 70 (e.g., highway maintenance or other general obligations of government), they would be considered improperly diverted.

Each air agency is required, as part of its part 70 program submittal, to submit a "fee demonstration" to show that its fee schedule would result in the collection and retention of fees sufficient to cover program costs, including an "initial accounting" to show that "required fee revenues" would be used solely to cover program costs.[10]

The EPA will generally presume that a fee schedule is sufficient to cover program costs if it results in the collection and retention of fees in an amount above the "presumptive minimum" —i.e., "an amount *not less than* $25 per ton" adjusted annually for increases in the Consumer Price Index[11] "times the total tons of the actual emissions of each regulated air pollutant (for presumptive fee calculation) emitted from part 70 sources," plus any greenhouse gas (GHG) cost adjustments, as applicable.[12] A fee schedule that is expected to result in fees above the "presumptive minimum" is considered to be "presumptively adequate." Note that the "presumptive minimum" is unique to each air agency because the total tons of actual emissions of "regulated air pollutants (for presumptive fee calculation)" are unique to each air agency.

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[6] *See* FASAB No. 7 at page 8; GASB No. 33.

[7] Concerning grants, an EPA memo, *Use of Clean Air Act Title V Permit Fees as Match for Section 105 Grants*, Gerald Yamada, Acting General Counsel, U.S. EPA, to Michael H. Shapiro, Acting Assistant Administrator, Office of Air and Radiation, U.S. EPA, October 22, 1993, states that part 70 fees are "program income" under 40 CFR § 31.25(a), and, because of this, part 70 fees cannot be used as match for section 105 grants and no air agency may count the same activity for both grant and part 70 fee purposes.

[8] "Nonexchange revenue" arises primarily from the exercise of governmental power to demand payment from the public (e.g., income tax, sales tax, property taxes, fines, and penalties) and when a government gives value directly without directly receiving equal value in return (e.g., legislative appropriations and intergovernmental grants).

[9] *See* 40 CFR § 70.9(a).

[10] *See* 40 CFR §§ 70.9(c)-(d) (fee demonstration requirements); 1993 fee schedule guidance (explaining that preparing the fee demonstrations that is part of the initial part 70 program submittal).

[11] *See* CAA § 502(b)(3)(B); 40 CFR § 70.9(b). The presumptive minimum fee rate is adjusted for increases in the Consumer Price Index each year in September. The fee rate for the period of September 1, 2016, through August 31, 2017, is $48.88 per ton. For more information, including a list of historical adjustment to the fee rate, *see https://www.epa.gov/title-v-operating-permits/permit-fees*.

[12] *See* 40 CFR § 70.9(b)(2) (emphasis added). The components of the "presumptive minimum" calculation—including certain emissions that may be excluded from the calculation, and an upward "GHG cost adjustment" that may apply—are addressed in 40 CFR §§ 70.9(b)(2)(i)–(v).

As part of a fee demonstration, air agencies with fee schedules that would not be presumptively adequate are required to submit a "detailed accounting" to show that collection and retention of fee revenue would be sufficient to cover program costs.[13] Air agencies are also required to provide an "initial accounting" to show how "required fee revenues" will be used solely to cover permitting program costs.[14] Air agencies with fee schedules considered "presumptively adequate" are nevertheless required to submit fee demonstrations,[15] but they may be "presumptive minimum program cost" demonstrations[16] showing that expected fee revenues are above the "presumptive minimum" calculated for the air agency. In order to receive the EPA's approval, any fee demonstration must provide an "initial accounting" showing how required fee revenues will be used solely to cover program costs.[17]

After an air agency fee program is approved by the EPA, there are several fee requirements that may apply to the permit program as circumstances dictate. One requirement is for an air agency to submit, as required by the EPA, "periodic updates" of the "initial accounting" portion of the fee demonstration to show how "required fee revenues" are used solely to cover the costs of the permit program.[18] Further, an air agency must submit a "detailed accounting" demonstrating that the fee schedule is adequate to cover costs if an air agency changes its fee schedule to collect *less than* the presumptive minimum or if the EPA determines—based on the EPA's own initiative, or based on comments rebutting a presumption of fee sufficiency—that there are serious questions regarding whether the fee schedule is sufficient to cover the costs.[19]

In addition, title V and part 70 provide general authority for the EPA to conduct oversight activities to ensure air agencies adequately administer and enforce the requirements for operating permits programs, including that the requirements for fees are being met on an ongoing basis.[20] One method the EPA uses to perform such oversight is through periodic program or fee evaluations of part 70 programs. As part of such an evaluation, the EPA may carefully review how the state has addressed the fee requirements of part 70 as previously described and work with the air agency to seek improvements or make corrections and adjustments if any fee concerns are uncovered. Also, as part of such an evaluation, the EPA may require "periodic updates" to a fee demonstration or a "detailed accounting" that fees are sufficient to cover permit program costs.[21] See the EPA's separate *Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70* ("title V evaluation guidance") for more on this subject.[22]

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[13] *See* 40 CFR § 70.9(b).
[14] *See* 40 CFR § 70.9(d).
[15] *See* 40 CFR § 70.9(c).
[16] *See* Sections 1.1 and 3.2 of the fee demonstration guidance.
[17] *See* 40 CFR § 70.9(d).
[18] *See* 40 CFR § 70.9(d).
[19] *See* 40 CFR § 70.9(b)(5); fee demonstration guidance, Section 2.0 (providing an example of a "detailed accounting"). The scope and content of a "detailed accounting" may vary but will generally involve information on program fees and costs and other accounting procedures and practices that will show how the air agency's fee schedule will be sufficient to cover all program costs.
[20] *See* CAA § 502(i); 40 CFR § 70.10(b).
[21] *See* 40 CFR §§ 70.9(a); 70.9(b)(1), (5)(ii).
[22] *Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70*, Stephen D. Page, Director, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, to Regional Air Division Directors, Regions 1 – 10, [INSERT DATE].

II. Types of Costs and Activities Included in Title V Costs

A. Overview

Activities that count as part 70 costs (direct and indirect costs of part 70). Part 70 uses the term "permit program costs" to describe the costs that must count for fee purposes under part 70.[23] This term is defined in 40 CFR § 70.2 as "all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in [40 CFR § 70.9(b)] (whether such costs are incurred by the permitting authority or other State or local agencies that do not issue permits directly, but that support permit issuance or administration)." At a minimum, any air program activity performed by an air agency under title V or part 70 must be included in program costs. Many of the activities required under title V or part 70 are described in Sections II.B through II.K of this guidance.

