Key Messages and Questions and Answers
For Final Flexible Air Permitting Rule

Key Messages:

EPA is finalizing revisions to title V operating permit regulations and reaffirming opportunities for flexibility under the existing permit regulations to promote greater consideration of flexible air permits (FAPs).

- Flexible air permits would assure environmental protection and encourage pollution prevention while allowing industrial facilities to take advantage of economic opportunities and reduce administrative burdens for both states and sources.

- States pilot tested the FAP approaches in today's final rule over a timeframe that spanned multiple Administrations. These approaches were proven effective from an operational, environmental and compliance perspective.

- Based on pilot experience, we anticipate that the FAP approaches will promote significant environmental, informational, economic and administrative benefits, particularly for the automotive and certain other dynamic and globally competitive industrial sectors.

- Flexible permits are not appropriate for all situations. In order for a FAP to be considered, sources must first propose FAP approaches to their permitting authority who can then decide whether it is appropriate to authorize such approaches on a case-by-case basis, depending on the specific facts of the situation.

Questions and Answers:

General:

1. What is a flexible air permit?

A FAP is an operating permit issued under title V of the Clean Air Act that facilitates flexible, market-responsive operations at a source while ensuring equal or greater environmental protection as achieved by conventional permits.

More information
FAP approaches allow a permitted source, under protection of the permit shield, to make certain types or categories of changes without further review and approval by the permitting authority of the individual changes as they subsequently occur. Under this flexibility, the source must continue to meet all Clean Air Act requirements that apply. These requirements include national emissions standards for hazardous air pollutants, and/or new source performance standards. In order to be effective, the combination of

FAP approaches contained in the title V permit must address all applicable requirements relevant to the anticipated changes being authorized.

FAP approaches addressed by this rulemaking include approved replicable methodologies (ARMs) and alternative operating scenarios (AOSs). The EPA also describes successful approaches used in state pilot permits to authorize "advance approved" changes in minor NSR permit programs. Advance approvals (AAs) authorize planned individual changes or categories of changes, including the addition of entirely new units. Advance approvals contained in NSR permits can then be incorporated into the sources operating permit as an applicable air requirement.

The ability to address anticipated changes in advance, through one or more upfront permitting actions, as opposed to subsequent, change-by-change, permitting actions—can greatly enhance operational flexibility and reduce administrative burdens while ensuring that applicable environmental requirements are met.

Public participation and the ability to comment on the changes can be enhanced because a more comprehensive picture of the facility's current and future operations and their related environmental impact is provided.

2. What types of sources are likely to be interested in FAP approaches?

We expect FAP approaches may be of interest to companies and facilities across many manufacturing sectors. Facilities anticipating the need to make time-sensitive operational changes during an upcoming permit term may be particularly interested in FAP approaches. The following business needs can increase the likelihood that flexible air permitting approaches will be useful to a facility:

- Short timeframes for bringing new products to market (time-to-market needs);
- Shifts of product lines, processes, and production levels to optimize asset utilization throughout a company's network of facilities;
- Agile manufacturing initiatives, such as Lean manufacturing and Six Sigma efforts, that require rapid and iterative changes to operations and equipment;
- Upcoming renovation or expansion projects; and
- Active pollution prevention programs which include continual process improvements.

3. Do the FAP approaches described in the final rulemaking exempt sources from applicable regulatory requirements such as NSR?

No. The rule focuses on approaches that enable permitting authorities to permit sources so as to meet all Clean Air Act obligations in ways that improve operational, environmental, and economic performance, while reducing administrative burden.

A source must obtain necessary approvals for changes that will or are expected to occur at the source during the term of the permit, or assurance that an otherwise applicable

requirement does not apply to these changes. Changes which are not approved in advance in a FAP would need to go through the normal permitting process.

4. What types of support does EPA intend to offer in order to facilitate greater consideration of FAP

The Agency anticipates that the effort by states and sources to investigate FAPs, including the potential for advance approval of minor NSR, AOSs, ARMs, or how, as appropriate, NSR projects can be more flexibly defined under current major NSR regulations, will involve a potentially wide spectrum of sources. As a result, EPA intends to provide general support to states, sources, and the public on this and other FAP topics, potentially in the form of a website, workshops, and an EPA network of contacts. In addition, we will consider other types of support to individual states where requested to do so.

