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Part II

Environmental Protection Agency

40 CFR Parts 55 and 71
Federal Operating Permits Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 55 and 71

[FRL 5183–1]

RIN 2060–AD68

Federal Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of opportunity for public hearing.

SUMMARY: The EPA is proposing a new subpart containing regulations setting forth the procedures and terms under which the Administrator will administer programs for issuing operating permits to covered stationary sources, pursuant to title V of the Clean Air Act as amended in 1990 (the Act). Although the primary responsibility for issuing operating permits to such sources rests with State, local, and Tribal air agencies, EPA will remedy gaps in air quality protection by administering a Federal operating permits program in areas lacking an EPA-approved or adequately administered operating permits program. Federally issued permits will clarify which requirements apply to sources and will enhance understanding of and compliance with air quality regulations.

DATES: *Comments.* Comments on the proposed regulations must be received by EPA's Air Docket on or before June 26, 1995.

Public Hearing. A public hearing is scheduled for 10:00 a.m., on May 30, 1995, at the address listed below. Requests to present oral testimony must be received by May 12, 1995, and the hearing may be canceled if no speakers have requested time to present their comments by that date. Written comments in lieu of, or in addition to, testimony are encouraged.

ADDRESSES: Comments should be mailed (in duplicate if possible) to: EPA Air Docket (Mail Code 6102), Attn: Docket No. A–93–51, Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC 20460. The public hearing will be held in the Waterside Mall auditorium at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Docket. Supporting information used in developing the proposed rules is contained in Docket No. A–93–51. Supporting information used in developing 40 CFR part 70 is contained in Dockets No. A–90–33 and No. A–93–50. These dockets are available for public inspection and copying between 8:30 a.m. and 3:30 p.m. Monday through Friday, at EPA's Air Docket, Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Candace Carraway (telephone 919/541–3189) or Kirt Cox (telephone 919/541–5399), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Mail Drop 12, Research Triangle Park, North Carolina 27711. Persons interested in attending the hearing or wishing to present oral testimony should contact Ms. Susan Curtis in writing at the U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Mail Drop 12, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Comments

The EPA is unlikely to be able to extend the public comment period. Two paper copies of each set of comments are requested. If possible, comments should be sent in both paper and computerized form. Comments generated on computer should be sent on an IBM-compatible diskette and clearly labeled. Computer files created with the WordPerfect 5.1 software package should be sent as is. Files created on other software packages should be saved in an ''unformatted'' mode for easy retrieval into WordPerfect. Comments should refer to specific page numbers of today's proposal whenever possible.

Outline

The contents of today's preamble are listed in the following outline:

I. Background and Purpose

Title V of the Act as amended in 1990 (42 U.S.C. 7661 *et seq.*) imposes on States the duty to develop, administer, and enforce operating permits programs that comply with the requirements of title V (section 502(d)(1)). The EPA has 1 year to approve or disapprove a submitted program (section 502(d)(1)). Once EPA has approved a State program, the covered sources within that program's scope have 1 year to submit permit applications to the permitting authority (section 503(c)) unless the permitting authority establishes an earlier date. Within the first 3 years of the program, the permitting authority must act on all applications submitted in the first year of the program (section 503(c)), and EPA must have an opportunity to object to the proposed permit if it does not comply with the Act's requirements (section 505(b)). Once the permitting authority issues a source its permit, the source may not violate any requirement of its permit or operate except in compliance with it (section 502(a)).

Title V also requires that EPA stand ready to issue Federal operating permits when States default in their duty to develop and administer part 70 programs. Section 502(b) of the Act requires that EPA promulgate regulations setting forth provisions under which States will develop operating permits programs and submit them to EPA for approval. Pursuant to this section, EPA promulgated 40 CFR part 70 on July 21, 1992 (57 FR 32250), which specifies the minimum elements of State operating permits programs.

The operating permits program's potential consequences for air pollution control and for sources' ability to meet changing market demands have made the process of developing and implementing the program complex and controversial. Indeed, nearly 20 entities, including State and local governments, environmental groups, and industry associations, petitioned for judicial review of the part 70 regulations. Subsequently, EPA decided to propose revisions to part 70. See 59 FR 44460 (Aug. 29, 1994). In light of ongoing discussions with petitioners, EPA may propose additional revisions to part 70 in the future that may also necessitate supplementing the part 71 provisions proposed today.

The EPA intends that proposed part 71 generally follow the approach taken in 40 CFR part 70, including the

recently proposed revisions to part 70. Differences between part 70 and part 71 are noted in the discussion of each section of the proposed rule. Where possible and appropriate, provisions of part 71 are consistent with part 70. Some of the differences between the provisions of part 71 and part 70 reflect the fact that part 71 programs are expected to be of limited duration. The EPA expects that States (and many Tribes) will revise their programs so that they become approvable, and responsibility for the permits program will be transferred back to the State or Tribe.

The Agency is aware that many parties have already submitted comments expressing both their concerns about and their support for the proposed revisions and that these parties are interested in the final Agency decisions on many of the issues raised in the part 70 rulemaking. This proposal for part 71 is not intended in any way to prejudge the Agency's decisions in the part 70 rulemaking, but rather simply parallels the proposed part 70 revisions in order to be consistent with that proposal.

The primary purpose of the proposed rule is to provide the mechanism by which EPA can assume responsibility to issue permits in situations where the State, local, or Tribal agency has not developed, administered, or enforced an acceptable permits program or has not issued permits that comply with the applicable requirements of the Act. Secondarily, the proposed rule provides for delegation of certain duties that may provide for a smoother program transition when State programs are approved. For both of these reasons, the proposed rule should strengthen implementation of the Act and enhance air quality planning and control.

Additional benefits of the proposed rule are much the same as those of the part 70 State operating permits rule. For example, permits issued under part 71 will clarify which requirements apply to a source. This clarification should enhance compliance with the requirements of the Act. The part 71 program will enable the sources, EPA, and the public to better understand the requirements to which the source is subject and whether the source is meeting those requirements. Part 71 permits also provide the vehicle for implementing air toxics programs under section 112.

The comment period for the proposed revisions to part 70 will end prior to the comment period for today's rulemaking proposal. It would therefore be of limited value for commenters to suggest in response to today's rulemaking proposal their concerns with those aspects of the part 70 proposed revisions on which proposed part 71 is based. Rather, EPA solicits comments on whether there are any provisions in proposed part 71 for which EPA has inappropriately proposed consistency with part 70 or its proposed revisions or has inappropriately departed from part 70 or its proposed revisions.

The rationale for today's proposal and many of the issues addressed in this proposal are discussed in greater detail in a document entitled ''Supplementary Information for Proposed Federal Operating Permits Rule'' (Supplementary Information Document) which is contained in the docket for this proposal (Docket No. A–93–51).

This preamble makes frequent use of the term ''State,'' usually meaning the State air pollution control agency that would be the permitting authority for a part 70 permit program. The reader should assume that use of ''State'' may also include reference to a local air pollution agency. In some cases, the term ''permitting authority'' is used and can refer to State, local, and Tribal agencies. The term may also apply to EPA, where the Agency is the permitting authority of record.

II. Proposal Summary

Sections 502(d)(3) and 502(i)(4) of the Act require EPA to promulgate a Federal operating permits program when a State has defaulted on its obligation to submit an approvable program within the timeframe set by title V or on its obligation to adequately administer and enforce an approved program. The rule proposed in this action would establish a national template for a Federal operating permits program that EPA may administer and enforce in a State. In addition, the proposed rule would establish the procedures for issuing Federal permits to sources for which States do not have jurisdiction (i.e., OCS sources outside of State jurisdictions and sources located in Tribal areas). Finally, the proposed rule would establish the procedures used when EPA must take action on a permit that has been proposed or issued by a State or local agency or Indian Tribe having an approved part 70 program and that EPA determines is not in compliance with the applicable requirements of the Act.

Like part 70, part 71 requires: (1) The use of a standard permit application form; (2) that sources subject to permitting requirements pay permit fees that assure adequate program resources and funding; and (3) permit issuance, appeal, and renewal procedures that ensure that each regulated source can obtain a permit that will assure compliance with all of its applicable requirements under the Act. Part 71 sources must obtain an operating permit addressing all applicable pollution control obligations under the State implementation plan (SIP), Federal implementation plan (FIP), or Tribal implementation plan (TIP); the acid rain program; the air toxics program under section 112; and other applicable provisions of the Act. Sources must also submit periodic reports to EPA concerning the extent of their compliance with permit obligations.

When EPA implements a part 71 program, it will cover only the geographic area that is not covered by an approved State, local, or Tribal program. For example, if a local agency within a State has an approved program but the entire State is not covered by an approved program, EPA's implementation of a part 71 program for the State would not affect the area subject to the approved local program.

In appropriate circumstances, EPA may delegate to a State, local, or Tribal permitting authority some or all of its authority to administer a part 71 program. The responsibilities of EPA and the delegate agency will be set forth in a Delegation of Authority Agreement.

The EPA will generally cease implementation of a part 71 program subsequent to approval of a State operating permits program.

III. Detailed Discussion of Key Aspects of the Proposed Regulations

A. Section 71.2—Definitions

Generally, the proposed definitions in part 71 would follow the definitions in currently promulgated part 70 and its proposed revisions, as appropriate. However, some of the definitions used in 40 CFR part 70 would be modified for use in this part. The key part 71 definitions (including some which would be defined differently than in part 70) are discussed in this section. Others are discussed in the preamble sections describing the program areas where they are primarily used. Still others are defined in other titles of the Act and the regulations promulgated thereunder.

1. Affected State

The definition of ''affected State'' for purposes of proposed § 71.8 would include lands within the exterior boundaries of an Indian reservation or other areas over which an Indian Tribe has jurisdiction (hereafter ''Tribal area''). If EPA administers a part 71 program for such an area, EPA would consider the Indian Tribe to be an

affected State and would provide the Tribe notice of draft permits, permit renewals, permit reopenings, and permit revisions. Such notice would also be provided when a part 71 program is implemented outside of a Tribal area and an applicant source is within 50 miles of the Tribal area, or is in an area that is contiguous to the Tribal area and may affect the air quality in that area, provided the Indian Tribe meets the eligibility criteria for being treated in the same manner as a State for programs under the Act. See 59 FR 43956 (Aug. 25, 1994).

The definition of ''affected State'' for purposes of proposed § 71.8 would also include the State or Tribal area and the area within the jurisdiction of the air pollution control agency in which the part 71 permit, permit revision, or permit renewal is being proposed. EPA believes this provision is necessary for part 71, while not for part 70. In some cases under a part 71 program, the title V permitting authority (EPA) would not be the same as the governmental body with general jurisdiction over the area (i.e., the State, Tribe, or local air pollution control agency). When EPA is the permitting authority, EPA believes it is necessary to notify the States, Tribal authorities, and local agencies with jurisdiction over the areas in which EPA's action is proposed. Otherwise, these authorities would be less apprised of EPA's actions than the neighboring areas that do not have jurisdiction over these areas and are less likely to be impacted by EPA's actions. The EPA solicits comment on this expansion of the term ''affected State,'' and on whether other mechanisms might adequately serve to apprise ''host'' jurisdictions of EPA part 71 actions.

2. Applicable Requirements

An ''applicable requirement'' is any standard or other requirement that applies to a source. This includes any relevant requirement in an approved SIP or preconstruction permit. It also includes any pertinent standard or other requirement imposed pursuant to any title of the Act, such as sections 111, 112, 114(a)(3), 129, 183(e), 183(f), 328, 504(b), 504(e), 608, or 609. However, EPA does not believe that the provisions of sections 604 through 606 and 610 through 612 of title VI of the Act must be considered as applicable requirements for title V and included in title V permits. The rationale for this determination can be found in the preamble to the proposed revision of the part 70 regulations, at IV.A.1(b). See 59 FR 44460 (Aug. 29, 1994).

For purposes of part 71, EPA today incorporates that rationale by reference. The EPA also incorporates by reference that notice's rationale for adding to the list of applicable requirements any requirements that create offsets or limit emissions for the purpose of complying with, or avoiding applicable requirements. The proposed addition to the part 70 list and today's proposal for part 71 would add as an applicable requirement any emissions-limiting requirement that is enforceable by citizens or EPA under the Act and that is placed on a source for purposes of creating an offset credit or avoiding the applicability of applicable requirements.

3. Tribal Areas

The EPA has published a proposed rule, pursuant to section 301(d)(2), specifying the provisions of the Act for which EPA believes it is appropriate to treat Indian Tribes in the same manner as States. See 59 FR 43956 (Aug. 25, 1994) (''Indian Tribes: Air Quality Planning and Management,'' hereafter ''proposed Tribal rule''). The proposed Tribal rule also addresses the criteria a Tribe must meet in order to be eligible for treatment in the same manner as a State for the specified provisions of the Act.

For a Tribe to be eligible for treatment in the same manner as a State, it must be Federally recognized (section 302(r)) and must meet the three criteria set forth in section 301(d)(2)(A)–(C). Briefly, these criteria consist of the following: (1) The Tribe must have a governing body carrying out substantial governmental duties and powers; (2) the functions to be exercised by the Tribe must pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the Tribe's jurisdiction; and (3) the Tribe must be capable of carrying out the functions to be exercised consistent with the terms and purposes of the Act and applicable regulations. These criteria and EPA's streamlined process for determining compliance with these criteria are described in detail in the Tribal rule (59 FR 43961–43964).

In the Tribal rule, EPA proposes to interpret the Act as granting, to Tribes approved by EPA to administer programs under the Act in the same manner as States, authority over all air resources within the exterior boundaries of an Indian reservation. This would enable Tribal-approved programs under the Act to address conduct on all lands, including non-Indian owned fee lands, within the exterior boundaries of a reservation. The proposed Tribal rule would also authorize an eligible Tribe to develop and implement programs under the Act for off-reservation lands that are determined to be within a Tribe's inherent sovereign authority to regulate. The rationale for this proposed interpretation of Tribal jurisdiction under programs under the Act is set out in detail in the proposed Tribal rule, and is incorporated here by reference. See 59 FR 43958–43961.

EPA's final interpretation of Tribal jurisdiction under this Act may affect the scope of a part 71 program administered by EPA for Tribes. When, pursuant to Federal implementation authority, EPA is acting in the place of a State or Tribe under the Act, all of the rights and duties that would otherwise fall to the State or Tribe accrue instead to EPA. See *Central Arizona Water Conservation Dist.* v. *EPA*, 990 F.2d 1531, 1541 (9th Cir. 1993), *cert. denied*, 114 S.Ct. 94 (1993). Therefore, the scope of Tribal authority under the Act may inform EPA's authority in administering a part 71 program for Tribes.

More specifically, EPA would have authority to implement a Tribal part 71 program for any lands within the exterior boundaries of a reservation and any off-reservation land over which a Tribe has inherent sovereign authority. Tribes determined eligible to be treated in the same manner as a State under the Act would be given notice under proposed §§ 71.8 and 71.10 of certain permit actions. All land within the exterior boundaries of a reservation and any other lands over which a Tribe has demonstrated inherent authority would be considered in providing notice to a Tribe. Further, the proposed part 71 rules provide that, in all instances, the Tribe for the area in which a part 71 permit program is being administered will receive notice.

The EPA's proposed Tribal rule is subject to public comment and may be modified before it is issued in final form. The EPA may need to make conforming changes to the part 71 rules proposed today to reflect any relevant revisions made to the Tribal rule.

4. Major Source

The EPA is proposing to utilize the same approaches to defining ''major source'' as were used for 40 CFR parts 63 and 70, except that today's proposal, like the recently proposed revisions to part 70, would change the definition of major source to conform to the definition in section 112(a) of the Act and to implementing regulations governing hazardous air pollutants (HAP) sources recently promulgated in 40 CFR part 63. Section 501(2) of the Act provides, in relevant part, that the term ''major source'' means ''any stationary source (or any group of stationary sources located within a

contiguous area and under common control)'' that would be a major source under section 112 or a major stationary source under section 302 or part D of title I of the Act. Other conditions and requirements relevant to the major source definition are:

a. *Section 302 and Part D Sources.* Except for sources qualifying as support facilities (see paragraph (c) of this section), stationary sources can only be aggregated to determine whether they constitute a major stationary source subject to section 302 or part D of the Act if they are in the same industrial grouping, as determined by their 2-digit code. These codes can be found in the Standard Industrial Classification Manual, 1987.

b. *Section 112 Sources.* Stationary sources of HAP must be aggregated for the purpose of determining whether they are major sources subject to section 112 without regard to their industrial grouping.

c. *Support Facilities.* The EPA proposes to include in the definition of a major source pursuant to section 302 or part D of title I of the Act, any facility or emission unit used to support the main activity of the source, regardless of its 2-digit code. A support facility must be located on the same property as the source it supports, or on adjacent property, and be under the control of the same entity. Also, at least 50 percent of the support facility's output must be dedicated to the source.

d. *Emission Requirements.* To be major, a stationary source must have the potential to emit pollutants in amounts at or above the major source threshold, which is determined by the type of pollutant emitted and by the attainment status of the area in which the source is located. Thus, the term ''major source'' encompasses the following:

(1) Air toxics sources with the potential to emit 10 tons per year (tpy) or more of any HAP listed pursuant to section 112(b); 25 tpy or more of any combination of HAP listed pursuant to section 112(b); or a lesser quantity of a given pollutant, if the Administrator so specifies. And, once the Administrator promulgates a definition of major source for radionuclides, a source would be major if it emits, or has the potential to emit, major amounts of radionuclides.

(2) Sources of air pollutants, as defined in section 302 of the Act with the potential to emit 100 tpy or more of any pollutant.

(3) Except as noted in paragraph (d)(4) of this section, sources subject to the nonattainment area provisions of title I, part D, with the potential to emit pollutants in the following, or greater, amounts:

(a) 50 tpy VOC or NO_X in serious ozone nonattainment areas;

(b) 25 tpy VOC or NO_X in severe ozone nonattainment areas;

(c) 10 tpy VOC or NO_X in extreme ozone nonattainment areas;

(d) 50 tpy VOC in ozone transport regions established pursuant to section 189 of the Act;

(e) 50 tpy carbon monoxide (CO) in serious CO nonattainment areas; and

(f) 70 tpy particulate matter (PM–10) in serious particulate matter nonattainment areas.

(4) The NO_X thresholds in paragraph (d)(3) of this section do not apply in nonattainment areas qualifying for an exemption under section 182(f) of the Act. This exemption applies in the case where reducing NO_X emissions would not reduce ozone formation. In those areas, a stationary source of NO_X is not considered a major source under part D of title I of the Act unless its potential to emit is 100 tpy or more. In areas not qualifying for this exemption, NO_X sources are subject to the lower thresholds defined in part D and listed in paragraph (d)(3) of this section. Whatever its location, any 100 tpy source would be considered a major source under section 302 of the Act. Also, the major source threshold for VOC in ozone transport regions in paragraph (d)(3) of this section does not apply for NO_X. This threshold was created by section 184(b) of the Act. Because section 182(f) of the Act (which requires NO_X sources to meet the same thresholds as VOC sources) does not refer to section 184(b) of the Act, the lower threshold for VOC sources in ozone transport regions does not apply to NO_X sources.

e. *Fugitive Emissions.* The fugitive emissions from a stationary source shall be considered in making the determination as to whether it is a major source when:

(1) The source belongs to one of the source categories listed in the definition of ''major stationary source'' at 40 CFR parts 51 and 52 which includes source categories regulated by a section 111 or section 112 standard as of August 7, 1980. Thus, proposed part 71 would follow the proposed revisions to part 70 in that sources in categories subject to standards set after August 7, 1980, if not otherwise listed, would be exempted from the requirement to include fugitive emissions when making their major source determination until such time as EPA conducts section 302(j) rulemaking to require that fugitive emissions from those sources be included.

(2) The air pollutants emitted are HAP or radionuclides. The EPA believes the Act requires that fugitive emissions of HAP or radionuclides, to the extent quantifiable, be counted. Section 112(a)(1) of the Act uses the term ''major source,'' rather than ''major stationary source,'' and legislative history indicates an intent by Congress to treat this definition differently than the section 302(j) ''major stationary source'' definition. Moreover, section 112 of the Act establishes a new program with a relatively narrow focus; it applies only for specific HAP at source categories to be determined by EPA. All this suggests that the section 302(j) rulemaking requirement does not apply in the context of section 112, and that fugitive emissions must therefore be included for the purpose of determining whether a source is major under section 112(a)(1).

4. New Source Review

The definitions for major and minor NSR have been included so they can be used to describe the proposed permit revision procedures. In some cases, the action to revise a permit will depend on whether the change was subjected to major or minor NSR before being processed as a part 71 revision.

5. Potential To Emit

In the proposed definition of ''potential to emit,'' limitations on a source's potential to emit would be federally enforceable only if they are enforceable by the Administrator and citizens under the Act. This differs from the definition currently in part 70 of this chapter, in that the part 70 definition only requires that the limitations be enforceable by the Administrator. This proposal would follow the definition in the proposed revisions to part 70. See 59 FR 44460 (Aug. 29, 1994).

6. Responsible Official

The proposed definition of ''responsible official'' would follow the definition in the recently proposed revisions to part 70.

7. Title I Modification

The proposed rule would adopt the definition of ''title I modification'' or ''modification under any provision of title I of the Act'' that is used in part 70. The proposed definition parallels a proposed revision to the regulations at part 70 of this chapter, on which EPA solicited comment, and the rationale for the definition in the preamble to the proposed revision to part 70 is incorporated herein by reference. See 59 CFR 44460 (Aug. 29, 1994).

B. Section 71.3—Sources Subject to Permitting Requirements

Section 502(a) of the Act subjects all affected sources (as provided in title IV), major sources, sources (including area sources) subject to standards or regulations under sections 111 or 112, sources required to have permits under parts C or D of title I, and any other source in a category designated by EPA, to the permitting requirements of title V. Section 502(a) also provides the Administrator the discretion to exempt one or more source categories (in whole or in part) from the requirement to obtain a permit ''if the Administrator finds that compliance with such requirements is impracticable, infeasible or unnecessarily burdensome on such categories.'' The Act specifies that major sources may not be exempted from these requirements. This requirement applies both to sources that are major for criteria pollutants and those that are major emitters of the HAP listed at section 112(b). However, section 112(r)(7)(F) of the Act also provides that sources that are subject solely to regulations or requirements under section 112(r) of the Act are not required to obtain a permit under this part.

1. Temporary Exemptions for Nonmajor Sources

Section 70.3(b)(1) of this chapter deferred the applicability of part 70 to nonmajor sources (except for affected sources and solid waste incineration sources) that would otherwise be subject because they are in a source category that is subject to part 70, such as one regulated by a section 111 or 112 standard. In the final part 70 rule, EPA stated its intent to propose rulemaking to resolve the exception status of these nonmajor sources within 5 years following the first full or partial approval of a State program with a deferral.

The EPA proposes to follow the same approach to deferrals for purposes of part 71.

2. Permanently Exempted Source Categories

The EPA proposes to exempt permanently two source categories from the requirement to obtain a part 71 permit:

(1) All sources that would be required to obtain a permit solely because they are subject to regulation under the demolition and renovation provisions of the NESHAP for asbestos (40 CFR 61.145); and

(2) All sources that would be required to obtain a permit solely because they are subject to regulation under the NSPS for residential wood heaters (40 CFR 60.530).

These source categories were exempted from permitting requirements under part 70 because the Administrator determined that permitting such sources would be impracticable, infeasible, and unnecessarily burdensome. This exemption is proposed to be continued for part 71. A more detailed rationale for this exemption is provided in the preamble to the part 70 regulations at 57 FR 32263–32264 (July 21, 1992), which EPA today incorporates by reference for purposes of part 71.

3. Major Section 112 (HAP) Sources

Like the proposed revisions to part 70 of this chapter, today's proposal would ensure that the definition of major source in this part matches the definition in section 112(a) of the Act and in the regulations governing HAP sources recently promulgated in 40 CFR part 63. Under 40 CFR Part 63, EPA definition of a major source of HAP is more inclusive than the definition originally promulgated in part 70. Unlike part 70, the part 63 definition of major source does not reference standard industrial classification (SIC) codes. As defined in part 63, an entire contiguous or adjacent plant site is considered a single source, rather than being subdivided according to industrial classification. See 59 FR 12412 (March 16, 1994). This definition does not limit the sources (or emission units) that can be included in a stationary source to those having the same 2-digit code. One result of this more inclusive definition is that there will likely be some HAP sources that are major under part 63 but are not major under part 70, as originally promulgated. The EPA believes it is necessary to expand the major source definition in part 70 and part 71 to include all sources that are major for part 63. Otherwise, those sources subject to a section 112 standard or other requirement will not have to apply for and obtain a part 71 permit until required to do so by a specific section 112 standard. Today's proposal, and the proposed revisions to part 70 of this chapter, reflect the more inclusive part 63 definition and ensure that HAP sources are treated consistently under rules promulgated pursuant to section 112 and title V of the Act.

