



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MAR 27 2018

MEMORANDUM

SUBJECT: Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70

FROM: Peter Tsirigotis
Director

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 tribal¹ 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 the OIG's Recommendations 2 through 8 to "issue a guidance document that sets forth a fee oversight strategy" (we refer to the attached guidance as the "**title V evaluation guidance**"). The EPA's response to the OIG's other recommendation is being issued concurrently in a separate memorandum and guidance concerning the EPA's review of fee schedules for title V programs ("updated fee schedule guidance").³

The title V evaluation guidance is consistent with EPA principles and best practices for efficient and effective oversight of state permitting programs⁴ and applies those principles and best practices to the specific context of title V program and fee evaluations under part 70 of the CAA. As a result, this guidance highlights opportunities for communication and collaboration between the EPA and air agencies throughout the evaluation process. Principles and best practices are discussed in Section I of the attached title V evaluation guidance.

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 *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*, Peter Tsirigotis, Director, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, to Regional Air Division Directors, Regions 1 – 10, March 27, 2018 ("updated fee schedule 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 See *Promoting Environmental Program Health and Integrity: Principles and Best Practices for Oversight of State Permitting Programs* (August 30, 2016).

Example best practices for conducting part 70 fee or program evaluations described in the guidance, as well as other existing guidance documents relevant to title V evaluations, include:

Example Best Practices:

- The frequency and timing of program and fee evaluations are defined in the Office of Air and Radiation's National Program Manager Guidance (NPM guidance), which is issued for a 2-year period.⁵ See Section III of the title V evaluation guidance.
- The EPA will post final evaluation reports on publicly accessible websites established for this purpose. See Section III.D of the title V evaluation guidance.
- A best practice for resolving concerns that arise during or after an evaluation is to use collaborative approaches, such as face-to-face meetings between the air agency and the EPA when possible, and preferably prior to taking formal approaches provided for in the part 70 regulations. See Section III.E of the title V evaluation guidance.

Other Available Guidance:

- EPA guidance on the sufficiency of fees and other fee requirements of part 70 for permitting programs, including guidance on certain requirements related to fee demonstrations. See Section IV of the title V evaluation guidance.
- EPA guidance on governmental accounting standards tailored to the part 70 program, including an example method for calculating annual fees, costs, and the "presumptive minimum" fee amount; types of revenue that may be counted as "fees"; clarification on the definition of "direct costs," "other direct costs," and "indirect costs"; and a review of methods for determining indirect costs. See list of EPA guidance on part 70 fee requirements in Attachment B of the title V evaluation guidance.

Finally, the title V evaluation guidance contains several attachments:

- Attachment A is a checklist that may be used by the EPA to help plan for a particular program or fee evaluation using a step-by-step approach with suggested timeframes for completing each step, including a timeframe for the issuance of the final evaluation report.
- Attachment B is a list of reference documents and other resources that may be useful as background information for reviewing issues that may arise during a program or fee evaluation.
- Attachment C provides an example annual financial data reporting form. It may be used as a tool to collect information to track an air agency's compliance with certain part 70 fee requirements. The form may be used to track information on fee revenue, program costs, and the presumptive minimum fee amount for a particular air agency. The example form also includes helpful explanations of common accounting terms referenced in part 70.

The EPA is also working to increase and improve internal collaboration, communication, expertise, and the sharing of information between the EPA staff working on title V evaluations. For example, as a best practice, the EPA plans to establish an internal system to facilitate staff input on and sharing of evaluation tools and evaluation reports.

⁵ See *Final FY 2017 OAR National Program Manager Guidance Addendum*, U.S. EPA, Publication Number 440B16001 (May 6, 2016) (NPM guidance) located at <https://www.epa.gov/sites/production/files/2016-05/documents/fy17-oar-npm-guidance-addendum.pdf>.

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 title V evaluation 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. Program and Fee Evaluation Strategy Guidance for 40 CFR Part 70 (“title V evaluation guidance”)
2. Attachment A – Evaluation Checklist for 40 CFR Part 70
3. Attachment B – Resources
4. Attachment C – Example Annual Financial Data Form for 40 CFR Part 70

DISCLAIMER

These documents explain the requirements of the EPA's regulations, describe the EPA's policies, and recommend procedures for sources and permitting authorities to use to ensure that program evaluations 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's 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.

Program and Fee Evaluation Strategy Guidance for 40 CFR Part 70

I. Principles and Best Practices for EPA Oversight of Permitting Programs

As part of the EPA's ongoing efforts to strengthen partnerships with state, local, and tribal agencies (referred to here as, "air agencies"), in 2016, the EPA established common principles and best practices for oversight of state permitting programs for air, water, and solid waste. *See Promoting Environmental Program Health and Integrity: Principles and Best Practices for Oversight of State Permitting Programs*, August 30, 2016.¹ The principles and best practices are intended to promote efficient and effective oversight that optimizes both collaboration and accountability in support of program health and integrity.

The title V evaluation guidance aligns with these principles and best practices and will consider them in title V evaluations of local and tribal air permitting programs as well as state programs. For example, this guidance provides for air agency evaluations that will be accomplished through clear, accurate, and up-to-date guidance, including guidance on evaluations and fee requirements for air agencies; routine review of air agency programs to identify and implement program improvements; requirements for yearly program evaluations on timeframes established in the Office of Air and Radiation's National Program Manager Guidance (NPM guidance);² the use of tools, including checklists, for planning and tracking the timely completion of evaluations; opportunities for collaboration between the EPA and air agencies throughout the evaluation process; and electronic posting of final evaluation reports.

II. Summary of Title V Requirements for Air Agencies

A. General Program Requirements

Title V of the Clean Air Act (CAA or Act) of 1990 establishes an operating permit program for major sources of air pollutants, as well as some other sources.³ The EPA promulgated regulations under 40 CFR part 70 (part 70), consistent with title V of the Act, to establish the minimum elements for operating permit programs to be administered by permitting authorities.

Air agencies with approved permit programs under part 70 must comply with minimum permit program requirements, such as reviewing application forms, adhering to certain permit processing procedures (including timeframes), ensuring certain permit content, collecting fees sufficient to fund the program, providing for public participation and EPA review of individual

¹ The report is located at https://www.epa.gov/sites/production/files/2016-10/documents/principles_and_best_practices_for_oversight_of_state_permitting_programs.pdf.

² The latest NPM guidance is for FY 2018 and FY 2019: *Final FY 2018 - 2019 OAR National Program Manager Guidance*, U.S. EPA, Publication Number 440P17002 (September 29, 2017) (NPM guidance) located at <https://www.epa.gov/sites/production/files/2017-09/documents/fy18-19-oar-npm-guidance.pdf>. The most recent NPM guidance should be consulted for specific program requirements and timeframes.