5. Are the FAP approaches generally available to all sources?

Yes. Based on pilot experiences and on the comments reviewed, EPA believes that most states can now consider the FAP approaches described in the final rulemaking. However, state and local permitting authorities retain the ability to determine the appropriateness of these permitting approaches in a particular situation. The permitting authority must reject source proposals where they would fail to meet the basic requirements of title V which apply to all operating permits (i.e. the permit would be inadequate to assure compliance with the underlying applicable requirements) and may reject them for being otherwise inappropriate, depending on the specific facts of the situation. For example, the permitting authority may reject a source's FAP proposal due to a poor compliance history or where the permitting authority expects few benefits to occur.

6. Are flexible air permits enforceable?

Yes.

EPA's evaluation of the state pilot permits found that the FAP approaches are enforceable. Such permits contained monitoring, recordkeeping, and reporting mechanisms sufficient to assure compliance with identified regulatory requirements.

7. What is the relationship between this rulemaking and the plantwide applicability limit (PAL) provisions of the December 2002 NSR Improvement rule?

The collection of FAP approaches addressed by this rulemaking build upon existing regulatory provisions and techniques that afford operational flexibility, such as the plantwide applicability limit (PAL) provisions of the December 2002 NSR Improvement rule.

This rulemaking, however, discusses approaches that further complement the major NSR approaches already provided for in that rule, including advance approval for minor NSR and approaches to address non-NSR requirements.

8. What experience do states have with piloting FAP approaches, and what lessons have been learned from these pilots?

Since the early 1990s, state and local permitting authorities, often with support from EPA, have been piloting FAP approaches addressed by today's rulemaking.

In 2001 and 2002, EPA conducted an extensive evaluation of the implementation experience for six pilot permits. The six permits that we analyzed were: (1) Intel (Aloha, Oregon); (2) 3M (St. Paul, MN); (3) Lasco Bathware (Yelm, WA); (4) DaimlerChrysler (Newark, DE); (5) Saturn (Spring Hill, TN); and (6) Imation (Weatherford, OK). The findings from this evaluation informed this rulemaking, and are included in the summary report for the evaluation, *Evaluation of the Implementation Experience with Innovative Air Permits*, which can be accessed at http://www.epa.gov/ttn/oarpg/t5/memoranda/iap_eier.pdf.

In preparing today's final rulemaking, EPA primarily drew on experiences from the mentioned six pilots. EPA also considered experience with additional pilot permits, including: (1) Imation (Camarillo, CA); (2) Merck (Elkton, VA); (3) Merck (Barceloneta, PR); (4) BMW (Spartanburg, SC); (5) Eli Lilly (West Lafayette, IN); and (6) 3M (Nevada, MO).

9. How does this rule correspond to the CAAAC Title V Task Force's April 2006 recommendations?

Clean Air Act Advisory Committee's (CAAAC) Title V Task Force recommendations, issued in April 2006, addressed the need for greater operational flexibility in title V permitting. Today's revisions are responsive to this call for encouraging broader use of FAP approaches, as well as to other recommendations made to reduce the overall administrative burden associated with title V permitting.

See http://www.epa.gov/oar/oaqps/permits/taskforce.html for more information on the CAAAC title V recommendations and plans for EPA's response to these recommendations.

10. Why is EPA taking this rulemaking action at this time?

With more than a decade of innovation and pilot experience with FAPs, the time is appropiate to introduce more mainstream use of these approaches. Numerous pilots have been completed and evaluated. They show that the use of these techniques can yield substantial benefits for the environment, the public, permitting authorities, and regulated sources.

11. What is an alternative operating scenario (AOS)?

An AOS is a FAP approach that is included in a title V permit and authorizes one or more changes to an existing emissions unit that result in the unit being subject to different applicable requirements. AOSs may be employed without requiring a permit revision at the time the changes occur. An AOS identifies all the applicable requirements associated with the alternate scenario and how the facility assures ongoing compliance. An AOS is generally useful where the recordkeeping under the relevant requirements is not sufficient to determine the requirements applicability to each new operating scenario.

In this rulemaking, EPA seeks to preserve the flexibility available under existing rules by codifying a definition of "AOS" and promulgating a few minor clarifications to the existing rules intended to improve certainty around the use of AOSs.

12. What is an approved replicable methodology (ARM)?

An ARM is a replicable protocol placed in a title V permit to facilitate compliance with an applicable requirement in situations that otherwise could require a permit revision. For example, an ARM could specify a replicable testing procedure for updating an emissions factor, rather than requiring a permit revision to accomplish the update. An ARM may also be used to assure that a given requirement does not apply in a particular situation. To be approvable, an ARM must deliver replicable results when operating on the same input data.