4. Section 112(r) Pollutants

Section 70.3(a)(3) of this chapter, as originally promulgated, requires any source subject to a standard or other requirement under section 112 of the Act to obtain a part 70 permit unless it would be subject to part 70 solely because it is subject to regulations or requirements under section 112(r). Section 112(r)(3) requires EPA to promulgate a list of regulated substances and thresholds for the prevention of accidental releases. Section 112(r)(4) establishes criteria for the development of a list of regulated substances, focusing on acute effects that result in serious off-site consequences, rather than chronic effects. As a result, many of the substances listed in § 68.130 of this chapter pursuant to section 112(r)(3) (59 FR 4478 (January 31, 1994)) are not regulated elsewhere under the Act.

Questions have been raised as to whether § 70.3(a)(1) of this chapter, which provides that ''any major source'' is subject to the permit rule, requires that sources that have major source levels of section 112(r) pollutants must be permitted. Setting aside the issues of whether and how major source status is to be determined for section 112(r) purposes, section 112(r)(7)(F) exempts from title V permitting requirements any source that would be subject to title V only as result of being subject to section 112(r) requirements. That section provides that ''(n)otwithstanding the provisions of title V or this section, no stationary source shall be required to apply for, or operate pursuant to, a permit issued under such title solely because such source is subject to regulations or requirements under this subsection.'' Thus, it is clear that even if a source could be considered a ''major source'' for section 112(r) purposes, it would not be subject to title V permitting on that basis alone. The EPA's proposed revisions to 40 CFR part 70 would revise § 70.3(a) of this chapter to clarify this point. Similarly, proposed § 71.3(a) reflects this approach.

C. Section 71.4—Program Implementation

Proposed section 71.4(a) describes the circumstances in which EPA would establish a full or partial Federal operating permits program for a State, excluding Tribal areas. Section 502(d)(3) of the Act requires EPA to promulgate, administer, and enforce a program for a State if an operating permits program for the State has not been approved in whole by November 15, 1995. However, the requirement that EPA establish a Federal program by November 15, 1995 for States lacking a fully approved program is suspended if a State program is granted interim approval. The duty to implement a Federal program then reapplies upon expiration of an interim approval, if the State has not received full approval by that time.

As provided in proposed § 71.4(a)(3), EPA would have the authority to

establish a partial part 71 program in limited geographical areas of a State if EPA has approved a part 70 program (or combination of part 70 programs) for the remaining areas of the State. This should avoid unnecessary disruption of partial programs that have been approved within a State and avoid intruding into the State's administration of its air program where only certain jurisdictions have failed to implement an approvable part 70 program.

The proposed rule also provides for EPA implementation of part 71 programs to ensure coverage of Tribal areas. The proposed Tribal rule generally describes EPA's authority for implementing programs under the Act to protect Tribal air quality. 59 FR 43960–43961. That discussion is incorporated here by reference.

In broad overview, the Act authorizes EPA to protect air quality on lands over which Indian Tribes have jurisdiction. The overarching purpose of the Act is ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' section 101(b)(1). The members of the public residing on lands over which Tribes have jurisdiction are equally entitled to air quality protection as those residing elsewhere.

Several provisions of the Act evince Congressional intent to authorize EPA to directly implement programs under the Act where there are voids in program coverage (e.g., sections 110(c)(1), 301 (d)(4) and 502 (d)(3), (i)(4)). Federal implementation of Clean Air Act programs on Indian lands is particularly appropriate where Federal action will prevent a ''vacuum of authority'' in air quality protection. See *Phillips Petroleum Co.* v. *EPA*, 803 F.2d 545, 555–56 (10 Cir. 1986) (affirming EPA's authority to directly implement Safe Drinking Water Act Underground Injection Control program on Indian lands where concluding otherwise would contradict the meaning and purpose of the Act by creating ''a vacuum of authority over underground injections on Indian lands, leaving vast areas of the nation devoid of protection from groundwater contamination''). Based on the proposed interpretation of Tribal jurisdiction under the Act in EPA's Tribal rule, discussed previously, EPA would have authority under today's proposed rules to implement part 71 programs for all areas within the exterior boundaries of an Indian reservation and other areas over which an Indian Tribe has jurisdiction.

If finalized as proposed, the Tribal rule will authorize Tribes to develop and submit title V operating permit programs to EPA for approval. The EPA's principal objective would be to assist Tribes in developing and administering their own title V operating permit programs, similar to the manner in which EPA has assisted States. The EPA recognizes that ultimately Tribes are best situated to provide primary protection of Tribal air resources. To these ends, EPA's proposed Tribal rule provides the following:

> It is EPA's policy to assist Tribes in developing comprehensive and effective air quality management programs to insure that Tribal air quality management programs will be implemented to the extent necessary on Indian reservations. EPA will do this by, among other things, providing technical advice and assistance to Indian Tribes on air quality issues. EPA intends to consult with Tribes to identify their particular needs for air program development assistance and to provide on-going assistance as necessary.

59 FR 43961.

However, EPA also intends to be prepared to implement title V programs in the event Tribes do not. To avoid gaps in title V permits program coverage, the rules proposed today authorize EPA to implement a title V operating permits program for Tribes that do not develop their own programs.

The more difficult issue is when EPA should implement title V programs for Tribes. EPA believes it is reasonable to give Tribes some opportunity to develop their own title V programs, assuming EPA's final Tribal rule authorizes them to do so, before EPA directly implements title V programs.

The part 71 rules propose to authorize EPA to implement the title V permit program for Tribes if a Tribal program has not been fully approved by November 15, 1997. Within the first two years of the program, the permitting authority would be required to take action on all applications submitted in the first year of the program. Nothing in today's proposal would prevent EPA from implementing a part 71 program for a Tribal area subsequent to November 15, 1995 but prior to November 15, 1997. It may be appropriate, particularly where the absence of an operating permits program would create a gap in coverage, for EPA to implement part 71 programs in advance of the effective date set by the rule. The EPA would discuss early implementation with the affected Tribe before adopting an earlier effective date. In such a case, the program would become effective when the Administrator provides written notice to the Tribal chairperson or analogous Tribal leader.

The EPA considered several factors in addressing this issue including: The opportunity for the development of Tribal programs that would render Federal implementation unnecessary; the importance of title V coverage, whether Tribal or Federal, in protecting Tribal air quality; and, the need to treat the potentially affected regulated community fairly and to facilitate certainty in business planning. The EPA solicits comments on whether the EPA's proposed approach to the effective date of the program is appropriate and whether the two-year deadline for taking action on permit applications is appropriate and feasible.

The proposed Tribal rule describes an administrative procedure by which EPA would resolve jurisdictional issues affecting Tribes. See 59 FR 43962–43963 (Aug. 25, 1994). That discussion is incorporated here by reference. Generally, EPA expects these issues to involve the precise boundary of the reservation in question and, less frequently, competing claims of jurisdiction over land which is outside of the exterior boundaries of a reservation.

Briefly summarized, the proposed Tribal rule would require EPA to notify the appropriate governmental entities regarding the Tribe's assertion of jurisdiction.[1] Those entities would have fifteen days following receipt of EPA's notification to provide formal comments to EPA regarding any dispute they might have with the Tribe's assertion of jurisdiction. Where the dispute concerns jurisdiction over off-reservation lands, appropriate governmental entities may request a one-time fifteen-day extension to the comment period. In all cases, comments from appropriate governmental entities would have to be offered in a timely manner and be limited to the Tribe's jurisdictional assertion. Where no timely comments are presented, EPA would conclude there is no objection to the Tribe's assertion. To raise a competing or conflicting claim, a commenter would be required to clearly explain the substance, basis, and extent of its objections. Finally, where EPA receives timely notification of a dispute, it could obtain such additional information and documentation as it believes appropriate and, at its option, consult with the Department of the Interior.

For purposes of identifying the Tribal area for which a part 71 program is

[1] For purposes of this rule, EPA is proposing to adopt the same definition of ''governmental entities'' as the Agency did in its December 1991 Water Quality Standards regulation. See 56 FR 64876 at 64884 (Dec. 12, 1991).

implemented, EPA proposes to follow the approach to resolving jurisdictional issues taken in the Tribal air rule. If the Tribal rule is finalized as proposed, EPA would notify appropriate governmental entities of the boundary of the Tribal area for a part 71 program at least 90 days prior to the effective date of the program. Those entities would then have an opportunity to provide formal comments prior to the program's effective date, as discussed above. Where no timely comments are presented, EPA would make a determination that the boundary for the part 71 program would be as proposed in the notice. Subsequently, EPA would publish a notice in the **Federal Register** which describes the precise boundaries of the part 71 program.

Where EPA identifies a jurisdictional dispute, it may obtain additional information and documentation and consult with the Department of the Interior prior to making a determination. The EPA would subsequently publish a notice in the **Federal Register** which describes the precise boundaries of the part 71 program. If the dispute cannot be resolved promptly, EPA would retain the option of implementing the part 71 program in the areas that are clearly shown to be part of the reservation (or are otherwise within the Tribe's jurisdiction). This will allow EPA to implement a part 71 program that covers all undisputed areas, while withholding action on the portion that addresses areas where a jurisdictional issue has not been satisfactorily resolved.

As proposed in § 71.4(c), EPA would promulgate a part 71 program for a permitting authority (including an eligible Tribe) if EPA determines that an approved program is not adequately administered or enforced and the permitting authority fails to correct the deficiencies that precipitated EPA's finding.[2] Where the acid rain portion of an operating permits program is not adequately administered, EPA could withdraw either the entire program or just the acid rain portion of the program. If EPA finds that the nonacid rain portion of the operating permits program is being adequately administered, EPA would generally withdraw only the acid rain portion. In such a case, EPA would issue the acid rain portion of the source's permit using the procedures set forth in 40 CFR part 72, and the State would continue to issue the remaining portion of the operating permits and would issue all permits to sources other than acid rain sources.

When EPA determines that a State is not adequately administering its program, EPA would provide notice to the State as required by 40 CFR 70.10(b)(1). The State would then have 90 days in which to take significant action to assure adequate administration and enforcement of the program. Where EPA determines that the State has not taken such significant action within the specified time, EPA could begin implementing a Federal program immediately. Otherwise, if the State had not fully corrected the deficiency that prompted EPA's determination of failure to administer or enforce within 18 months of the determination, EPA would begin implementing a Federal program 2 years after the date of the determination. This framework is identical to that which EPA promulgated in part 70 at 40 CFR 70.10(b) (2) and (4).

The EPA acknowledges that its intent to retain the option of withdrawing only the acid rain portion of a program in appropriate situations is a change of position from EPA's statement in the preamble to the final part 70 rule (see 57 FR 32260) that should a State fail to adequately administer phase II of the acid rain program, EPA will take back the entire operating permits program. There, EPA stated that in such a situation EPA would implement part 71, as supplemented by Federal acid rain permit issuance procedures, and would issue permits to acid rain sources within the State. The EPA notes that this discussion was not reflected in regulatory language in the finally promulgated part 70 rule, which instead provided EPA discretion to withdraw program approval in whole or in part. See 40 CFR 70.10(c)(1). Moreover, EPA explained in a May 21, 1993 guidance document entitled ''Title IV–Title V Interface Guidance for States,'' that if EPA finds that a part 70 program is not being properly administered or enforced for title IV purposes, EPA will publish a notice in the **Federal Register** making this announcement and noting where permit applications are to be delivered. When publishing such a **Federal Register** notice, EPA may elect to withdraw approval for an entire part 70 program submittal or only the acid rain portion of it and may apply appropriate sanctions under section 179(b) of the Act.

Under part 71, EPA would retain the option of withdrawing only the acid rain portion of the program and issuing a phase II acid rain permit, rather than withdrawing the entire part 70 program and issuing a comprehensive part 71 operating permit. The EPA believes that it is reasonable and appropriate to depart from the policy stated in the preamble to the final part 70 rule regarding withdrawal of phase II acid rain authority because EPA believes that deficiencies with respect to the acid rain portion of a State program would generally not adversely affect the remaining portions of the State program. By withdrawing approval of just the acid rain portion, EPA would minimize disruption of otherwise adequate State air programs. It should be noted that the acid rain portion of a source's operating permit contains discreet requirements that are not intertwined with the remaining provisions of the permit. For example, phase II acid rain permits generally contain a requirement that a source hold sufficient allowances to cover emissions, specify requirements for NO_X emissions and provide for continuous emissions monitoring in accordance with 40 CFR part 75. Amendments and revisions to such provisions are subject to a different set of procedures as specified in 40 CFR part 72. Thus, separate Federal administration of the acid rain permitting program in a State that fails to adequately administer the acid rain portion of its operating permits program would be a logical step where the remainder of the part 70 program was being adequately administered by the State.

The EPA solicits comment on this approach, and on whether this approach is consistent with the requirements of title V. The EPA stresses that section 502(i)(1) of the Act allows EPA to determine that only a portion of an approved State program is not being adequately administered and enforced. While section 502(i)(1) does not explicitly provide that where a State fails to correct an identified deficiency in a finding under section 502(i)(4), EPA may promulgate, administer, and enforce only the relevant portion of the program, EPA believes that Congress could not have intended for EPA to be compelled to withdraw and take over entire part 70 programs where only discrete portions of the program are deficient. Such a result would be unnecessarily disruptive of State air programs and would require much greater Federal intrusion into the State's air program than may be necessary to correct the faulty portion.

[2] Although this preamble section addresses withdrawing approval of State operating permit programs, note that eligible Tribes would be treated in the same manner as States for purposes of withdrawal of program approval, assuming the Tribal rule is finalized as proposed. In that case, the provisions of 40 CFR 70.10(b)(1), which address State failure to administer or enforce an approved part 70 program, and 40 CFR 70.10(c), which addresses criteria for withdrawal of State programs, would apply equally to Tribal programs.

Section 71.4(d) addresses the circumstances in which EPA proposes to issue permits to OCS sources (sources located in offshore waters of the United States) pursuant to the requirements of section 328(a) of the Act. Section 328 of the Act transferred from the Department of the Interior to EPA the authority to regulate air pollution from sources located on the OCS off of the Atlantic, Arctic, and Pacific coasts and in the Gulf of Mexico east of 87.5 degrees longitude. In today's notice, which proposes revisions to 40 CFR part 55 in addition to the proposed Federal operating permit rules, EPA is proposing to require an OCS source to comply with the requirements of part 71 if the source is located beyond 25 miles of States' seaward boundaries or if the source is located within 25 miles of a State's seaward boundary and the requirements of part 71 are in effect in the corresponding onshore area (COA). Section 328 requires that EPA establish requirements for sources located within 25 miles of a State's seaward boundary that are the same as would be applicable if the source were located in the COA.

Part 71 permits would be issued to OCS sources by the Administrator or a State or local agency that has been delegated the OCS program in accordance with part 55 of this chapter. As OCS sources beyond 25 miles of States' seaward boundaries would become subject to part 71 immediately upon the effective date of part 71, they would be required to submit part 71 permit applications within 1 year of becoming subject to this part.

Proposed § 71.4(e) describes how EPA would take action on objectionable permits that have already been proposed or issued by a permitting authority. Section 505(b) of the Act and 40 CFR 70.8 (c) and (d) require EPA to object to the issuance of any permit that EPA determines is not in compliance with the applicable requirements of the Act. If the permitting authority does not take appropriate action in response to EPA's objection, EPA shall revise, terminate, or revoke the permit if it has been issued and shall correct and issue the permit if it has not been issued.

As provided in 40 CFR 70.7(g) (§ 70.7(j) in the proposed revisions to part 70), if EPA finds that a State-issued permit must be reopened to correct an error or add newly applicable requirements, EPA will notify the permitting authority. If the permitting authority does not take appropriate action, EPA will revise and reissue the permit under part 71.

As provided at 40 CFR 70.8(c)(1), EPA will object to the issuance of any proposed permit that EPA determines is not in compliance with the applicable requirements of the Act or the requirements of part 70. If EPA objects within 45 days of receipt of a copy of the proposed permit, the permitting authority may not issue the proposed permit to the source. The EPA's objection, as required by 40 CFR 70.8(c)(2), shall include a statement of EPA's reasons for objecting and a description of the permit terms that the permit must include to respond to the objection. Moreover, under 40 CFR 70.8(c)(3), failure of the permitting authority to: (1) Comply with requirements in 40 CFR 70.8 (a) and (b) to notify EPA and affected States, (2) submit to EPA any information necessary to adequately review the proposed permit, or (3) process the permit under procedures approved to meet the public participation requirements of part 70 would also constitute grounds for EPA objection to a proposed permit.

Under 40 CFR 70.8(c)(4), if the permitting authority fails within 90 days after EPA's objection to revise and submit to EPA a new proposed permit responding to the objection, EPA will issue or deny the permit. Proposed § 71.4(e)(1) would establish the authority for EPA's permit issuance or denial in these situations.

Likewise, proposed § 71.4(e)(1) would establish the authority for EPA to revise, terminate, or revoke a permit in response to a citizen petition filed under 40 CFR 70.8(d). The EPA's action to revise, terminate or revoke a permit would then occur consistent with 40 CFR 70.7(g)(4) or (5)(i) and (ii) (§§ 70.7(j)(4) or (5)(i) and (ii) of the proposed revisions to part 70), except in unusual circumstances, such as where there is a substantial and imminent threat to the public health and safety resulting from the deficiencies in the permit. Usually, the permitting authority would have 90 days from receipt of EPA's objection in response to a citizen petition to resolve the objection and terminate, revise, or revoke and reissue the permit in accordance with EPA's objection. See 40 CFR 70.7(g)(4), § 70.7(j)(4) of the proposed revisions to part 70. If the permitting authority failed to resolve the objection, EPA would terminate, revise, or revoke and reissue the permit, after providing at least 30 days notice to the permittee in writing of the reasons for such action (which may be given at any time during the time period after EPA objects to the permit) and providing the permittee an opportunity for comment on EPA's proposed actions and an opportunity for a hearing. See 40 CFR 70.7(g)(5)(i) and (ii) and §§ 70.7(j)(5)(i) and (ii) of the proposed revisions to part 70. Proposed § 71.4(e)(2) would provide the authority for EPA to take such action.

Section 71.4(f) of the proposed rule would authorize EPA to use part 71 in its entirety or any portion of the regulations, as needed. For example, EPA could use the provisions for permitting OCS sources without permitting any other types of sources. Similarly, EPA could use only portions of the regulations to correct and issue a State permit without, for example, requiring an entirely new application. Proposed § 71.4(f) would also authorize EPA to exercise its discretion in designing a part 71 program. The EPA would be able to, through rulemaking, modify the national template by adopting appropriate portions of a State's program as part of the Federal program for that State, provided the resulting program is consistent with the requirements of title V.

The EPA believes it is reasonable and appropriate to provide this flexibility in implementing a part 71 program. First, such flexibility would enable EPA to intervene in the administration and enforcement of an operating permits program only to the extent necessary to correct deficiencies. Second, it would provide EPA, after notice and comment rulemaking, the ability to appropriately tailor part 71 to the State in which it would be implemented, thus resulting in less disruption of the State air program and the daily operations of covered sources than might otherwise occur. While EPA believes that part 71 as proposed today should not result in unnecessary disruption, the Agency recognizes that further State-specific tailoring may be appropriate.

Proposed § 71.4(g) clarifies that EPA would publish a notice of the effective dates of part 71 programs. The EPA would publish such notice in the **Federal Register** and would, to the extent practicable, publish notice in a newspaper of general circulation in the area affected by the part 71 program. The EPA would also publish such notice for delegations of part 71 programs. Finally, in addition to notices in the **Federal Register** and newspapers of general circulation, EPA would send a letter to the Governor (or his or her designee) or the Tribal governing body for the affected area informing him or her of when the part 71 program or its delegation would become effective.

Section 71.4(h) proposes that EPA would be authorized to promulgate and administer a part 71 program in its entirety even if only limited deficiencies exist in a State or Tribal program. The EPA believes that such authority is

necessary because limited deficiencies could have wide-ranging impacts within a program. For example, if a State program failed to provide adequate opportunities for public or affected State participation in permitting actions, the integrity of permit content could become suspect, the public and affected States would be excluded from administrative and judicial review of permit actions, and EPA oversight of such actions could suffer, as a result of citizens not having standing to petition EPA to object to permits.

Section 71.4(i) of the proposed rule describes how EPA would take action on the initial part 71 permits in the event that a full or partial part 71 program becomes effective in a State or Tribal area prior to the permitting authority issuing part 70 permits to all subject sources. The EPA proposes to utilize a 3-year transition plan similar to that required of States under § 70.4(b)(11)(ii) of this chapter. Under proposed § 71.4(i)(1), any remaining sources that had not yet received part 70 permits from the permitting authority would be required to submit applications to EPA for part 71 permits within 1 year of becoming subject to the part 71 program. The sources that had already received part 70 permits, if any, would continue to operate under those permits, unless EPA had withdrawn part 70 approval due to the inadequacy of the part 70 permits, in which case those sources would be required to obtain part 71 permits. After receiving part 71 permit applications, EPA would act on one-third of those applications each year for the first 3 years of the part 71 program. As previously issued part 70 permits needed to be revised or renewed, sources would apply to EPA for such revisions or renewals under part 71.

As provided in proposed § 71.4(j), EPA would have the discretion to delegate some or all of its authority to administer a part 71 program to a State or eligible Tribe. The delegation process is described further in the discussion of proposed § 71.10.

Section 71.(4)(k) of the proposed rule would authorize EPA to administer and enforce part 70 permits issued by a permitting authority under a previously-approved part 70 program after EPA has withdrawn approval of such program until they are replaced by part 71 permits issued by EPA.

Proposed § 71.4(l) describes what would happen after EPA approves a part 70 program for an area in which a part 71 program has been effective and how the Administrator, or the new part 70 permitting authority, will administer and enforce the part 71 permits until they are replaced by part 70 permits. For a State that submits a late part 70 submittal to EPA such that EPA has not approved or disapproved the submittal by November 15, 1995, part 71 becomes automatically effective until the State's part 70 program is approved by EPA. However, sources are not obligated to submit applications to EPA until 12 months after they have become subject to an effective part 71 program (unless an earlier submittal date is set by EPA). Therefore, if the State's part 70 program is approved shortly after part 71 is effective, it is highly likely that sources will submit applications to the permitting authority rather than to EPA. Upon approval of the part 70 program, EPA will suspend further action on applications for part 71 permits. Where appropriate, applications received by EPA prior to approval of the part 70 program will be forwarded to the permitting authority after approval of the part 70 program.

Finally, proposed § 71.4(m) provides how EPA would implement the provision of section 325 of the Act if the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands petitions the Administrator to exempt any source or class of sources from the requirements of title V of the Act.

D. Section 71.5—Permit Applications

Much of proposed § 71.5 is modeled on the provisions currently promulgated at 40 CFR 70.5, and on the proposed revisions to that section. See 59 FR 44460 (Aug. 29, 1994). In this notice, EPA incorporates by reference the rationale provided for these provisions, to the extent such rationale apply to a Federal operating permit program as well as to State permit programs. Copies of the part 70 rule as promulgated in July 1992 and of the notice proposing revisions to part 70 have been included in the docket for this rulemaking. The Supplementary Information Document contains a general discussion and explanation of the proposed rule's application requirements. Where proposed part 71 differs from promulgated part 70 or the proposed revisions to part 70 the discussion goes into greater detail describing the part 71 proposal. Where proposed part 71 follows part 70 precedent, shorter general descriptions of the part 71 proposal are supplied. It should be noted that the formatting of proposed § 71.5 does not correspond to that of 40 CFR 70.5. In developing proposed part 71, EPA determined that the formatting of 40 CFR 70.5 could be improved so that it is easier to follow. The EPA requests comment on this proposed formatting difference.