³ *See* CAA §§ 501-507; 42 U.S.C. §§ 7661-7661f.

permits, and supplementing permits with compliance provisions (when needed), among other requirements.⁴

B. Summary of Title V Fee Requirements

The EPA is issuing a separate memorandum and updated fee schedule guidance on the activities that constitute title V permit program costs and must, therefore, be funded by permit fees. The requirements for air agency fee programs are further discussed in Section I of the updated fee schedule guidance.⁵ This title V evaluation guidance identifies best practices and guidance on EPA oversight of air agency fee programs, particularly through program and fee evaluations. Attachment B of the title V evaluation guidance provides a list of all previously issued EPA guidance on part 70 fee requirements. The following is a summary of the fee requirements that will guide the EPA reviews of air agency programs:⁶

- Permit fees must be paid by “part 70 sources,”⁷ and the permit fees must cover all “reasonable (direct and indirect) costs” of the permit program.⁸ If the permit fees at least cover the total permit program costs, the fees are deemed to be sufficient.
- Permit fees paid by “part 70 sources” are “exchange revenue” or “earned revenue” in governmental accounting terminology because a good or service (e.g., a permit) is exchanged by a governmental entity for a price (e.g., a permit fee).⁹ Only revenue classified as “exchange revenue” should be compared to costs to determine the overall financial results of operations for a period.¹⁰ This means that no legislative appropriations, taxes, grants,¹¹ fines and penalties, which are generally characterized as

⁴ See 40 CFR §§ 70.1(a) and 70.4.

⁵ *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*, Peter Tsirigotis, Director, OAQPS, to Regional Air Division Directors, Regions 1 – 10, March 27, 2018 (updated fee schedule guidance).

⁶ See the updated fee schedule guidance at Section I. General Principles for Review of Title V Fee Schedules.

⁷ The term “part 70 sources” is defined in 40 CFR § 70.2 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.”

⁸ See CAA section 502(b)(3)(A); 40 CFR § 70.9(a).

⁹ 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 and see Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998), issued by the Governmental Accounting Standards Board (GASB) at pages 1-4.

¹⁰ See FASAB No. 7 at page 8. For example, see Governmental Accounting Standards Series, Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998), issued by GASB, and Statement of Recommended Accounting Standards Number 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting*, issued by FASAB.

¹¹ Since part 70 fees are “program income” under 40 CFR § 31.25(a), part 70 fees cannot be used as match for section 105 grants, and no state may count the same activity for both grant and part 70 fee purposes. See an October 22, 1993, memo (and several other memos) on this subject, listed in Attachment B of this document.

“non-exchange revenue,”¹² should be compared to 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, required permit fees may not be diverted for non-part 70 purposes.^{13,14} Nothing in part 70 restricts air agencies from collecting additional fees beyond the minimum amount needed to cover part 70 program cost; however, all fees (including surplus) must be used for part 70 purposes.
- During permit program implementation, the EPA may require “periodic updates” of the “initial accounting” portion of the “fee demonstration” to show whether fee revenue required by part 70 is used solely to cover the costs of the permit program.¹⁵
- During program implementation, the EPA may also require a “detailed accounting” to show that the fee schedule is adequate to cover costs when an air agency changes its fee schedule to collect *less than* the “presumptive minimum”¹⁶ or if the EPA determines, based on comments rebutting a presumption of fee sufficiency or on the EPA’s own initiative, that there are serious questions regarding whether the fee schedule is sufficient to cover the permit program costs.¹⁷

¹² “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).

¹³ Part 70 purposes are all activities in a permit program that must be funded by part 70 fees. As the EPA has previously explained in the EPA’s November 1993 memo, *Title V Fee Demonstration and Additional Fee Demonstration Guidance (“fee demonstration guidance”)*, the types of activities included in a permit program to be funded by permit fees, and the costs of those activities will differ depending on many factors associated with the particular permitting authority. These include the number and complexity of sources within the area covered by the program; how often the permitting authority reviews permits (e.g., some permitting authorities may renew permits every year instead of every 5 years); the universe of sources covered (i.e., some permitting authorities may not opt to defer permitting for non-major sources); the experience of the permitting authority with permitting (e.g., agencies with permitting experience may not need as extensive training programs as those with no operating permit experience); and many other factors. Each permitting authority will have to determine its own permitting effort and what activities are directly or indirectly concerned with operating permits.

¹⁴ See 40 CFR § 70.9(a).

¹⁵ See fee demonstration requirements at 40 CFR §§ 70.9(c) and 70.9(d) and see the EPA’s November 1993 memo, *Title V Fee Demonstration and Additional Fee Demonstration Guidance (“fee demonstration guidance”)*, on preparing fee demonstrations for the initial part 70 program submittal.

¹⁶ A fee schedule that would result in fees above the “presumptive minimum” is considered to be “presumptively adequate.” The “presumptive minimum” is generally defined to be “an amount *not less than* \$25 per year [adjusted for increases in the Consumer Price Index] times the total tons of the actual emissions of each “regulated air pollutant (for presumptive fee calculation)” emitted from part 70 sources.” Note that the calculation of the “presumptive minimum” also excludes certain emissions and adds a “GHG cost adjustment.” See 40 CFR 70.9(b)(2)(i) through (v).

¹⁷ See 40 CFR § 70.9(b)(5) and Section 2.0 of the fee demonstration guidance for an example “detailed accounting.” The scope and content of a “detailed accounting” may vary but will generally involve information on program fees and costs and accounting procedures and practices that will show how the air agency’s fee schedule will be sufficient to cover all program costs.

III. Best Practices for EPA Evaluation of Part 70 Programs

This section includes an overview of title V program and fee evaluations and describes the EPA's recommended best practices for conducting program and fee evaluations. This includes a general process and recommended steps for conducting such evaluations, including a timeframe for completion of final evaluation reports. This section also includes recommendations for activities that may occur after a final evaluation report is issued, including for resolution of concerns raised during an evaluation process, and for public posting of final evaluation reports.

A. Overview of Part 70 Program and Fee Evaluations

In its oversight capacity, the EPA periodically evaluates part 70 programs to ensure that they are being implemented and enforced in accordance with the requirements of title V and part 70. Program and fee evaluations help the EPA pinpoint areas for program improvement, determine if previously suggested areas of improvement have been addressed by the air agency, and identify best practices that can be shared with other air agencies and the EPA Regions to promote program health and integrity.

The frequency and timeframes for conducting part 70 evaluations are documented in the NPM guidance.¹⁸ The frequency and timeframe for a specific evaluation should be consistent with the NPM guidance for the period in which the evaluation occurs.¹⁹ The current NPM guidance requires each EPA Region to complete one part 70 evaluation each year. This means that final evaluation reports should be issued within a 1-year timeframe.²⁰ It may be possible for the EPA to complete some evaluations on a shorter timeframe than specified by the NPM guidance when the scope of an air agency evaluation is tailored to some element of the program, based on previous performance, as evidenced by previous evaluations. Looking for these opportunities and completing evaluation reports in less than a year is encouraged as a best practice.

Program evaluations can be conducted on any particular element or elements of the part 70 program, including the complete program, or the air agency's implementation (including fee reviews), enforcement, and legal authority for the program.

As a best practice, the EPA Regions should review previous evaluation results that may help inform and tailor the appropriate scope of an upcoming evaluation and may give particular focus to issues that have previously been identified as problematic. In addition, the EPA Regions should be aware of any recent statutory or regulatory changes (including to federal or state rules) and may want to focus part of the evaluation on these newer implementation areas.

¹⁸ The final FY 2018 – 2019 NPM guidance includes a goal for the EPA Regions to perform an evaluation for at least one permitting authority for each EPA Region per year. The Regional goals in the guidance are reviewed periodically and may change in the future.

¹⁹ The NPM guidance is currently revised on a 2-year cycle. The current guidance is effective for fiscal years 2018 and 2019.

²⁰ The EPA notes that program or fee evaluations are not currently required to begin on the first day of the fiscal year; thus, an evaluation may start during one fiscal year and end during the next fiscal year.