ARMs provide increased clarity and certainty to a source and the public regarding protocols that may be used under a permit, while also reducing administrative burden for sources and permitting authorities in processes that would otherwise entail revisions to a permit. ARMs cannot modify, supersede, or replace an applicable requirement or reporting required under an applicable requirement. Instead, ARMs can serve as a strategic approach for incorporating relevant applicable requirements into a title V permit.

In this rulemaking, EPA seeks to preserve the flexibility available under existing rules by codifying a definition of "ARM" and promulgating a few minor clarifications to the existing rules intended to improve certainty around the use of ARMs.

13. What are "advance approved changes"?

Advance approved changes, or "advance approvals (AA)," authorize planned individual changes or categories of changes, including the addition of entirely new units, that would otherwise require review and approval by the permitting authority at the time the changes occur. Advance approvals contained in NSR permits can then be incorporated into the sources operating permit as an applicable air requirements.

In our evaluation of the pilot permits, EPA found that the use of AAs under minor NSR improved operational efficiency at the plants particularly for the typically incremental,

iterative nature of industrial process improvements. We also found that pollution prevention (P2) projects approved in advance became more attractive to the companies because such projects could be undertaken without the delay and uncertainty of future case-by-case approvals. In addition, P2-related projects reduced emissions and enabled sources to comply more easily with emissions limits such as the plantwide emissions caps that were often features of the pilot permits.

Advance approval approaches are typically used in conjunction with plantwide emissions caps, such as Plantwide Applicability Limits (PALs) and Potential-to-Emit (PTE) limits, to prevent major NSR or other requirements from being triggered by physical or operational changes made under the advance approvals.

In this rulemaking, EPA describes successful approaches used under existing rules in state pilot permits to authorize advance approved changes in permit programs, such as minor NSR. EPA is also making minor revisions to the title V permit application requirements to allow reporting of aggregate emissions from emissions units subject to an annual emissions cap while preserving the permitting authority's ability to request unit-specific information as needed to develop permit terms necessary to assure compliance with all applicable requirements.

14. Why did EPA withdraw its Green Group proposal?

Based on the varying types of concerns raised by commenters, EPA no longer believes that the pursuit of a single, nationally uniform approach such as the one for Green Groups to achieving advance approval under major NSR is practical or desirable.

As part of its September 2007 notice, EPA proposed revisions that would have added major NSR requirements for the advance approval of a "Green Group," which consists of designated emissions activities ducted to a common air pollution control device that is determined to meet "best available control technology" (BACT) or "lowest achievable emission rate" (LAER), as applicable.

To establish a Green Group, a source would have gone through the major NSR permitting process and obtain a permit which would limit future emissions growth and changes that would occur in the Green Group over its 10-year duration.

EPA is also withdrawing our Green Group proposal due to our belief that the current major NSR regulations already provide considerable flexibility to states in the design and implementation of their SIPs. Moreover, we believe that available options can provide operational flexibility while addressing the types of concerns raised by commenters on EPA's Green Groups proposal.

15. What can States do under existing rules to explore flexible major NSR permits?

The major NSR regulations, in general, are quite detailed and prescriptive as to what changes are subject to review, but afford considerable flexibility to determine how

subject NSR projects must be permitted. As a result, under the current major NSR regulations, with the exception of the relatively narrow class of construction projects with independent phases for PSD purposes, EPA believes states are free to design and implement their major NSR state implementation plans to address project scope and duration, number and types of emissions units comprising the project which are subject to emissions tracking, timely construction of authorized changes, and reevaluation of initial control technology and/or air quality impact reviews as necessary.

EPA encourages states and sources to explore how projects subject to major NSR might be more flexibly permitted and administratively managed. In addition, EPA is willing to work with states to evaluate their current SIPs and to explore opportunities for revising them to best allow for FAP approaches accommodated by the existing major NSR regulations.

Impacts and Benefits:

16. Do the FAP approaches remove or diminish the ability of the public to participate and comment throughout the permitting process?

Public participation and the ability to comment on the changes implemented using flexible permitting approaches can be enhanced because a more comprehensive picture of the anticipated future operational changes and of their related environmental impact is provided.