1. Insignificant Activities and Emission Levels

Proposed § 71.5(g) would allow insignificant activities or emission levels to be exempt from the application content requirements of proposed § 71.5(f). These exemptions would reduce the administrative burden on sources by eliminating the requirement that a source include in its application an extensive analysis of insignificant activities (or emissions units) and quantities of emissions. This proposal is based on the part 70 provisions regarding insignificant activities and emissions levels, and is supported by the *Alabama Power* decision, where the court found that emissions from certain small modifications and emissions of certain pollutants at new sources could be exempted from some or all PSD review requirements on the grounds that such emissions would be de minimis. See *Alabama Power* v. *Costle,* 636 F.2d 323, 360 (D.C. Cir., 1979). In other words, EPA may determine levels below which there is no practical value in conducting an extensive review. In general, an agency can create this exemption where the application of a regulation across all classes will yield a gain of trivial or no value. A determination of when a matter can be classified as de minimis turns on the assessment of particular circumstances of the individual case. For EPA to establish that an emissions threshold is trivial and of no consequence, EPA must consider the size of the particular emissions threshold relative to the major source threshold applicable in the various areas where a regulation will be in effect.

In the rulemaking establishing requirements for State operating permits programs under part 70, many commenters suggested that EPA create a de minimis exemption level for regulated air pollutants, and that emissions information not be required for pollutants below this de minimis level. In the final part 70 rule, EPA gave States discretion to develop lists of insignificant activities and to set insignificant emission levels if certain criteria were met and subject to EPA review and approval. In the proposed part 71 rule, EPA has fashioned provisions for insignificant activities or emission levels that meet the minimum requirements for States under the part 70 rulemaking, while taking a unique Federal approach, based on the Agency's experience in reviewing State provisions for insignificant activities and emission levels in the course of part

70 operating permits program reviews. The EPA notes, however, that the part 70 provisions on insignificant activities and emissions levels are the subject of ongoing litigation settlement discussions, and that a possible result of these discussions could be a modification of the part 70 provisions on this issue. To the extent any future proposed revisions to the part 70 insignificant activities and emissions level criteria are more stringent than the provisions proposed for part 71, EPA may have to supplement this proposal to make the two rules consistent.

In this rulemaking, EPA proposes to exempt all information required by proposed § 71.5(f) concerning insignificant activities inclusion in the permit application, while for insignificant emission levels, application information completeness requirements would vary from proposed § 71.5(f). To ensure that all significant information is included in the permit application, the proposed rule includes a provision stating that no activities or emission levels shall be exempt from proposed § 71.5(g) if the information omitted from the application is needed to determine or impose any applicable requirement, to determine whether a source is major, to determine whether a source is subject to the requirement to obtain a part 71 permit, or to calculate the fee amount required under the fee schedule established pursuant to proposed § 71.9. The proposed prohibition against omitting information from the application that is relevant to the determination or imposition of applicable requirements means that an activity (or emissions unit) that has applicable requirements could not be considered as an insignificant activity or to have insignificant emission levels. Applicable requirements in this context include any standard or requirement as defined in proposed § 71.2. The proposed provision that the exemption not interfere with the requirement to obtain a part 71 permit is necessary to insure that all the requirements of the Act are met, because the requirements of title V of the Act are not included in the proposed definition of applicable requirements. An activity or emission level could not be insignificant if it constitutes a major source. An activity or emission level could not be insignificant if omitting the emissions from the application would prevent the aggregate source emissions from exceeding the major source threshold or a threshold that would trigger an applicable requirement, such as a modification under section 112(g). This proposal would further prohibit these exemptions from being used by applicants when information needed to calculate the fee amount required under the fee schedule would be omitted from the application. Although the fee schedule provided in proposed § 71.9(c)(1) would exclude insignificant emissions from being counted for fee purposes, this provision would be retained for instances where the Administrator promulgates a different fee schedule for a particular state pursuant to proposed § 71.9(c)(7). Under such a fee schedule, information concerning insignificant activities or emissions may be needed to calculate the fee amount.

a. *Insignificant Activities.* To meet the requirements of part 70, States submitted rules incorporating a wide variety of approaches for implementing these provisions. Many State part 70 program submittals included extensive lists of insignificant activities. Some of the listed activities were so broadly defined that it was difficult to determine if they would interfere with the determination or imposition of applicable requirements or affect major source status, seemingly inviting the omission of significant information. Some were so narrowly defined that industry would be invited to propose an endless number of additional listings for inclusion in the rules in future years, creating an administrative burden on the States. In the course of EPA's review of part 70 permit program submittals, it was also clear that there were very few insignificant activities that are common among the States. The EPA proposes to include a short list of broadly-defined insignificant activities that are frequently included in State part 70 program submittals. These activities commonly occur in residential settings, are not subject to applicable requirements (with the possible exception of certain SIP-based requirements for residential heating sources that are not commonly adopted on a nation-wide basis), and normally have small quantities of emissions. Emission units at a source that are on the list of insignificant activities in proposed § 71.5(g)(1) could not be treated as insignificant (1) when the activities are subject to an applicable requirement, including an applicable requirement of a Federal or Tribal implementation plan, (2) if information concerning the activities would interfere with any applicability determination, (3) if the insignificant activities constitute a major source, (4) if not counting the emissions from insignificant activities in the total source emissions would prevent the source from being determined to be a major source, or (5) if any information that would otherwise be left off of the permit application would be needed to calculate the fee amount required under the fee schedule established under proposed § 71.9.

b. *Insignificant Emission Levels.* The proposal would further allow emission units or activities with small emissions to be included in the application in a streamlined manner, as long as the application did not exclude information needed to (1) determine or impose applicable requirements, (2) determine the requirement to obtain a permit, (3) determine whether the source is a major source, or (4) calculate the fee amount, and provided the emissions caps of proposed § 71.5(g)(2) were not exceeded. The EPA believes that this would ensure that enough information will be provided that the permitting authority can make a quick assessment of whether the emissions are insignificant. Nevertheless, to ensure that the rule is being applied properly by the applicant, the permitting authority could request additional information if needed. Note that to qualify as insignificant emissions, the emissions could not count toward or trigger a unit-based de minimis permit revision under proposed § 71.7(f). The only emissions units that would have emissions levels qualifying as insignificant under proposed § 71.5(g) would be units that would not be included in the part 71 permit anyway because they could not be subject to applicable requirements, contribute to the triggering of an applicable requirement, or affect a major status determination. Therefore, for existing units with insignificant emissions there would not be any permit terms or conditions to revise and for new units with insignificant emissions there would not be any permit terms or conditions to add to the part 71 permit.

The emissions caps of proposed § 71.5(g)(2) are expressed in terms of potential to emit, not actual emissions. The use of potential to emit is consistent with how major source thresholds (which were used in developing the proposed caps) are defined. Furthermore, EPA believes that basing the caps on potential to emit provides greater assurance that only truly insignificant levels of emissions would be eligible for streamlined treatment on the permit application form.

In commenting on the necessity of de minimis levels to be established in the part 70 rulemaking, one commenter suggested the level be set at 5 tpy or 20 percent of the applicable major source threshold. An examination of these

levels in terms of major source thresholds is necessary to determine if they are trivial. For example, a 5-ton emission is 20 percent of the major source threshold for serious and severe ozone nonattainment areas, but 50 percent of the major source threshold in extreme ozone nonattainment areas. A level set at 20 percent of the applicable threshold would equal 2 tons in extreme ozone nonattainment areas, but would be 20 tons in moderate nonattainment areas. It is not clear that emissions of this size could be characterized as trivial in all areas for all air pollutants, especially because emissions at these levels may trigger State major new source review (NSR), thus triggering applicable requirements.

Therefore, EPA is proposing and soliciting comment on setting the threshold for insignificant emission levels at 1 tpy for regulated air pollutants, except HAP, in all areas except extreme ozone nonattainment areas, where the threshold is proposed to be 1,000 pounds (lb) per year. These levels would be 1 percent of the major source threshold in moderate nonattainment areas, 2 percent in serious ozone nonattainment areas, 4 percent in severe ozone nonattainment areas, and 5 percent of the threshold in extreme ozone nonattainment areas. The EPA believes that these levels are trivial and would not prevent EPA from collecting any information of a consequential or significant nature. The lower threshold for extreme ozone nonattainment areas is necessary due to the increased concern that permitting authorities would have in such areas. Permitting authorities in these areas have collected information pertaining to permitted sources with relatively small emissions. This level of concern has been necessary in order to achieve emission reductions sufficient to make progress towards meeting the NAAQS.

The EPA proposes and solicits comment on setting the exemption threshold for HAP for any single emissions unit to be the lesser of 1,000 lb per year or the de minimis levels established under section 112(g) of the Act. In the part 70 rulemaking, EPA recommended that the emissions levels for HAP established for the purpose of setting insignificant emission levels not be less stringent than the levels established for modifications under section 112(g) of the Act. Although this was only a recommendation, many States structured their emissions levels for HAP using these levels as upper bounds. Note that the provisions of proposed § 71.5(g) would prevent a part 71 emissions unit from having insignificant emissions levels if the unit was subject to applicable requirements of section 112(g). The EPA also proposes that the level for HAP should never be higher than 1,000 pounds per year. This is necessary because the major source threshold is 10 tpy for a single HAP, thus ensuring that insignificant emissions of HAP will never exceed 5 percent of the major source threshold. The EPA believes that these levels are trivial and would not prevent EPA from collecting any information of a consequential or significant nature.

The EPA proposes and solicits comment on setting the threshold for insignificant emissions for the aggregate emissions of any regulated air pollutant, excluding HAP, from all emission units located at a facility to not exceed a potential to emit of 10 tpy, except in extreme ozone nonattainment areas, where potential to emit may not exceed 5 tpy. The EPA further proposes and solicits comment on setting the threshold for insignificant emissions levels for the aggregate emissions of all HAP from all emission units located at a facility to not exceed a potential to emit of 5 tpy or the section 112(g) de minimis levels, whichever is less. These provisions would provide more certainty to the permitting authority because no emissions values in terms of potential or actual emissions would be required to be included in the application for emissions qualifying as insignificant, and it is conceivable that large quantities of emissions could be hidden from scrutiny without such aggregate emission thresholds. In addition, these provisions would clarify for applicants that large numbers of similar sources, such as valves or flanges, that might be exempt on an individual basis, would have to be described in detail in the application if the aggregate emissions from all the units are relevant to the applicability of the Act's requirements or the determination of major source status.

Minimal information concerning emissions units with insignificant emissions would have to be provided in a list in the application. This list would have to describe the emission units in sufficient detail to identify the source of emissions and demonstrate that the exemption applies. For example, the description ''space heaters'' on a list may not provide sufficient information because there could be an unlimited number of units with potentially significant emissions, but the description, ''two propane-fired space heaters,'' places a limit on any estimate of emissions and would provide enough information. Descriptions may need to specify not only the number of units meeting the description, when more than one unit is included under a single description, but in many cases capacity, throughput, material being processed, combusted, or stored, or other pertinent information may need to be provided. For example, ''storage tank'' would be insufficient, but ''250-gallon underground storage tank storing unleaded gasoline, annual throughput less than 2,000 gallons,'' would be sufficient for quick assessment, because this level of information is sufficient to demonstrate whether any applicable requirements apply and that the 1 tpy emissions cap would most likely not be exceeded.

Emissions units (or activities) with insignificant emissions that might be logically grouped together on the list that would be required by proposed § 71.5(g)(2) but that have dissimilar descriptions, including dissimilar capacities or sizes, would be required to be listed separately in the application. This is necessary to prevent large numbers of emissions units from being grouped together on the list in such a way that the description would be too broad to provide sufficient information to identify the emissions units and provide an indication of whether or not the exemption applies. On the other hand, in certain cases, large numbers of certain activities could be grouped together on the list. For example, a complex facility may have hundreds of valves and flanges where the aggregate potential to emit of all the valves and flanges does not exceed the aggregate emissions cap and there are no applicable requirements that apply to the valves and flanges. In this case, it would most likely be appropriate to list all the valves and flanges together as one listed item, including the number of units meeting the exemption.

The EPA solicits comment on the approach regarding insignificant activities and emission levels proposed in this notice, particularly on whether this approach provides greater clarity than that discussed in promulgated part 70, and whether the approach proposed in this notice would be compatible with the approaches developed by States to date. The EPA also solicits comment regarding whether the approach proposed today provides adequate safeguards to insure that part 71 permit applications do not exclude significant information, especially all information necessary to determine applicability of Act requirements and major source status.

2. Cross Referencing Information in the Application

The permitting authority could allow the application to cross-reference

relevant materials where they are current and clear with respect to information required in the permit application. Such might be the case where a source is seeking to update its title V permit based on the same information used to obtain a NSR permit or where a source is seeking renewal of its title V permit and no change in source operation or in the applicable requirements has occurred. Any cross-referenced documents would have to be included in the title V application that is sent to the permitting authority and that is made available as part of the public docket on the permit action.

3. Application Completeness Determinations

As provided by proposed § 71.5(c), a complete application would be one that the permitting authority has determined contains all the information needed to begin processing. The preamble to the proposed revisions to part 70 discusses two options for providing flexibility when determining application completeness. The first option addresses applications for sources with future-effective compliance dates, and the second option addresses the submittal of less detailed applications for sources that are scheduled to be permitted in the second and third years of the initial phase-in of a part 70 program. See 59 FR 44460 (Aug. 29, 1994).

Although the regulatory language concerning completeness determinations in the part 71 proposal is consistent with the regulatory language in the proposed part 70 revisions, EPA is not anticipating revising the proposed part 71 regulatory language to specifically implement either of the flexibility options discussed in the preamble to the proposed revisions to part 70. As EPA is not as familiar with sources as State and local permitting authorities, EPA is not in a position to adequately quality assure applications that apply such flexibility options. Thus, the use of such flexibility options in determining application completeness could increase the risk of inappropriate completeness determinations by EPA, as well as increase EPA's administrative burden. As a result of this concern, EPA is not proposing to provide for the flexibility options described in the preamble to the revisions to part 70, but solicited comment on this position in the part 71 proposal.

E. Section 71.6—Permit Content

Many of the proposed provisions of § 71.6 follow the provisions of 40 CFR 70.6, which were described and discussed at length in the proposed and final preambles to 40 CFR part 70, and in the recently proposed revisions to part 70. This notice incorporates the rationale provided in the part 70 notices by reference, as appropriate. This discussion focuses on those provisions that are affected by the legal challenges to the part 70 rule and those issues for which the approach proposed to be taken in part 71 differs from that taken in part 70 or the proposed revisions thereto.

The provisions of proposed § 71.6 have been formatted differently than those in 40 CFR 70.6 to consolidate the provisions related to compliance and to make the section easier to follow. The EPA solicits comment on the proposed formatting change.

1. Prompt Reporting of Deviations

Like part 70, proposed part 71 would require that each permit contain provisions for prompt notification of deviations. In both cases, the definition of ''deviation'' is consistent with the definition of deviation in the proposed enhanced monitoring rule. However, part 71 proposes to define ''promptly'' for purposes of reporting deviations from federally-issued permits.

Under this proposal and the proposed enhanced monitoring rule, deviation means any of the following conditions: Where emissions exceed an emission limitation or standard; where process or control device parameter values demonstrate that an emission limitation or standard has not been met; or where observations or data collected demonstrates noncompliance with an emission limitation or standard or any work practice or operating condition required by the permit. These conditions (except in cases where provisions that exempt such conditions from being federally enforceable violations have been promulgated or approved by the Administrator) would be deemed deviations from part 71 permit requirements and would require prompt reporting to the permitting authority.

Part 71 sources would be required to promptly notify the permitting authority of any deviations. Under part 71, promptly has more than one meaning. This follows the model established in part 70. Where the underlying applicable requirement contains a definition of prompt or otherwise specifies a time frame for reporting deviations, that definition or time frame shall govern. Where the underlying applicable requirement fails to address the time frame for reporting deviations, prompt is defined differently depending on the type of pollutant emitted. For deviations concerning a HAP or toxic air pollutant that exceed a permit requirement for at least a one hour duration, prompt reporting would be defined as within 24 hours. Sources emitting other regulated air pollutants at levels that exceed permit requirements for at least two hours would be required to report the deviation within 48 hours.

The EPA recognizes that there are other notification requirements that have been established under other statutes that require sources to provide immediate notification of releases of specific chemicals in reportable quantities to agencies other than EPA and State permitting authorities. Generally these notifications apply to a potential emergency situation such as those requirements in CERCLA and SARA title III. In addition, pursuant to section 112(r), the Chemical Safety and Hazards Investigation Board has the authority to develop regulations for reporting accidental releases of section 112(r) substances. If a reporting regulation is established, it would become an applicable requirement on the source. The EPA stresses that sources must comply with such notice requirements even if they have provided notice to the permitting authority pursuant to proposed § 71.6(f)(3). Failure to provide notices required by these other statutes and their implementing regulations may result in enforcement actions and penalties.

Because the emissions from sources could cover a very large spectrum with a wide range of health effects, the permitting authority may also define in the permit the concentration and time duration of a deviation that must be reported promptly and the schedule for such reporting.

Sources may notify the permitting authority of a deviation by telephone or facsimile within their required time schedule, and must then submit certified written notice within ten working days. All deviations would still have to be included in monitoring reports which would be required to be submitted at least every 6 months or more frequently if required by another applicable requirement (e.g., NSPS or enhanced monitoring).

2. General Permits

Proposed § 71.6(l) would implement section 504(d), which authorizes the permitting authority to issue a ''general permit covering numerous similar sources.'' The approach proposed for part 71 would follow that of part 70 and the recently proposed revisions thereto.

In response to the concerns raised in the legal challenges to the part 70 rule, EPA has reevaluated its approach to

providing for public participation for general permits.

In the most recent part 70 proposal, the following items concerning general permits were proposed: (1) authorization to operate under a general permit is a final action subject to judicial review; and (2) the permitting authority is required to notify the public of sources who have been authorized to operate under a general permit. The latter action could be done as a monthly summary. Proposed § 71.6 follows the approach of the recent part 70 proposal for general permits.

3. Emergency Defense

As provided in proposed § 71.6(o), part 71 permits could contain permit terms that provide that a source can establish an affirmative defense to an enforcement action based on noncompliance due to an emergency. The affirmative defense would not apply to permit terms other than technology-based emission limitations (e.g., MACT standards) and would not apply unless the source provides appropriate documentation as specified in proposed § 71.6(o)(3). The emergency defense would be independent of any emergency or upset provision contained in an applicable requirement.

Although part 71 permits could contain provisions for an emergency defense, EPA notes that sources that produce, process, handle or store a listed substance under section 112(r) or any other extremely hazardous substance nonetheless have a general duty in the same manner and to the same extent as section 654, title 29 of the United States Code, to identify hazards assessment techniques, to design and maintain a safe facility, and to minimize the consequences of accidental releases.

The EPA is reevaluating the provisions in parts 70 and 71 relating to the emergency defense in light of concerns identified in legal challenges to the part 70 rule. The EPA may propose revisions to the part 70 and part 71 sections providing for the emergency defense before EPA would include such defense in any part 71 permits. In the interim, to ensure consistency with currently promulgated part 70, EPA would include in part 71 provisions allowing permit terms to establish an emergency defense.

4. Operational Flexibility

Section 502(b)(10) of the Act requires that the minimum elements of an approvable permit program include provisions to allow changes within a permitted facility without requiring a permit revision. In the current part 70 rule, EPA included three different methods for implementing this mandate. However, in response to concerns raised by petitioners and State permitting authorities charged with implementing part 70, EPA recently proposed to revise part 70 to eliminate one of those methods and clarify the operation of the others. Today's part 71 proposal adopts the same approach to operational flexibility as discussed in the proposed revision to part 70. The rationale for EPA's position on operational flexibility is set out in the proposed revisions to part 70 (59 FR 44460 (Aug. 29, 1994)), which today's notice incorporates by reference.

5. Referencing of Requirements

Petitioners in the part 70 litigation have asked EPA for clarification on the subject of data that may be referenced but not included in the permit.

In the recently proposed revisions to part 70, EPA has indicated that some referencing might be appropriate, and has requested comment on whether referencing should be allowed for: (1) test methods, (2) definitions, (3) startup, shutdown, or malfunction requirements or plans, and (4) detailed emission calculation protocols. The EPA solicits comments on referencing for part 71 permits.

F. Section 71.7—Permit Review, Issuance, Renewal, Reopenings, and Revisions

This section of the preamble describes EPA's proposed regulations governing permit issuance, renewal, reopening, and revision procedures under part 71. Generally, under a part 71 program such procedures would follow the procedures in the currently promulgated part 70 rule, as recently proposed to be revised. See 40 CFR 70.7 and 59 FR 44460 (Aug. 29, 1994). To the extent part 71 would follow the procedures in existing part 70 and the proposed revisions thereto, this notice incorporates the rationale for those procedures by reference. Where possible, EPA believes it is appropriate to model part 71 procedures on those required by part 70, in order to promote national consistency between the title V permit programs that will be administered throughout the country. National consistency will ensure that sources are not faced with substantially different programs when EPA, as opposed to State agencies, is the permitting authority. Moreover, as most part 71 programs are likely to be of limited duration, consistency with part 70 will enable smooth transition between Federal and State programs, encourage States to take delegation of administration of part 71 programs, help States that have been unable to obtain part 70 approval to phase into the title V program, promote uniformity in public and affected State participation, and provide a level playing field for sources.

In certain respects, the procedures under proposed part 71 would vary from the procedures in part 70. This is usually due to the fact that EPA, as a Federal permitting authority, will not be implementing State air programs in general when it assumes title V responsibilities. Consequently, certain opportunities under part 70, such as new source review merged with title V permit revision procedures, would not be available where EPA is the permitting authority. However, where a State takes delegation of the administration of a part 71 program, some of these opportunities would be available. These variations are discussed in the relevant sections of the discussion below. In other cases, where part 70 and the proposed revisions thereto provide States with flexibility to decide among alternative approaches or define specific elements of permit program procedures in developing their State programs, part 71 would decide these issues in the regulation itself, rather than rely upon further program development. Moreover, in today's notice EPA proposes detailed procedures for permitting actions, similar to those found at 40 CFR part 124 governing other permit programs administered by EPA.

1. Permit Issuance and Renewal

Part 71 would generally follow the currently promulgated part 70, as proposed to be revised in the August 29, 1994, **Federal Register** notice, in establishing procedures for permit issuance and renewal. These procedures are set forth in proposed § 71.7(a)–(c) and are discussed in greater detail in section 3–F–1 of the Supplementary Information Document.

In certain respects, part 71 would differ from part 70 and the proposed revisions thereto. For example, part 71 permitting authorities would be required to provide EPA with statements describing the legal and factual basis for draft permit terms only where the part 71 program has been delegated to a State or Tribal agency for administration. Also, only in cases where EPA has delegated part 71 administration to a State or Tribal agency would EPA would reserve the right to terminate or revoke and reissue a permit when the delegate permitting authority is not taking appropriate action to expeditiously process a permit renewal application.

2. Permit Revisions

Proposed §§ 71.7(d)–(h) would govern how permits are revised under part 71 programs. These procedures would generally follow the 4-track system contained in the recently proposed revisions to part 70. However, certain aspects of the 4-track system would not be available unless EPA had delegated administration of a part 71 program to a State or eligible Tribal agency. Moreover, where the proposed revisions to part 70 would leave it to State discretion to decide certain issues on a program-by-program basis, part 71 would contain specific provisions. Where the permit revision procedures under part 71 would differ from those under proposed part 70, the rationale for those differences is provided in detail. Where the procedures under part 71 would be the same as those under the proposed part 70 4-track system, this notice incorporates by reference the rationale for those provisions contained in the notice for the proposed revisions to part 70. See 59 FR 44460 (Aug. 29, 1994). The part 71 permit revision procedures are discussed in greater detail in section 3–F–2 of the Supplementary Information Document.

The EPA wishes to stress that in first describing this permit revision structure in the proposed revisions to part 70, the Agency solicited comments on ways to simplify what is admittedly a complex system. In light of the extensive comments received concerning the complexity of the proposal, EPA will publish a supplemental proposal covering part 70 permit revision procedures that differs from the August 29, 1994 proposal. The supplemental proposal is expected to be published within a few months of the publication of today's part 71 proposal and has not been developed in time to be incorporated into today's proposal. After the new part 70 procedures are proposed, EPA will most likely need to publish a supplemental proposal for part 71 pertaining to permit revision procedures. If so, EPA would finalize other portions of the rule first in order to be able to administer part 71 programs by November 15, 1995. The EPA expects to promulgate the part 70 permit revisions procedure in time to adjust corresponding sections of proposed part 71, as appropriate, before EPA would receive any applications for permit revisions under a part 71 program.

a. *Administrative Amendments.* The provisions governing administrative amendments to part 71 permits would be located at proposed § 71.7(e). Today's proposal would follow existing part 70 in allowing changes that are generally clerical in nature to be made pursuant to administrative amendment procedures. Also, like the proposed revisions to part 70, part 71 would allow increases in the frequency of required testing, monitoring, recordkeeping and reporting to be incorporated through the administrative amendment process. While part 70 provides a subsequent opportunity for identifying other changes similar to those just described for processing as administrative amendments in the program approval stage, part 71 would not, simply because after promulgation of this rule there would be no further stage of part 71 program development.