To ensure that permitting authorities have adequate resources to implement their part 70 programs, another best practice is to conduct a fee evaluation as part of the overall program evaluation. The content and scope of a fee evaluation may be specific to the air agency being evaluated, but frequent topics include those identified in Sections II.B and IV of this title V evaluation guidance.

B. Preparing for Title V Evaluations

Developing an evaluation checklist and an evaluation questionnaire can help expedite the program review process and is considered a best practice for the EPA Regions in preparing for a part 70 program evaluation. An example evaluation checklist, to plan for and track the progress of a particular evaluation, is provided in Attachment A. An evaluation checklist provides a framework of specific topics to be evaluated and recommended steps leading to issuance of a final evaluation report, including a timeline based on the 1-year timeframe of the current NPM guidance. Note that the timeframes for the individual steps in the example checklist are flexible, provided the 1-year overall timeframe is met. Another recommended best practice is to share the checklist with the air agency prior to the actual evaluation to assist them in preparing for the evaluation.

An evaluation questionnaire is another tool that the EPA Regions may prepare in advance of an evaluation. Typically, an evaluation questionnaire is a compilation of specific questions intended to gather information and data from an air agency to assist the EPA in its evaluation of a particular part 70 program. As a best practice, the EPA Regions should share draft questionnaires with other EPA Regions or Headquarters offices to seek input and share “lessons learned” prior to transmitting to the air agency. Collaboration can enhance national consistency and help the Regional office learn from the experiences of other Headquarters offices.

C. Information and Data Gathering Phase

An important initial step of any program or fee evaluation is gathering information about current program implementation. Typically, an evaluation formally begins when the EPA Region sends a letter to the air agency informing the agency of the EPA’s intent to conduct an evaluation, with a request for specific information and data needed to conduct the evaluation. Usually such a letter will be preceded by an informal call or email to provide the air agency with notice of the evaluation. The letter should specify the scope of the evaluation and a timeline for when a response from the air agency is expected. As a best practice, if the EPA Region intends to use an evaluation questionnaire, that questionnaire should be included with the letter.

The next recommended step is for the air agency to respond in writing to the EPA’s questions and provide the information or data that was requested. The length of time to complete this step is dependent on the scope of the evaluation and the air agency’s data collection systems. If the air agency foresees an issue with providing the information requested in a timely manner, it should reach out to the EPA Region to discuss steps to address the issue and reach consensus on a revised timeline.

If resources allow, the EPA Region should, as a best practice, conduct an in-person meeting with the air agency shortly after sending the letter (and questionnaire if one is to be used) to answer

preliminary questions on timing and scope. In addition, the EPA Region and the air agency could hold a follow-up meeting to discuss the air agency's draft response. In preparing for these meetings, the EPA staff should make every effort to gather as much relevant information as possible before meeting with the air agency in order to make the best use of time.

In addition to the evaluation questionnaire, another method for collecting information or data for an evaluation includes file and permit reviews. File reviews may also be used by the EPA to evaluate the effective implementation of certain program responsibilities (e.g., to quality assure fee collection procedures). The EPA may use a permit review (reviewing a sample of issued permits) to evaluate whether the air agency is satisfying permit-content requirements and permit-issuance procedures in practice.²¹

D. Evaluation Report Phase

The EPA staff should document each title V evaluation in an evaluation report. The report may describe concerns identified during the evaluation and, if any concerns are identified, may include recommended corrective actions with intended timeframes for resolution. The EPA may also ask the air agency to provide an explanation of how it will resolve these concerns and an estimate of the timeframe needed for the air agency to complete its work.

The EPA staff drafting the evaluation report should consult with Regional management or Headquarters offices as needed, particularly if the report addresses nationally significant issues. Once completed, the draft evaluation report's findings and recommendations, including those addressing novel or controversial issues, should be shared with EPA management and other offices.

As a best practice, the EPA should provide the draft report to the air agency with an option to provide comments back to the EPA. During this time, the EPA and the air agency may also choose to have further discussions of the draft report findings. If further discussion occurs, additional time may be necessary to complete the final report and corrective action plan.

After attaching any air agency comments to the report and revising the report to incorporate input from EPA management and the air agency being evaluated, the final report should be signed by the relevant EPA air program manager or other designated EPA official. The final report should then be transmitted to the air agency and an electronic copy should be posted on a publicly accessible website maintained by the EPA (the Regional websites are linked to the national webpage for the part 70 program).²² As a best practice, any supporting information related to the evaluation should be posted on the EPA website with the final report, including the air agency's response to the questionnaire, relevant communications, and other supporting data. Approaches used to address novel or controversial issues should be summarized and shared for potential use in future reviews.

²¹ See 40 CFR §§ 70.6 and 70.7.

²² See <https://www.epa.gov/title-v-operating-permits/epa-oversight-operating-permits-program>.

E. Post-Report Activities

Activities that occur after the EPA transmits the final evaluation report are not included in the 1-year timeframe for completing the evaluation process pursuant to the NPM guidance. Subsequent activities will proceed on a separate track under different timeframes.

The EPA may provide an opportunity for the air agency to respond in writing to the final evaluation report, particularly in cases where the EPA identified concerns but a corrective action plan was not agreed upon during the preparation of the final report. This step is not necessarily part of the evaluation process and may proceed on a separate track. The EPA would not expect such responses to necessarily be part of the final report, particularly in cases where the responses occur after the final report has been transmitted to the air agency. However, these post-report responses may be included as supporting information on the website, along with the final report.

The EPA encourages its staff to, where possible, conduct in-person meetings with their air agency counterparts in order to best facilitate resolution of any issues identified in the report. Depending on the complexity of the issue, such face-to-face meetings may be facilitated by the involvement of a third-party negotiator or other EPA offices (e.g., the Office of the Chief Financial Officer) as appropriate. Such meetings may prove useful to resolve straight forward issues that can be expeditiously resolved (e.g., permit administration or implementation issues that do not require regulatory changes), as well as to discuss long-term plans for resolving more complex issues (e.g., where resolution may involve changes to statutory authority, regulatory changes, or a multi-step process that may take multiple years to complete). In cases where initial discussions between the EPA and air agency staff do not result in a plan to resolve issues, a best practice is to elevate the issue to the management level (e.g., EPA and air agency management).

Finally, if the issue resolution process described above fails to resolve the issues identified during a program or fee evaluation, the EPA has the authority to consider whether an official EPA finding of a program deficiency is warranted.²³ The decision to make such a finding should be coordinated with EPA management at the Regional and Headquarter level. Section 502(i) of the Act provides that whenever the EPA Administrator determines that an air agency is not adequately administering or enforcing a title V program, or any portion of a title V program, the EPA shall provide notice to the air agency and may take certain measures intended to incentivize compliance. In practice, the EPA refers to the determination as a “finding,” the inadequate administration or implementation as a “deficiency,” and the notice as a “Notice of Deficiency” (NOD).²⁴ The EPA will use its best judgment to decide when a finding of a program deficiency is warranted; whenever such a finding is made, the EPA will issue an NOD and follow the requirements that flow from that finding.

²³ See 40 CFR §§ 70.10(b) and 70.4(i)(1).

²⁴ NODs are published in the *Federal Register*.

IV. Assessment of Fee Sufficiency and Other Fee Requirements

This section discusses the requirement for part 70 permit fees to be sufficient to cover program costs, including requirements for updates to certain elements of part 70 fee demonstrations, including for “periodic updates” to the “initial accounting” and for a “detailed accounting” in certain circumstances. This section also discusses Attachment C, which is an example annual financial data reporting form that may be used to report fee revenue, program costs, and to calculate the “presumptive minimum” for an air agency for a particular year.