As described above, part 70 costs must include all "reasonable direct and indirect costs"[24] that are incurred by air agencies in the development, implementation, and enforcement of the part 70 program. "Direct costs" are expenses that can be directly attributed to part 70 program activities or services. "Direct costs" can generally be subdivided into two categories: "direct labor costs" and "other direct costs." The term "direct labor costs" refers to salary and wages for direct work on part 70, including fringe benefits. The term "other direct costs" refers to other direct part 70 expenses, such as materials, equipment, professional services, official travel (e.g., transportation, food and lodging), public notices, public hearings, and contracted services. "Indirect costs" are costs for "general administration" or "overhead" that are not directly attributable to a part 70 program because they benefit multiple programs or cost objectives, but they are needed to operate a part 70 program. "Indirect costs" for a part 70 program are typically determined based on an indirect rate or a proportional share of the expenses of a larger organization. Examples of "indirect costs" include, but are not limited to, costs for utilities, rent, general administrative support, data processing charges, training and staff development, budget and accounting support, supplies and postage.

In addition, note that air agency accounting practices vary in how they nominally categorize costs as "direct costs," "indirect costs," or "other direct costs," depending on the specific nature of the activity. An example would be training costs, which are typically treated as "indirect costs" but sometimes as "direct costs," particularly where the training is about part 70 (e.g., for permit staff development). While accounting practices and terminology may vary among air agencies, the important principle to remember is that all reasonable direct and indirect costs of the program must be represented in the costs reported to the EPA, regardless of how the costs are categorized by the air agency.

Part 70 and the 1993 fee schedule guidance describe the part 70 activities of "reviewing and acting on any application for a part 70 permit"[25] and "implementing and enforcing the terms of any part 70

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[23] See 40 CFR § 70.9(a).

[24] The phrases, "reasonable direct and indirect costs" and "reasonable (direct and indirect) costs" have the same meaning. The phrase "reasonable direct and indirect costs" was initially used by the EPA in the 1993 fee schedule guidance, page 1. The phrase "reasonable (direct and indirect) costs" is also found in CAA section 502(b)(3)(A), (C)(iii).

[25] The response to comments document for the part 70 final rule clarifies that the phrase "acting on permit applications" in section 503(c) of the Act means the act of issuing or denying a permit, not just beginning review of a permit application. *See*

permit," and these activities must be included in part 70 costs.[26] The following paragraphs use these phrases to clarify the extent that certain activities performed by the air agency must be included in part 70 costs. The phrase "reviewing and acting on any application for a part 70 permit" refers to all activities related to processing the permit application and issuing (or denying) the final part 70 permit, while the phrase "implementing and enforcing the terms of any part 70 permit" refers to all activities necessary to administer and enforce final part 70 permits, prior to the filing of an administrative or judicial complaint or order.[27]

Also, the following paragraphs clarify the extent to which fees must fund the costs of "permit programs under provisions of the Act other than title V" (hereafter referred to as "other permits") (e.g., preconstruction review permits) and "activities which relate to provisions of the Act in addition to title V" (hereafter referred to as "other activities") (e.g., a requirement for an air agency to develop a case-by-case emissions standard for an existing source).[28]

Costs of implementing and enforcing the requirements of "other permits."[29] The costs of "implementing and enforcing" the terms of a part 70 permit must be treated as a part 70 cost.[30] Thus, part 70 costs must include the cost of implementing and enforcing any term or condition of a non-part 70 permit required under the Act[31] that is incorporated into a part 70 permit and meets the definition of "applicable requirement"[32] in part 70.
Similarly, the cost of implementing and enforcing any term or condition of a consent decree or order that originates in a non-part 70 permit that has been incorporated into a part 70 permit must be included as a part 70 cost.[33]

Technical Support Document for Title V Operating Permits Programs (May 1992) at page 4-4, EPA Docket No. EPA-HQ-OAR-2004-0288; Legacy Docket No. A-90-33.

[26] The phrases "reviewing and acting on any application for a part 70 permit" and "implementing and enforcing the terms of any part 70 permit" are found at 40 CFR § 70.9(b)(1)(ii) and (iv). Similar phrases are found in the EPA's 1993 fee schedule guidance at page 3 and the phrases in the guidance have the same meaning as the phrases in part 70. *See also*, CAA § 502(b)(3)(A).

[27] An EPA memo, *Matrix of Title V-Related and Air Grant-Eligible Activities*, OAQPS, U.S. EPA, September 23, 1993 (the "matrix guidance"), page 8, which clarifies that enforcement costs are counted for part 70 purposes prior to the filing of a complaint or order. *See* page 8.

[28] The phrases cited here were originally discussed on pages 2 and 3 of the cover memorandum for the 1993 fee schedule guidance.

[29] *See* page 3 of the cover memorandum for the 1993 fee schedule guidance for previous discussion of these "other activities."

[30] *See* 40 CFR § 70.9(b)(1)(iv).

[31] Examples of non-part 70 permits required under the Act may include "minor new source review" (minor NSR) permits, "synthetic minor" permits, Prevention of Significant Deterioration (PSD) permits, and Nonattainment NSR permits authorized under title I of the Act.

[32] "Applicable requirements" are the air quality requirements that must be included in part 70 permits. See the definition of "applicable requirement" in 40 CFR § 70.2, which includes "any terms and conditions of any preconstruction permits issued pursuant to any regulations [under title I]," and certain requirements under titles I, III, IV and VI of the Act.

[33] The EPA has previously explained that consent decrees and orders reflect the conclusion of a judicial or administrative process resulting from the enforcement of "applicable requirements," and, because of this, all CAA-related requirements in such consent decrees and orders "are appropriately treated as 'applicable requirements' and must be included in title V permits. . ." *See In the Matter of Citgo Refining and Chemicals Company, L.P.*, Order on Petition Number VI-2007-01, at 12 (May 28, 2009).

The costs of implementing and enforcing "applicable requirements" from a non-part 70 permit that will go into a part 70 permit in the future may be counted as part 70 costs. However, once a source has submitted a timely and complete part 70 application and paid part 70 fees, all costs of implementing and enforcing the non-part 70 permit must be counted as part 70 costs.[34]

Also, any implementation and enforcement activities related to a requirement that is incorporated into a part 70 permit that is not "federally enforceable" and would not meet the definition of an "applicable requirement" (e.g., a "state-only" requirement) need not be treated as a part 70 cost.[35] The matrix guidance also clarifies that state-only requirements are air grant-eligible activities, rather than title V-eligible activities.

Costs of reviewing and acting on applications for "other permits." The costs of "reviewing and acting on" (issuing or denying) any non-part 70 permit, such as a minor new source review (NSR) permit, should not be treated as a part 70 cost for fee purposes. The 1993 fee schedule guidance was ambiguous on this point,[36] but part 70 does not require any non-part 70 permits to be issued or denied; therefore, the costs of issuing or denying non-part 70 permits are not direct costs of part 70. In addition, the costs of issuing or denying non-part 70 permits are not indirect costs of part 70 because such activities are not needed to operate the part 70 program;[37] thus, it must not be treated as a title V cost. For example, the issuance of an NSR permit to create a "synthetic minor source"[38] would exempt the source from part 70 permitting based on major source status, and, thus, the source would not be counted for part 70 costs calculations (assuming the source was not subject to part 70 for another reason).

Costs of performing certain other activities related to applicable requirements. Certain activities required by the Act or its implementing regulations are not "applicable requirements" as defined in part 70 because they apply to the permitting authority rather than the source.[39] We refer to such activities as "other activities." As such, questions often arise as to whether the costs of "other activities" are part 70 costs, costs of the underlying standard, or costs of the preconstruction review permitting process.

