



THE TITLE V PETITIONS PROCESS RULEMAKING

Webinar

October 4, 2016



OVERVIEW

- Background
- Overview of Proposed Rule
- Proposed Changes to Regulations
- Recommended Practices and Guidance
- How to Comment

PURPOSE OF WEBINAR

- To provide an overview of what is in the proposed “*Revisions to the Petition Provisions of the Title V Permitting Program*”
- Provide information about commenting on the proposal
 - Published Wednesday, August 24, 2016 [81 FR 57822]
 - Comment period ends October 24, 2016

BACKGROUND: WHAT IS TITLE V?

- A section in the Clean Air Act (CAA) that establishes the operating permit program requirements
- Implementing regulations are found at parts 70 (minimum program requirements for states) and 71 (federal program)
- Established by the CAA Amendments of 1990
- Objective is to improve compliance and transparency with the CAA by combining all requirements applicable to a source into a single operating permit.

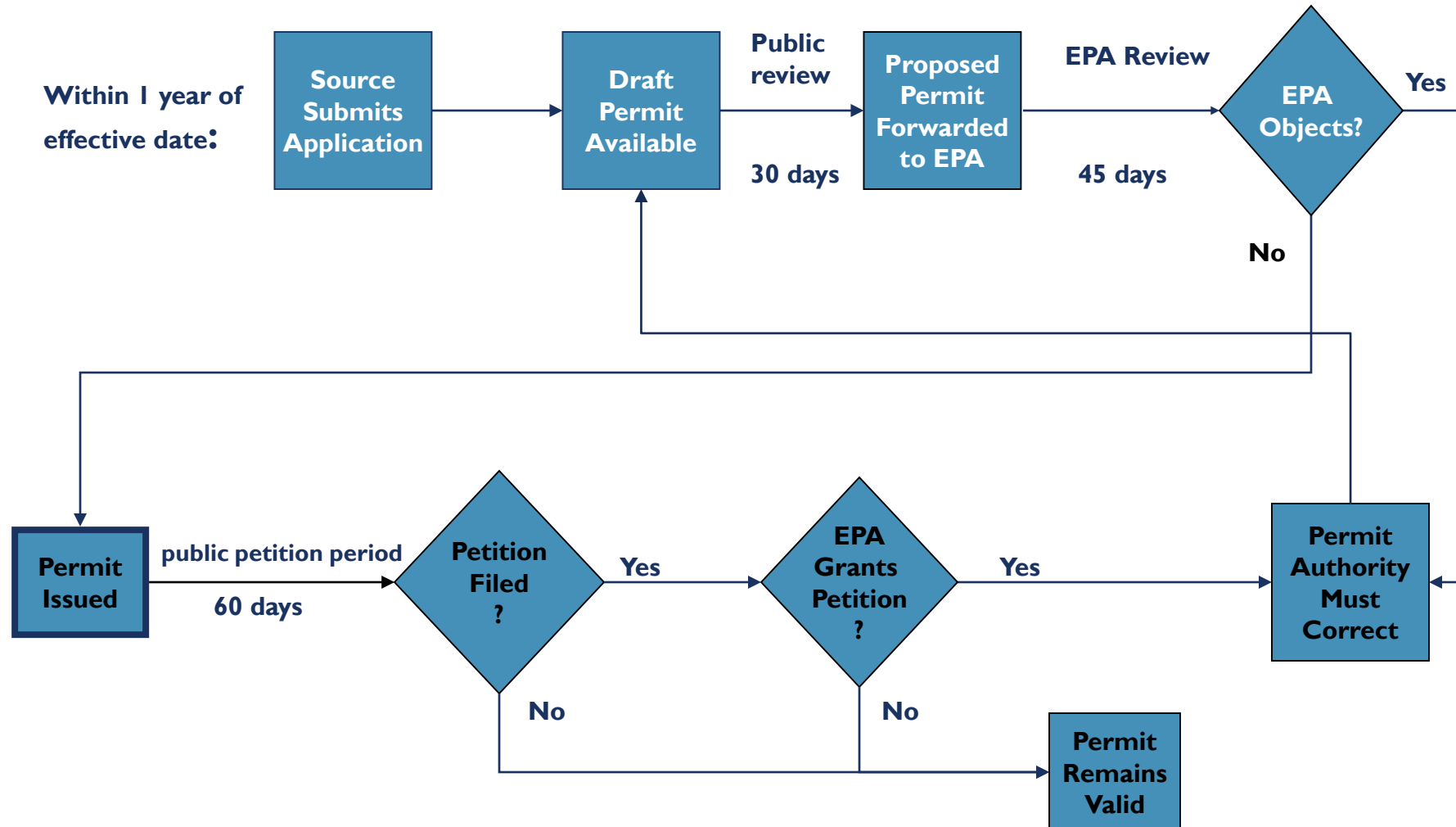
BACKGROUND: WHO ISSUES TITLE V OPERATING PERMITS?