Where EPA has delegated administration of a part 71 program to a State or eligible Tribe, part 71 would follow the recent proposed revisions to part 70 by allowing changes that undergo ''merged'' part 71/NSR or part 71/section 112(g) process to be incorporated into the part 71 permit as administrative amendments. For purposes of part 71, this opportunity to follow proposed part 70 would exist only where States or eligible Tribes take delegation of the part 71 program. When administering a part 71 program for a State, EPA would not also be implementing the State's preconstruction program, so EPA would not be able to upgrade the State's preconstruction program to part 71 process. While this eliminates a significant opportunity for streamlined permit revision where EPA is acting as the permitting authority, EPA believes that it is infeasible for EPA to merge preconstruction review and part 71 review unless the same permitting authority processes both actions. Moreover, to the extent States take delegation of part 71 programs, this opportunity for flexibility will be present. The EPA solicits comment on the proposed limited availability of merged processing under part 71 and suggestions for ways in which this merged processing could be more feasibly provided.

In delegation agreements, EPA and delegate agencies could agree that delegate agencies could conduct merged processing on a case-by-case basis. That is, delegate agencies could be authorized to provide merged process for all or some of their preconstruction determinations or to allow sources to elect merged process for only individual changes. Delegate agencies that provided merged process on only a case-specific basis would have to state when they are doing so in the initial notification of the permit action sent to EPA. A delegate agency that wished to provide for merged NSR changes would have to set out the eligibility criteria and process for merged NSR changes in its application for delegation to EPA. Depending on existing State statutory or regulatory provisions, no changes would be required to existing NSR programs.

While under the proposed revisions to part 70 EPA would require States to submit eligibility criteria for merged processing in their part 70 programs that EPA would review in the context of program approval, EPA believes that the process in part 71 for applying for delegation and entering into delegation agreements provides an adequate forum for evaluating a delegate agency's ability to provide merged processing. Similarly, EPA believes that delegation agreements are adequate vehicles for establishing a delegate agency's authority to merge preconstruction and part 71 actions on a case-by-case basis. The delegation process requires the State to submit evidence of adequate statutory and regulatory authority to carry out part 71 responsibilities, and EPA would publish delegation agreements in the **Federal Register**, giving notice of the delegate agency's authorization to provide for merged processing.

Consistent with the proposed revisions to part 70, part 71 would allow administrative amendment procedures to be used to incorporate standards promulgated after permit issuance pursuant to section 112 of the Act.

For all changes that qualify as administrative amendments, the part 71 permitting authority would use specific procedures to incorporate those changes into the permit. Generally, these procedures would follow those contained in the August 29, 1994, proposed revisions to part 70, but would differ in certain respects. For example, the part 71 permitting authority would be required to provide EPA with a copy of the effective permit addendum reflecting the change only where EPA has delegated a part 71 program to a State or eligible Tribe.

b. *De Minimis Permit Revisions.* Following the proposed revisions to part 70, EPA is proposing at § 71.7(f) a de minimis permit revision track in part 71 for changes that do not undergo merged program administrative amendment procedures but that have only a small emissions impact. Under this track, a source would be able to operate the change as early as the day it submits its permit revision application. Public and affected State review of the change would then follow. See the more detailed discussion in section 3–F–2–b of the Supplementary Information Document, as well as the Agency's preamble for the proposed revisions to

part 70 (59 FR 44460, Aug. 29, 1994) regarding the types of changes that would be eligible for this process, the details of the process itself, and the rationale for the creation of this revision track.

In certain respects, the de minimis track in part 71 would differ from that in proposed part 70. For example, a person who was unsuccessful in persuading the part 71 permitting authority to disapprove a source's requested de minimis change could not petition EPA to object to the permit. This is because both when EPA is the permitting authority and when EPA has delegated that responsibility, citizens will already have the opportunity to directly appeal the final de minimis permit revision to the Environmental Appeals Board. Thus, requiring an intermediate step of requesting EPA to object to its own permitting action would both be redundant and delay citizen access to administrative, and ultimately judicial, review of the change. The Agency solicits comment on this approach. While the proposed revisions to part 70 would leave States discretion in developing their part 70 programs in determining whether the source, versus the State permitting authority, would have the responsibility to provide public notice of de minimis changes, under part 71, sources would have that duty. This specificity is due to the fact that EPA, unlike States, will not be conducting further program development for part 71 programs beyond promulgating part 71, so it is necessary for EPA to establish in this rule whether the public notification duty will fall on sources or the permitting authority. The EPA proposes to place the public notice responsibility on sources because the Agency believes that sources will be in a better position to provide timely notice of their de minimis changes than EPA regional offices would be and will have more ready access to area newspapers for providing such notice. Consequently, requiring sources to provide notice should ensure that de minimis changes are expeditiously processed. Moreover, EPA believes that under the proposed revisions to part 70, revised State programs could commonly require sources to provide such notice, and consistency in implementation of de minimis permit revision procedures will aid program transition when States obtain part 70 approval or when EPA assumes permitting responsibilities.

As under the proposed revisions to part 70, the scope of de minimis changes would be defined in two ways. Any change at a small emissions unit (''unit-based'' de minimis) would qualify, as would a small change at a large unit (''increment-based'' de minimis), provided certain conditions designed to ensure the enforceability of the resulting permit limit were met. Unlike the proposed revisions to part 70, for part 71 EPA is not proposing that permitting authorities, whether they are EPA or delegate States or eligible Tribes, could establish alternative de minimis emissions thresholds based on a demonstration submitted subsequent to final promulgation of part 71. This is because, again, after promulgation of part 71, EPA will not be further developing part 71 programs, so there will not be an opportunity to consider alternative de minimis thresholds. Moreover, EPA does not believe that EPA delegation of part 71 administration to States or eligible Tribes provides an adequate forum for evaluating alternative thresholds developed by States or eligible Tribes, since there will be no formal approval action in those delegations and the public will not have an opportunity to comment upon them before they are effective.

Procedurally, part 71 would also provide more specificity than would the proposed revisions to part 70. For example, the source could operate the requested de minimis change 7 days after the permitting authority received the application or, with the permitting authority's permission, as early as the day its application is submitted. The proposed revisions to part 70 provide that States in developing their part 70 programs would have discretion to allow changes to be made 7 days following receipt of the application, and such authorization would be included in their program submittals for EPA approval; as discussed above, since promulgation of part 71 will represent the final stage of part 71 program development, proposed part 71 specifies that sources could make de minimis implement changes after 7 days.

Also, under part 71, sources would be required to provide public notice of de minimis changes on a monthly, batched basis, publishing one notice listing all changes at the source for which applications for de minimis permit revisions had been sent to the permitting authority in the preceding month. The EPA solicits comment on this approach, particularly regarding the extent to which States intend to impose the public notification duty on sources under the proposed revisions to part 70. While the proposed revisions to part 70 specified neither who has the responsibility for providing public notice nor the manner in which public notice should be given, part 71 would be specific on these points, for the reasons discussed above. The EPA solicits comment, however, on the method or methods sources could use to provide such notice. For example, sources could be required to publish notice of de minimis changes in a newspaper of general circulation within the area where the source is located or in State or local governmental publications, to send actual notice to interested persons on a list developed by the source or the permitting authority, or both. At minimum, the final rule will provide a mechanism to ensure that public notice reaches all interested citizens.

c. *Minor Permit Revisions.* Under today's proposal, most changes ineligible for administrative amendment or de minimis permit revision procedures would be eligible for the minor permit revision process. Taking the current part 70 rule's minor permit modification process as a starting point and following the proposed revisions to part 70, proposed part 71 would add expedited procedures for providing public notice and a 21-day comment period, allow the source to operate the requested change at the end of the 21-day comment period when no objections are received, and provide for permitting authority final action to be taken on applications within 60 days of their receipt. The description of and the rationale for EPA's proposed minor permit revision process for part 70 is contained in the preamble to the proposed revisions to part 70 (see 59 FR 44460, Aug. 29, 1994). To the extent applicable to part 71, EPA incorporates that rationale for this notice. However, where elements of the minor permit revision track differ in proposed part 71 from those in part 70, this notice describes those differences. A more detailed discussion of the part 71 minor permit revision process is contained in section 3–F–2–c of the Supplementary Information Document.

For part 71 minor permit revisions, as for de minimis changes and merged program administrative amendments, notice to EPA, and EPA's 45-day review period and opportunity to veto would occur only where EPA had delegated its role as the permitting authority to a State or eligible Tribe. While this is a departure from the proposed revisions to part 70, as discussed previously, EPA does not believe there is any utility, when EPA is the permitting authority, in requiring EPA review of EPA permitting action, since sources, affected States and public citizens that object to EPA permitting actions will be able to directly appeal those decisions to the Environmental Appeals Board.

Consequently, providing for an additional step of EPA review and opportunity to object would unnecessarily slow down this expedited revision track and would also delay access of interested parties to administrative and judicial review.

Moreover, in cases of objections to minor permit modifications filed by affected States, only where EPA had delegated part 71 administration to a State or eligible Tribe would the part 71 permitting authority have to forward to EPA a written response to any of these objections that were not accepted.

Another difference under the part 71 program would be that if the permitting authority failed to act on a public objection, the commenter could file suit in Federal court, rather than State court, to force the permitting authority to take action on the written comment. In addition, commenters would be able to bring suit in Federal court to seek an injunction against the source implementing or continuing to implement requested changes before they are approved. Injunctive relief would be available in accordance with applicable standards for obtaining such relief under Federal law.

Also, only where EPA had delegated a part 71 program to a State or eligible Tribe, would the part 71 permitting authority be required to wait until the date after EPA's 45-day review period had expired, provided EPA had not objected, before issuing the final minor permit revision. The delegate agency would be required to take final action by day 60, or 15 days after the close of EPA's review period, whichever is later. In addition, under part 71 programs, commenters may not petition EPA to object to minor permit revisions for the reasons discussed above with respect to de minimis permit revisions.

d. *Significant Permit Revisions.* Following the proposed revisions to part 70, under proposed part 71 the significant permit revision process would essentially follow that of the significant permit modification track in existing part 70. See the description of this process in the Agency's proposed revisions to part 70 (59 FR 44460, Aug. 29, 1994) for the rationale for this approach, which EPA incorporates by reference for purposes of part 71. See also the more detailed description of the part 71 significant permit revision process contained in section 3–F–2d of the Supplementary Information Document.

Proposed part 71 would require the permitting authority to take final action on applications for significant permit revisions within 18 months of receipt of the application. However, because prompt action on permit revisions is of critical importance to industry, the EPA intends to complete such revisions within 12 months and expects that only the most complex revisions would require more than a year to complete.

e. *Alternative Option for Monitoring Changes.* Following the proposed revisions to part 70, EPA also proposes as an option in part 71 alternative provisions governing changes involving monitoring requirements. While this option essentially adheres to the 4-track system discussed above, certain provisions of the system would need to be modified to incorporate the alternative option for monitoring changes. The rationale for this alternative option is discussed in detail in the preamble to the proposed revisions to part 70 (see 59 FR 44460, Aug. 29, 1994), and this notice incorporates that rationale by reference, to the extent it is applicable to part 71. As appropriate, EPA intends to match in the final part 71 rule the final part 70 provisions regarding this option. For a more detailed discussion of this option under part 71, see section 3–F–2–e of the Supplementary Information Document.

Under part 71, the source, rather than the permitting authority, would have the responsibility to provide monthly batch public notice of monitoring changes processed under this option's de minimis permit revision track. Moreover, for monitoring changes processed under this option's significant permit revision track, part 71 permitting authorities would be required to send demonstrations and their evaluations to EPA only where EPA has delegated part 71 program administration. Again, EPA believes that expeditious process of de minimis permit revisions is better served by sources providing notice, and that the non-permitting authority EPA review and veto role adds value to the permitting process only where there is a separate entity such as a delegated State functioning as the part 71 permitting authority.

3. Incorporation of New Standards

The process by which EPA proposes to incorporate into permits new MACT standards promulgated under section 112 would follow that contained and discussed in detail in the proposed revisions to part 70 (see 59 FR 44460, Aug. 29, 1994). This notice incorporates by reference the rationale for this process contained in the preamble to the proposed revisions to part 70. To the extent appropriate, EPA intends the final part 71 rule to be consistent with the part 70 rule as it is finally promulgated. For a more detailed discussion of this process for purposes of part 71, see section 3–F–3 of the Supplementary Information Document.

Note that under a delegated part 71 program, if EPA receives the initial notification because the MACT standard has not yet been delegated to the State, local or Tribal agency, EPA will send this notice to the delegate part 71 permitting authority, and upon receipt of this notice the permitting authority could begin processing the administrative amendment. Also, under delegated part 71 programs, where the NSR programs have been enhanced to meet part 71 requirements, minor and major NSR actions would be acceptable for addressing and establishing part 71 permit conditions needed to assure compliance with MACT standards. Thus, the merged preconstruction review process applying to NSR permits could also be used to revise the part 71 permit to incorporate the MACT requirements applicable to the source. If the NSR action were not merged (as would be the case if EPA had not delegated part 71 administration to a State or eligible Tribe), the part 71 revision would be eligible under the minor permit revision track, or, if it met the criteria, the de minimis permit revision track.

4. Permit Reopenings

Under proposed § 71.7(i), part 71 would follow the currently promulgated part 70 in providing when and how permits would be reopened. For a more detailed discussion of the part 71 permit reopening procedures, see section 3–F–4 of the Supplementary Information Document. Where EPA has delegated a part 71 program to a State or eligible Tribe, special provisions for EPA notification to the delegate agency that cause exists to reopen would apply. These procedures follow those in existing part 70 for notification to approved part 70 permitting authorities. Briefly, if EPA finds that cause exists to reopen a permit, it would notify the delegate agency and the source. The delegate agency would have 90 days after receipt of this notice to forward to EPA a proposed determination of termination, revision, or revocation and reissuance of the permit. The EPA could extend the 90-day period for an additional 90 days if a new application or additional information is necessary. The EPA could then review the proposed determination for 90 days. If the delegate agency fails to submit a determination or if EPA objects to the determination, EPA may terminate, revise, or revoke and reissue the permit after providing the source at least 30 days written notice and an opportunity

for comment and a hearing on EPA's proposed action.

G. Section 71.8—Affected State Review

Following the proposed revisions to part 70, proposed § 71.8 would implement section 505(a)(2) of the Act and require that the permitting authority provide notice to all affected States (as defined in proposed § 71.2) of each draft permit and addenda to permits that incorporate de minimis permit revisions. Under the proposed procedures for minor permit revisions, sources, rather than permitting authorities, would have the responsibility to provide notice to affected States for such changes. Affected States are those States whose air quality may be affected, and that are contiguous to, the State in which a part 71 permit, permit revision, or permit renewal is being proposed, or those within 50 miles of the source. Tribal areas or areas under the jurisdiction of a local air pollution control area may be considered affected States in some cases.

Affected States that receive notice pursuant to proposed § 71.8 could submit written recommendations and comments to the permitting authority. If the permitting authority refuses to accept the recommendations, the reasons for the refusal would have to be provided in writing to the affected State(s) that provided the recommendations or comments during the public or affected State review period.

H. Section 71.9—Permit Fees

1. Authority to Impose Fees

The EPA believes that title V provides EPA the authority to charge sources fees whenever EPA is required to administer a part 71 program. Section 502(b)(3)(C)(i) of the Act provides that if EPA determines that the fee provisions of a State's part 70 program do not meet the requirements of title V, or if EPA determines that a permitting authority is not adequately administering or enforcing its approved fee program, EPA may, in addition to taking any other action authorized under title V, collect reasonable fees from the sources that should be paying adequate fees pursuant to an approved part 70 fee program. Thus, EPA has the discretion to charge fees whenever a State fails to establish an approvable fee program or fails to implement its approved fee program, even if there are no other deficiencies in the State's operating permits program. Section 502(b)(3)(C)(i) also provides that fees charged by EPA shall be designed solely to cover EPA's costs of administering the provisions of the permits program promulgated by EPA.

2. Fee Calculation and Assessment

The fee schedule proposed in § 71.9 would establish a dollar per ton charge on actual emissions of each regulated pollutant (for fee calculation) that is emitted from a source.

Under the fee schedule in this proposal, the date of the initial fee submittal would be contingent upon several factors. If EPA withdraws approval of a part 70 program, initial part 71 fees would be due in accordance with a schedule based upon a source's primary SIC Code, as provided in proposed § 71.9(f)(1).

If EPA implements a part 71 program in an area that did not have a part 70 program in place, initial fee calculation work sheets and fees would be due at the same time the initial permit application is due, in accordance with the requirements of proposed § 71.5(b)(1).

Regardless of whether a part 70 program preceded a part 71 program, sources that become subject to the part 71 program after the part 71 program's effective date would be required to submit initial fee calculation work sheets and fees at the same time the initial permit application would be due, in accordance with the requirements of proposed § 71.5(b)(1).

Sources would be allowed to pay their initial annual fee in two installments. The first payment equalling one-third of the annual fee would have to be submitted along with the initial fee calculation worksheet. The balance would be due four months later, but in no event later than a year after the program's effective date.

As provided in proposed § 71.9(g), for sources that receive a part 71 permit as a result of an EPA veto of the State's proposed part 70 permit (as provided in proposed § 71.4(e)), the initial fee calculation work sheet and fees would be due 3 months after the date the part 71 permit is issued. Delaying the source's fee payment in this manner would provide the State an opportunity to issue a permit that satisfies EPA's objection, thereby relieving sources of the burden of paying both State and Federal permit fees. However, such sources would not be permitted to pay fees in installments because their obligation to pay fees arises after EPA has completed the permit issuance process.

For sources that commenced operation during the calendar year preceding the date on which a source's initial application is due, the initial fee calculation would be based on an estimate of the current calendar year's actual emissions. This estimated fee would be adjusted in the first annual emission report. In addition, sources that would be required to submit initial fee calculation work sheets and fees between January 1 and March 31, as required by either proposed § 71.9(f)(1) or § 71.9(g), would have the option of basing their initial fee calculation on an estimate of the preceding calendar year's actual emissions. This provision would provide sources with a means for meeting the initial fee submittal requirements if their initial fee submittal date does not provide for sufficient time to calculate the previous calendar year's actual emissions. This estimation would also have to be reconciled in the first annual emission report.

For purposes of subsequent annual emissions reporting and fee assessments, the date (month and day) on which the initial part 71 fee calculation work sheet and fees were due would be considered the ''anniversary date'' for that source. Each source would be required to submit an annual report of its actual emissions for the preceding calendar year by its anniversary date. However, to allow sources with anniversary dates between January 1 and March 31 the time needed to analyze the preceding calendar year's emissions data, the anniversary date for these sources would be April 1. The annual report would have to include a fee calculation work sheet and full payment.

As discussed above, sources that commenced operation during the preceding calendar year would base their initial fee calculation on an estimate of the current calendar year's actual emissions. When the permitting authority receives the first annual emissions report, the permitting authority would compare the estimate to the emissions report and would adjust the initial fee to reflect the annual emissions listed in the report. If an additional fee is required, payment would be due with the submittal of the annual emissions report. If the source has overpaid, the permitting authority would credit the source's account. Regardless of this adjustment procedure, the source would be required to pay its current emissions fee based on the actual emissions listed in the first annual emissions report.

Sources subject to proposed § 71.9(f)(1) or § 71.9(g) that have initial application and fee calculation work sheets due between January 1 and March 31 could opt to base their initial fee on an estimate of the past year's

actual emissions. The first annual emissions report for such sources would have to reconcile the emissions fee from the initial fee calculation. In addition to calculating the current emissions fee, the report would be required to include actual emissions data from the estimated year, and the source's account would have to be revised accordingly.

Section 502(b)(3)(C)(ii) requires that sources that fail to pay fees in a timely fashion shall be assessed interest at a rate equal to the sum of the Federal short-term rate determined by the Secretary of the Treasury in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986, plus 3 percentage points and shall pay a penalty charge of 50 percent of the fee amount. Proposed § 71.9(l) would implement section 502(b)(3)(C)(ii) by providing that the penalty charge shall be due if the fee is not paid within 30 days of the payment due date or if sources that compute fees based on estimated annual emissions substantially underestimate these emissions.

Fee payments would be required to be in United States currency in the form of a money order, bank draft, certified check, corporate check, or electronic funds transfer payable to the order of the U. S. Environmental Protection Agency. The EPA intends to develop additional guidance regarding remittance procedures as the Federal operating permits program is implemented.

3. Principles for Developing Fee Structure

The following principles were used to develop the proposed fee requirements:

a. *Fees Based on Average Annual Costs.* By means of the fee structure proposed in this rule, EPA intends to recover both direct and indirect costs for the various activities conducted to administer part 71 programs. Direct costs would include personnel benefits and salaries, travel, equipment costs, and contractor expenses. Indirect costs would be those resources, outside of direct program costs, used to manage, oversee and provide counsel to program offices. These would include costs such as those incurred by EPA's management, administrative, and policy staff. Indirect costs would also include overhead costs, such as utilities and rents.

The methodology proposed to be used for setting fees is to estimate the cost of implementing the part 71 program nationwide and to divide that cost by the estimated emissions that would be subject to the fee. The result is a fee expressed in dollars per ton/yr of pollutants emitted. A detailed discussion of the assumptions and calculations involved in determining fees is found in ''Federal Operating Permits Program Costs and Fee Analysis'' (Fee Analysis), which is contained in the docket for this rulemaking.

The cost estimates presented in the Fee Analysis are based on operating a part 71 program for two years. The EPA believes this is a reasonable average program duration, given the expected transitory nature of the program.

For purposes of the cost analysis, the hourly personnel costs were assumed to be the same for EPA and for delegate agencies. Therefore, the total personnel costs for an EPA administered program and one which is delegated in whole or in part would be identical except for the cost of additional EPA oversight (which would be covered by a $3 per ton/yr surcharge discussed below).

Because part 71 programs will generally be transitional programs, EPA may in some cases decide to staff the program primarily through contractor assistance. The emissions fee for a particular part 71 program would vary depending on the extent to which EPA relies on contractor support and the cost of contractor assistance. If the program is administered by EPA without contractor assistance, the proposed fee would be $45 per ton/yr. If the program were staffed through contractor assistance (except for those functions for which the use of contractors is not appropriate such as final permit issuance determinations), EPA would establish a fee based on the contractor costs for a particular program.

As provided in proposed § 71.9(c)(3), the fee for a contractor assisted program is the sum of the permitting authority's costs associated with activities that it undertakes, the cost of paying a contractor to undertake other activities, and a surcharge that covers EPA's oversight costs. The formula for determining the cost of contractor assistance is as follows:

C=[B+T+N] divided by 12,300,000

Where B represents the base cost (contractor costs), where T represents travel costs, and where N represents non-personnel data management and tracking costs.

B, T and N, when summed, are divided by the total tonnage of national emissions that would be subject to fees (12.3 million tons) to convert the cost into a per ton fee rate.

The Fee Analysis discusses the methodology used in computing the base cost of the part 71 program, travel costs and non-personnel data management and tracking costs. Travel costs and non-personnel data management and tracking costs would be the costs ($14,488,000 and $13,400,000 respectively) indicated in Table A–3 of that document.

As indicated above, the base cost would vary depending on the hourly rate paid for contractor assistance. Table A–3 presents the base cost for a program in which contractor assistance (costing $62 per hour) was used to the maximum extent possible. This $62 figure reflects the average hourly cost of several large contracts awarded by EPA for projects relating to air quality control. Using that hourly rate, the resulting per ton fee would be $77. The base cost was computed by summing the costs of contractor assistance for years 1 and 2 for the activities listed in Table A–1 of the Fee Analysis (except those activities which EPA should undertake, i.e., presiding over hearings, transition planning, guidance, contract management, and training) and then computing an annualized cost. To determine the fee for a particular part 71 program, EPA would substitute a different hourly rate (based on the actual rate charged by the contractor) into the computation.