Fee sufficiency. The part 70 rule uses the term “sufficient” in relation to fees and costs.²⁵ Since the question of whether fees are sufficient is a key concern that may be considered by the EPA as part of a program or fee evaluation, further explanation may be helpful:

- Section 502(b)(3)(A) of the Act requires permit programs to fund all “reasonable (direct and indirect) costs” of the permit programs through permit fees collected from sources. Similarly, part 70 requires the fees to be paid by “part 70 sources,”²⁶ requires the fees to be sufficient to cover all reasonable permit program costs, and requires the fees to be used “solely” for permit program costs.²⁷
- The costs against which fees are compared must include, at a minimum, certain activities required by the part 70 rules²⁸ and all “reasonable (direct and indirect) costs.”²⁹ Additional discussion on the revenue and costs that should be used in this comparison is provided in the separate updated fee schedule guidance as well as Section II.B of this title V evaluation guidance.
- If concerns regarding fee sufficiency are raised by the EPA, the EPA will typically follow the issue resolution procedures discussed in Section III.E of this title V evaluation guidance.

Initial fee demonstration. As part of the initial part 70 program submittal to the EPA, air agencies are required to provide a “fee demonstration” to show that the fee schedules selected by the air agencies would result in the collection and retention of fees in an amount sufficient to meet the fee requirements of part 70.³⁰ The contents of the “fee demonstration” vary depending on the status of the air agency with respect to the “presumptive minimum”:

²⁵ See 40 CFR §§ 70.9(a), (b) and (c).

²⁶ The term “part 70 sources” is defined in 40 CFR § 70.2 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.

²⁷ See 40 CFR § 70.9(a).

²⁸ See 40 CFR § 70.9(b)(1).

²⁹ CAA section 502(b)(3)(A).

³⁰ See the fee demonstration requirements at 40 CFR §§ 70.9(c) and 70.9(d) and the EPA’s November 1993 memo, *Title V Fee Demonstration and Additional Fee Demonstration Guidance (“fee demonstration guidance”)*, on preparing fee demonstrations for the initial part 70 program submittal. See 40 CFR § 70.9(c), (d).

- Air agencies with fee schedules that would result in fees above the “presumptive minimum” are required to submit a “presumptive minimum program cost” demonstration showing that the expected fee revenue would in fact be above the “presumptive minimum”³¹ and also provide an “initial accounting”³² to show that fees would be used solely to cover part 70 program costs.
- Air agencies with fee schedules that would result in fees below the “presumptive minimum” are required to submit a “detailed accounting”³³ showing that the expected fee revenue would still be sufficient to cover part 70 program costs and an “initial accounting”³⁴ to show that the required fees would be used solely to cover part 70 program costs.

Also, as part of the initial program submittal, part 70 requires the submittal of several additional elements with respect to program costs.³⁵

Detailed accounting. After program approval, a “detailed accounting” that permit fees are collected and retained in an amount sufficient to cover all reasonable direct and indirect costs is required in the following two circumstances:³⁶

- When an air agency sets a fee schedule that would result in an amount less than the “presumptive minimum,”³⁷ or
- When the EPA determines—based on comments rebutting the presumption or its own initiative—that there are serious questions regarding whether the fee schedule is sufficient to cover costs.

A “detailed accounting” for an approved part 70 program would be based on data on fee revenue and program costs. The level of detail required in the “detailed accounting” remains at the discretion of the EPA and will depend on circumstance-specific factors related to the air agency being evaluated.³⁸

Periodic updates. After program approval, the EPA may require “periodic updates”³⁹ to the “initial accounting” element of the fee demonstration to confirm that required fees are being used solely to cover part 70 costs. A “periodic update” for an approved part 70 program is based on

³¹ This fee demonstration is referred to as the “presumptive minimum program cost” demonstration in Sections 1.1 and 3.2 of the EPA’s November 1, 1993, memo, *Title V Fee Demonstration and Additional Fee Demonstration Guidance* (“*fee demonstration guidance*”).

³² See 40 CFR § 70.9(d).

³³ See 40 CFR § 70.9(b)(5) and an example “detailed accounting” in Section 2.0 of the fee demonstration guidance.

³⁴ See 40 CFR § 70.9(d).

³⁵ See, e.g., 40 CFR § 70.4(b)(8)(v).

³⁶ See the “detailed accounting” requirements at 40 CFR § 70.9(b)(5)(1).

³⁷ The calculation of the “presumptive minimum” is provided in 40 CFR §§ 70.9(b)(2)(i) through (v).

³⁸ See the fee demonstration guidance, Section 2.0, for an example “detailed accounting.”

³⁹ See the “periodic update” provision at 40 CFR § 70.9(d).

records showing that required fee revenue is actually being retained and used to cover the reasonable direct and indirect costs of the part 70 program.

Example annual financial reporting form. Attachment C of this title V evaluation guidance is an example annual financial reporting form for part 70. This tool may be used to help track the collection of fee revenue, program costs, and the presumptive minimum fee amount for a particular air agency. Attachment C also includes helpful explanations of common accounting terms used for part 70 purposes. This example annual financial reporting form represents one way to collect the information previously described and is not required by part 70 for any particular oversight activity.

V. Identification of Financial and Accounting Expertise for Fee Reviews

The OIG Report requested that the EPA explain how to leverage financial or accounting expertise to assist with fee evaluations. Historically, the EPA staff with scientific, engineering, or similar technical degrees or experience are tasked with air agency program and fee evaluations.

A recommended best practice is to seek the assistance of existing EPA staff with governmental accounting, financial, or economics expertise, who work outside of the part 70 program (e.g., staff involved in grants administration or in determining the economic penalty of noncompliance for civil penalty assessment) to assist with fee evaluations as needed. One way for the EPA to seek internal assistance for fee evaluations would be to offer a formal detail opportunity (a temporary reassignment for a set period of time) for a financial or accounting professional to work on part 70 evaluations. Another way to seek internal EPA assistance would be to use the EPA's Skills Marketplace.⁴⁰

EPA staff without financial or accounting expertise who want to become familiar with state, local, or tribal financial and accounting standards and practices may consider reviewing governmental accounting guidance issued by the national accounting standards board (e.g., the Governmental Accounting Standards Board (GASB)) and financial or audit reports generated by the air agency. Financial or accounting audit reports generated by the air agency may also provide useful data, address emerging issues with the part 70 program, or confirm that known fee issues are being addressed.

Financial or accounting guidance. The primary focus of part 70 fee evaluations is to review whether the air agency's fee program is being implemented consistent with part 70 requirements (see Section II of this guidance, *Summary of Title V Requirements for Air Agencies*). The focus of fee evaluations under part 70 is different from the focus of typical financial or accounting "audits" (as that term is used in the accounting profession).⁴¹ Attachment B of this guidance

⁴⁰ The Skills Marketplace is a component of the EPA's recently launched Talent Hub Portal SharePoint site located at: https://usepa.sharepoint.com/sites/OA_Applications/TalentHub/smp/SitePages/Home.aspx.

⁴¹ In the accounting profession, the primary purpose of an audit is to verify that financial statements of governmental or private entities are consistent with specific accounting criteria.

includes several examples of governmental accounting or financial guidance and other resources that may be useful for technical staff to build expertise in these areas.