Examples of applicable requirements associated with "other activities" include, but are not limited to, the following:

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[34] *See* EPA memo, *Additional Guidance on Funding Support for State and Local Programs*, Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, to Regional Administrators, Regions I–X, August 28, 1994.
[35] *See* 40 CFR § 70.6(b)(2).
[36] Note that the EPA's 1993 fee schedule guidance contains the ambiguous statement that "the costs of reviewing and acting on applications for permits required under Act provisions other than title V *need not* be recouped by title V fee." This statement has been interpreted by some to mean that the costs of non-title V permits "are not needed" or "may *optionally"* be counted in title V costs.
[37] This is distinct from the requirement to count the costs of implementing and enforcing any applicable requirements from a non-part 70 permit within a part 70 permit as part 70 costs.
[38] A "synthetic minor source" is a source that has practically enforceable restrictions on its potential to emit (PTE) such that the source's emissions would be kept below levels that would make it a "major source."
[39] Although the "other activities" may originate within a federal standard or requirement that we generally refer to as an "applicable requirement" and the activities may result in an "applicable requirement," the activities themselves do not meet the definition of "applicable requirement" within 40 CFR § 70.2.

- Emissions standards or other requirements for new sources under section 111(b) of the Act;
- Emissions standards or other requirements for existing sources under section 111(d) of the Act;
- Case-by-case maximum achievable control technology (MACT) standards that may be required under section 112 of the Act; and
- Activities required by a state, federal, or tribal implementation plan (SIP, FIP, or TIP), including section 110 of the Act.

The 1993 fee schedule guidance stated that the cost for performing "other activities" would be part 70 costs only to the extent the activities are "necessary for part 70 purposes."[40] The 1993 fee schedule guidance has resulted in numerous questions over the years as to the scope of the term "part 70 purposes." The EPA believes a clearer standard for determining when "other activities" must be included in part 70 costs would include an evaluation of: the extent to which the air agency is required to perform the "other activities" pursuant to part 70, title V, or the approved part 70 program; the extent to which the activity is performed to assure compliance with, or enforce, part 70 permit terms and conditions; or the extent to which a non-part 70 rule (e.g., a section 111 or 112 standard) requires the air agency to perform the activity in the part 70 permitting context. If an "other activity" does not meet any of these criteria (e.g., a non-part 70 rule requires an activity in a non-part 70 context), it should not be included in part 70 costs.

Nonetheless, if any activity is an "applicable requirement" for a source, the applicable requirement must be included in a part 70 permit and the costs to the air agency of including it in the permit (and implementing and enforcing) must be treated as part 70 costs.[41]

For example, the cost of *incorporating* a standard (e.g., a section 111(b) standard) into a part 70 permit—where the task is merely one of copying the requirements from the regulation unchanged into a permit—would be a part 70 cost. However, the cost of *developing* a source-specific emission limitation outside the permit processing context (e.g., a standard pursuant to section 111(d) emission guidelines) would be a section 111 cost (although the cost of subsequently incorporating that standard into the part 70 permit would be a part 70 cost).

The costs of "other activities" related to implementation plans, including section 110 or 111 of the Act, should not be counted for part 70 purposes if the activities are required as part of the preconstruction review process or directly relate to implementation plan development, as required by title I of the Act.[42] If an air agency is unsure of where to draw the line on including such activities in part 70 costs, they should contact the EPA for assistance.

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[40] See page 2 of the introductory memorandum for the 1993 fee schedule guidance.
[41] *See* § 70.9(b)(1)(ii), (4).
[42] Implementation plan development is mandated under title I of the Act and costs typically include such activities as maintaining state-wide emissions inventories and performing ambient monitoring and emissions modeling of air pollutants for which national ambient air quality standards have been set.

General standard for EPA review of part 70 costs for a particular air agency. In general, the EPA expects that part 70 permit fees will fund the activities listed in this guidance. However, in evaluating a part 70 program, the EPA will consider the particular design and attributes of that program. Because the nature of permitting-related activities can vary across air agencies, the EPA evaluates each program individually. The activities listed in this guidance may not represent the full range of activities to be covered by permit fees.[43] Additionally, some air agencies may have further program needs based on the particularities of their own air quality issues and program structure.

Sections II.B through II.K of this guidance provide further information on specific permitting activities and the extent to which the costs of such activities must be treated as part 70 costs.

B. The Costs of Part 70 Program Administration

All part 70 program administration costs must be treated as part 70 costs.[44] Examples of program administration costs include:

- Program infrastructure costs (e.g., development of part 70 regulations, implementation guidance, policies, procedures, and forms);
- Program integration costs (adapting to changes in related programs, such as NSR, section 112 programs, and other programs);
- Data system implementation costs (including data systems for submitting permitting information to the EPA, for permit program administration, implementation and tracking and to provide public access to permits or permit information);
- Costs to operate local or Regional offices for part 70, the costs of interfacing with other state, local, or tribal offices (e.g., briefing legislative or executive staff on program issues and responding to internal audits);
- Costs related to interfacing with the EPA (e.g., related to program oversight, including program evaluations, responding to public petitions, revising implementation agreements between the air agency and the EPA); and
- Activities similar to those above.

In addition, there are other program implementation costs, such as the costs of making determinations of which sources are subject to part 70 permitting requirements that must be treated as part 70 costs.[45] Examples of such activities include:

[43] The fee demonstration guidance cites various factors that may affect the types of activities included in a permit program and influence costs. *See* fee demonstration guidance at 4-5.

[44] This section includes many activities that would be categorized as part 70 costs under 40 CFR §§ 70.9(b)(1)(i)-(iii) that are not covered elsewhere in subsequent sections of this guidance and are necessary to conduct a part 70 program.

[45] Many of these activities may also be described as related to reviewing and acting on applications for part 70 permits, as provided in 40 CFR § 70.9(b)(1)(ii).

- Maintaining an inventory of part 70 sources (e.g., for enforcement of the requirement for sources to obtain a permit or for part 70 fee purposes);

- Costs of determining if an individual source is a major source (for applicability purposes);

- Costs of determining if a source qualifies for coverage under a general permit (if the air agency chooses to issue them); and

- Costs of determining if a non-major source is required to obtain a part 70 permit and costs of implementing any insignificant activity and emission level exemptions under part 70.

C. The Costs of Part 70 Program Revisions

All costs of revising an approved part 70 program must be treated as part 70 costs, including the costs of developing new program elements to respond to changes in requirements, whether the revisions are the air agency's own initiative or required by the EPA.[46] Examples of program revision costs include:

- Costs of revising the program elements that are changing (e.g., program legal authority, implementing regulations, data systems, and other program elements);

- Costs of documenting the changes; and

- Costs associated with obtaining the needed approvals, including for submitting program revisions to the EPA and any necessary follow-up work related to obtaining approval.