Each time a part 71 program is implemented, EPA would determine the percentage of personnel time allocated to contractors by considering who could best perform each type of permitting activity (e.g., technical review and processing of permit applications and compliance plans, preparation for public hearings, compliance inspections). This flexibility would allow EPA to develop a staffing pattern that meets the unique needs of the part 71 program being administered. By using the formula specified in proposed § 71.9(c)(3), EPA would arrive at the basic emissions fee. If the program is delegated or staffed largely by contractors, there would be additional costs due to the oversight that EPA must provide to the program. These additional costs of EPA's review of permit applications, compliance plans, draft permits, permit revisions and reopenings would increase the emissions fee by $3 per ton/yr.

The EPA currently uses contractors for permits related work pursuant to competitively bid contracts which compensate contractors on a level of effort basis, using set hourly fees. These contracts, which provide for a certain number of hours of services at a fixed hourly rate, were used in projecting the costs of using contractors to implement part 71 programs and could be used by EPA for part 71 programs when contractor assistance is needed. It has been suggested that for part 71 programs

it may be more cost effective if contracts for part 71 programs were independently bid. Therefore, EPA solicits comments on whether fees for part 71 programs should be based on contractor costs established by a new competitive bid process. While not wanting to dismiss this alternative, the EPA is concerned about the costs involved with preparing the documentation required for the competitive bid process and that the length of time required to undertake this process (usually 12–18 months) would make this alternative impractical in light of the program's effective date. In particular, EPA solicits comments on whether this approach would result in cost savings.

The EPA considered several other options for setting fees. For example, EPA considered the possibility of basing fees for each part 71 program on the fee structure submitted by a State or local government as part of its part 70 submittal. This approach, however, has limited utility in that it is not appropriate where the submittal contains an inadequate fee program or where no submittal is made. Furthermore, the administrative burden (and the delay in program implementation) involved with completing individual rulemakings for each part 71 program made this option infeasible.

Given that it is not practical to craft a fee schedule that fits each State, and given that EPA is unable to foresee with certainty when and where it may be necessary to implement part 71 programs, EPA proposes to base its fees on the average cost of implementing a part 71 program.

The EPA considered whether the average cost of the part 71 program would be recovered by charging a fee of $25 per ton/yr (1989 baseline with CPI adjustments), which is the amount of fee revenue that EPA would presume is adequate for purposes of funding State operating permits programs under part 70. For fiscal year 1995, this fee would equal $30.18. However, EPA believes that there would be some differences in costs between the Federal program and State programs which made use of the presumptive fee inappropriate.

Using the approach outlined above, EPA has developed a proposed fee structure that will reflect the cost of the Federal operating permits program, though not necessarily the cost of implementing the program in any particular State. The proposed fee is expected to be adequate for nearly all part 71 programs and should, on average, collect sufficient revenue to fund permitting under this part. However, if EPA determines that the fee structure provided in proposed § 71.9(c)(1)–(4) does not adequately reflect the program costs for a particular area, such as a Tribal area, then EPA may by separate rulemaking establish a different fee for a part 71 program.

b. *Minimizing Administrative Burdens.* Although EPA could design a fee system that imposes different fees based on such factors as source categories, the particular pollutants emitted, or the type of permitting action requested, EPA proposes a straight forward emissions-based fee system. For sources, the fee computation would be simple. Similarly, EPA's administrative burden related to assessing fees and monitoring compliance with fee requirements would be minimized.

c. *Fees Calculated Based on Existing Information.* The EPA would provide sources with fee calculation work sheets. Using these work sheets, sources would compute their actual emissions of the appropriate pollutants and multiply by the appropriate per ton/yr rate. Sources would submit fees within the first 12 months of the effective date of the program, and annually thereafter. Many sources are already subject to annual emissions reporting requirements. Thus, except for new sources, there would generally be no requirement that sources develop any information for the work sheets that would not already be required on the application form or as an emission reporting requirement.

d. *Fees Imposed in Advance of EPA's Rendering Services.* Under the proposal, all part 71 sources would remit fees within 12 months of the effective date of the permit program, even if the source is not issued a part 71 permit within that time. Those fees will provide a stable source of revenue from which to fund the initial start-up costs of the program, the costs of issuing permits within the first year of the program, as well as cover ongoing activities such as inspections, reviewing monitoring reports, and other compliance and enforcement activities.

This procedure would comply with Federal policy for user fees established in OMB Circular A–25 (July 8, 1993), which provides that fees are to be collected before services are administered or goods provided to ensure that fees are actually paid for the services provided, that the Treasury receives funds in a timely manner, and that additional administrative burdens and costs for collecting fees are avoided.

4. Revision of Fee Structure

To reflect changes in operating costs, fees would be adjusted automatically every year (after 1997) by the same percentage as the percent change in the CPI. Also, the fee schedule would be revisited every two years as required by section 902(a)(8) of the Chief Financial Officer's Act of 1990. (31 U.S.C. 501 *et seq.*)

I. Section 71.10—Delegation of Part 71 Program

1. Delegation Process

Section 301(a)(1) of the Act provides that the Administrator is authorized to prescribe such regulations as are necessary to carry out his or her functions under the Act. Pursuant to this authority, proposed § 71.10 provides that a part 71 program may be delegated in whole or in part, with or without signature authority (i.e., the authority to issue permits) to any State or local agency or eligible Tribe that is found to have the requisite legal authority to administer such a program. For purposes of the rule, an eligible Indian Tribe would be a Tribe that EPA has determined meets the criteria for being treated in the same manner as a State, pursuant to regulations implementing section 301(d)(2) of the Act.

The EPA recognizes that in some cases States could fail to receive part 70 program approval due to program flaws that are not related to the permitting authority's practicable ability to implement a title V program. For example, the submitted part 70 program may contain elements in it enabling legislation or its regulations that prevent EPA from granting program approval, even though EPA may be confident that the State permitting authority could adequately administer and enforce a title V program that meets the requirements of the Act. While title V requires EPA to promulgate Federal title V programs for States that fail to receive part 70 program approval, EPA believes that in situations where State permitting authorities appear capable of implementing programs that meet the requirements of title V, it would be consistent with the general policies of the Act to involve States in implementing required Federal permits programs, rather than exclude State permitting authorities.

The Act has long provided that air pollution control is the primary responsibility of States and local governments. (See, e.g., section 101(a)(3) of the Act, 42 U.S.C. 7401(a)(3).) Moreover, while title V requires States to submit permit programs for approval by EPA, the Act does not provide that program approval is the sole mechanism available for State air pollution control

agencies to become permitting authorities under title V. Section 501(4) of the Act defines ''permitting authority'' to mean both the Administrator or the air pollution control agency ''authorized'' by the Administrator to carry out a permit program under title V. Section 302(b) of the Act defines ''air pollution control agency'' to include State and local government agencies. The EPA believes the word ''authorized'' as used in section 501(4) may reasonably be interpreted to apply not only to instances in which EPA approves a submitted part 70 program, but also to instances in which EPA determines that a State or local air pollution control agency demonstrates that it is capable of carrying out a title V permit program even where the State has not submitted a part 70 program that has received EPA approval.

The EPA could exercise its discretion to delegate authority to administer some portion or all of a part 71 program where, for example, it makes sense to take advantage of existing expertise of the delegate agency or where it seems probable that the delegate agency's submitted part 70 program will be approved within a short time by EPA, provided in both cases that the delegate agency has the authority to administer the portion of the program that would be delegated.

Any agency that seeks to obtain delegation of a part 71 program would be required to submit a formal request for delegation, in accordance with the provisions of proposed § 71.10, and such other documentation as is necessary for review and consideration by the Administrator to make a determination that the agency or eligible Tribe has adequate legal authority and procedures to administer and enforce a part 71 program.

The EPA would adopt a flexible approach in evaluating delegation requests. The EPA would not demand that each delegate agency administer a part 71 program in precisely the same way because each delegate agency would have to comply with its own procedures, administrative codes, regulations, and laws as well as the requirements of this part.

The Governor or designee for a State, a local agency, or the Tribal governing body for an eligible Tribe, would be required to submit to EPA a written request for delegation of authority on behalf of the State or local agency or eligible Tribe pursuant to proposed § 71.10. The request would have to include a legal opinion that certifies that the State or local agency or eligible Tribe has the requisite legal authority to implement and administer the program. The request would also have to identify the officers or agencies responsible for carrying out the State, local, or Tribal procedures, regulations, and laws.

The EPA would respond in writing to each delegation request and shall state to what extent the request has been accepted or rejected. If the request is accepted in whole or in part, the Administrator would delegate to the Governor or designee, the local agency, or Tribal governing body, the authority to carry out the accepted portions of the delegation. If the request is rejected in whole or in part, the notification shall specify the reasons for such rejection.

The terms and conditions of the delegation would be set forth in a ''delegation of authority agreement'' that specifies the effective date for the agreement. The delegation of authority agreement would be published in the **Federal Register** by EPA and would identify the delegate State, local, or Tribal procedures to be used for implementing and administering the program by reference to the request and to any additional submission by the Governor or designee, or Tribal governing body supplementing or modifying the State, local or Tribal procedures.

2. Full and Partial Delegation

Although EPA encourages delegate agencies to accept full delegation of all aspects of the administration of part 71 programs, there are situations where a delegate agency may be unable or unwilling to assume all responsibility for administering these programs. Where appropriate, EPA could choose to grant partial delegations as follows:

(1) Delegation of authority may be granted for only a portion of the State or regulatory area;

(2) Delegation of authority may be restricted to certain source categories or parts thereof; or

(3) Authority may be delegated for selected parts of the procedural responsibility in implementing a part 71 program with EPA acting as a partner in completing the remaining actions (e.g., delegation of authority may be granted with regard to the administrative and/or technical portion of implementing the part 71 program, with EPA providing enforcement should such action become necessary);

(4) Authority may be delegated for only the acid rain portion of a title V program, or for other parts of the title V program, not including the acid rain portion.

3. Procedural Requirements for Delegation

The delegate agency would be required to provide notice to the Administrator of all applications for any permit, permit renewal, or permit revision, including any compliance plan, or any portion thereof that the Administrator determines to be necessary to review the application and permit effectively, each proposed permit, and each final permit as provided in proposed § 71.10(d). The delegate agency would also have to provide notice of each draft permit to affected States on or before the time that the delegate agency provides this notice to the public under proposed §§ 71.7 (e)(4), (h), or (i) or § 71.11(d) and would be required to provide any affected State a copy of the addendum for a de minimis permit revision within 7 days of the date on which the addendum takes effect.

Affected States that receive notice pursuant to proposed § 71.8(a) could submit written recommendations and comments on the permit to the delegate agency. If the delegate agency refuses to accept the recommendations, the reasons for the refusal would have to be provided in writing to the State(s) providing the recommendations.

The EPA could waive its own and affected States' review of permits for any category of sources, except major sources, by nationwide regulation for a category of sources. The EPA could also waive its own right to review, but maintain the requirement for a delegate agency to notify affected States. During Phase II of the acid rain program, the Agency does not intend to waive its own right to review permits for affected sources under the acid rain program.

When a part 71 program has been delegated with signature authority in accordance with the provisions of this section, the Administrator could object, in writing, to a part 71 permit if the delegate agency fails to properly submit, process, or provide notice as would be required by this part or if the part 71 permit does not assure compliance with applicable requirements of the Act. If the delegate agency fails to revise the proposed permit in response to the objection, the Administrator could deny the permit or issue a permit in accordance with the part 71 program.

4. Delegation of Authority Agreement

A delegation of authority agreement would specify the terms and conditions of the delegation and would be required to include, but not be limited to:

(1) A provision that the delegation is made in accordance with proposed § 71.10;

(2) A provision that describes the source categories, geographic areas, and the administrative and enforcement activities governed by the delegation;

(3) A provision that requires the delegate agency to comply with the public notice requirements of proposed §§ 71.7 and 71.11;

(4) A provision that requires the delegate agency to provide a copy, through the appropriate Regional Office, of each permit application, proposed permit, and final permit to the Administrator as required in proposed § 71.10(d);

(5) A provision that any permit issued by a delegate agency contain a statement identifying the permit as a title V, part 71 permit;

(6) A provision that requires EPA's concurrence on any applicability determination or policy statement regarding title V or parts 70 or 71 not covered by determinations or guidance provided to the delegate agency;

(7) A provision that requires immediate notification to be provided to EPA if the delegate agency is unable or unwilling to administer or enforce a provision of the delegated part 71 program with respect to any source; and

(8) A provision that the delegate agency may not grant any waiver to a permit requirement or issue any order that violates an effective provision or requirement of part 71 or the Act.

J. Section 71.11—Administrative Record, Public Participation, and Administrative Review

Section 71.11 of the proposal establishes procedures by which the part 71 permitting authority would act on permit applications, issue draft permits, provide opportunities for public comment, and issue final permits. The emphasis in proposed §§ 71.11(a)–(j) is on a description of the notice and public participation procedures for initial permit issuance, permit renewals, permit reopenings, and significant permit revisions. The notice and public participation procedures for administrative amendments, de minimis permit revisions, and minor permit revisions are described in proposed § 71.7.

Proposed §§ 71.11(k)–(m) describe the administrative record for permits, the procedure for appeal of permits, and the determination of the beginning and ending days for any scheduled time period. Unlike proposed §§ 71.11(a)–(j), provisions in proposed §§ 71.11(k)–(m) would apply to all permit actions, including administrative amendments, de minimis permit revisions, minor permit revisions and significant permit revisions.

The EPA considered two alternative methods of establishing the public participation and administrative review procedural requirements. The first alternative would be to amend the existing procedures in 40 CFR part 124, which establishes specific decision making procedures for RCRA, Underground Injection Control (UIC), PSD, and NPDES permits, so that the procedures would be compatible with the part 71 program. The EPA would then incorporate those provisions by reference into the part 71 permit rule. The second alternative was to establish public participation and administrative appeal procedures as a separate section of this rule. This alternative has the advantage of allowing these procedures to focus specifically on the needs of the part 71 program as well as appear in close proximity to the permit program requirements in the Code of Federal Regulations.

Today's proposal follows the second alternative. The proposed public participation and administrative appeals procedures are set out at § 71.11 and are based closely on selected provisions of part 124, subpart A. The EPA does not believe the choice of one format over the other will have a substantial impact on the implementation of this rule.

Once a permit application is complete, including an application to revise an existing permit, the permitting authority would tentatively decide whether to prepare a draft permit. Such draft permits would contain permit conditions specified in proposed § 71.6, public notice of the draft permit would be issued and the draft would be made available for comment. Administrative amendments of permits would not be subject to draft permit or public notice requirements. Public notice of de minimis permit revisions would be on a post hoc basis, and draft permits for minor permit revisions would be publicly noticed by the applicant source. All draft permits issued by the permitting authority would be accompanied by a statement that briefly describes the derivation of the conditions of the draft permit and the reasons for them.

Proposed § 71.11(d) would establish public notice and comment procedures for part 71 permit actions not addressed elsewhere in the proposal, including application denials, draft permit preparation, scheduling of public hearings, reopening of the public comment period, and granting of appeals. Where other provisions of this proposal establish permitting procedures for specific types of actions, such as in the provisions on administrative amendments, de minimis permit revisions, and minor permit revisions, those provisions would govern. Notice of draft permits under proposed § 71.11(d) (including permit revisions) would provide at least 30 days for public comment, and notices of hearings would be issued at least 30 days before hearings are held. Notice would be provided by mail to interested persons, by publication, or by other reasonable means and would include information on the permittee, contact persons, and general procedures on submitting comments and requesting to speak at hearings. In addition, notices of hearings would provide information on dates, times, and places of hearings, as well as applicable rules and procedures. The permitting authority could hold hearings either upon the basis of requests or on its own initiative.

Proposed § 71.11(e) would establish requirements for consideration of comments on a draft permit. It would require that a request for a public hearing be in writing and include a statement of the nature of the issues proposed to be raised at the hearing. It would also stipulate that all comments be considered in making the final decision on the draft permit, and that a publicly available record be kept of commenters and issues raised.

Proposed § 71.11(f) on public hearings would require that a public hearing be held if there was a significant degree of interest in a draft permit. The permitting authority would designate a Presiding Officer who would be responsible for conducting the hearing. This proposed procedure would allow statements from any person, with reasonable limits on time allowed for oral statements. A tape recording or written transcript would be required to be made available to the public.

Proposed § 71.11(g) would require that all reasonably ascertainable issues and all reasonably ascertainable arguments be raised or submitted by the close of the public comment period. It would require that supporting materials be submitted in full, rather than incorporated by reference. In order to comply with this proposed requirement, the comment period could be longer than 30 days, at the discretion of the permitting authority.

Proposed § 71.11(h) would allow the permitting authority to reopen the public comment period if any person believed that a condition of the draft permit is inappropriate, or that the permitting authority's decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate. If information submitted during the public comment period appeared to raise substantial new questions, the

permitting authority would have the flexibility to prepare a new draft permit, or prepare a revised statement of basis and reopen or extend the comment period.

Proposed § 71.11(i) would require the permitting authority to issue a final permit decision once the public comment period had closed. The final decision, which becomes effective immediately upon issuance of the decision or a later date specified in the decision, would be a decision to issue, deny, revise, revoke and reissue, renew, or terminate a permit.

Proposed § 71.11(j) would require the permitting authority to issue a response to comments. The response would specify what provisions, if any, of the draft permit were changed in the final permit decision, and why. It would also require a description and response to all significant comments, and require inclusion of any cited documents in the administrative record. If an affected State recommended changes to the draft permit that were not accepted by the permitting authority, proposed § 71.11(j) would require written notification to the affected State.

Final permit decisions would be based on the administrative record defined in proposed § 71.11(k), including comments received, hearing transcripts, the response to comments, the final permit, the permit application, and the draft permit and its statement of basis.

Proposed § 71.11(l) grants a right of appeal of all final permit decisions, including those taken under provisions establishing procedures for administrative amendments, de minimis permit revisions, and minor permit revisions, and establishes procedures for such appeals. Within 30 days of a final permit decision, interested persons could petition the Environmental Appeals Board to review the final permit decision. Petitions for review would be required to include a statement of the reasons supporting review and could address only issues raised during the public comment period, unless it was impracticable to raise the relevant objections during such period or the grounds for objection arose after the period closed. An example of a situation in which it is impracticable to raise an objection during the comment period would be when a significant change is made from a draft to final permit without providing an opportunity for public comment. Moreover, while persons who participated in the comment or hearing processes could petition the Board to review any condition of the final permit decision, persons who failed to file comments or participate in hearings could petition the Board only with respect to changes from the draft to final permit decision. When a part 71 permit is appealed, it would nevertheless remain fully effective and enforceable against the permitted source.

The EPA seeks comment on its method of establishing procedures for public participation and administrative review, and on the appropriateness of the specific procedures proposed. The EPA particularly seeks comment on the issues of the statement of basis accompanying draft permits, the proposed public notice and comment requirements, and appeals of permits.

Pursuant to sections 114 and 503(e) of the Act, EPA, by this proposed rule solicits comments on the appropriateness of, and the means for, making available to the public information that a source would be required by this rule to collect. Such information might include, for example, the data resulting from use of required monitoring methods. Specifically, EPA is requesting comment on what types and amount of information required under this rule should be made available to the public, what limits, if any, to place on a requirement to make available such information, and appropriate methods for making such information publicly available (e.g., electronic reporting to a publicly accessible data base, direct access by the public to information held by sources, or reliance on EPA and/or delegated States to assist the public in obtaining the information). The EPA also solicits comment on appropriate language for a rule or policy guidance document to effectuate public availability of information required under this rule and solicits comments on whether a rule or a policy guidance document is more appropriate.

Under both delegated and nondelegated part 71 programs, interested persons (including permitees) would be authorized to petition the Administrator to reopen an already issued permit for cause as provided in proposed § 71.11(n). Petitions would be required to be in writing and to contain facts or reasons supporting the request. If the Administrator determined that cause exists to reopen the permit, he or she would revise, revoke and reissue, or terminate the permit consistent with the requirements and procedures in proposed § 71.7.

Under part 70, citizens can petition EPA to object to State issued permits and can appeal EPA's failure to object to a proposed permit. However, for both delegated and nondelegated part 71 programs, the EPA feels this type of petition process is unnecessary because the final permit can be appealed directly to the Environmental Appeals Board (EAB) and because citizens can use the petition process provided by proposed § 71.11(n) in cases where the deadline for appeal to the EAB has passed. The EPA believes that this approach provides an adequate opportunity for EPA oversight of part 71 programs, and that consequently there is little value in providing the opportunity for citizens to petition the Administrator to object to a proposed permit, which could result in two separate and simultaneous routes to appeal EPA's permitting actions. Moreover, the approach proposed today would be more consistent with that taken in the Agency's recently promulgated rule (to be codified at 40 CFR 71.21 *et seq*), which governs how title V specialty permits would be issued to sources seeking alternative hazardous air pollution emissions limits under section 112(i)(5) of the Act. See 59 FR 59921 (Nov. 21, 1994) (''Federal Operating Permit Programs; Permits for Early Reductions Sources''). The Agency solicits comment on this approach.

K. Section 71.12—Prohibited Acts

It is important to note that it is unnecessary to include an enforcement authority section in the part 71 Federal program regulations that specifically corresponds to the enforcement authority section in the part 70 State program regulations. Rather, because the program under part 71 is a Federal program, it will be enforced through the full Federal enforcement authorities in the Act.

Examples of the Federal enforcement authorities available under the Act for violations of title V and the regulations thereunder include, but are not limited to, the authority to: (1) Restrain or enjoin immediately and effectively any person by order or by suit in court from engaging in any activity in violation of the Act that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment; (2) seek injunctive relief in court to enjoin any violation of the Act; (3) issue an administrative order against any person assessing a civil administrative penalty of up to $25,000 per day for each violation of the Act; and (4) assess and recover a civil penalty of not more than $25,000 per day for each violation of the Act. Another example of enforcement authority available under the Act is the authority to assess criminal fines pursuant to title 18 of the United States Code or imprisonment for not to exceed 5 years, or both, against any person who knowingly violates title V and the

regulations thereunder. The above list is not an exhaustive description of the Federal enforcement authority available under the Act for violations of title V and the regulations thereunder. Accordingly, nothing in this discussion shall be construed to limit the Federal enforcement authorities available under the Act for violations of title V and the regulations thereunder.

The Federal enforcement authority available under the Act for violations of title V and the regulations thereunder provides broader enforcement authority than the States are required to have under the part 70 regulations. For example, 40 CFR 70.11 requires that States have authority to recover civil penalties for a maximum amount of not less than $10,000 per day per violation. The Federal enforcement authority imposes a maximum penalty of up to $25,000 per day per violation.

VI. Administrative Requirements

A. Reference Documents

All the documents referenced in this preamble fall into one of two categories. They are either reference materials that are considered to be generally available to the public, or they are memoranda and reports prepared specifically for this rulemaking. Both types of documents can be found in Docket No. A–93–51.

B. Office of Management and Budget (OMB) Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan program or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant'' regulatory action. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The estimated annualized cost of implementing the part 71 program is $137.5 million to the Federal government and $79.8 million to respondents, for a total of $217.3 million which reflects industry's total expected costs of complying with the program. Since any costs incurred by the Agency in administering a program would be recaptured through fees imposed on sources, the true cost to the Federal government is zero. The requirements for the costs result from section 502(d) of title V which mandates that EPA develop a Federal operating permits program. The proposed program is designed to improve air quality by: indirectly improving the quality of State-administered operating permits programs; encouraging the adoption of lower cost control strategies based on economic incentive approaches; improving the effectiveness of enforcement and oversight of source compliance; facilitating the implementation of other titles of the Act, such as title I; and improving the quality of emissions data and other source-related data.

C. Regulatory Flexibility Act Compliance

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the **Federal Register**, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). The EPA has established guidelines which require an RFA if the proposed rule will have any economic impact, however small, on any small entities that are subject to the rule, even though the Agency may not be legally required to develop such an analysis.

The original part 70 rule and the recently proposed revisions to part 70 were determined to not have a significant and disproportionate adverse impact on small entities. Similarly, a regulatory flexibility screening analysis of the impacts of the proposed part 71 rule revealed that the proposed rule would not have a significant and disproportionate adverse impact on small entities; few small entities would be subject to part 71 permitting requirements because the proposed rule defers permitting requirements for nonmajor sources. Consequently, the Administrator certifies that the proposed part 71 regulations will not have a significant and disproportionate impact on small entities. The EPA, however, solicits any information or data which might affect this proposed certification. The EPA will reexamine this issue and perform any subsequent analysis deemed necessary. Any subsequent analysis will be available in the docket and taken into account before promulgation.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA and a copy may be obtained from Sandy Farmer, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M St., Washington, D.C. 20460, (202) 382–2706.