Financial or accounting audit reports generated by air agencies. Audit reports or financial reports prepared by air agencies for their own accounting, budgeting, or oversight purposes may include useful background information for fee evaluations, including caseload statistics, historical funding patterns, funding sources, and identification of program performance issues. The GASB requires air agencies to prepare annual financial reports to determine compliance with their budgetary requirements or finance-related requirements. Most air agencies follow these requirements through review of financial reports by an auditor, with preparation of the reports by the air agency budget office, legislature, or by the department itself. Most air agencies also require local programs to be audited for submittal to the state auditor. These financial audits are typically conducted at the departmental level, but part 70 data may be available upon request. Such reports are not required by the EPA, but, if available and timely, they may provide useful information for program or fee evaluations.

ATTACHMENT A

Evaluation Checklist for 40 CFR Part 70

Regardless of the type of evaluation being conducted (program, fee, or combination of the two), the EPA describes the evaluation process as consisting of two phases: 1) Information and Data Gathering Phase and 2) Evaluation Report Phase, each of which is composed of several recommended steps. The requirement of the EPA's national program manager guidance ("NPM guidance") for fiscal years 2018 and 2019 is for part 70 evaluations to be completed within 1 year.¹ The checklists in Tables 1 and 2 describe the phases, recommended steps, and timeframes for each phase and step, leading to completion of the evaluation process within the 1-year timeframe.

The EPA Regions may revise this checklist to meet their needs. For example, the column for recommended duration could be replaced with expected dates for completion of each step for planning purposes, and steps that do not apply for a specific evaluation could be deleted. The column for comments could be used to document reasons why expected timeframes were not met or other relevant information concerning implementation of a step.

Information and Data Gathering Phase

An EPA letter requesting certain information from the air agency, and the air agency's response is the first phase of the evaluation process. The recommended best practice for this phase is that it takes no longer than 160 days. Recommended steps and durations for the steps are listed in Table 1.

Evaluation Report Phase

Drafting and finalization of the evaluation report is the second phase of the evaluation process. The recommended timeframe for this phase is 205 days. Specific steps and a recommended duration for each step are listed in Table 2.

¹ *Final FY 2018 - 2019 OAR National Program Manager Guidance*, U.S. EPA, Publication Number 440P17002 (September 29, 2017) (NPM guidance) located at <https://www.epa.gov/sites/production/files/2017-09/documents/fy18-19-oar-npm-guidance.pdf>.

Table 1: Information and Data Gathering Phase Checklist
 (It is recommended that this phase take no more than 160 days.)

Description	Recommended Duration	Checklist	Comments
The Region drafts a checklist and sends an information request letter to the state, local or tribal agency (“air agency”).	No longer than 40 days.	<input type="checkbox"/> Start drafting letter and checklist: ___/___/____ <input type="checkbox"/> Letter transmitted: ___/___/____	
Air agency responds to questions in writing.	No longer than 120 days. [†] This phase should be completed within 80 days of project initiation.	<input type="checkbox"/> Air agency response received: ___/___/____	

[†] The scope of the evaluation and sophistication of the data collection systems employed by the air agency will inform the time needed for this step.

Table 2: Program and/or Fee Evaluation Report Phase Checklist
 (It is recommended that this phase take no more than 205 days.)

Description	Recommended Duration	Checklist	Comments
The Region reviews the air agency response and drafts evaluation report. EPA HQ consultation as needed.	No longer than 60 days.	<input type="checkbox"/> Regional review of air agency response <input type="checkbox"/> Consultation with HQ (as needed) Date step completed: ___/___/___	
The EPA and the air agency meet to discuss results (optional).	No longer than 30 days after draft report available.	<input type="checkbox"/> EPA & air agency meeting to discuss results: ___/___/___	
EPA Regional management briefed on draft report; copy provided to air agency for comment (optional).	No longer than 50 days. ^{††}	<input type="checkbox"/> EPA management briefing: ___/___/___ <input type="checkbox"/> Draft report sent for comment: ___/___/___	
Air agency responds to draft report with comments (optional).	No more than 30 days.	<input type="checkbox"/> Air agency response received: ___/___/___	
The EPA releases final version of evaluation report.	No more than 35 days. [‡]	<input type="checkbox"/> Final evaluation report released: ___/___/___	

^{††} If an air agency will not be providing comments on the report, the EPA Region could issue the final report by the end of this step or 140 days.

[‡] Some air agencies may request that the EPA also release the air agency's response with the release of the final evaluation report. The EPA recommends that Regions include such responses in their final reports, when practicable.

ATTACHMENT B

Resources

This is a list of resources where users can find additional information related to the requirements and issues discussed in this document.

Part 70 Monitoring Requirements

- Source Monitoring Guidance:
 - Monitoring Knowledge Base: <http://cfpub.epa.gov/oarweb/mkb/>.
 - Compliance Assurance Monitoring: <http://www3.epa.gov/ttn/atw/cam/ricam.html>.
 - Emissions Measurement Center: <http://www3.epa.gov/ttn/emc/>.
- Preconstruction Review:
 - For EPA resources concerning preconstruction review permitting, *see* <http://www2.epa.gov/nsr>.
 - For EPA guidance memos on preconstruction review, *see* <https://www.epa.gov/nsr/new-source-review-policy-and-guidance-document-index>.

EPA Responses to Part 70 Petitions (EPA Orders)

- *See* EPA responses and petitions at <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>.

Greenhouse Gas Permitting Requirements

- October 23, 2015 – Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, Final Rule: <https://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf>.

Guidance on Government Accounting Standards

- Handbook of Federal Accounting Standards and Other Pronouncements, as Amended, as of June 30, 2015, Federal Accounting Standards Advisory Board (FASAB Handbook): http://www.fasab.gov/pdf/files/2015_fasab_handbook.pdf:
 - Statement of Federal Financial Accounting Standards 4: *Managerial Cost Accounting Standards and Concepts*, page 396 of the FASAB Handbook (June 2015) (“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 (June 2015) (“SFFAS No. 7”).
- Statements of the Governmental Accounting Standards Board (GASB Statements): <http://www.gasb.org/cs/ContentServer?c=Page&pagename=GASB%2FPPage%2FGASBSactionPage&cid=1176160042391>.
 - 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.
- Examples of air agency financial or performance audit reports:
 - Accountability, *New York State Department of Environmental Conservation, Report of Title V Operating Permit Program Revenues, Expenses and Changes in Fund Balance for the Two Fiscal Years Ended March 31, 2009*, Report Number 2010-S-61. Accessed January 19, 2017, at: www.osc.state.ny.us/audits/allaudits/093011/10s61.pdf.
 - State of Washington, Department of Ecology, *Air Operating Permit Program Report Fiscal Year 2014*. Publication Number 15-02-008. Accessed January 19, 2017, at www.fortress.wa.gov/ecy/publications/documents/1502008.pdf.
 - State of North Carolina, Division of Air Quality, Department of Environment and Natural Resources, *Title V Air Quality Permit Program Accountability Report*, November 2009. Accessed January 19, 2017, at: www.ncleg.net/documents/sites/committees/ERC/ERC%20Reports%20Received/2009/Dept%20of%20Environment%20and%20Natural%20Resources/2009-Nov%20-%20Title%20V%20Air%20Quality%20Permit%20Program.pdf.