D. The Costs of Reviewing Applications and Acting on Part 70 Permits

All costs of reviewing an application for a part 70 permit, developing applicable requirements as part of the process of a permit, and ultimately acting upon the application must be treated as part 70 costs.[47] These costs must include the costs of the application completeness determination, the technical review of the application (including the review of any supplemental monitoring that may be needed, review of any compliance plans, compliance schedules, and review of initial compliance certifications included in the application), drafting permit terms and conditions to reflect the applicable requirements that apply to the source, determining if any permit shields apply, public participation, the EPA and affected air agency review, and issuing the permit. The cost of these activities must be included for initial permit processing, permit renewal, permit reopening, and permit modification.

The costs of developing part 70 permit terms and conditions. All costs associated with the development of permit terms and conditions to reflect the "applicable requirements," including the costs of incorporating such terms in part 70 permits, must be treated as part 70 costs. The applicable requirements include the emissions limitations and standards and other requirements as provided for in the definition of applicable requirements in 40 CFR § 70.2. Such costs may include the costs to determine the provisions of the applicable requirements that specifically apply to the source, to develop operational flexibility provisions, netting/trading conditions, and appropriate compliance conditions

[46] *See* 40 CFR § 70.4(i).
[47] *See* CAA section 502(b)(3)(A)(i); 40 CFR § 70.9(b)(1)(ii).

(e.g., inspection and entry, monitoring and reporting). Appropriate compliance provisions may include periodic monitoring and testing under 40 CFR § 70.6(a)(3)(i)(B) and monitoring sufficient to assure compliance under 40 CFR § 70.6(c)(1).

Part 70 also requires certain regulatory provisions to be included in permits, such as citation to the origin and authority of each permit term, a statement of permit duration, requirements related to fee payment, certain part 70 compliance and reporting requirements, a permit shield (if provided by the air agency), and similar terms. The costs of developing such terms must be covered by permit fees.[48]

The costs of developing "state-only" permit terms need not be treated as part 70 costs. Air agencies should screen or separate "state-only" requirements from federally-enforceable requirements and—while the act of separating part 70 terms from state-only terms should be treated as part 70 costs—the costs of developing state-only permit terms, putting them in the part 70 permit, and implementing and enforcing them as they appear in the part 70 permit need not be treated as part 70 costs for fee purposes.[49]

The costs of public participation and review (by the EPA and the affected air agency). All costs of notices (or transmitting information) to the public, affected air agencies and the EPA for part 70 permit issuance, renewal, significant modifications and (if required by state or local law) for minor modifications (including staff time and publication costs) must be treated as part 70 costs. [50]

Any costs associated with hearings for part 70 permit issuance, renewal, significant modifications, and for minor modifications (if required by state or local law), including preparation, administration, response, and documentation, must be treated as part 70 costs.

All costs for the air agency to develop and provide a response to public comments received during the public comment period must be treated as part 70 costs.

Any costs associated with transmitting necessary documentation to the EPA for review and response to an EPA objection must be treated as part 70 costs.[51] Also, the costs associated with an air agency's response to an EPA order granting objection to a part 70 permit and/or the costs of defending challenges to part 70 permit terms in state court must be treated as part 70 costs.

E. The Costs of Implementation and Enforcement of Part 70 Permits

With some exceptions related to court costs and enforcement actions, the costs of implementing and enforcing the terms of any part 70 permit must be treated as part 70 program costs.[52] Implementation and

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[48] *See* 40 CFR § 70.6.
[49] *See* the matrix guidance, which notes that state-only requirements in part 70 permits are air-grant-eligible activities, rather than title V-eligible activities.
[50] *See* 40 CFR § 70.7(h) concerning public participation and 40 CFR § 70.8 concerning the EPA and affected air agency review.
[51] *See* 40 CFR § 70.8(a).
[52] *See* 40 CFR §§ 70.4(b), 70.6, 70.9(b)(1)(iv), and 70.11.

enforcement of permit terms and conditions related to part 70 includes requirements for compliance plans, schedules of compliance, monitoring reports, deviation reports, and annual certifications.

The costs of any follow-up activities when compliance/enforcement issues are encountered should be treated as part 70 costs. Part 70 costs include such activities as conducting site visits, stack tests, inspections, audits, and requests for information either before or after a violation is identified (e.g., requests similar to the EPA's section 114 letters).

Part 70 costs should include the costs for any notices, findings, and letters of violation, and the development of cases and referrals up until the filing of the complaint or order. Excluded from permit costs are enforcement costs incurred after the filing of an administrative or judicial complaint.[53]

Part 70 costs must also include the costs of implementing and enforcing any restrictions on potential to emit (PTE) that are included in a part 70 permit, whether they originate in the part 70 permit or were transferred from a non-part 70 permit, such as a minor NSR permit for a "synthetic minor source."

F. The Costs of Implementing and Enforcing the Requirements of Non-Title V Permits Required Under the Act

Part 70 fees must cover the costs of implementing and enforcing the terms and conditions of "other permits" (non-part 70 permits) required under the Act, such as preconstruction review permits under title I, that have been incorporated in part 70 permits as "applicable requirements."[54]

Also, the costs of implementing and enforcing the terms and conditions of consent decrees and orders that originate in a non-part 70 permit that are incorporated into a part 70 permit must be treated as part 70 costs. *See* Section II.A of this guidance.

The costs of implementing and enforcing applicable requirements for "prospective part 70 sources" need not be treated as part 70 costs until such time as the source submits a timely and complete permit application and pays fees. In addition, the costs of implementing and enforcing "state-only" requirements need not be treated as part 70 costs.

G. The Costs of Performing Certain "Other Activities" Related to Applicable Requirements

Certain activities are required by the Act but are not "applicable requirements" because they apply to the permitting authority, rather than the source; such activities are referred to as "other activities."[55] Examples of applicable requirements that contain these activities include, but are not limited to, standards for existing sources under section 111(d) of the Act; case-by-case MACT under sections 112 of the Act; and certain activities required by a SIP, FIP, or TIP, including section 110 of the Act. The costs of other activities must be treated as part 70 costs, if the air agency is required to perform the activities by part 70, title V, or the air agency's approved part 70 program; if a non-part 70 rule requires them to be performed in the part 70 permitting context; or if the activities are needed to assure compliance with, or to enforce, the terms and conditions of a part 70 permit. The costs of other activities

[53] *See* the matrix guidance at page 8.
[54] Required to be treated as part 70 costs in certain cases by 40 CFR § 70.9(b)(1)(iv).
[55] Required to be treated as part 70 costs in certain cases by 40 CFR §§ 70.9(b)(1)(ii) and (iv).

should not be treated as part 70 costs, if they do not meet any of these criteria (e.g., a non-part 70 rule requires an activity that occurs in a non-part 70 context). *See* Section II.A of this guidance.

H. The Costs of Revising, Reopening, and Renewing Part 70 Permits

All costs associated with processing permit revisions, including for administrative amendments, minor modifications (fast-track and group processing), and significant modifications, must be treated as part 70 costs.[56] The part 70 costs must include all the costs of reviewing and acting on the application, as well as implementing and enforcing the revised permit terms.[57] The costs of implementing any "operational flexibility provisions"[58] approved into a program to streamline permit revision procedures must be treated as permit program costs (this may also generally be considered to be one of the costs of implementing a permit).