As compared to the burden imposed by 40 CFR part 70, the average additional annual burden on sources for the collection of information is approximately 3.3 million hours, or on average approximately 96 hours per respondent and none for State and local agencies. The total annualized cost for collection is estimated to be approximately $79.8 million for sources. There is no burden for State and local agencies. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Chief, Information Policy Branch (PM–223) U.S. Environmental Agency, 401 M St. SW, Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, marked, ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Unfunded Mandates Reform Act

As shown in the Information Collection Request Document (ICR), today's action imposes no costs on State, local and tribal governments. The EPA estimates that the direct cost to the private sector would be no more than $96.6 million in any one year. and above costs industry would have incurred by complying with State permits programs mandated by the Act, for which part 71 programs are substitutes. For EPA's estimates of the cost to industry and permitting agencies for State permits programs, see 57 FR 32293 (July 21, 1992) and 59 FR 44525 (August 29, 1994). As shown in the ICR for proposed part 71, the part 71

program would impose on industry a marginal cost (i.e., a cost above what industry would incur to comply with State requirements) of $31.9 million for collecting information (e.g., completing permit applications). Additionally, EPA has calculated the marginal cost to industry of the part 71 fee structure to be $64.7 million. As shown in the ICR, part 71 programs would generate $137.5 million in fees, using an average fee of nearly $60 per ton of certain regulated pollutants. On the other hand, most States are expected to charge approximately $31 per ton (or $25 per ton as adjusted for inflation using a baseline year of 1989) which is the fee amount which title V of the Act suggests would be adequate to fund a State permit program. The difference between fees generated under part 71 and under the otherwise applicable State fee requirements (based on $31 per ton) would be $64.7 million. In addition, it is important to note that the estimates used in these projections (and the ICR) are based on the assumption that EPA would administer 10 part 71 programs for a full year. The EPA believes that it is very unlikely that it would administer that many programs for such an extended time period. For these reasons, EPA believes that the total marginal costs to industry under today's proposal would not exceed $100 million in any one year. Therefore, the Agency concludes that it is not required by Section 202 of the Unfunded Mandates Reform Act of 1995 to provide a written statement to accompany this proposed regulatory action because promulgation of the rule would not result in the expenditure by State, local, and tribal governments, in the aggregate or by the private sector, of $100,000,000 or more in any one year.

List of Subjects

40 CFR Part 55

Air pollution control, Outer Continental Shelf, operating permits.

40 CFR Part 71

Air pollution control, Prevention of significant deterioration, New source review, Fugitive emissions, Particulate matter, Volatile organic compounds, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Lead, Operating permits, Indian Tribes, Air pollution control—Tribal authority.

Dated: March 28, 1995.

Carol Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

(**Note:** Material enclosed by brackets and designated as ''Option'' set forth an alternative proposal regarding revision of permit terms that prescribe monitoring or recordkeeping procedures. Material enclosed by brackets and designated as ''alternatives'' set for an alternative proposal regarding processing changes under the administrative amendment procedures and de minimis permit revision procedures.)

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

2. Section 55.6 is proposed to be amended by adding paragraph (c)(3) to read as follows:

§ 55.6 Permit requirements.

* * * * *

(c) * * *

(3) If the COA does not have an operating permits program approved pursuant to 40 CFR part 70 or if EPA has determined that the COA is not adequately implementing an approved program, the applicable requirements of 40 CFR part 71, the Federal operating permits program, shall apply to the OCS sources. The applicable requirements of 40 CFR part 71 will be implemented and enforced by the Administrator. The Administrator may delegate the authority to implement and enforce all or part of a Federal operating permits program to a State pursuant to § 55.11.

* * * * *

3. Section 55.10 is proposed to be amended by revising paragraph (a)(1) and by adding paragraph (b) to read as follows:

§ 55.10 Fees.

(a) * * *

(1) EPA will calculate and collect operating permit fees from OCS sources in accordance with the requirements of 40 CFR part 71.

* * * * *

(b) OCS sources located beyond 25 miles of States' seaward boundaries. EPA will calculate and collect operating permit fees from OCS sources in accordance with the requirements of 40 CFR part 71.

4. Section 55.13 is proposed to be amended by adding paragraph (f) to read as follows:

§ 55.13 Federal requirements that apply to OCS sources.

* * * * *

(f) 40 CFR part 71 shall apply to OCS sources:

(1) Located within 25 miles of States' seaward boundaries if the requirements of 40 CFR part 71 are in effect in the COA.

(2) Located beyond 25 miles of States' seaward boundaries.

(3) When an operating permits program approved pursuant to 40 CFR part 70 is in effect in the COA and a Federal operating permit is issued to satisfy an EPA objection pursuant to 40 CFR 71.4(e).

* * * * *

PART 71—[AMENDED]

5. The authority citation for part 71 continues to read as follows:

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

6. Part 71 is proposed to be amended by adding subpart A to read as follows:

Subpart A—Operating Permits

Sec.

Subpart A—Operating Permits

§ 71.1 Program overview.

(a) This part sets forth the comprehensive Federal air quality operating permits permitting program consistent with the requirements of title V of the Clean Air Act (Act) (42 U.S.C. 7401 *et seq.*) and defines the requirements and the corresponding standards and procedures by which the Administrator will issue operating permits. This permitting program is designed to promote timely and efficient implementation of goals and requirements of the Act.

(b) All sources subject to the operating permit requirements of title V of the Act and this part shall have a permit to operate that assures compliance by the source with all applicable requirements.

(c) The requirements of this part, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or as modified by title IV of the Act and 40 CFR parts 72 through 78.

(d) Issuance of permits under this part may be coordinated with issuance of permits under the Resource

Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*) and under the Clean Water Act (33 U.S.C. 1251 *et seq.*), whether issued by the State, the U.S. Environmental Protection Agency (EPA), or the U.S. Army Corps of Engineers.

(e) Nothing in this part shall prevent a State from administering an operating permits program and establishing more stringent requirements not inconsistent with the Act.

§ 71.2 Definitions.

The following definitions apply to part 71. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable requirements of the Act.

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

Administrator or *EPA* means the Administrator of the U.S. Environmental Protection Agency (EPA) or his or her designee.

Affected source shall have the meaning given to it in 40 CFR 72.2.

Affected States are:

(1) All States and Tribal areas whose air quality may be affected and that are contiguous to the State or Tribal area in which the permit, permit revision or permit renewal is being proposed; or that are within 50 miles of the permitted source. A Tribe and any associated Tribal area shall be treated as a State under this paragraph (1) only if EPA has determined that the Tribe is eligible to be treated in the same manner as a State.

(2) The State or Tribal area in which a part 71 permit, permit revision, or permit renewal is being proposed.

(3) Those areas within the jurisdiction of the air pollution control agency for the area in which a part 71 permit, permit revision, or permit renewal is being proposed.

(4) Except as provided in paragraph (3) of this definition, the term ''affected State'' does not include any local agency, district, or interstate program.

Affected unit shall have the meaning given to it in 40 CFR 72.2.

Applicable requirement means all of the following as they apply to emissions units in a part 71 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future compliance dates):

(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter;

(2) Any requirement enforceable by the Administrator and by citizens under the Act that limits emissions for the purposes of creating offset credits or for complying with or avoiding the applicability of applicable requirements;

(3) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;

(4) Any standard or other requirement under section 111 of the Act, including section 111(d);

(5) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(6) Any standard or other requirement of the acid rain program under title IV of the Act or 40 CFR parts 72 through 78;

(7) Any requirements established pursuant to section 114(a)(3) or 504(b) of the Act;

(8) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(9) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(10) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(11) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(12) Any standard or other requirement of the regulations promulgated at 40 CFR part 82, subpart B and subpart F to protect stratospheric ozone under sections 608 or 609 of title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a permit issued under title V of the Act, and any standard or other requirement under any other section(s) of title VI of the Act that the Administrator determines should be contained in a permit issued under title V of the Act; and

(13) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

Delegate agency means the State air pollution control agency, local agency, other State agency, Tribal agency, or other agency authorized by the Administrator pursuant to § 71.10 to carry out all or part of a permit program under part 71.

Designated representative shall have the meaning given to it in 40 CFR 72.2.

Draft permit means the version of a permit for which the permitting authority offers public participation under § 71.7 or § 71.11 and affected State review under § 71.8.

Eligible Indian tribe or *Eligible tribe* means a tribe that has been determined by EPA to meet the criteria for being treated in the same manner as a State, pursuant to the regulations implementing section 301(d)(2) of the Act.[1]

Emissions allowable under the permit means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

Emissions unit means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. This term is not meant to alter or affect the definition of the term ''unit'' for purposes of title IV of the Act.

Federal Indian reservation, Indian reservation or *reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Final action or *final permit action* means the issuance or denial of a part 71 permit, permit renewal, or permit revision by the permitting authority, which has completed all review procedures required by §§ 71.7, 71.8, and 71.11, and is subject to administrative appeal and judicial review.

Fugitive emissions are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

General permit means a part 71 permit that meets the requirements of § 71.6(d).

Indian tribe or *tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Insignificant activity or emissions means those activities, operations, and

[1] Proposed rule entitled ''Indian Tribes: Air Quality Planning and Management'', 59 FR 43956 (August 25, 1994).

emissions levels which meet the criteria listed in § 71.5(g) for exemption from the documentation and reporting requirements of § 71.5(f).

Major new source review (major NSR) means a title I program contained in an EPA-approved or promulgated implementation plan for the preconstruction review of changes which are subject to review as new major stationary sources or major modifications under EPA regulations implementing parts C or D of title I of the Act. (40 CFR 51.165 through 51.166, 40 CFR part 51, subpart P, 40 CFR 52.21 through 52.29).

Major source means any stationary source or group of stationary sources as described in paragraph (1), (2), or (3) of this definition. For purposes of paragraphs (2) and (3) of this definition, major stationary source includes any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control) belonging to a single major industrial grouping. For the purposes of defining ''major source'' in paragraph (2) or (3) of this definition, a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. In addition, for purposes of paragraphs (2) and (3) of this definition, any facility that supports a source, where both are under the control of the same person (or persons under common control) and on contiguous or adjacent properties, shall be considered a support facility and part of the same source, regardless of the 2-digit code of that facility. A stationary source (or group of stationary sources) is considered a support facility to a source if at least 50 percent of the output of the support facility is dedicated to the source.

(1) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant (HAP) (including any fugitive emissions of such pollutant) which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such HAP (including any fugitive emissions of such pollutants), or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, ''major source'' shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants or any group of stationary sources as defined in section 302 of the Act, that directly emits, or has the potential to emit, 100 tpy or more of any air pollutant (including any fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act or for the purposes of paragraph (3) of this definition, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) All other stationary source categories regulated by a standard promulgated as of August 7, 1980, under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category;

(3) A major stationary source as defined in part D of title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as ''marginal'' or ''moderate,'' 50 tpy or more in areas classified as ''serious,'' 25 tpy or more in areas classified as ''severe,'' and 10 tpy or more in areas classified as ''extreme;'' except that the references in this paragraph (3)(i) to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182 (f)(1) or (f)(2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas: That are classified as ''serious,'' and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM–10) nonattainment areas classified as ''serious,'' sources with the potential to emit 70 tpy or more of PM–10 or, where applicable, a PM–10 precursor.

Minor new source review (minor NSR) means a title I program approved by EPA into a State's implementation plan under EPA regulations implementing section 110(a)(2) of title I of the Act for the preconstruction review of changes which are subject to review as new or modified sources (40 CFR 51.160 through 51.164) and which do not qualify as new major stationary sources or major modifications under EPA regulations implementing part C or D of title I of the Act (40 CFR 51.165 through 51.166, 40 CFR part 51, subpart P, 40 CFR 52.21 through 52.29).

Part 70 permit means any permit or group of permits covering a part 70 source that has been issued, renewed, amended or revised pursuant to 40 CFR part 70.

Part 70 program or *State program* means an operating permits program approved by the Administrator under 40 CFR part 70.

Part 70 source means any source subject to the permitting requirements of 40 CFR part 70.

Part 71 permit or *permit* (unless the context suggests otherwise) means any permit or group of permits covering a part 71 source that has been issued, renewed, amended or revised pursuant to this part.

Part 71 program means a Federal operating permits program under this part.

Part 71 source means any source subject to the permitting requirements of this part, as provided in § 71.3(a) and § 71.3(b).

Permit program costs means all reasonable (direct and indirect) costs required to administer an operating permits program, as set forth in § 71.9(b) of this part.

Permit revision means any administrative permit amendment, de minimis permit revision, minor permit revision, or significant permit revision.

Permitting authority means one of the following:

(1) The Administrator, in the case of EPA-implemented programs;

(2) A delegate agency authorized by the Administrator to carry out a Federal permit program under this part; or

(3) The State air pollution control agency, local agency, other State agency, Indian Tribe, or other agency with a part 70 program.

Potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator and by citizens under the Act. This term does not alter or affect the use of this term for any other purposes under the Act, or the term ''capacity factor'' as used in title IV of the Act or 40 CFR parts 72 through 78.

Proposed permit means the version of a permit that the delegate agency proposes to issue and forwards to the Administrator for review in compliance with § 71.10(d).

Regulated air pollutant means the following:

(1) Nitrogen oxides or any volatile organic compounds;

(2) Any pollutant for which a national ambient air quality standard has been promulgated;

(3) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(4) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(5) Any pollutant subject to a standard promulgated under section 112 of the Act or other requirements established under section 112 of the Act, including sections 112 (g), (j), and (r) of the Act, including the following:

(i) Any pollutant subject to requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and

(ii) Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to section 112(g)(2) requirement.

Regulated pollutant (for fee calculation), which is used only for purposes of § 71.9(c), means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Act.

Renewal means the process by which a permit is reissued at the end of its term.

Responsible official means one of the following: (1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(4) For affected sources:

(i) The designated representative for all actions, standards, requirements, or prohibitions under title IV of the Act or 40 CFR parts 72 through 78; or

(ii) The designated representative or a person meeting the provisions of paragraph (1), (2), or (3) of this definition for any other purposes under part 71.

State means any non-Federal permitting authority, including any local agency, interstate association, or statewide program. The term ''State'' also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas Islands. Where such meaning is clear from the context, ''State'' shall have its conventional meaning. For purposes of the acid rain program, the term ''State'' shall be limited to authorities within the 48 contiguous States and the District of Columbia as provided in section 402(14) of the Act.

Stationary source means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act.

Title I modification or *modification under any provision of title I of the Act* means any modification under part C or part D of title I or sections 110(a)(2), 111(a)(4), 112(a)(5), or 112(g) of the Act; under regulations codified in this chapter to implement sections 112(a)(5) and 112(g) of the Act or in 40 CFR 51.160 through 51.164, 40 CFR part 60, or in 40 CFR 61.07; or under State regulations approved by EPA to meet such requirements.

Tribal area means, for the purposes of the regulations under this part, those lands over which an Indian Tribe has authority under the Clean Air Act to regulate air quality. These lands include all areas within the exterior boundaries of an Indian reservation and any other areas outside reservation boundaries that EPA determines to be within a Tribe's inherent authority.

§ 71.3 Sources subject to permitting requirements.

(a) *Part 71 sources.* The following sources are subject to the permitting requirements under this part:

(1) Any major source, except that a source is not required to obtain a permit if it would be classified as a major source solely because it has the potential to emit major amounts of a pollutant listed pursuant to section 112(r)(3) of the Act and is not otherwise required to obtain a permit under this part;

(2) Any source, including an area source (i.e., a nonmajor source), subject to a standard, limitation, or other requirement under section 111 of the Act;

(3) Any source, including an area source (i.e., a nonmajor source), subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Act;

(4) Any source required to have a permit under part C or D of title I of the Act;

(5) Any affected source; and

(6) Any source in a source category designated by the Administrator pursuant to this section.

(b) *Source category exemptions.*

(1) All sources listed in paragraph (a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act are exempted from the obligation to obtain a part 71 permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions in addition to those provided for in paragraph (b)(4) of this section.

(2) Nonmajor sources subject to a standard or other requirement under either section 111 or 112 of the Act after July 21, 1992 shall be exempted from the obligation to obtain a part 71 permit if the Administrator exempts such sources from the requirement to obtain a part 70 or part 71 permit at the time that the new standard is promulgated.

(3) Any source listed in paragraph (a) of this section that is exempt from the requirement to obtain a permit under this section may opt to apply for a permit under a part 71 program.

(4) The following source categories are exempted from the obligation to obtain a part 71 permit:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, Subpart AAA—Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 61, Subpart M—National Emission Standard for Hazardous Air Pollutants for Asbestos, § 61.145, Standard for Demolition and Renovation.

§ 71.4 Program implementation.

(a) *Part 71 programs for States.* The Administrator will administer and enforce a full or partial operating permits program for a State (excluding Tribal areas) in the following situations:

(1) A program for a State meeting the requirements of part 70 of this chapter has not been granted full approval under § 70.4 of this chapter by the Administrator by November 15, 1995, and the State's part 70 program has not been granted interim approval under § 70.4(d) of this chapter for a period extending beyond November 15, 1995. The effective date of such a part 71 program is November 15, 1995.

(2) An operating permits program for a State which was granted interim approval under § 70.4(d) of this chapter has not been granted full approval by the Administrator by the expiration of the interim approval period or November 15, 1995, whichever is later. Such a part 71 program shall be effective upon expiration of the interim approval or November 15, 1995, whichever is later.

(3) Any partial part 71 program will be effective only in those portions of a State that are not covered by a partial part 70 program that has been granted full or interim approval by the Administrator pursuant to § 70.4(c) of this chapter.

(b) *Part 71 programs for Tribal areas.* The Administrator may administer and enforce an operating permits program for a Tribal area, as defined in § 71.2, when an operating permits program for the area which meets the requirements of part 70 of this chapter has not been granted full or interim approval by the Administrator by November 15, 1995.

(1) Determining the boundaries of a Tribal area. At least 90 days prior to the effective date of a part 71 program for a Tribal area, the Administrator shall notify all appropriate governmental entities of the proposed geographic boundaries of the program.

(i) For programs solely addressing air resources within the exterior boundaries of the Reservation, EPA's notification of other governmental entities shall specify the geographic boundaries of the Reservation. For programs also addressing off-reservation areas, EPA's notification of other governmental entities shall include the substance and bases of the Tribe's assertions of jurisdiction over such off-reservation area(s), including:

(A) A map or legal description of the off-reservation area(s) over which the Tribe asserts jurisdiction.

(B) A statement by the Tribe's legal counsel (or equivalent official) which describes the basis for the Tribe's assertion of jurisdiction which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of jurisdiction over the off-reservation area(s).

(ii) The appropriate governmental entities shall have 15 days to provide written comments to the Administrator regarding any dispute concerning the boundary of the Reservation. Where a Tribe has asserted jurisdiction over off-reservation areas, appropriate governmental entities may request a single 15-day extension to the general 15-day comment period.

(iii) In all cases, comments must be timely, limited to the scope of the Tribe's jurisdictional assertion, and clearly explain the substance, bases and extent of any objections. If a Tribe's assertion is subject to a conflicting claim, the EPA may request additional information and may consult with the Department of the Interior.

(iv) The Administrator shall promptly decide the scope of the Tribe's jurisdiction. If a conflicting claim cannot be promptly resolved, the Administrator shall implement a part 71 program encompassing all undisputed areas.

(v) The part 71 program will extend to all areas within the exterior boundaries of the Tribe's reservation, as determined by the Administrator, and any other areas the Administrator has determined to be within the Tribe's jurisdiction.

(vi) The Administrator's determination of the scope of the Tribe's jurisdiction shall be published in the **Federal Register** at least 30 days prior to the effective date of the part 71 program.

(2) The effective date of a part 71 program for a Tribal area shall be November 15, 1997.

(3) Notwithstanding paragraph (b)(2) of this section, the Administrator, in consultation with the governing body of the Tribal area, may adopt an earlier effective date.

(4) Notwithstanding paragraph (i)(2) of this section, within two years of the

effective date of the part 71 program for the Tribal area, the Administrator shall take final action on permit applications from part 71 sources that are submitted within the first full year after the effective date of the part 71 program.

(c) *Part 71 programs imposed due to inadequate implementation.*

(1) The Administrator will administer and enforce an operating permits program for a permitting authority if the Administrator has notified the permitting authority, in accordance with § 70.10(b)(1) of this chapter, of the Administrator's determination that a permitting authority is not adequately administering or enforcing its approved operating permits program, or any portion thereof, and the permitting authority fails to do either of the following:

(i) Correct the deficiencies within 18 months after the Administrator issues the notice; or

(ii) Take significant action to assure adequate administration and enforcement of the program within 90 days of the Administrator's notice.

(2) The effective date of a part 71 program promulgated in accordance with this paragraph (c) shall be:

(i) Two years after the Administrator's notice if the permitting authority has not corrected the deficiency within 18 months after the date of the Administrator's notice; or

(ii) Such earlier time as the Administrator determines appropriate if the permitting authority fails, within 90 days of the Administrator's notice, to take significant action to assure adequate administration and enforcement of the program.

(d) *Part 71 programs for OCS sources.*

(1) Using the procedures of this part, the Administrator will issue permits to any source which is an outer continental shelf (OCS) source, as defined under § 55.2 of this chapter, is subject to the requirements of part 55 of this chapter and section 328(a) of the Act, is subject to the requirement to obtain a permit under title V of the Act, and is either:

(i) Located beyond 25 miles of States' seaward boundaries; or

(ii) Located within 25 miles of States' seaward boundaries and a part 71 program is being administered and enforced by the Administrator for the corresponding onshore area, as defined in § 55.2 of this chapter, for that source.

(2) The requirements of § 71.4(d)(1)(i) shall apply on [Effective date of the final regulations].

(3) The requirements of § 71.4(d)(1)(ii) apply upon the effective date of a part 71 program for the corresponding onshore area.

(e) *Part 71 program for permits issued to satisfy an EPA objection.* Using the procedures of this part and 40 CFR 70.8 (c) or (d), or 40 CFR 70.7(g) (4) or (5) (i) and (ii), as appropriate, the Administrator will deny, terminate, revise, revoke or reissue a permit which has been proposed or issued by a permitting authority or will issue a part 71 permit when:

(1) A permitting authority with an approved part 70 operating permits program fails to respond to a timely objection to the issuance of a permit made by the Administrator pursuant to section 505(b) of the Act and § 70.8 (c) and (d) of this chapter;

(2) The Administrator, under § 70.7(g) of this chapter, finds that cause exists to reopen a permit and the permitting authority fails to either:

(i) Submit to the Administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate; or

(ii) Resolve any objection EPA makes to the permit which the permitting authority proposes to issue in response to EPA's finding of cause to reopen, and to terminate, revise, or revoke and reissue the permit in accordance with that objection.

(3) The requirements of this paragraph (e) shall apply on [Effective date of the final regulations].

(f) *Use of selected provisions of this part.* The Administrator may utilize any or all of the provisions of this part to administer the permitting process for individual sources or take action on individual permits, or may adopt through rulemaking portions of a State or Tribal program in combination with provisions of this part to administer a Federal program for the State or Tribal area in substitution of or addition to the Federal program otherwise required by this part.

(g) *Public notice of part 71 programs.* In taking action to administer and enforce an operating permits program under this part, the Administrator will publish a notice in the **Federal Register** informing the public of such action and the effective date of any part 71 program as set forth in § 71.4 (a), (b), (c), or (d)(1)(ii). The promulgation of this part serves as the notice for the part 71 permit programs described in § 71.4(d)(1) (i) and (e). The EPA will also publish a notice in the **Federal Register** of any delegation of a portion of the part 71 program to a State, eligible Tribe, or local agency pursuant to the provisions of § 71.10. In addition to notices published in the **Federal Register** under this paragraph (g), the Administrator will, to the extent practicable, publish notice in a newspaper of general circulation within the area subject to the part 71 program effectiveness or delegation, and will send a letter to the Tribal governing body for an Indian Tribe or the Governor (or his or her designee) of the affected area to provide notice of such effectiveness or delegation.

(h) *Effect of limited deficiencies in State or Tribal programs.* The Administrator may administer and enforce a part 71 program in a State or Tribal area even if only limited deficiencies exist either in the initial program submittal for a State or eligible Tribe under part 70 of this chapter or in an existing State or Tribal program that has been approved under part 70 of this chapter.

(i) *Transition plan for initial permit issuance.* If a full or partial part 71 program becomes effective in a State or Tribal area prior to the issuance of part 70 permits to all part 70 sources under an existing program that has been approved under part 70 of this chapter, the Administrator shall take final action on initial permit applications for all part 71 sources in accordance with the following transition plan.