- Part 70 Program (states, local agencies and tribes)
 - Most title V permits are issued under this section
 - 115 State and local agencies have received approval of their title V programs
 - The Southern Ute Tribe has been approved to issue part 70 permits. This is the only Indian Nation which has been approved to issue part 70 permits
- Part 71 Program (federal)
 - EPA Regional Offices issue part 71 Federal Permits on most Tribal Lands and certain areas of the outer continental shelf (OCS)
 - The Navajo Nation has taken delegation of the part 71 Program so issues part 71 permits to title V sources within its jurisdiction. Thus, at present, the Navajo Nation is the only delegated permitting authority in the Country

BACKGROUND: HOW DO PERMITS GET ISSUED?

- Sources must apply to state/local/tribal agency
 - Permitting agency issues draft permit with required terms and conditions pursuant to applicable requirements.
- Draft permit is subject to public notice and comment
 - Public hearing may be requested
- Proposed permit goes to EPA for review
 - EPA may object to a permit if it determines its provisions are not in compliance with the CAA
 - If no objection, the final permit is issued
- Public may petition the Administrator to object to the proposed permit
 - In order to file a title V petition, issues must be raised with “reasonable specificity” during public comment period

BACKGROUND: PERMIT ISSUANCE PROCESS



OVERVIEW OF PROPOSED REGULATORY CHANGES

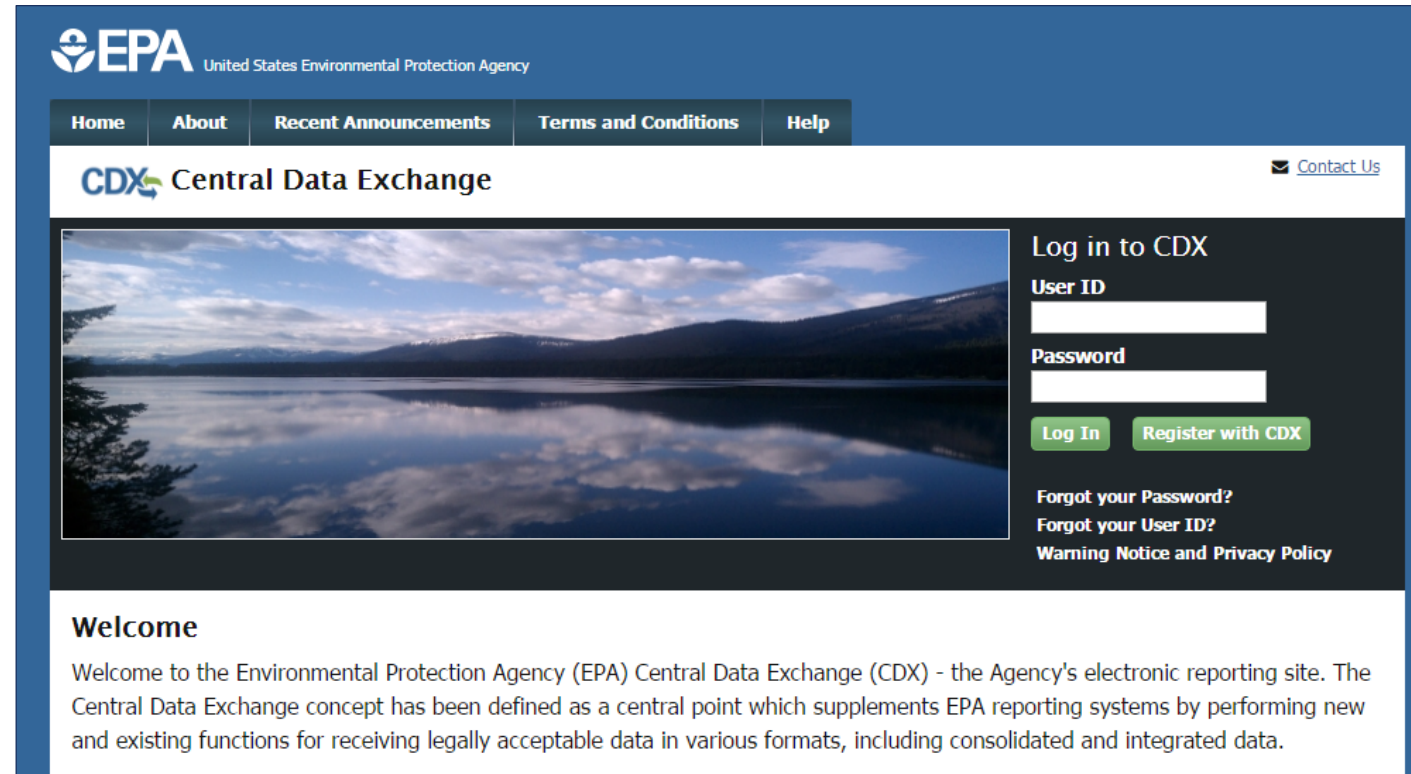
- The purpose of the proposal is to increase stakeholder access to and understanding of the petition process and aid the EPA's review of petitions.
- The EPA is proposing regulatory changes to **three** areas specific to the petition process
 - **Area 1** – Electronic Submittal of Petitions