The cost for the air agency to reopen a part 70 permit for cause must be treated as part 70 costs. The proceedings to reopen a permit shall follow the same procedures that apply to initial permit issuance, and include a requirement for the air agency to provide a notice to the source of the agency's intent to reopen the permit.

When the EPA reopens a part 70 permit for cause, the air agency's costs for the proposed determination of termination, modification, or revocation and reissuance, and the costs to resolve the objection in accordance with the EPA's objection, must be treated as part 70 costs.

The cost of renewing permits every 5 years, which involves the same procedural requirements, including public participation, and the EPA and affected air agency review, must be treated as part 70 costs, [59] just as for initial permit issuance.

I. The Costs of General and Model Permits

All costs for development and implementation of general and model permits under part 70 must be included in part 70 program costs, including the costs of drafting permits, public participation, the EPA review and any affected air agency's review, permit issuance, publication, assessing applications for coverage under the general permit, and other related costs.[60] Note that the issuance of general and model permits is an option for air agencies, but if such permits are issued by an air agency under part 70, the costs must be included in part 70 costs.

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[56] Required to be treated as part 70 costs under 40 CFR § 70.9(b)(1)(ii). Also *see* 40 CFR § 70.7 for more on permit issuance, renewal, reopening and revision procedures.
[57] 40 CFR §§ 70.9(b)(1)(ii) and (iv).
[58] Section 502(b)(10) of the Act requires the operating permit regulations to include provisions to allow changes within a permitted facility without requiring a permit revision under certain circumstances. The EPA refers to these provisions as "operational flexibility provisions." *See* 40 CFR § 70.4(b)(12).
[59] 40 CFR § 70.9(b)(1)(ii).
[60] Required to be included in part 70 costs by 40 CFR §§ 70.9(b)(1)(ii) and (iv). Also *see* 40 CFR § 70.6(d) for more on the administration of general permits.

J. The Costs of the Portion of the Small Business Assistance Program (SBAP) Attributable to Part 70 Sources

The SBAP under title V is authorized to provide counseling to help small business stationary sources to determine and meet their obligations under the Act.[61] The SBAP is authorized to provide assistance to small business stationary sources under the preconstruction and operating permit programs; however, air agencies need only to include costs related to assistance with part 70 in part 70 costs.[62] *See* 40 CFR § 70.9(b)(1)(viii). Allowable costs for part 70 include the costs to establish a small business ombudsman program to provide information on the applicability of part 70 to sources, available assistance for part 70 sources, the rights and obligations of part 70 sources, and options for sources subject to part 70.

Part 70 costs for SBAP must include the costs for outreach/publications on the requirements of part 70 and/or the applicable requirements included in part 70 permits, the costs of assisting part 70 sources through a clearinghouse on compliance methods and technologies, including pollution prevention approaches, and the costs to assist sources with part 70 permitting, which may include the portion of costs for a small business compliance advisory panel that are related to part 70.

K. The Costs of Permit Fee Program Administration

All costs associated with the administration of an air agency's part 70 fee program must be included in part 70 costs, including the costs for revising fee schedules (as needed to cover all required costs), periodic updates, detailed accounting (if needed), determining the presumptive minimum for the air agency, participating in EPA evaluations of fee programs or similar EPA oversight activities, assisting sources with fee issues, auditing fee payment by sources, assessing penalties for fee payment errors, responding to internal audits and inquiries, and similar activities.[63]

III. Flexibility in Fee Schedule Design

An air agency may design its fee schedule to collect fees from sources using various methods, provided the fee structure raises sufficient revenue to cover all required program costs.[64] Thus, air agencies may

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[61] For examples of the types of activities of a SBAP that could be attributable to part 70 sources and funded by part 70 fees, see *Transition to Funding Portions of State and Local Air Programs with Permit Fees Rather than Federal Grants,* Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, to Regional Administrators, Regions I – X, July 21, 1994 ("transition guidance"); Letter from Conrad Simon, Director, Air & Waste Management Division, EPA Region II to Mr. Billy J. Sexton, Director, Jefferson County Department of Planning and Environmental Management, Air Pollution Control District, Louisville, Kentucky, January 23, 1996 ("Sexton memo").

[62] Note that the preconstruction review permitting costs of assisting non-part 70 sources should generally not be included as part 70 costs, except for costs related to implementation and enforcement of permit terms from a preconstruction review permit that have been included in a part 70 permit.

[63] *See* 40 CFR § 70.9(b)(l)(ii); *Overview of Clean Air Title V Financial Management and Reporting – A Handbook for Financial Managers*, Environment Finance Center, University of Maryland, Maryland Sea Grant College, University of Maryland. Supported by a grant from the U.S. EPA, January 1997 ("Financial Manager's Handbook") (providing an overview of air agency application of general government accounting, budgeting, and financial reporting concepts to the part 70 program).

[64] *See* 40 CFR § 70.9(b)(3).

charge: emissions-based fees based on actual emissions or allowable emissions; fixed fees for certain permit processes (different fees for initial permit review, renewals, or for various types of permit revisions); different fee rates (e.g., dollars per ton of emissions) for certain air pollutants; fees reflecting the actual costs of services for sources (such as charging for time and materials for a review); or other types of fees, including any combination of such fees. Finally, air agencies may charge annual fees or fees covering some other period of time.

This flexibility for fee schedule design is available without regard to whether the air agency has set its fees to collect above or below the presumptive minimum. Many air agencies have designed their fee schedules to collect fees using an emissions-based approach that mirrors the approach of part 70 for determining the presumptive minimum program cost for an air agency.[65] However, air agencies are not required to charge fees to sources in that manner, and it is possible that such an approach may not necessarily result in fees that would be sufficient to cover all part 70 program costs.

IV. The EPA Review of Existing Air Agency Fee Programs

The initial program submittals involved review of data on expected fee revenue, program costs and accounting practices that were prospective in nature, since little or no data would have been available on actual fees or costs at that time.

At this point, the EPA review of air agency fee programs generally focuses on a review of actual data on fee revenue, program costs, and review of existing accounting practices. The EPA oversight of existing fee programs will also likely be conducted as part of a program evaluation, a separate fee evaluation, or through submittal of any periodic updates or detailed accountings related to fee demonstration requirements. The EPA has issued a separate memorandum and guidance on part 70 program and fee evaluations concurrently with this updated fee schedule guidance.[66]

Fee evaluations for existing part 70 programs will generally focus on certain key requirements of the Act and part 70 for fees discussed in Section I, *General Principles for Review of Title V Fee Schedules*, of this guidance. Such reviews may cover certain aspects of air agency accounting practices and procedures related to fees, particularly fee assessment procedures, tracking of fee collection and revenue uses (including transfers in and out of part 70 program accounts), whether all part 70 costs are included in the air agency's accounting of costs, and potentially other accounting aspects.