List of EPA Guidance on Part 70 Fee Requirements

- January 1992 – *Guidelines for Implementation of Section 507 of the Clean Air Act Amendments – Final Guidelines*, U.S. EPA, 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 Permit Program Regulations*, U.S. EPA. See Section 9 at page 9-1:
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 Permit 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, to 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, The matrix notes that it is to be “read and used in concert with the August 4, 1993 fee [schedule] guidance” (“matrix 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 Council, U.S. EPA to Michael H. Shapiro, Acting Administrator, Office of Air and Radiation, U.S. EPA:
[http://yosemite.epa.gov/oa/eab_web_docket.nsf/filings%20by%20appeal%20number/957cb8b03e0ccaf0852574b0005aa688/\\$file/additional%20filing%20%20no.1%20...22.pdf](http://yosemite.epa.gov/oa/eab_web_docket.nsf/filings%20by%20appeal%20number/957cb8b03e0ccaf0852574b0005aa688/$file/additional%20filing%20%20no.1%20...22.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, Director, Air and Toxics Division, Regions VII, VIII, IX, and X (“fee demonstration guidance”):
<http://www3.epa.gov/ttn/naaqs/aqmguide/collection/t5/feedemon.pdf>.

- 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:
<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, U.S. 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 Officers and Program 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>.
- March 27, 2018 – *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*, Peter Tsigotis, Director, OAQPS, U.S. EPA, to Regional Air Division Directors, Regions 1 – 10 (“updated fee schedule guidance”):
<https://www.epa.gov/title-v-operating-permits/title-v-operating-permit-policy-and-guidance-document-index>.

ATTACHMENT C

Example Annual Financial Data Form for 40 CFR Part 70

Permitting Authority: _____

Annual Period: ____/____/____ to ____/____/____ (MM/DD/YYYY)

Annual Program Revenue		
A	Total Program Revenue (Fees Paid by Part 70 Sources)	\$
Annual Presumptive Minimum Cost Calculation		
B	Total Emissions of “Regulated Pollutants (for presumptive fee calculation)”	tons
C	Presumptive Minimum Fee Rate During Period (\$/ton)	\$ per ton
D	Total Greenhouse Gas (GHG) Cost Adjustments (as applicable)	\$
E = (B*C)+D	Presumptive Minimum Cost for the Program	\$
A < E or A ≥ E	Compare Total Program Revenue to Presumptive Minimum Cost Enter: “Less Than” or “Greater Than” or “Equal To”	
Annual Program Costs		
F	Direct Labor Costs ¹	\$
G	Other Direct Costs ²	\$
H = F+G	Total Direct Costs	\$
I	Known Indirect Costs ³	\$
J = K*L	Calculated Indirect Costs ⁴	\$
K	Indirect Rate	%
L	Total Cost Base for the Part 70 Program	\$
M = I or J	Total Indirect Costs	\$
N = H+M	Total Program Costs	\$
O = A - N	Annual Operating Result <i>(Report deficits in parentheses)</i>	\$

¹ This is the sum of all direct labor costs, including regular payroll, overtime payroll, leave, fringe, and any other administrative surcharges.

² This is the sum of all other direct costs, including travel, materials, equipment, contractor, and any other costs directly allocable to the part 70 program.

³ Indirect Costs may either be known or calculated. If known, enter on this row; if calculated, skip to the next three rows.

⁴ If Indirect Costs are calculated, enter the result here, and enter the rate and base below. Accounting or budgeting personnel may be able to provide additional information on or assistance with calculating Indirect Costs.

Program Balance of Accounts (Report deficits in parentheses)		
P	Beginning of Year Balance ⁵	\$
Q = O	Annual Operating Result	\$
R	Fee Revenue Transferred In (describe in comments)	\$
S	Non-Exchange Revenue Transferred In (describe in comments) – Informational Only	\$
T	Fee Revenues Transferred Out (describe in comments)	\$ ()
U = O+Q+R-T	End of Year Balance	\$

COMMENTS:

Use this section to describe any changes in accounting methods or program elements that affect the fee program, categories of revenue or expenses that do not fit into any of the listed categories or apply across multiple categories, transfers in or out, or any unusual activities or circumstances relevant to fees administration. Attach additional pages if needed.

⁵ This is the prior year's "End of Year Balance."

BACKGROUND – EXAMPLE ANNUAL FINANCIAL DATA FORM FOR PART 40 CFR 70

The Example Annual Financial Data Form is a tool that may be used to collect information from state, local, or tribal (“air agencies”) part 70 programs concerning their compliance with part 70 requirements for fees. The use of this form is not required for any specific air agency or time period and it may be revised as appropriate. Air agencies may find this form useful for collecting programmatic information for their own internal tracking purposes.

Fee sufficiency. The primary purpose of the revenue, costs, and balance of accounts sections of the financial data form is to collect information concerning the sufficiency of fees, consistent with Clean Air Act (Act) § 502(b)(3)(A) and 40 CFR § 70.9(a). The fee sufficiency requirements include requirements for air agencies to collect annual fees (or the equivalent over some other period) that are sufficient to cover all reasonable direct and indirect costs of the program and to track if required fees are being diverted for non-part 70 purposes.⁶

Presumptive minimum. A secondary use for the financial data form is to assess an air agency’s status with respect to the “presumptive minimum” of part 70.⁷ This assessment may have been important when an air agency was originally approved to collect above the “presumptive minimum,” but changes made over time have resulted in total annual fees being collected that are less than the “presumptive minimum.”⁸ This assessment is important because 40 CFR § 70.9(b)(3) requires air agencies that collect less than the presumptive minimum to submit a “detailed accounting” to ensure fee sufficiency, and air agencies that were originally approved to collect at least the presumptive minimum would not have submitted the detailed accounting with the program submittal. Examples of cases where an air agency’s status in this respect may have changed include where the air agency uses a formula to calculate the presumptive minimum that is outdated or inconsistent with 40 CFR § 70.9(b)(2) or where the program was approved to charge fees to individual sources using the methodology for calculating the presumptive minimum pursuant to 40 CFR § 70.9(b)(2) and the air agency’s requirements for fee payment from individual sources are outdated or inconsistent with the part 70 calculation.⁹

The EPA may use its discretion to decide when this form should be completed by an air agency and which sections of the form should be completed. The EPA will evaluate any information submitted and determine appropriate next steps.

⁶ The requirements that fees be sufficient to cover all reasonable direct and indirect program costs, and that such fees not be diverted for other purposes, applies to all title V permit programs, regardless of whether or not the program was approved to collect “not less than” or “less than” the presumptive minimum.

⁷ The presumptive minimum of CAA § 502(b)(3)(B) and 40 CFR § 70.9(b)(2) is generally calculated by multiplying a dollar per ton rate (which is adjusted annually for increases in the Consumer Price Index) by the tons of “regulated pollutants (for presumptive fee calculation)” emitted by all part 70 sources in an air agency for a year (or equivalent period) and adding a “GHG cost adjustment,” which is a set dollar amount to reflect certain increased costs for permitting.

⁸ Air agencies have flexibility to charge fees to sources on any basis, including to charge emission fees, application fees, service-based fees, or other types of fees, regardless of whether or not the program was approved to collect “not less than” or “less than” the presumptive minimum.

⁹ The presumptive minimum calculation of 40 CFR § 70.9(b)(2) was updated in 2015 to add a GHG cost adjustment; see the final rule, *Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Utility Generating Units; Final Rule* (80 FR 64510, October 23, 2015). 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>.