 - Providing direction as to how petitions should be submitted to the EPA, including encouraging the use of the Agency's electronic submittal system.
 - **Area 2** – Required Petition Content and Format
 - Assisting petitioners with preparing their title V petitions by specifying the content and format needed for efficient review and response by EPA.
 - **Area 3** – Proposed Administrative Record Requirements
 - Ensuring permitting authorities prepare complete permit records that are consistent with the requirements of the CAA by requiring them to respond in writing to significant comments received during the public comment period for draft title V permits, and to provide that response with the proposed title V permit to the EPA for the Agency's 45-day review period. This change is expected to provide more access to and better understanding of permitting decisions.

PRE- AND POST- PETITION INFORMATION/GUIDANCE

- While not part of the proposed regulatory changes, to increase the transparency and clarity of the title V petition process, in the preamble to the proposed rule, the EPA is also:
 - Providing guidance on “recommended practices” for developing permits and permit records
 - Presenting information on the EPA’s interpretations of certain title V provisions of the CAA and its implementing regulations regarding the steps following an EPA objection in response to a title V petition.
 - These interpretations have been previously stated in title V orders
 - The agency is repeating these interpretations in this proposal to ensure greater access to these interpretations

AREA I: ELECTRONIC SUBMITTAL OF PETITIONS

- Proposed change: require petitions to be submitted using **one** of the three identified methods.
 - Electronic submittal system (preferred method)
 - Designated email address: titleVpetitions@epa.gov
 - Designated mail/courier address