A fee evaluation may include a review of an air agency's fee program status with respect to the presumptive minimum defined in 40 CFR § 70.9(b)(2). This may be important in cases where a part 70 program was initially approved to charge above the presumptive minimum, in order to determine if the air agency is now charging less than the presumptive minimum. This is relevant because 40 CFR § 70.9(b)(5)(i) requires an air agency to submit a detailed accounting to show that its fees would be

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[65] *See* 40 CFR § 70.9(b)(2)(i).

[66] *Program and Fee Evaluation Strategy and Guidance for Part 70*, Stephen D. Page, Director, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, to Regional Air Division Directors, Regions 1 – 10, [INSERT DATE].

adequate to cover the program costs if the air agency charges less than the presumptive minimum. This requirement is ongoing (not restricted to program submittals).

In addition, the EPA revised the part 70 requirements related to calculating the presumptive minimum to add a "GHG cost adjustment" in an October 23, 2015, final rule.[67] Although the EPA has announced a review of this final rule (82 FR 16330, April 4, 2017), the EPA has not proposed any specific changes to the "GHG cost adjustment." Because air agencies are required to collect sufficient fees to cover the costs of implementing their operating permit programs, they may still use the "GHG cost adjustment" (as applicable) in calculating the fees owed to reflect the associated administrative burden of considering GHGs in the permitting process. The "GHG cost adjustment" is designed to cover the overall added administrative burden of adding GHGs to the permitting program in a general sense.

"Presumptive Minimum" Calculation

1. **Calculate the "Cost of Emissions."** The calculation is based on multiplying the actual emissions of "fee pollutants"[68] (tons) from the air agency's part 70 sources for a preceding 12-month period by the "presumptive minimum fee rate"[69] ($/ton) that is in effect at the time the calculation is performed.

   Air agencies may exclude the following types of fee pollutants from the calculation:
   - Actual emissions of each regulated fee pollutant in excess of 4,000 tons per year on source-by-source basis.[70]
   - Actual emissions of any regulated fee pollutant emitted by a part 70 source that was already included in the presumptive minimum fee calculation (i.e., double-counting of the same pollutant is not required).[71]
   - Insignificant quantities of actual emissions not required in a permit application pursuant to 40 CFR § 70.5(c).[72]

2. **Calculate the "GHG Cost Adjustment" (as applicable)**[73] The "GHG cost adjustment" is the cost for the air agency to conduct certain application reviews (activities) to determine if GHGs have been properly addressed for an annual period. The adjustment is calculated by multiplying

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[67] The "GHG cost adjustment" was promulgated as part of an October 23, 2015, final rule titled, *Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Utility Generating Units*, 80 FR 64510. Specifically, see Section XII.E. "Implications for Title V Fee Requirements for GHGs" at page 64633. *See also* 40 CFR §§ 70.9(b)(2)(v) and (d)(3)(viii).

[68] The term "fee pollutants" used here is shorthand for "regulated pollutants (for presumptive fee calculation)," as defined in 40 CFR § 70.2.

[69] The "presumptive minimum fee rate" is calculated by the EPA in September of each year and is effective from September 1 to August 31 of the following year. The fee rate is adjusted annually for changes in the Consumer Price Index (CPI) and is published on the following Internet site: *https://www.epa.gov/title-v-operating-permits/permit-fees.*

[70] *See* 40 CFR § 70.9(b)(2)(ii)(B).

[71] *See* 40 CFR § 70.9(b)(2)(ii)(C). For example, a source may emit an air pollutant that is defined as both a hazardous air pollutant and a pollutant for which a national ambient air quality standard has been established, e.g., a volatile organic compound. The actual emissions of such a pollutant is not required to be counted twice for fee purposes.

[72] *See* 40 CFR § 70.9(b)(2)(ii)(D).

[73] *See* 40 CFR §§ 70.9(b)(2)(i) and (v).

the total hours to conduct the activities (burden hours) by the average cost of staff time ($/hour) to conduct the activities.

To calculate the total hours for the air agency to conduct the activities, multiply the number of activities performed in each category listed in the following table by the corresponding "burden hours per activity factor," and sum the results.[74]

Table 1. GHG reviews counted for GHG cost adjustment purposes

Activity	Burden Hours per Activity Factor
GHG completeness determination (for initial permit or updated application)	43
GHG evaluation for a permit modification or related permit action	7
GHG evaluation at permit renewal	10

To determine the GHG cost adjustment ($), the total hours to conduct the reviews (calculated above) is multiplied by the average cost of staff time ($/hour). The average cost of staff time must include wages, employee benefits, and overhead and will be unique to the air agency. The average cost may be known for the air program or may be available from the air agency budget office or accounting staff.

3. **Calculate the Total Presumptive Minimum.** The total presumptive minimum ($) for the annual period is determined by adding the "cost of emissions" (determined in Step 1) and the "GHG cost adjustment," as applicable (determined in Step 2).

See Attachment B, *Example Presumptive Minimum Calculation*, for an example calculation for a hypothetical air agency that incorporates the "GHG cost adjustment."

V. Future Adjustments to Fee Schedules

Air agencies must collect part 70 fees that are sufficient to cover the part 70 permit program costs.[75] Accordingly, air agencies may need to revise fee schedules periodically to remain in compliance with the requirement that permit fees cover all part 70 permit program costs. Changes in costs over time may be due to many factors, including but not limited to: changes in the number of sources required to obtain part 70 permits; changes in the types of permitting actions being performed; promulgation of new emission standards; and minor source permitting requirements for CAA sections 111, 112, or 129 standards. Air agencies should keep the EPA Regions apprised of any changes to fee schedules over time. The EPA will assess the proposed revision and determine whether it must be processed by the EPA as a substantial or non-substantial revision. As part of this process, the EPA may request additional information, as appropriate.

[74] The table shown here is found at 40 CFR § 70.9(b)(2)(v).
[75] 40 CFR § 70.9(a).

ATTACHMENT A

List of Guidance Relevant to Part 70 Fee Requirements

EPA Guidance on Part 70 Requirements:

- January 1992 – *Guidelines for Implementation of Section 507 of the Clean Air Act Amendments – Final Guidelines,* Office of Air Quality Planning and Standards (OAQPS), U.S. EPA. *See* pages 5 and 11-12 concerning fee flexibility for small business stationary sources: *http://www.epa.gov/sites/production/files/2015-08/documents/smbus.pdf.*

- July 7, 1993 – *Questions and Answers on the Requirements of Operating Permits Program Regulations*, U.S. EPA. See Section 9: *http://www.epa.gov/sites/production/files/2015-08/documents/bbrd_qa1.pdf.*

- August 4, 1993 – *Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs under Title V*, John S. Seitz, Director, OAQPS, U.S. EPA, to Air Division Directors, Regions I-X ("1993 fee schedule guidance"). Note that there was an earlier document on this subject that was superseded by this document: *http://www3.epa.gov/ttn/naaqs/aqmguide/collection/t5/fees.pdf.*