Accounting methods: The part 70 rules do not generally require any particular governmental accounting standards or tracking systems to be used by air agencies. However, part 70 contains certain requirements for tracking permit fees and program costs and for funding the program costs with permit fees that must be met by all air agencies, regardless of the accounting standards and tracking systems being used. Due to variability and changes in accounting standards, systems, and practices, it is important for air agencies to note changes that may affect part 70 fees, costs, and accounting practices in the comments section of this form.

The EPA recognizes the following resources may be helpful in understanding governmental accounting standards as they relate to part 70 programs:

- 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/pdf/files/2015_fasab_handbook.pdf
 - Statement of Federal Financial Accounting Standards 4: *Managerial Cost Accounting Standards and Concepts*, page 396 of the FASB Handbook (June 2015) (“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 (June 2015) (“SFFAS No. 7”).
- Statements of the Governmental Accounting Standards Board (GASB):
<http://www.gasb.org/jsp/GASB/Page/GASBSectionPage&cid=1176160042391#gasbs25>
 - 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.

Definition of terms: Several terms (e.g., “Direct Labor” and “Indirect Costs”) used in the Example Annual Financial Data Form are not defined in part 70. Some terms are defined in the EPA’s fee guidance (particularly the EPA’s updated fee schedule guidance¹⁰), in the U.S. Office of Management and Budget’s (OMB’s) Circular A-87 Revised (Cost Principles for State, Local, and Indian Tribal Governments), and in the FASB Handbook’s chapter on Managerial Cost Accounting Standards and Concepts (SFFAS No. 4), among other reference documents.

Supporting information: The information reported on this example form should be based on relevant supporting accounting information or documentation. Air agencies that complete the form for submittal to the EPA should maintain such supporting information for submittal to the EPA upon request.

¹⁰ *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*, Peter Tsigotis, Director, OAQPS, to Regional Air Division Directors, Regions 1 – 10, March 27, 2018, (updated fee schedule guidance).

INSTRUCTIONS – EXAMPLE ANNUAL FINANCIAL DATA FORM FOR PART 70

These instructions are a general explanation of how to complete the attached Example Annual Financial Data Form for Part 70 (“example financial form”). This form is not required to be submitted on any frequency by air agencies – it is simply a useful example of how an EPA Region may collect financial information related to title V fee requirements. The EPA Regions may revise this form to suit a particular air agency or may opt to only require certain sections be completed.

Annual Program Revenue

- **Total Program Revenue (Fees Paid by Part 70 Sources) (\$):** Include all title V fees paid directly by part 70 sources, including emission fees, application fees, and other fees under the air agency’s fee schedule.
 - The fees collected under a part 70 program are referred to as “Exchange Revenue” or “Earned Revenue” in governmental accounting guidance because a good or service is provided by a governmental entity (e.g., a permit) in exchange for a price (e.g., a permit fee).¹¹ Also, governmental accounting guidance provides that only revenue classified as “Exchange Revenue” should be compared against costs to determine the overall financial results of operations for a period.¹² This means that legislative appropriations, taxes, grants, fines, or penalties, which are generally characterized as “Non-Exchange Revenue,”¹³ should not be compared against costs to determine if fees are sufficient to cover part 70 program costs.
 - Some part 70 programs have direct access to permit fees to cover costs. However, other part 70 programs are required by state or local law to deposit permit fees into general accounts, with operating costs subject to legislative appropriation. In both scenarios, if the funds were originally paid as permit fees and used for part 70 purposes for the report year, the fees may be considered “Total Program Revenue” and entered as such on the example financial form. Permit fees that were retained in a prior year and transferred for use in the report year should be reported as “Funds Transferred In.”
 - Note that any non-part 70 fee revenue (“Non-Exchange Revenue”) should only be identified for informational purposes in the “Program Balance of Accounts” section of the example financial form, specifically the “Non-Exchange Revenue Transferred In” line.¹⁴

¹¹ 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. Also see Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998), issued by the Governmental Accounting Standards Board (GASB) at pages 1-4. Conversely, “Non-Exchange 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).

¹² See FASAB No. 7 at page 8.

¹³ “Non-Exchange 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).

¹⁴ Since “Non-Exchange Revenue” is not allowed to be counted as part 70 fees, they should not be compared to costs or carried over to the “Beginning of Year Balance” or “End of Year Balance” lines.

Annual Presumptive Minimum Calculation

This section helps to determine if an air agency's status is considered to be "presumptively adequate" to fund program costs for a year.¹⁵ This determination is relevant to part 70 when an air agency's fee schedule was approved to be above the "presumptive minimum," but due to changes over time, it is now collecting and retaining fee revenue below the "presumptive minimum." When such a change occurs, 40 CFR § 70.9(b)(5) requires the air agency to submit a "detailed accounting" to show that its fees are sufficient to cover the part 70 program costs.

- Total Emissions of "Regulated Pollutants (for presumptive fee calculation)" (tons/year): Report the actual emissions of "Regulated Pollutants (for presumptive fee calculation)," as the term is defined in 40 CFR § 70.2, for all part 70 sources for the year. Also *see* 40 CFR § 70.9(b)(2)(ii) and (iii) for additional information on emissions that may be excluded from the total. The EPA sometimes refers to these emissions as "Fee Pollutants" since they are only used for fee purposes.
- Presumptive Minimum Fee Rate During Period (\$/ton): The EPA calculates the "Presumptive Minimum Fee Rate" (\$/ton) for part 70 in September of each year, and the fee rate is effective from September 1 through August 31 of the following year. The EPA publishes the fee rate on the EPA's title V permit website.¹⁶ If a part 70 program uses a different 12-month period, then the fee rate in effect at the beginning of the reporting period or an average fee rate (prorated by month) may be used.
- Total Greenhouse Gas (GHG) Cost Adjustments, as applicable (\$): A final rule published October 23, 2015, included a "GHG Cost Adjustment," which is part of the calculation of the "presumptive minimum" for an air agency under part 70.¹⁷ The adjustment is intended to reflect the increased costs of permitting GHGs for part 70 programs.
- Presumptive Minimum Cost for the Program (\$): To determine the total "presumptive minimum" for an air agency, multiply the actual emissions of "Regulated Pollutants (for presumptive fee calculation)" by the "Presumptive Minimum Fee Rate" and add the "GHG Cost Adjustment" (as applicable) for the period.
- Compare Revenue to Presumptive Minimum Cost: Compare the "Total Program Revenue" to the calculated "Presumptive Minimum Cost for the Program" to determine if the fee revenue has fallen below the "Presumptive Minimum." If the total program revenue is lower, a "detailed accounting" is required to show that fee revenue is sufficient to cover the program costs.¹⁸

¹⁵ *See* 40 CFR §§ 70.9(b)(2)(i) through (v) for more on the "presumptive minimum."

¹⁶ *See* <https://www.epa.gov/title-v-operating-permits/permit-fees>.

¹⁷ *See* 80 FR 64659 and 40 CFR §§ 70.9(b)(2)(i) and § 70.9(b)(2)(v) concerning the "GHG cost adjustment" for part 70.

¹⁸ *See* 40 CFR § 70.9(b)(5).

Annual Program Costs

The full cost of a part 70 program is described in accounting terms as being comprised of all reasonable “direct and indirect costs.” To assess the full cost, one should assess the total resources used to conduct a program or complete an activity under a program. Full cost includes all “direct and indirect costs,” regardless of funding sources. “Indirect costs” exist whether or not the program exists, while “direct costs” exist only if the program exists. If, by eliminating the program, a particular cost is eliminated, then the cost is labeled a “direct cost.”