The screenshot shows the EPA Central Data Exchange (CDX) website. At the top, there is the EPA logo and the text "United States Environmental Protection Agency". Below this is a navigation menu with links for "Home", "About", "Recent Announcements", "Terms and Conditions", and "Help". The main header area includes the "CDX Central Data Exchange" logo and a "Contact Us" link. The central part of the page features a large image of a lake reflecting mountains. To the right of this image is a login section titled "Log in to CDX" with input fields for "User ID" and "Password", and buttons for "Log In" and "Register with CDX". Below the login section are links for "Forgot your Password?", "Forgot your User ID?", and "Warning Notice and Privacy Policy". At the bottom of the page, there is a "Welcome" section with a message: "Welcome to the Environmental Protection Agency (EPA) Central Data Exchange (CDX) - the Agency's electronic reporting site. The Central Data Exchange concept has been defined as a central point which supplements EPA reporting systems by performing new and existing functions for receiving legally acceptable data in various formats, including consolidated and integrated data."

The EPA's current electronic submittal system, CDX, is located at: <https://cdx.epa.gov/>.



AREA I: ELECTRONIC SUBMITTAL OF PETITIONS

Why is EPA proposing this change?

- Provide clarity for petitioners by establishing centralized points for submitting petitions.
- Ensure more efficient receipt of petitions and any attachments, which helps improve EPA's efficiency in responding to petitions.

AREA I: ELECTRONIC SUBMITTAL OF PETITIONS

- Benefits to using the electronic submittal system:
 - Immediate notification to petitioner that petition was received.
 - Petitioners can submit the petition and any attachments in one entry.
 - Attachments not limited by size.
 - Immediate and direct availability to the EPA, saving administrative processing time.
- All methods of petition submittal are available now at the Title V Petitions webpage.
 - Only need to submit **one** copy of the petition through one of the identified methods; no need for duplicate copies.

You are here: EPA Home » Title V Operating Permits » Title V Petitions

Title V Petitions

What are title V petitions?

A "title V petition" is a legal document submitted to the EPA pursuant to [Section 505\(b\)\(2\)](#) of the [Clean Air Act](#) and [40 C.F.R. § 70.8\(d\)](#).

How can I file a title V petition?

The EPA requests that you file title V petitions electronically through the [Central Data Exchange](#).

If you tried but you are unable to use the Central Data Exchange to file your petition, the EPA requests that you send your petition and associated attachments to the following e-mail address: titleVpetitions@epa.gov.

If you have made every effort to electronically submit your petition but are simply unable to successfully do so, please submit a hardcopy of your petition to the following address:

US EPA
Office of Air Quality Planning and Standards
Air Quality Policy Division
Operating Permits Group Leader
109 T.W. Alexander Dr. (C-504-01)
Research Triangle Park, NC 27711

<https://www.epa.gov/title-v-operating-permits/title-v-petitions>

AREA 2: REQUIRED PETITION CONTENT AND FORMAT

Proposed Change

- Establish in part 70 key mandatory content requirements for title V petitions.
 - These proposed requirements are based on CAA requirements and aspects of the demonstration standard interpreted by the EPA in numerous title V petition orders and re-stated in this notice.
 - By proposing to codify what has already been discussed in prior orders, the EPA aims to help all stakeholders understand the criteria that the EPA applies in reviewing a title V petition.
- Establish requirements to encourage similar formats for all petitions to further assist the agency in its review process

AREA 2: REQUIRED PETITION CONTENT AND FORMAT

We are proposing that all future petitions need to:

- Identify the proposed permit on which the petition is based
 - Includes the permit number, version number and/or any other necessary information
 - Must specify whether the permit is an initial permit, renewal or modification
- Demonstrate that the petition was filed on time
 - Such as an electronic receipt
 - Date/time stamp from email
 - Postmark date

AREA 2: REQUIRED PETITION CONTENT AND FORMAT

We are proposing that all future petitions need to (cont.):

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



AREA 2: REQUIRED PETITION CONTENT AND FORMAT

We are also proposing

- That we will not consider information incorporated by reference
 - All pertinent information in support of each issue raised as a petition claim must be included within the petition itself.
- The use of a standard format
 - Following the order of the required information

We are asking for comment on whether there should be a page limit for petitions

AREA 2: REQUIRED PETITION CONTENT AND FORMAT

Why is EPA proposing these changes?