- August 9, 1993 – *Acid Rain-Title V Guidance on Fees and Incorporation by Reference,* Brian J. McLean, Director, Acid Rain Division, U.S. EPA, to Air, Pesticides, and Toxics Division Directors, Regions I, IV, and VI, Air and Waste Management Division Director, Region II, Air and Toxics Division Directors, Regions III, VII, VIII, IX and X and Air and Radiation Division Director, Region V: *http://www.epa.gov/sites/production/files/2015-08/documents/combo809.pdf.*

- September 23, 1993 – *Matrix of Title V-Related and Air Grant-Eligible Activities*, OAQPS, U.S. EPA ("matrix guidance"). The matrix notes that it is to be "read and used in concert with the August 4, 1993, fee [schedule] guidance": *http://www.epa.gov/sites/production/files/2015-08/documents/matrix.pdf.*

- October 22, 1993 – *Use of Clean Air Act Title V Permit Fees as Match for Section 105 Grants,* Gerald M. Yamada, Acting General Counsel, U.S. EPA, to Michael H. Shapiro, Acting Administrator, Office of Air and Radiation, U.S. EPA: *https://www.epa.gov/sites/production/files/2015-08/documents/usefees.pdf.*

- November 01, 1993 – *Title V Fee Demonstration and Additional Fee Demonstration Guidance.* John S. Seitz, Director, OAQPS, U.S. EPA, to Director, Air, Pesticides and Toxics Management Division, Regions I and IV, Director, Air and Waste Management Division, Region II, Director, Air, Radiation and Toxics Division, Region III, Director, Air and Radiation Division, Region V, Director, Air, Pesticides and Toxics Division, Region VI and Director, Air and Toxics Division, Regions VII, VIII, IX and X, U.S. EPA ("fee demonstration guidance"): *http://www3.epa.gov/ttn/naaqs/aqmguide/collection/t5/feedemon.pdf.*

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- July 21, 1994 – *Transition to Funding Portions of State and Local Air Programs with Permit Fees Rather than Federal Grants,* Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, to Regional Administrators, Regions I – X ("transition guidance"): *http://www.epa.gov/sites/production/files/2015-08/documents/grantmem.pdf.*

- August 28, 1994 – *Additional Guidance on Funding Support for State and Local Programs*, Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, to Regional Administrators, Regions I – X ("additional guidance memo"): *http://www.epa.gov/sites/production/files/2015-08/documents/guidline.pdf.*

- January 23, 1996 – Letter from Conrad Simon, Director, Air & Waste Management Division, EPA Region II to Mr. Billy J. Sexton, Director, Jefferson County Department of Planning and Environmental Management, Air Pollution Control District, Louisville, Kentucky ("Sexton memo"): *https://www.epa.gov/sites/production/files/2016-04/documents/sexton_1996.pdf.*

- January 1997 – *Overview of Clean Air Title V Financial Management and Reporting – A Handbook for Financial Managers*, Environment Finance Center, University of Maryland, Maryland Sea Grant College, University of Maryland. Supported by a grant from the U.S. EPA ("financial manager's handbook"): *http://www.epa.gov/sites/production/files/2015-08/documents/t5finance.pdf.*

- October 23, 2015 – *Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Utility Generating Units; Final Rule* (80 FR 64510). *See* Section XII.E, "Implications for Title V Fee Requirements for GHGs" at page 64633: *http://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf.*

Guidance on Governmental Accounting Standards Relevant to Part 70:

- Handbook of Federal Accounting Standards and Other Pronouncements, as Amended, as of June 30, 2015, Federal Accounting Standards Advisory Board (FASAB). *http://www.fasab.gov/pdffiles/2015_fasab_handbook.pdf.*

- Statement of Federal Financial Accounting Standards 4: *Managerial Cost Accounting Standards and Concepts*, page 396 of the FASB Handbook ("SFFAS No. 4").

- Statement of Federal Financial Accounting Standards 7: Accounting for Revenue and Other Financial Sources and Concepts for Reconciling Budgetary and Financial Accounting, page 592 of the FASAB Handbook ("SFFAS No. 7").

Statements of the Governmental Accounting Standards Board (GASB):

- Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998) ("GASB Statement No. 33"): *http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029148&acceptedDisclaimer=true*.

- Statement No. 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments* (June 1999) ("GASB Statement No. 34"): *http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029121&acceptedDisclaimer=true.*

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ATTACHMENT B

Example Presumptive Minimum Calculation

This attachment provides an example calculation of the "presumptive minimum" under 40 CFR part 70 for a hypothetical air agency ("Air Agency X").[1]

Background:

- The "presumptive minimum" is an amount of fee revenue for an air agency that is presumed to be adequate to cover part 70 costs.[2]
    - If an air agency's fee schedule would result in fees that would be less than the presumptive minimum, there is no presumption that its fees would be adequate to cover part 70 costs and the air agency is required to submit a "detailed accounting" to show that its fees would be sufficient to cover its part 70 costs.[3]
    - If an air agency's fee schedule would result in fees that would be at least equal to the presumptive minimum, there is a presumption that its fees would be adequate to cover costs and a "detailed accounting" is not required. However, a "detailed accounting" is required whenever the EPA determines, based on comments rebutting the presumption of fee adequacy or on the EPA's own initiative, that there are serious questions regarding whether its fees are sufficient to cover part 70 costs.[4]
- In addition, independent of the air agency's status with respect to the presumptive minimum, a "detailed accounting" is required whenever the EPA determines on its own initiative that there are serious questions regarding whether an air agency's fee schedule is sufficient to cover its part 70 costs. This is required because part 70 requires an air agency's fee revenue to be sufficient to cover part 70 permit program costs.[5]
- The quantity of air pollutants and the "GHG cost adjustment" are unique to each air agency and vary from year-to-year. As a result, the presumptive minimum calculated for an air agency is also unique to that particular agency on a year-to-year basis.
- No source should use the presumptive minimum calculation described in this attachment to calculate its part 70 fees.[6] Sources should instead contact their air agency for more information on how to calculate fees for a source.

[1] The example calculation follows the requirements of 40 CFR § 70.9(b)(2)(i)-(v).
[2] *See* 40 CFR § 70.9(b)(2)(i).
[3] *See* 40 CFR § 70.9(b)(5) (concerning the "detailed accounting" requirement).
[4] *See* 40 CFR § 70.9(b)(5)(ii).
[5] *See* 40 CFR §§ 70.9(a) and (b)(1).
[6] *See* 40 CFR § 70.9(b)(3) (providing air agencies with flexibility on how they charge fees to individual sources).

- An air agency may calculate the presumptive minimum in several circumstances:

    - As part of a fee demonstration submitted to the EPA when an air agency sets its fee schedule to collect at or above the presumptive minimum.