(1) All part 71 sources that have not received part 70 permits shall submit permit applications under this part within 1 year after the effective date of the part 71 program.

(2) Final action shall be taken on at least one-third of such applications annually over a period not to exceed 3 years after such effective date.

(3) Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Act shall be acted on within 12 months of receipt of the complete application.

(4) Submittal of permit applications and the permitting of affected sources shall occur in accordance with the deadlines in title IV of the Act and 40 CFR parts 72 through 78.

(j) *Delegation of part 71 programs.* The Administrator may promulgate a part 71 program in a State or Tribal area and delegate part of the responsibility for administering the part 71 program to the State or eligible Tribe in accordance with the provisions of § 71.10; however, delegation of a part of a program will not constitute any type of approval of a State or Tribal operating permits program under part 70 of this chapter. Where only selected portions of a part 71 program are administered by the Administrator and the State or eligible Tribe is delegated the remaining portions of the program, the notice referred to in paragraph (g) of this section will define the respective roles of the State or eligible Tribe and the

Administrator in administering and enforcing the part 71 operating permits program.

(k) *EPA administration and enforcement of part 70 permits.* When the Administrator administers and enforces a part 71 program after a determination and notice under § 70.10(b)(1) of this chapter that a State or Tribe is not adequately administering and enforcing an operating permits program approved under part 70 of this chapter, the Administrator will administer and enforce permits issued under the part 70 program until part 71 permits are issued using the procedures of part 71. Until such time as part 70 permits are replaced by part 71 permits, the Administrator will revise, reopen, revise, terminate, or revoke and reissue part 70 permits using the procedures of part 71 and will assess and collect fees in accordance with the provisions of § 71.9.

(l) *Transition to approved part 70 program.* The Administrator will suspend the issuance of part 71 permits promptly upon publication of notice of approval of a State or Tribal operating permits program that fully meets the requirements of part 70 of this chapter. The Administrator may retain jurisdiction over the part 71 permits for which the administrative or judicial review process is not complete and will address this issue in the notice of State program approval. After approval of a State or Tribal program and the suspension of issuance of part 71 permits by the Administrator:

(1) The Administrator, or the permitting authority acting as the Administrator's delegated agent, will continue to administer and enforce part 71 permits until they are replaced by permits issued under the approved part 70 program. Until such time as part 71 permits are replaced by part 70 permits, the Administrator will revise, reopen, revise, terminate, or revoke and reissue part 71 permits using the procedures of the part 71 program. However, if the Administrator has delegated authority to administer part 71 permits to a delegate agency, the delegate agency will revise, reopen, terminate, or revoke and reissue part 71 permits using the procedures of the approved part 70 program. If a part 71 permit expires prior to the issuance of a part 70 permit, all terms and conditions of the part 71 permit, including any permit shield that may be granted pursuant to § 71.6(n), shall remain in effect until the part 70 permit is issued or denied, provided that a timely and complete application for a permit renewal was submitted to the permitting authority in accordance with the requirements of the approved part 70 program.

(2) A State or local agency or Indian Tribe with an approved part 70 operating permits program may issue part 70 permits for all sources with part 71 permits in accordance with a permit issuance schedule approved as part of the approved part 70 program or may issue part 70 permits to such sources at the expiration of the part 71 permits.

(3) The Administrator shall rescind the part 71 permit for a source when it is replaced by a part 70 permit issued under the approved part 70 program.

(m) *Exemption for certain territories.* Upon petition by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Marianas Islands, the Administrator may exempt any source or class of sources in such territory from the requirement to have a part 71 permit under this chapter. Such an exemption does not exempt such source or class of sources from any requirement of section 112 of the Act, including the requirements of section 112(g) or (j).

(1) Such exemption may be granted if the Administrator finds that compliance with part 71 is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant. Any such petition shall be considered in accordance with section 307(d) of the Act, and any exemption granted under this paragraph (m) shall be considered final action by the Administrator for the purposes of section 307(b) of the Act.

(2) The Administrator shall promptly notify the Committees on Energy and Commerce and on Interior and Insular Affairs of the House of Representatives and the Committees on Environment and Public Works and on Energy and Natural Resources of the Senate upon receipt of any petition under this paragraph (m) and of the approval or rejection of such petition and the basis for such action.

(n) *Retention of records.* The records for each draft, proposed, and final permit application, renewal, or modification shall be kept by the Administrator for a period of 5 years.

§ 71.5 Permit applications.

(a) *Duty to apply.* The owner or operator of a source required to obtain a permit under § 71.3 shall submit a timely and complete permit application in accordance with this section.

(b) *Timely application.*

(1) A timely application for a source which does not have an existing operating permit issued by a State under the State's approved part 70 program and is applying for a part 71 permit for the first time is one that is submitted within 12 months or an earlier date after the source becomes subject to the part 71 program. Sources required to submit applications earlier than 12 months will be notified in advance by the permitting authority of this paragraph (b)(1) and given a reasonable time to submit their applications. In no case will this notice be given less than 120 days in advance of the submittal date.

(2) For purposes of changes eligible under § 71.6(q), a timely application is one that is submitted not later than 6 months after the notice required under § 71.6(q)(3).

(3) For purposes of permit revisions other than changes eligible under § 71.6(g), a timely application is one that is submitted by the relevant deadlines set forth in § 71.7(e), (f), (g), or (h).

(4) For purposes of permit renewal, a timely application is one that is submitted at least 6 months but no longer than 18 months prior to the date of the part 70 or part 71 permit expiration.

(5) Applications for initial phase II acid rain permits shall be submitted to the permitting authority by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides or by such other deadlines established under title IV of the Act and 40 CFR parts 72 through 78.

(c) *Complete application.* To be found complete, an application must provide all information required pursuant to paragraph (f) of this section sufficient to allow the permitting authority to begin processing the application, except that an application for a permit revision need supply such information only if it is related to the proposed change. Additionally, an initial applicant must remit payment of any fees owed pursuant to § 71.9 in order for the application to be found complete. The information supplied by the applicant pursuant to paragraph (f) of this section must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information consistent with paragraph (i) of this section. Unless the permitting authority determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in § 71.7(a)(3). If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, the

permitting authority may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in § 71.7(b), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.

(d) *Confidential information.* In a case where a source submits information to the permitting authority under a business confidentiality claim, the permitting authority will follow procedures found at 40 CFR part 2. Pursuant to § 2.301(e) of this chapter, information contained in the permit application regarding emissions data or a standard or limitation is not entitled to confidential treatment.

(e) *Duty to supplement or correct application.* Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(f) *Standard application form.* Part 71 sources shall submit the following information using application forms provided by the permitting authority (or if provided by the permitting authority, an electronic reporting method). Information as described in this paragraph (f) for each emissions unit at a part 71 source shall be included in the application. A complete part 71 permit application shall include the following elements:

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone numbers and names of plant site managers/contacts.

(2) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(i) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under paragraph (g) of this section. Fugitive emissions shall be included in the permit application in the same manner as stack emissions for each emissions unit, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. Moreover, information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule established pursuant to § 71.9 must be provided.

(ii) Identification and description of all points of emissions described in paragraph (f)(3)(i) of this section in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(iii) Emissions rates in tpy and in such additional terms as are necessary to establish compliance consistent with the applicable standard reference test method.

(iv) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(v) Identification and description of air pollution control equipment and compliance monitoring devices or activities, including brief descriptions of any appropriate operation and maintenance procedures and quality assurance procedures.

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the part 71 source.

(vii) Other information required by any applicable requirement (including, but not limited to, stack height limitations developed pursuant to section 123 of the Act).

(viii) Calculations on which the information in paragraphs (f)(3)(i) through (vii) of this section is based.

(4) The following air pollution control requirements:

(i) Citation and description of all applicable requirements, and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this part or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source pursuant to § 71.6(a)(8) or to define permit terms and conditions implementing § 71.6(a)(9) or § 71.6(p).

(8) Identification of those emissions units eligible for emissions trading under § 71.6(a)(9) and those emissions units at which changes may be processed under de minimis permit revision procedures contained in § 71.7(f).

(9) A compliance plan for all part 71 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements.

(ii) A description as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(C) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(iii) A compliance schedule as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance

with, the applicable requirements on which it is based.

(iv) A schedule for submission of certified progress reports every 6 months for sources required to have a schedule of compliance to remedy a violation, unless more frequent submittals are required in the applicable requirement or by the permitting authority.

(v) For affected sources applying for part 71 permits, the compliance plan content requirements specified in this paragraph (f)(9) must be met for all applicable requirements, including the applicable requirements of title IV of the Act. For permit applications required under the acid rain program, the compliance plan content requirements of 40 CFR part 72, subpart D must be met.

(10) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with paragraph (i) of this section and section 114(a)(3) of the Act;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) A schedule for annual submissions of compliance certifications during the permit term, or for more frequent submissions if specified by the underlying applicable requirement or by the permitting authority; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(11) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by 40 CFR part 72.

(12) Temporary sources requesting a single permit for multiple sites must also provide in the permit application ambient air quality standard and increment and visibility analyses as required under part C of title I of the Act.

(g) *Insignificant activities and emissions levels.* The following types of insignificant activities and emissions levels are exempt from the requirements of paragraph (f) of this section. Notwithstanding the preceding sentence, no activity or emission levels shall be exempt from the requirements of paragraph (f) of this section if the information omitted from the application is needed to determine the applicability of or to impose any applicable requirement, to determine whether a source is major, to determine whether a source is subject to the requirement to obtain a part 71 permit, or to calculate the fee amount required under the schedule established pursuant to § 71.9.

(1) *Insignificant activities.* Information concerning the following activities need not be provided in the application:

(i) Mobile sources;

(ii) Air-conditioning units used for human comfort that do not use a class I or class II ozone depleting substance and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;

(iii) Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;

(iv) Heating units used for human comfort that do not provide heat for any manufacturing or other industrial process;

(v) Noncommercial food preparation;

(vi) Consumer use of office equipment and products;

(vii) Janitorial services and consumer use of janitorial products; and

(viii) Internal combustion engines used for landscaping purposes.

(2) *Insignificant emissions levels.* Emissions meeting the criteria in paragraph (g)(2)(i) or (g)(2)(ii) of this section need not be included in the application consistent with paragraph (f) of this section, but must be listed with sufficient detail to identify the emission unit and indicate that the exemption applies. Similar emission units, including similar capacities or sizes, may be listed under a single description, provided the number of emission units is included in the description. No additional information is required at time of application, but the permitting authority may request additional information during application processing.

(i) *Emission criteria for regulated air pollutants, excluding hazardous air pollutants (HAP).* Potential to emit of regulated air pollutants, excluding HAP, for any single emissions unit shall not exceed 1 tpy, except in extreme ozone nonattainment areas, where potential to emit may not exceed 1,000 pounds (lb) per year. Aggregate emissions of any regulated air pollutant, excluding HAP, from all emission units shall not exceed potential to emit of 10 tpy, except in extreme ozone nonattainment areas, where potential to emit may not exceed 5 tpy.

(ii) *Emission criteria for HAP.* Potential to emit of any HAP from any single emissions unit shall not exceed 1,000 lb per year or the de minimis level established under section 112(g) of the Act, whichever is less. Aggregate emissions of all HAP from all emission units shall not exceed potential to emit of 5 tpy or the de minimis levels established under section 112(g) of the Act, whichever is less.

(h) *Application for coverage under a general permit.* Part 71 sources that qualify for a general permit must apply to the permitting authority for coverage under the terms of the general permit or must apply for a part 71 permit consistent with this section. The permitting authority may provide for applications for general permits which deviate from the requirements of this section, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and assure compliance with, the general permit.

(i) *Certification by a responsible official.* Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

§ 71.6 Permit content.

(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(i) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(ii) The permit shall state that where an applicable requirement of the Act is more stringent than an applicable requirement of 40 CFR parts 72 through 79, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

(iii) If an applicable implementation plan allows a determination of an alternative emission limit at a part 71 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant permit revision process, and the permitting authority elects to use such process, any

permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(iv) *Emission units and part 71 sources.*

(A) For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(B) For any nonmajor source subject to the part 71 program, the permitting authority shall include in the permit all applicable requirements applicable to emissions units that caused the source to be subject to the part 71 program.

(2) *Permit duration.* The permitting authority shall issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources. Notwithstanding this requirement, the permitting authority shall issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years. The permit shall state when the source's application for renewal must be submitted to the permitting authority consistent with § 71.5.

(3) For affected sources, a permit condition prohibiting any affected unit from emitting sulfur dioxide in excess of any allowances that the affected unit lawfully holds under title IV of the Act or 40 CFR parts 72 through 78.

(i) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(ii) No limit shall be placed on the number of allowances held by the unit. The unit may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(iii) Any such allowance shall be accounted for according to the procedures established in regulations 40 CFR parts 72 through 78.

(4) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit.

(5) Provisions stating the following:

(i) The source must comply with all conditions of the part 71 permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(ii) *Need to halt or reduce activity not a defense.* It shall not be a defense for a source in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iii) The permit may be modified, revoked, reopened and reissued, or terminated for cause. The filing of a request by the source for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(iv) The permit does not convey any property rights of any sort, or any exclusive privilege.

(v) The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit or to determine compliance with the permit, including copies of records required to be kept by the permit. The source may assert a claim of confidentiality consistent with section 114(c) of the Act and 40 CFR part 2 with respect to any such requested information.

(vi) A schedule of compliance does not sanction noncompliance with the applicable requirement on which it is based.

(6) A provision to ensure that a part 71 source pays fees to the permitting authority consistent with the fee schedule in § 71.9.

(7) *Emissions trading.* A provision stating that no permit revision shall be required under any economic incentives, marketable permits, emissions trading or other similar programs or processes approved in an implementation plan or other applicable requirement authorizing such changes to be provided for in the permit and where the permit provides for such changes.

(8) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the permitting authority. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating. Provided that each of the alternative scenarios available for a particular unit is monitored in a way that yields objective, contemporaneous measurement and recordation of relevant emissions or parameters and that the means of measurement are sufficiently different for each of the scenarios that the contemporaneous record reveals the scenario under which the source was operating when the record was made, no further notice to the permitting authority is required. Otherwise, the permit shall require that when any change is made between alternative scenarios, the permittee at the beginning of the following week shall place in regular mail to the permitting authority notice of such change(s) between scenarios, which could consist of a copy of the relevant portion of the on-site log indicating the scenario(s) under which the source operated during the previous week;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions under each such operating scenario; and

(iii) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this part.

(9) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of any emissions trade. Such terms and conditions:

(i) Shall include all terms required under paragraphs (a) and (c) of this section to ensure compliance;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions that allow such increases and decreases in emissions; and

(iii) Must meet all applicable requirements and the requirements of this part.

(b) *Federally-enforceable requirements.* All terms and conditions in a part 71 permit, including any provisions designed to limit a source's potential to emit, shall be enforceable by the Administrator and citizens under the Act.

(c) *Compliance requirements.* All part 71 permits shall contain testing, monitoring, reporting, recordkeeping and compliance certification requirements sufficient to assure compliance with the terms and conditions of the permit consistent with the following provisions of this section. Any document (including reports) required to be submitted by a part 71 permit shall contain a certification by a

responsible official that meets the requirements of § 71.5(i).

(d) *Monitoring requirements.* Each permit shall contain the following requirements with respect to monitoring:

(1) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act;

(2) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (f) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (d)(2); and

(3) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(e) *Recordkeeping requirements.* Each permit shall contain the following requirements with respect to recordkeeping:

(1) All applicable recordkeeping requirements;

(2) Where applicable, a requirement to maintain records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements;

(ii) The date(s) analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used;

(v) The results of such analyses; and

(vi) The operating conditions as existing at the time of sampling or measurement; and

(3) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(f) *Reporting and notification requirements.* Each permit shall contain the following requirements with respect to reporting and notification:

(1) All applicable reporting requirements.

(2) Submittal of reports of any required monitoring at least every 6 months or more frequently if required by the applicable requirement or by the permitting authority. All instance of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with § 71.5(i).

(3) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Where the underlying applicable requirement contains a definition of prompt or otherwise specifies a time frame for reporting deviations, that definition or time frame shall govern. Where the underlying applicable requirement fails to address the time frame for reporting deviations, reports of deviations shall be submitted to the permitting authority based on the following schedule:

(i) For emissions of a hazardous air pollutant or a toxic air pollutant (as identified in an applicable regulation) that continue for more than an hour in excess of permit requirements, the report must be made with 24 hours of the occurrence.

(ii) For emissions of any regulated air pollutant, excluding those listed in paragraph (f)(3)(i) of this section, that continue for more than two hours in excess of permit requirements, the report must be made within 48 hours.

(iii) A permit may contain a more stringent reporting requirement than required by paragraphs (f)(3)(i) and (ii) of this section.

(A) If any of the above conditions are met, the source must notify the permitting authority by telephone or facsimile based on the timetable listed in paragraphs (f)(3)(i) through (iii) of this section. A written notice, certified consistent with § 71.5(i), must be submitted within 10 working days of the occurrence.

(B) All deviations reported under paragraph (f)(3) of this section must also be identified in the 6 month report required under paragraph (f)(2) of this section.

(4) For purposes of paragraph (f)(3) of this section, deviation means any condition determined by observation, data from an enhanced monitoring protocol, any other monitoring protocol, or any other monitoring which is required by the permit that can be used to determine compliance, that identifies that an emission unit subject to a part 71 permit term or condition has failed to meet an applicable emission limitation or standard or that a work practice was not complied with or completed. For a condition lasting more than 24 hours which constitutes a deviation, each 24 hour period is considered a separate deviation. Included in the meaning of deviation are any of the following:

(i) A condition where emissions exceed an emission limitation or standard;

(ii) A condition where process or control device parameter values demonstrate that an emission limitation or standard has not been met;

(iii) Any other condition in which observations or data collected demonstrates noncompliance with an emission limitation or standard or any work practice or operating condition required by the permit.

(g) *Compliance certification requirements.* Each permit shall contain the following requirements with respect to compliance certifications with the terms and conditions contained in the permit, including emission limitations, standards, or work practices:

(1) The frequency (not less than annually or more frequently if specified in the applicable requirement or by the permitting authority) of submissions of compliance certifications;

(2) In accordance with paragraph (d) of this section, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(3) A requirement that the compliance certification includes the following:

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The compliance status;

(iii) Whether compliance was continuous or intermittent;

(iv) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with paragraph (d) of this section;

(v) Such other facts as the permitting authority may require to determine the compliance status of the source; and

(vi) A requirement that all compliance certifications be submitted to the permitting authority.

(4) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act.

(h) *Inspection and entry requirements.* Each permit shall contain inspection and entry requirements that require that,

upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority or an authorized representative to perform the following:

(1) Enter upon the permittee's premises where a part 71 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(4) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(i) *Compliance schedule.* Each permit shall contain a schedule of compliance consistent with § 71.5(f)(9).

(j) *Progress reports.* Each permit shall contain a requirement that the permittee submit progress reports consistent with an applicable schedule of compliance and § 71.5(f)(9) to be submitted at least semiannually, or more frequently if required by the applicable requirement or by the permitting authority. Such progress reports shall contain the following:

(1) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(k) *Other provisions.* Each permit shall contain such other provisions as the permitting authority may require.

(l) *General permits.*

(1) The permitting authority may, after notice and opportunity for public participation provided under § 71.11, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other part 71 permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the permitting authority shall grant the terms and conditions of the general permit. Notwithstanding the shield provisions of paragraph (n) of this section, the source shall be subject to enforcement action for operation without a part 71 permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under title IV of the Act (40 CFR part 72).

(2) Without repeating the public participation procedures required under § 71.11, the permitting authority may grant a source's request for authorization to operate under a general permit, and such a grant shall be a final permit action for purposes of judicial review.

(3) The permitting authority shall provide timely notice to the public of any authorization given to a source to operate under the terms of a general permit. Such notice may be made on a monthly, summarized basis covering all sources receiving authorization since the time of the last notice.

(m) *Temporary sources.* The permitting authority may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall contain all of the terms and conditions required by this section as well as the following terms and conditions:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the permitting authority at least 10 days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions of this section.

(n) *Permit shield.*

(1) Except as provided in this part, the permitting authority may expressly include in a part 71 permit a provision stating that compliance with the terms and conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(i) Such applicable requirements are included and are specifically identified in the permit; or

(ii) The permitting authority, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A part 71 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph (n) or in any part 71 permit shall alter or affect the following:

(i) The provisions of sections 112(r)(9) and 303 of the Act (emergency orders), including the authority of the Administrator under those sections;

(ii) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) The applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

(iv) The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

(o) *Emergency provision.*

(1) *Definition.* An ''emergency'' means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) *Effect of an emergency.* An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (o)(3) of this section are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(ii) The permitted facility was at the time being properly operated;

(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(iv) The permittee submitted notice of the emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph (f)(3) of this section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the

occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

(p) *Operational flexibility.* A permitted facility may make changes without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions), provided that the facility provides the permitting authority with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days. The source and the permitting authority shall attach each such notice to their copy of the relevant permit.

(1) *Trading under permitted emissions cap.* The permitting authority shall include in a permit an emissions cap, pursuant to a request submitted by the applicant, consistent with any specific emission limits or restrictions otherwise required in the permit by any applicable requirements, and permit terms and conditions for emissions trading solely for the purposes of complying with that cap, provided that the permitting authority finds that the request contains adequate terms and conditions, including all terms required under § 71.6, to determine compliance with the cap and with any emissions trading provisions. The permit shall also contain terms and conditions to assure compliance with all applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions cap is enforceable and trades pursuant to it are quantifiable and enforceable. Any permit terms and conditions establishing such a cap or allowing such trading may be established or changed only in a full permit issuance, renewal, or significant permit revision procedures. The permitting authority shall not be required to include in the cap or emissions trading provisions any emissions unit where the permitting authority determines that the emissions are not quantifiable or where it determines that there are no replicable procedures or practical means to enforce the emissions trades.

(i) Under this paragraph (p)(1) of this section, the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(ii) The permit shield described in § 71.6(n) may extend to terms and conditions that allow such increases and decreases in emissions.

(2) *Trading under the implementation plan.* Permitted sources may trade increases and decreases in emissions in the permitted facility, where the applicable implementation plan provides for such emissions trades without requiring a permit revision and based on the 7-day notice prescribed in paragraph (p) of this section. This provision is available in those cases where the permit does not already provide for such emissions trading provided the permit identifies which permit terms may be replaced with the emission trading provisions in the implementation plan.

(i) Under paragraph (p)(2) of this section, the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and that provide for the emissions trade.

(ii) The permit shield described in § 71.6(n) shall not extend to any change made under paragraph (p) of this section. Compliance with the permit terms that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.

(q) The permitting authority may allow permittees, without first applying for a permit revision, to make changes that do not result in the source being in violation of any permit term or condition but render the source subject to an applicable requirement to which the source was not previously subject, provided the requirements of paragraphs (q)(1) through (8) of this section are met.

(1) Each change shall:

(i) Meet all applicable requirements and shall not violate or result in the violation of any existing permit term or condition; and

(ii) Not result in a net increase in the allowable emissions of any regulated pollutant at the source.

(2) The change may not be subject to the requirements of title IV of the Act.

(3) Sources must provide contemporaneous written notice to the permitting authority of each such change. Such written notice shall describe each such change, the date of the change, any change in emissions, pollutants emitted, and the applicable requirement to which the source becomes subject as a result of the change.

(4) The change shall not be eligible for the permit shield under § 71.6(n) until such time as a permit shield may be granted in a subsequent permit revision consistent with the provisions of §§ 71.7(g) or 71.11.

(5) The permittee shall keep a record describing changes made under this paragraph (q).

(6) The permittee shall apply for a permit revision by the deadline set forth in § 71.5(b)(2), except that if the deadline would occur after the date on which a renewal application is due, the permitting authority may allow the permittee to incorporate the permit revision request in its renewal application.

(7) The permit shall be revised under the relevant procedures of § 71.7(e), (f), (g), or § 71.11 for which the change is eligible, except that, notwithstanding provisions in those sections, if the change is subsequently processed under minor permit revision or significant permit revision procedures, and the permitting authority or EPA (in the case of a program delegated pursuant to § 71.10) determines that the change was ineligible under this paragraph (q), then the source shall be liable from the date the change was made for failure to have applied for a permit revision before the change was made as required under § 71.7.