Providing the longer term picture of anticipated source operations can allow the public to engage, participate, and comment in the permitting process in a more meaningful and efficient way. EPA's evaluation of pilot flexible permitting experience revealed important improvements in the timing, format, and availability of information provided by sources using FAPs.

17. What environmental benefits does EPA anticipate from this rulemaking?

EPA expects this rulemaking will have significant environmental improvement benefits. In our evaluation of pilots, we documented several environmental performance benefits of the FAP approaches addressed by today's rulemaking, including that the permits facilitated emissions reductions and increased pollution prevention (P2) efforts.

In particular, emissions caps and advance approval provisions both create incentives for emissions reductions and make it easier to implement changes that lower emissions. The net environmental benefits were significant for the pilot permits we evaluated. Of the five sources that had operated under their flexible permits for three or more years, all five achieved 30- to 80-percent reductions in actual plantwide emissions and/or emissions per unit of production.

18. What other benefits does EPA anticipate from this rulemaking?

EPA expects this rulemaking would also have significant informational, economic and administrative benefits. Participating companies in the pilot permit activity also reported that a FAP significantly reduces the uncertainty and transaction costs associated with the permitting process. Pilot companies also reported that FAPs significantly reduced staffing and related resource costs because there was no longer a need to seek and process multiple case-by-case permit actions given the changes reasonably anticipated at the facility were already included and approved in the permit. The FAPs resulted in a net cost savings over time for both the sources and for the state permitting authorities.

19. How would the final rulemaking affect state and local air permitting programs?

The final FAP rule does not require any state to revise either their existing NSR or title V operating permit regulations in order to use FAP approaches related to advance approvals for minor or major NSR or ARMs. These approaches do not involve any mandatory, minimum program elements. States are free to review and assess whether their existing regulations can accommodate these approaches, but they are under no obligation to do so. The minor revisions involving AOSs, a mandatory, minimum title V program element for states, involves the addition of a general definition for use in implementing current AOS provisions. As a result, we expect that few states will need to revise or clarify their NSR or title V operating permit regulations, although some may choose to do rulemaking or issue a policy statement in order to make the availability of FAP approaches more explicit.

20. What impact does EPA anticipate that this rulemaking will have on the level of resources and time needed by permitting authorities to develop a FAP?

EPA anticipates that the revisions will reduce for both permitting authorities and sources, the level of resources and time needed to develop a FAP.

Before these changes the pilot permitting efforts faced obstacles and challenges inherent to innovation, where new approaches must be developed, carefully assessed, and tested. Still, despite the resources and time needed to complete many of the pilot permits, permitting authorities that addressed this issue in EPA's evaluation report stated that the payback period for the initial permit development effort was about two to three years.

EPA anticipates that the FAP rulemaking will eliminate much of the uncertainty associated with the use of FAP approaches and thus shorten the "payback period."

EPA also recognizes that several states may have to impose additional fees to offset higher initial costs.

21. What impact will this rule have on pollution prevention activities?

The rule will provide flexibility and encourage sources to undertake P2 activities. For example, the ability to implement P2 measures using advance approvals would enable sources to implement such activities as part of a comprehensive emissions control strategy. Providing a path for sources to implement a strategy that is P2 friendly can reduce administrative costs and time and result in a more environmentally sustainable footprint for the facility.

22. What impact will this rule have on greenhouse gas emissions?

EPA anticipates that the effect of this rulemaking will encourage investigation of more options to improve the operational and energy efficiency of sources using these FAP approaches, thereby reducing greenhouse gas emissions in aggregate or in terms of emissions per unit of production. For example, FAP techniques could be used to reduce the administrative permitting burden associated with replacing motors, drives, or other equipment with more energy-efficient models, while ensuring that all applicable environmental requirements are addressed.

23. Why is EPA proposing to reject portions of Texas' Flexible Air Permits Program but finalizing today's rule that encourages flexible air permits?

EPA believes that flexible air permits, when properly designed and implemented, can enhance public transparency and an understanding of the operations and associated air emissions at an industrial facility. Today's rulemaking identifies approaches that will further enhance this objective and also ensures environmental protection while providing operational flexibility for industrial sources.

We do not believe that the Texas flexible air permitting program provides such transparency nor does it enable the public to understand the anticipated changes that will occur at the facility or their emission consequences. In short, there are several aspects of Texas' current program that do not comport with the requirements of the Clean Air Act and EPA is asking Texas to conform its program to ensure such compliance.