Examples of “Direct Labor Costs,” “Other Direct Costs,” and “Indirect Costs” are provided below. It is beyond the scope of this example financial form to include a review of whether all part 70 program activities described in the separate updated fee schedule guidance¹⁹ are included in the “Direct and Indirect Costs;” however, such a review may be part of a “detailed accounting” or other EPA oversight activity.

- **Direct Labor Costs (\$)**: Salary and wages for direct work on part 70, including for professional, administrative, and supervisory staff. These costs should include fringe benefits (compensation in addition to regular salary and wages). Also, include the portion of “Direct Labor Costs” not covered by employee contributions, such as those associated with employee contributions to insurance and retirement.
- **Other Direct Costs (\$)**: Direct part 70 expenses, such as materials, equipment, professional services, official travel (i.e., food and lodging), public notice, public hearings, and contractors.
- **Indirect Costs (\$)**: “Indirect Costs” are funds spent on general administration (sometimes referred to as overhead). For a part 70 program, this is a share of costs associated with managing the organization within which the permit program resides, represented through an “Indirect Rate.” For example, to the extent that a program resides within a larger office, the program may be charged a proportionate share of the overhead expense associated with the larger office. The budget or accounting office of the environmental division or department may be able to provide the indirect costs for part 70 or may be able to assist with determining them using one of the following methods:
 - **Known Indirect Costs (\$)**: This is the known value of “Indirect Costs” for a part 70 program, such as may be provided by an air agency budget or accounting office.
 - **Calculated Indirect Costs (\$)**: If the “Indirect Costs” are not known, then multiply an “Indirect Rate” (e.g., a percentage that represents a fraction of total costs that are indirect costs) by a known “Total Cost Base” (either “Total Costs” or “Total Labor Costs” for the part 70 program) to calculate “Indirect Costs.” If calculated in this manner, the “Indirect Rate” and the “Total Cost Base” should be included on the example financial form.
- **Annual Operating Result (\$)**: The difference between the “Total Program Revenue” and “Total Program Costs” reveals the degree to which the program generated a surplus, deficit, or breaks even. If costs exceed fee revenue, then there was a deficit. If fee revenue exceeds costs, then there was a surplus. Deficits should be reported in parentheses to indicate a negative number.

¹⁹ See *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*, Peter Tsirigotis, Director, OAQPS, to Regional Air Division Directors, Regions 1 – 10, March 27, 2018 (updated fee schedule guidance).

Program Balance of Accounts

This section of the example financial form shows the program's overall fiscal status over time based on the balance at the beginning of the period, changes in account balances from operations, fund transfers, and resulting year-end balance.

- **Beginning of Year Balance (\$)**: The net balance (surplus or deficit) at the beginning of the year. If unknown, enter zero. This is the prior year's "End of Year Balance."
- **Annual Operating Result (\$)**: The amount of fees minus costs for the year. If negative, include in parentheses to indicate a deficit for the year.
- **Fee Revenue Transferred In (\$)**: Permit fee revenue not already accounted for above that is transferred from other accounts, such as fee revenue that was collected and retained in prior years used to cover costs for this year. Enter the amount of fee revenue and describe the source of funds in the comments section (e.g., permit fees retained in prior years) and whether the transfers are temporary (e.g., one-time) or permanent (e.g., recurring). If the funds originated as permit fees for the year being reported, enter the amount on the "Total Program Revenue" line, rather than this line.
- **Non-Exchange Revenue Transferred In (\$)**: Non-Exchange Revenue (e.g., grants, taxes, penalties, fines, and similar) transferred in to cover program costs. Enter the amount here and describe the source of funds in the comments section. This line is for information only and will not be included in any calculations of permit fee revenue on this form.
- **Fee Revenue Transferred Out (\$)**: Permit fee revenue transferred out of program accounts during the report year. In the comments section, describe the intended use of the funds and whether the transfer is permanent or temporary. If you intend to use the fees in future years for the part 70 program, please indicate so in comments. If not, please describe the intended use of funds and whether the fees are in excess of the costs for the year. Any such transfers out will be subject to close scrutiny by the EPA.
- **End of Year Balance (\$)**: The net balance (surplus or deficit) at the end of the year. In the comments section, please describe any steps that will be taken to address a significant deficit, if known or available.

EXAMPLES OF TYPICAL DIRECT AND INDIRECT COSTS

The following examples are intended to help permitting staff understand how various types of costs would be categorized for accounting purposes. For a complete list of part 70 program activities that should be included as part 70 costs, *see* the EPA's separate updated fee schedule guidance.

Direct Costs:

"Direct Costs" consists of two categories: 1) "Direct Labor Costs" and 2) "Other Direct Costs."

- Examples of Direct Labor Costs:
 - Cost of "direct labor";
 - Fringe benefits (i.e., retirement, health insurance, and life insurance); and
 - Leave, holiday, overtime and premium pay, and other personnel costs.

- Examples of Other Direct Costs:
 - Equipment purchases; and
 - Miscellaneous items, such as supplies and materials, equipment rentals, travel, purchased services such as printing, and contractual services.

Indirect Costs:

"Indirect Costs" can be thought of as the time spent on administrative support and other office expenses, which are not solely related to the program's operation because they benefit multiple programs or cost objectives, but are needed to operate a part 70 program.

- Examples of Indirect Costs:
 - Space rental, utilities, including telephones;
 - Administrative support related to an office's overall mission, including such costs as procurement, contracting, office services, property management, vehicle management, supply, finance, payroll, voucher processing, personnel services, records management, and document control;
 - Miscellaneous supplies and materials, including postage;
 - Data processing, management, and control;
 - Equipment rentals and costs;
 - Training and development;
 - Budget development, planning, and coordination;
 - Public information and inquiries;
 - Safety management, including inspection, training, and promotion;
 - Recurring reports, such as accounting or property reports; and
 - Unemployment Compensation, Equal Employment Opportunity Office costs and other affirmative action program costs.

DETERMINING THE PROPORTIONAL SHARE OF INDIRECT COSTS

When “Indirect Costs” are not known, they can be calculated through the use of an “Indirect Rate.” Generally, an “Indirect Rate” is calculated by dividing total “Indirect Costs” by total “Direct Costs.” Because air agency accounting methods vary, the indirect and direct costs can be for all environmental programs, the environmental department or division, or the air program. The resulting “Indirect Cost Rate” is the percentage of “Total Costs” that are “Indirect Costs.” The resulting “Indirect Rate” is then multiplied by the “Total Cost Base,” which may be either “Total Direct Labor Costs” or “Total Costs” for part 70, as shown below.

$$\text{Indirect Cost Rate} = \text{Total Indirect Costs} / \text{Total Direct Costs}$$

$$\text{Calculated Indirect Costs} = \text{Indirect Cost Rate} * \text{Total Direct Labor Costs for Part 70}$$

or

$$\text{Calculated Indirect Costs} = \text{Indirect Cost Rate} * \text{Total Costs for Part 70}$$

FOR MORE INFORMATION ON DETERMINING AIR AGENCY COSTS

For further information on determining costs for state, local, and tribal governments, *see* OMB Circular A-87 Revised, Cost Principles for State, Local and Indian Tribal Government (May 10, 2004) and OMB Circular A-133, Audits of State, Local Governments, and Non-Profit Organizations (last revised June 26, 2007). These guidance documents are not specific to part 70 but are generally useful for understanding costs for the purposes of the part 70 program.