- To provide transparency and clarity regarding the EPA's expectations of petitions and petitioner's demonstration
- Expected Benefits
 - The agency anticipates receiving petitions
 - That are more concise and clear **and**
 - That contain all relevant material critical to efficiently review claims
 - Similar organization for all petitions could reduce agency review time as a result of having the specific information in the same format in every petition received.

AREA 3: PROPOSED ADMINISTRATIVE RECORD REQUIREMENTS

Proposed Changes

- Require a permitting authority to respond in writing to significant comments received during the public participation process for a draft permit.
- Revisions to part 70 to specifically identify the statement of basis document as a necessary part of the permit record throughout the permitting process.

AREA 3: PROPOSED ADMINISTRATIVE RECORD REQUIREMENTS

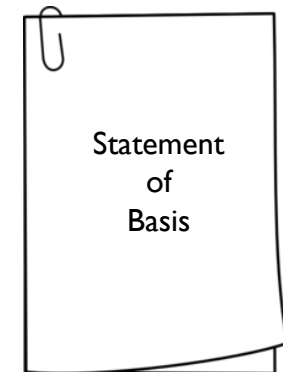
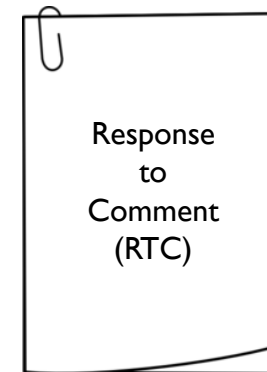
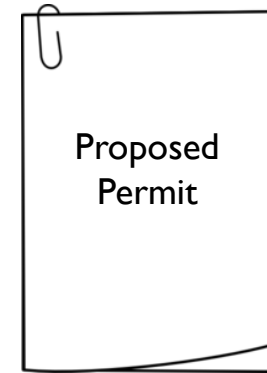
Proposed Changes (cont.)

- Require the written response to all significant comments (RTC) and the statement of basis document to be included as part of the proposed permit record that is sent to the EPA for its 45-day review period.
 - The 45-day review period would not begin until all the supporting information has been received by the EPA. This includes the proposed permit, statement of basis, and the written RTC (or when no significant comments are received during the public comment period a statement to that effect).
- Require that within 30 days of sending the proposed permit to the EPA, that permitting authorities must provide notification that the proposed permit and the response to significant public comments are available to the public. Such notice must explain how these materials may be accessed.
 - Relatedly, the EPA also proposes to post when a proposed permit is received and the corresponding 60-day deadline for submitting a petition on the EPA Regional Office Web sites.

AREA 3: PROPOSED ADMINISTRATIVE RECORD REQUIREMENTS

Why is EPA proposing these changes?

- The agency considers both the statement of basis and the written RTC to be integral components of the permit record.
- Many permitting authorities already submit a written RTC and statement of basis along with a proposed permit; other authorities may provide this information at a later date.
- This would standardize the practice of submitting the response to comment (RTC) document and statement of basis to EPA.





AREA 3: PROPOSED ADMINISTRATIVE RECORD REQUIREMENTS

Benefits of the proposed changes

- Ensures EPA has the state's rationale before us when reviewing a proposed permit, which could result in less pre- and post-petition permit processing.
- Ensures petitioners have the entire record before them when submitting a petition.
- Improve efficiency of response process due to complete administrative record.

RECOMMENDED PRACTICES GUIDANCE FOR PERMITTING AUTHORITIES

While the EPA is not requiring the following actions, the agency is recommending practices for permitting authorities when preparing title V permits, which can minimize the likelihood that a petition will be submitted on a title V permit.