    - As part of a fee evaluation to determine if an air agency with a fee schedule originally approved to be at or above the presumptive minimum now results in fees that are below the current presumptive minimum. When this occurs, the air agency is required to submit a "detailed accounting" to show that its fee schedule will be sufficient to cover all required program costs. Such a change in the presumptive minimum for an air agency may occur for many reasons over time.[7]

    - To update the presumptive minimum amount for the air agency to account for changes that have occurred since the calculation was last performed. A common reason for an air agency to do this is to recalculate the amount to add the GHG cost adjustment.[8]

The presumptive minimum calculation is generally composed of three steps:

1. *Calculation of the "cost of emissions."* The "cost of emissions" is proportional to the emissions of certain air pollutants of part 70 sources.

2. *Calculation of the "GHG cost adjustment"(as applicable).* The "GHG cost adjustment," promulgated in October 23, 2015, is intended to recover the costs of incorporating GHGs into the permitting program.

3. *Sum the values calculated in Steps 1 and 2.*

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[7] It has been almost two decades since most part 70 programs were approved. Changes may have occurred since then that would affect the presumptive minimum calculation for an air agency. For example, changes in the emissions inventory for part 70 sources or changes to air agency fee schedules. The part 70 rules were also revised in 2015 to add a "GHG cost adjustment" to the calculation of the presumptive minimum fee.
[8] *See* 80 FR 64633 (October 23, 2015); 40 CFR § 70.9(b)(2)(v).

Example Scenario and Calculation:

Air Agency X performs its presumptive minimum calculation in November of 2016 using data for Fiscal Year 2016 (FY16 or October 1, 2015, through September 30, 2016).

Step 1 – Calculate the Cost of Emissions:

The "cost of emissions" is determined by multiplying the air agency's inventory of actual emissions of certain pollutants from part 70 sources ("fee pollutants") by an annual fee rate determined by the EPA.

A. Determine the Actual Emissions of "Fee Pollutants" for a 12-month Period Prior to the Calculation.

Note that the term "fee pollutants" used here is shorthand for "regulated pollutants (for presumptive fee calculation)," a defined term in part 70,[9] which includes air pollutants for which a national ambient air quality standard has been set, hazardous air pollutants, and air pollutants subject to a standard under section 111 of the Act, excluding carbon monoxide, greenhouse gases, and certain other pollutants.[10] Note that any preceding 12-month period may be used, for example, a calendar year, a fiscal year, or any other period that is representative of normal source operation and consistent with the fee schedule used by the air agency.

For example, a review of Air Agency X's emissions inventory records for part 70 sources for the 12-month period (FY16) indicates that the actual emissions of "fee pollutants" were 15,700 tons.

Total "Fee Pollutants" = 15,700 tons for FY16

B. Determine the Presumptive Minimum Fee Rate ($/ton) Effective at the Time the Calculation is Performed.

The presumptive minimum fee rate is updated by the EPA annually and is effective from September 1 until August 31 of the following year. Historical and current fee rates are available online: *https://www.epa.gov/title-v-operating-permits/permit-fees.* The fee rate used in the calculation is the one that is effective on the date the calculation is performed, rather than the fee rate in effect for the annual period of the emissions data.

For example, Air Agency X calculates its "presumptive minimum" for FY16 in November 2016. The air agency first refers to the EPA website (listed above) to find the fee rate effective for November 2016. This fee rate ($48.88) is used in the next step to calculate the cost of emissions.

Presumptive Minimum Fee Rate ($/ton) = $ 48.88 per ton.

[9] The definition of "regulated pollutant (for presumptive fee calculation)" is found at 40 CFR § 70.2.
[10] Note that 40 CFR §§ 70.9(b)(2)(ii) and (iii) provides exclusions for certain air pollutants and includes a definition of "actual emissions."

C. Calculate the Cost of Emissions.

Calculate the cost of emissions by multiplying the total tons of "fee pollutants" (value found in A) by the presumptive minimum fee rate (value found in B).

Cost of Emissions = "Fee Pollutants" (tons) * Presumptive Minimum Fee Rate ($/ton)
= 15,700 tons * $48.88/ton
= $767,416

Value Calculated in Step 1: Cost of Emissions = $767,416

Step 2 – Calculate the GHG Cost Adjustment (as applicable):

The "GHG cost adjustment" is the cost for the air agency to review applications for certain permitting actions to determine if GHGs have been properly addressed.

A. Determine the Number of GHG Activities for Each Activity Category.

Determine the total number of activities processed during the period for each activity category listed in the following table [based on table at 40 CFR § 70.9(b)(2)(v)].

Activity	**Burden Factor (hours per activity)**
GHG Completeness Determinations (for initial permit or updated application)	43
GHG Evaluations for Permit Modification or Related Permit Actions	7
GHG Evaluations at Permit Renewal	10

For example, Air Agency X's records were reviewed to determine the number of activities that occurred for each activity category during FY16:

- 2 GHG completeness determinations for initial applications
- 46 GHG evaluations for permit modifications or related actions
  (11 significant modifications and 35 minor modifications)
- 20 GHG evaluations at permit renewal

Note that the activities above are assumed to occur for each initial application, permit modification, or permit renewal, regardless of whether the source emits GHGs or is subject to applicable requirements for GHGs. Thus, there were 20 GHG evaluations at permit renewal because there were 20 permit renewals.

B. Calculate the GHG Burden for Each Activity Category.

The GHG burden for each activity category is calculated by multiplying the number of activities for each category (identified in A) by the relevant burden factor (hours/activity) listed in the table above.

GHG Burden = Number of activities * Burden factor (hours/activity)

For example, Air Agency X calculated GHG burden as follows:

- 2 Completeness Determinations * 43 hours/activity = 86 hours
- 46 Evaluations for Mods or Related Actions * 7 hours/activity = 322 hours
- 20 Evaluations at Permit Renewal * 10 hours/activity = 200 hours

C. Calculate the Total GHG Burden (in hours).

The total GHG burden hours are calculated by summing the GHG burden hours for each activity category determined in B.

For example, Air Agency X calculated total GHG burden hours as follows:
Total GHG Burden Hours = 86 hours + 322 hours + 200 hours
= 608 hours

D. Calculate the GHG Cost Adjustment.

Calculate the GHG cost adjustment for the period by multiplying the total GHG burden hours (value calculated in C) by the cost of staff time.

GHG Cost Adjustment = Total GHG burden hours (hours) * Cost of staff time ($/hour)

For example, Air Agency X's budget office reported that the average cost of staff time for the Department of Natural Resources (including wages, benefits, and overhead) for FY16 was $56/hour.

GHG Cost Adjustment = Total GHG burden hours * Cost of staff time
= 608 hours * $56/hour
= $34,048

Value Calculated in Step 2: GHG Cost Adjustment = $34,048

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Step 3 – Calculate the Total Presumptive Minimum:
Calculate the total for the period by adding the cost of emissions (value calculated in Step 1) and the GHG cost adjustment, as applicable (value calculated in Step 2).

Presumptive minimum = Cost of emission ($) + GHG cost adjustment ($)
= $767,416 + $34,048
= $801,464

Total Presumptive Minimum = $801,464

Conclusion:

$801,464 is the Air Agency X's presumptive minimum for FY16. This value would be compared against the total part 70 fee revenue for the same period to determine if the total fee revenue is greater than or less than the presumptive minimum.

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