Recommendations for Permitting authorities

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

RECOMMENDED PRACTICES GUIDANCE FOR PERMITTING AUTHORITIES

Recommendations for Permitting authorities (cont)

- Consulting with the appropriate EPA Regional Office as needed to resolve issues related to comments on draft permits and incorporating those resolutions into the proposed permits.
- Consulting with the appropriate EPA Regional Offices as needed to resolve issues related to the EPA objections or comments on proposed permits and incorporating those resolutions into the final permits.
- For petitions on which the EPA grants an objection on a claim because the record is inadequate, revising the record and permit as necessary and in a timely manner to resolve the objection.
- Reviewing permits that are the subject of a petition and revising or reopening for cause to address any issues raised by the petition that have not been resolved.
- Posting the proposed permit and RTC online where possible.

RECOMMENDED PRACTICES FOR SOURCES

The EPA is providing the following recommended practices for a source to consider to help ensure that its permit includes the conditions to assure compliance with applicable requirements under the CAA and part 70. In some cases, this may minimize the likelihood that a petition will be submitted on its title V permit.

These “recommended practices” include

- Submitting permit applications that include all information required under the approved title V permit program.
- Consulting with the permitting authority when any discrepancy or inaccuracy is identified in the permit, at any stage of the permitting process.
- Promptly providing any updates to the permit application to the permitting authority.
- If public comments identify an issue in the draft permit, contacting the permitting authority to make revisions to address the concern before the permit is proposed to the EPA.
- Timely responding to inquiries from the permitting authority at each stage in the permitting process, including the draft, proposed, and final stages.

INFORMATION ON THE POST-PETITION ORDER PROCESS

Various stakeholders have indicated there can be confusion around the appropriate steps following an EPA petition order, particularly when the Administrator granted the petition in whole or in part. The notice provides information about the activities that occur, or may occur, after the EPA responds to a title V petition, often referred to as the post-petition process.

In general, these steps include

- The CAA does not provide express direction as to the specific procedures and steps once EPA has granted a petition.
- Part 70 regulations provide a state with 90 days to resolve the EPA's objection.
- A permitting authority may address an EPA objection by, among other things, providing the EPA with a revised permit.
 - In some cases, the permitting authority's response to an EPA objection may not involve a revision to the permit terms and conditions themselves, but may instead involve revisions to the permit record.
- Whether the permitting authority submits revised permit terms, a revised permit record, or other revisions to the permit, the permitting authority's response is generally treated as a new proposed permit.
- This new proposed permit is subject to the agency's opportunity to conduct a new 45-day review, and an opportunity for a second petition if the EPA does not object.



Questions?

FOR MORE INFORMATION

- To download a copy of this proposed rule, go to the EPA's Title V Operating Permits website at: <https://www.epa.gov/title-v-operating-permits>.
- Today's Proposed Rule and other associated information are available either electronically at www.regulations.gov, the EPA's electronic public docket and comment system, or in hardcopy at the EPA Docket Center's Public Reading Room. (Docket ID No. is EPA-HQ-OAR-2016-0194.)
- The Public Reading Room is located in the EPA Headquarters, Room Number 3334 in the William Jefferson Clinton West Building, located at 1301 Constitution Avenue, NW, Washington, D.C. Hours of operation are 8:30 a.m. to 4:30 p.m. eastern standard time, Monday through Friday, excluding Federal holidays.
 - Visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.

HOW TO COMMENT

- EPA will accept written comments on the proposed rule for until October 24, 2016.
- Comments on the proposed rule (identified by Docket ID Number EPA-HQ-OAR-2015-0355) may be submitted by the following method:
 - Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2016-0194 to the *Federal eRulemaking Portal*: <http://www.regulations.gov>
 - Tips for preparing comments can be found at <http://www.epa.gov/dockets/comments.html>
- Special considerations apply for submissions which contain information considered to be Confidential Business Information or other information the disclosure of which is restricted by statute. For more information on this, as well as for the full EPA public comment policy, information about multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.