(8) If eligible for the minor permit revision procedures of § 71.7(g), the following provisions shall apply to changes made under this paragraph (q):

(i) The public notice required under § 71.7(g)(3)(ii) shall state that if no germane and non-frivolous objection is received within 21 days of application, the permitting authority may consider that the change was eligible for processing under this paragraph (q) without further opportunity for public objection. In addition to the provisions of § 71.7(g)(3)(ii) a germane objection is one that objects to the change on the grounds that the source was ineligible under this paragraph (q).

(ii) The provisions of §§ 71.7(g)(5)(i) and (ii) prohibiting the source from making the change do not apply.

(iii) Notwithstanding the provisions of § 71.7(g)(7), the source must comply with all applicable requirements from the date the change was made.

§ 71.7 Permit review, issuance, renewal, reopenings, and revisions.

(a) *Action on application.*

(1) A permit, permit revision, or renewal may be issued only if all of the following conditions have been met:

(i) The permitting authority has received a complete application for a permit, permit revision, or permit renewal, except that a complete application need not be received before issuance of a general permit under § 71.6(l);

(ii) The permitting authority has complied with the applicable requirements for public participation under this section or § 71.11, if applicable;

(iii) The permitting authority has complied with the requirements for notifying and responding to affected States under § 71.8(a);

(iv) Except as provided in paragraph (a)(6) of this section, the conditions of the permit provide for compliance with all applicable requirements and the requirements of this part; and

(v) In the case of a program delegated pursuant to § 71.10, except for revisions qualifying for de minimis permit revision procedures under paragraph (f) of this section or for administrative amendment procedures under paragraphs (e)(1)(i) through (iv) of this section, the Administrator has received a copy of the proposed permit and any notice required under § 71.10(d) and has not objected to the issuance of the permit under § 71.10(g) within the time period specified therein.

(2) Except as provided under the initial transition plan provided under § 71.4(i) or under 40 CFR part 72 or title V of the Act for the permitting of affected sources under the acid rain program, the permitting authority shall take final action on each permit application (including a request for permit revision or renewal) within 18 months after receiving a complete application. Notwithstanding the preceding sentence, the permitting authority shall take final action within 12 months after receipt of a complete application containing an early reduction demonstration under section 112(i)(5) of the Act and regulations promulgated thereunder, and within the time period specified under paragraph (g)(5)(v) of this section for a minor permit revision. Final action may be delayed where an applicant fails to provide additional information in a timely manner as requested by the permitting authority under § 71.5(c) .

(3) The permitting authority shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. Notwithstanding the above, for revisions that qualify for and are processed through the procedures of paragraph (e), (f), or (g) of this section, the permitting authority need not undertake a completeness determination before commencing revision procedures.

(4) The permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to any person who requests it, and to EPA, in the case of a program delegated pursuant to § 71.10.

(5) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under title I of the Act.

(6) Any new applicable requirement approved or promulgated by EPA that becomes applicable to a source prior to issuance of a draft permit (whether during issuance or renewal) shall be included in the draft permit. If any new applicable requirement becomes applicable after issuance of a draft permit, and the requirement is not reflected in the draft permit, the permit may be issued without incorporating the new applicable requirement, provided that the permitting authority institutes proceedings no later than the date of permit issuance to reopen the permit consistent with paragraph (i) of this section to incorporate the new applicable requirement and that the permit contains a statement that it is being reopened for this purpose.

(b) *Requirement to apply for a permit.* Except as provided in this paragraph and paragraphs (e), (f), and (g) of this section, no part 70 or part 71 source may operate after the time that it is required to submit a timely and complete application under an approved permit program or this part, except in compliance with a permit issued under a part 70 program or this part. If a part 70 or part 71 source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a part 71 permit is not a violation of this part until the permitting authority takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph (a)(3) of this section, and as required by § 71.5(c), the applicant fails to submit by the deadline specified in writing by the permitting authority any additional information identified as being needed to process the application.

(c) *Permit renewal and expiration.*

(1) Permits being renewed are subject to the same procedural requirements that apply to initial permit issuance, including those for public participation, affected State review, and EPA review, in the case of a program delegated pursuant to § 71.10.

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with paragraph (b) of this section and §§ 71.5(b) and 71.5(c).

(3) If a timely and complete application for a permit renewal is submitted by the permittee consistent with §§ 71.5(b) and 71.5(c), but the permitting authority has failed to issue or deny the renewal permit before the end of the term of the previous part 70 or part 71 permit, then all the terms and conditions of the permit, including any permit shield, shall remain in effect until the permitting authority issues or denies the renewal permit. In the case of a program delegated pursuant to § 71.10, EPA may invoke its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.

(d) *Permit revisions.* Changes requiring revision of a part 70 or part 71 permit are those that could not be operated without violating an existing permit term or rendering the source subject to an applicable requirement to which the source has not been previously subject. A permit revision for purposes of the acid rain portion of the permit shall be governed by 40 CFR part 72.

(e) *Administrative permit amendments.*

(1) An ''administrative permit amendment'' is a permit revision that:

(i) Corrects typographical errors;

(ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change;

(iii) Requires more frequent testing, monitoring, recordkeeping, or reporting;

(iv) Allows for a change in ownership or operational control of a source where

the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority;

(v) In the case of a program delegated pursuant to § 71.10, incorporates the requirements of a minor new source review (NSR) or major NSR preconstruction permit or decision or a determination under section 112(g) of the Act, provided that such permit or determination was issued in accordance with the procedural requirements of paragraph (e)(4) of this section and contains compliance requirements substantially equivalent to those required under § 71.6.

(vi) Notwithstanding the provisions of paragraph (e)(1)(v) of this section, incorporates a standard promulgated after permit issuance pursuant to section 112 of the Act.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by 40 CFR part 72.

(3) *Administrative permit amendment procedures for changes meeting the criteria under § 71.7(e)(1)(i) through (iv).* Changes meeting the criteria set forth in paragraphs (e)(1)(i) through (iv) of this section may be made to a permit using the following procedures:

(i) The source shall submit to the permitting authority an application containing a proposed addendum to the source's part 70 or part 71 permit. The application shall demonstrate how the proposed change meets one of the criteria for administrative amendments set forth in paragraphs (e)(1)(i) through (iv) of this section, and include certification by the responsible official consistent with § 71.5(i) that the change is eligible for administrative amendment procedures. The addendum shall:

(A) Identify the terms of the existing part 70 or part 71 permit that it proposes to change;

(B) Propose new permit terms consistent with the provisions of this part applicable to the change;

(C) Designate the addendum as having been processed under the procedures of this paragraph (e)(3); and

(D) Specify that the addendum will be effective 60 days from the date of permitting authority receipt unless the permitting authority disapproves the change within such period.

(ii) The permitting authority may allow the source to implement the requested change immediately upon making all required submittals, including the proposed addendum.

(iii) The proposed addendum will become effective 60 days after the permitting authority receives the submittal, provided the permitting authority has not disapproved the request in writing before the end of the 60-day period. The permitting authority shall record the change by attaching a copy of the addendum to the existing part 70 or part 71 permit and, in the case of a program delegated pursuant to § 71.10, shall provide the Administrator with a copy of the addendum.

(iv) If the permitting authority disapproves the change, it shall notify the source of its reasons for disapproving the change in a timely manner. Upon receiving such notice, the source shall comply with the terms of the permit that it had proposed to change, and thereafter the proposed addendum shall not take effect. The permitting authority may approve a permit addendum for an administrative permit amendment that varies from the source's application without rendering the source liable for violating its existing permit if the permitting authority's revisions are not necessary to make the request eligible for administrative amendment procedures and do not change the applicant's proposed determination of which applicable requirements of the Act apply to the source as a result of the requested change and if the source demonstrates to the satisfaction of the permitting authority its compliance with the applicable requirement to which it is subject as a result of the change. However, the source would remain liable for any violations of the requirements which are applicable as a result of the change and the source's proposed permit revision.

(v) The process in paragraph (e)(3) of this section may also be used for changes initiated by the permitting authority that meet the criteria under paragraphs (e)(1)(i), (ii), and (iv) of this section. For such changes, the permitting authority shall notify the source of the proposed change and its effective date, and shall attach a copy of the change to the existing permit. On the effective date of the proposed change, the source shall comply with the provisions of the proposed change.

(vi) The permit shield under § 71.6(n) may not extend to administrative amendments processed under paragraph (e)(3) of this section.

(4) *Administrative amendment procedures for changes meeting the criteria under § 71.7(e)(1)(v).* In the case of a program delegated pursuant to § 71.10, a change meeting the criteria of paragraph (e)(1)(v) of this section may be made to a permit using the procedures in the following paragraphs (e)(4) (i) through (iv) of this section.

(i) An applicant shall submit prior to construction (including modification), a permit application to the permitting authority meeting the requirements for applications of minor NSR, major NSR, determinations under section 112(g) of the Act, and paragraph (e)(3)(i) of this section. The application must:

(A) Specify draft permit terms governing construction of any proposed new or modified emissions unit or combination thereof, including all applicable requirements;

(B) Inform the permitting authority that the source is requesting to revise the part 70 or part 71 permit using the process under this paragraph (e)(4);

(C) Include a proposed addendum to the part 70 or part 71 permit that identifies the terms of the existing part 70 or part 71 permit that will change and the draft terms and conditions which will govern operation of the new or modified unit consistent with part 71 (including compliance requirements consistent with § 71.6) and any notice requirements contained in paragraph (e)(4)(ii) of this section, and that incorporates relevant terms and conditions from the proposed minor NSR or major NSR or action under section 112(g) of the Act; and

(D) Include an affidavit signed by a responsible official stating that the source accepts all liability of making the requested change prior to final permitting authority action to revise the source's permit.

(ii) For any minor NSR or major NSR or action under section 112(g) of the Act and part 71 permit addendum proposed for approval under paragraph (e)(4) of this section, the permitting authority shall:

(A) Provide a comment period for the public and affected States prior to construction of the change of at least 30 days or, in the case of minor NSR, as many days as required by the applicable implementation plan approved as of November 15, 1993, but not less than 15 days. Where a minor NSR action includes a netting transaction involving either a single emissions increase above applicable title I modification significance levels or a sum of increases above applicable major source thresholds, a public comment period of at least 30 days must be provided for a change to qualify for processing under this paragraph (e)(4);

(B) Provide notice and a copy of the application filed pursuant to paragraph (e)(4)(i) of this section to EPA by the beginning of the public comment period;

(C) Issue a minor NSR or major NSR permit or determination or issue a determination under section 112(g) of the Act and an addendum to the part 70 or part 71 permit for the operation of the change if it determines the requirements of the applicable minor NSR, major NSR, or review program under section 112(g) of the Act and part 71 have been met; and

(D) Provide an opportunity for EPA objection consistent with the provisions of § 71.10(g), starting either upon receipt of the notice described under paragraph (e)(4)(ii)(D)(*1*) or (*2*) of this section as applicable or from the date the permitting authority made its final minor NSR, major NSR, or determination under section 112(g) of the Act, whichever is later.

(*1*) For changes approved by the permitting authority under major NSR or review under section 112(g) of the Act, the source shall provide a notice to EPA and the permitting authority which must be postmarked at least 21 days before the anticipated date of initial startup of the new or modified source. For such changes, the source may commence operation at the end of the 21-day period unless EPA objects in writing to the proposed change within the 21-day period. Upon notification of such objection, the source may not operate such a change and must comply with the terms and conditions of the permit that it sought to change.

(*2*) For changes approved by the permitting authority under minor NSR, the source shall notify EPA and the permitting authority of the anticipated date for startup of the change. The source may commence operation of such a change upon postmark of such notice.

(iii) The proposed part 71 permit addendum may become effective 45 days after EPA receives notice under paragraph (e)(4)(ii)(D) of this section or 45 days from the date the permitting authority makes its final preconstruction determination, whichever is later, provided that by the end of such period EPA has not objected to the change.

(iv) If EPA objects to the change, EPA shall notify the permitting authority and the source of its reasons for objecting to the change. Upon receiving such notice, the source shall comply with the terms of the permit that it had proposed to change, and thereafter the proposed addendum shall not take effect. If, subsequent to source implementation of the requested change, EPA objects to the change, the source shall be liable for having operated in violation of its existing permit from the time it implemented the change. Notwithstanding the preceding sentence, the permitting authority may revise a proposed addendum making an administrative permit amendment in response to an EPA objection without rendering the source liable for violating its existing permit if the permitting authority's revisions are not necessary to make the change eligible for administrative amendment procedures and do not change the applicant's proposed determination of which applicable requirements apply to the source as a result of the requested change and if the source demonstrates to the satisfaction of the permitting authority its compliance with the applicable requirement to which it is subject as a result of the change and the source's proposed permit revision. However, the source would remain liable for any violations of the requirements which are applicable as a result of the change and the source's proposed permit revision.

(v) The permitting authority may provide a permit shield consistent with the provisions of § 71.6(n) .

(5) *Administrative permit amendment procedures for changes meeting the criteria under § 71.7(e)(1)(vi).* Changes meeting the criteria set forth in paragraph (e)(1)(vi) of this section may be made to a permit using the following procedures:

(i) After receipt of the initial notification required under the standard under section 112 of the Act, the permitting authority shall prepare a proposed addendum to the source's part 70 or part 71 permit. The addendum shall contain the following:

(A) A statement that the standard under section 112 of the Act is an applicable requirement for the permitted source;

(B) A schedule of compliance, consistent with § 71.5;

(C) A requirement to submit any implementation plan or report required under the standard;

(D) A requirement to apply for a minor permit revision by the deadline for the compliance statement, unless the source is exempted from this requirement by the rulemaking promulgating the applicable standard under section 112 of the Act. If the source is utilizing an alternative requiring case-by-case approval, such as emissions averaging, the source shall apply for a significant permit revision in lieu of the minor permit revision required in the preceding sentence. If the compliance statement deadline is within 6 months of the end of the permit term, the source may incorporate its application for the revisions into its application for permit renewal, in lieu of applying for revisions by the compliance statement deadline;

(E) Any other provisions required to be incorporated into the permit by the applicable standard under section 112 of the Act.

(ii) The permitting authority shall make available for public review and comment for at least 30 days a list of sources whose permits are reopened under this paragraph (e)(5). Notice of the availability of the list shall be given by such time as to assure that any additional administrative amendments for sources subject to the standard and not on the list take effect within 18 months after publication of the standard under section 112 of the Act. If after considering public comment, the permitting authority determines that permits for other sources must be reopened to incorporate standards under section 112(g) of the Act, it shall notify such sources of its intent to do so at least 30 days before reopening the permit, and may use the provisions of this paragraph (e)(5).

(iii) The proposed addendum shall become effective not later than 18 months after publication of the standard under section 112 of the Act. The permitting authority shall attach a copy of the addendum to the existing part 70 or part 71 permit and shall, in the case of a program delegated pursuant to § 71.10, provide the Administrator with a copy.

(iv) The permitting authority shall, as soon as practicable, place all information required to be submitted by the permit with respect to the standard under section 112 of the Act in a docket accessible to the public.

(v) The permit shield under § 71.6(n) may not extend to administrative amendments processed under paragraph (e)(5) of this section.

(f) *De minimis permit revisions.*

(1) A de minimis permit revision may be made by the permitting authority to a part 70 or part 71 permit provided that the permit contains a term or condition authorizing the source to make use of de minimis permit revision procedures for qualifying changes at the applicable unit and such term or condition was established during permit issuance or renewal, or under permit revision procedures contained in § 71.11, and provided the action taken meets the criteria and procedures specified in paragraph (f) of this section.

(2) *Criteria.* For the change to be considered de minimis and eligible for de minimis permit revision procedures, the conditions in paragraph (f)(2)(i) of this section and the applicable conditions and limits in paragraphs (f)(2) (ii) and (iii) of this section must be

met. The limits in paragraphs (f)(2) (ii) and (iii) of this section are on a single pollutant basis except where a combination of hazardous air pollutants is indicated.

(i) *Conditions limiting de minimis changes.*

(A) The source must not be in violation of the part 70 or part 71 permit terms and conditions it seeks to change.

(B) In the case of existing units, the need for a permit revision must result from a physical or operational change. [OPTION: ADD TO END OF SENTENCE: unless the permit revision solely involves monitoring or recordkeeping requirements.]

(C) [OPTION: ADD TO BEGINNING OF SENTENCE: Except for permit revisions solely involving monitoring or recordkeeping requirements,] The change may not involve a permit term or condition established to limit emissions which is federally enforceable only as a part 70 or part 71 permit term or condition.

(D) De minimis emission threshold levels cannot be met by offsetting emission increases with emission decreases at the same source.

[OPTION: ADD NEW PARAGRAPHS (f)(2)(i) (E) and (F):

(E) The change may not involve a change to monitoring or recordkeeping requirements unless, prior to the source's submission of a de minimis permit revision application, the permitting authority affirmatively determines that the monitoring or recordkeeping change has been demonstrated by the source:

(*1*) To not affect the capability of the method to measure emission results as precisely, accurately, and timely as is provided by the existing monitoring or recordkeeping method;

(*2*) To only affect a single source or facility; and

(*3*) To not constitute a new or alternative monitoring method or represent a new operating level of the method.

(F) The criteria for all demonstrations required under paragraph (f)(2)(i)(E) of this section shall include, in addition to the requirements of paragraph (f)(3)(C) of this section, an analysis conducted in accordance with 40 CFR 64.4(b)(5) and 64.4(c) utilizing appendices A, B, C, and D of 40 CFR part 64. [END OF OPTION]

(ii) *Unit-based change limits.* For a change at any emissions unit to qualify as a unit-based de minimis permit revision, the total emissions of an entirely new unit and the total emissions at an existing unit after the change (i.e., the sum of the existing emissions before the change plus the emissions increase that results from the change) may not exceed:

[ALTERNATIVE 1 FOR paragraph (f)(2)(ii)(A):]

(A) For criteria pollutants, the following emissions over the life of the permit:

(*1*) 4 tons of CO;

(*2*) 1 ton of NO_X;

(*3*) 1.6 tons of SO_2;

(*4*) 0.6 ton of PM–10;

(*5*) 1 ton of VOC.

[ALTERNATIVE 2 to paragraph (f)(2)(ii)(A):]

(A) For criteria pollutants, 20 percent of the applicable major source threshold, or 5 tpy of VOC or NO_X, whichever is greater, but in no event more than 15 tpy PM–10 or 0.6 tpy lead.

[ALTERNATIVE 3 to paragraph (f)(2)(ii)(A):]

(A) For criteria pollutants, 5 tpy.

[ALTERNATIVE 4 to paragraph (f)(2)(ii)(A):]

(A) For criteria pollutants, 30 percent of the applicable major source threshold or 5 tpy, whichever is greater. [END OF ALTERNATIVES to paragraph (f)(2)(ii)(A)]

[ALTERNATIVE 1 to paragraph (f)(2)(ii)(B):]

(B) For HAP's, 0 tpy.

[ALTERNATIVE 2 to paragraph (f)(2)(ii)(B):]

(B) For HAP's, 20 percent of the major source thresholds established under section 112 of the Act or 50 percent of the de minimis levels established under section 112(g) of the Act, whichever is less.

[ALTERNATIVE 3 to paragraph (f)(2)(ii)(B):]

(B) For HAP's, 75 percent of de minimis levels established under section 112(g) of the Act. [END OF ALTERNATIVES to paragraph (f)(2)(ii)(B)]

(C) For other pollutants regulated only under section 111 of the Act, the significance levels in § 52.21(b)(23)(i).

(iii) *Increment-based change limits.* A change at any emissions unit not qualifying for a unit-based change may still qualify as a de minimis permit revision if the following criteria are met:

(A) *Additional conditions:*

(*1*) Any resulting emissions limit must be expressed in the same form and units of measure as the previous emissions limit;

(*2*) Any associated recalibration of continuous emissions monitors (CEM) or operational parameters must be undertaken in accordance with emission rates-to-CEM or operational parameter ratios established in the operating permit program, in the source's permit, or through permit issuance procedures providing at least as much permitting authority, EPA (in the case of a program delegated pursuant to § 71.10), and affected State review and public participation as minor permit revision procedures; [OPTION: DELETE PREVIOUS PARAGRAPH (f)(2)(iii)(A)(*2*).]

(B) *Size restrictions on individual change.* No emissions increase at any unit may exceed:

[ALTERNATIVE 1 to paragraph (f)(2)(iii)(B)(*1*):]

(*1*) For criteria pollutants, the following emissions over the life of the permit:

(*i*) 4 tons of CO;

(*ii*) 1 ton of NO_X;

(*iii*) 1.6 tons of SO_2;

(*iv*) 0.6 ton of PM–10;

(*v*) 1 ton of VOC.

[ALTERNATIVE 2 to paragraph (f)(2)(iii)(B)(*1*):]

(*1*) For criteria pollutants, 20 percent of the applicable major source threshold, 10 percent of the limit applicable to the unit undergoing the change, or 15 tpy VOC or NO_X, whichever is less but in no event less than [2–5] tpy VOC or NO_X or greater than 15 tpy PM–10 or 0.6 tpy lead.

[ALTERNATIVE 3 to paragraph (f)(2)(iii)(B)(*1*):]

(*1*) For criteria pollutants, 30 percent of applicable major source thresholds, or 15 percent of the limit applicable to the unit undergoing the change, whichever is less, but in no event less than 5 tpy for VOC or NO_X. [END OF ALTERNATIVES FOR paragraph (f)(2)(iii)(B)(*1*)]

[ALTERNATIVE 1 to paragraph (f)(2)(iii)(B)(*2*):]

(*2*) For HAP's, 0 tpy.

[ALTERNATIVE 2 to paragraph (f)(2)(iii)(B)(*2*):]

(*2*) For HAP's, 20 percent of the major source thresholds established under section 112 of the Act, 50 percent of the de minimis levels set pursuant to section 112(g) of the Act, or 10 percent of the limit applicable to the unit undergoing change, whichever is less.

[ALTERNATIVE 3 to paragraph (f)(2)(iii)(B)(*2*):]

(*2*) For HAP's, 75 percent of de minimis levels established under section 112(g) of the Act. [END OF ALTERNATIVES FOR paragraph (f)(2)(iii)(B)(*2*)]

(*3*) For other pollutants regulated only under section 111 of the Act, the significance levels in § 52.21(b)(23)(i) of this chapter.

(3) *De minimis permit revision procedures.*

(i) *Application.* A source may submit an application to the permitting authority requesting the use of de minimis permit revision procedures

provided that the permit contains a term or condition that authorizes the source to make use of the de minimis permit revision procedures for qualifying changes, the application meets the requirements of § 71.5(f), and the permit application includes the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) An addendum containing the terms and conditions of the source's suggested draft permit revision;

(C) A demonstration that the proposed change meets the criteria for a de minimis permit revision; and

(D) Certification by a responsible official consistent with § 71.5(i) that:

(*1*) The source is in compliance with any permit terms or conditions it seeks to revise;

(*2*) The proposed revision meets the criteria for use of de minimis permit revision procedures; and

(*3*) The source accepts all liability of making the requested change prior to final permitting authority action to revise the source's permit.

[OPTION: ADD NEW PARAGRAPH:

(E) A summary of any required demonstration performed in accordance with paragraphs (f)(2)(i)(E) and (F) of this section, and verification of such demonstration's affirmative approval by the permitting authority.]

(ii) The permitting authority may allow the source to implement the requested change 7 days after the permitting authority's receipt of the source's de minimis permit revision application. At its discretion, the permitting authority may grant a request by the source to implement the change after less than 7 days.

(iii) *Public notification.* Public notice shall be provided by the source of de minimis permit revision applications received by the permitting authority on a monthly, batched basis. At a minimum, the notice shall include: the name and address of the source where the proposed change would occur, a description of the change, the effective date of the permit revision, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs; reference to the pertinent administrative record/public docket; and the name, address and phone number of a person from whom interested persons may obtain additional information, including the permit application and supporting documentation as described in paragraph (f)(3)(i) of this section. [OPTION: ADD TO END OF PARAGRAPH: In addition, for permit revisions involving changes to monitoring or recordkeeping requirements, the permitting authority shall also submit to the publicly available docket the complete demonstration required by paragraphs (f)(2)(i) (E) and (F) of this section, a summary of the demonstration, and an affirmative statement of the demonstration's adequacy.]

(iv) *Permit amendment.* The permit is revised by attaching the proposed addendum to the permit with the addendum specifying when the permit revision takes effect consistent with the following provisions.

(A) Where the preconstruction permitting agency affirmatively approved the change pursuant to a preconstruction review process that included at least a 21-day public comment period and the preconstruction permitting agency authorized the change to be made under the de minimis permit revision process, the addendum shall take effect upon submission to the part 71 permitting authority of a complete de minimis permit revision application.

(B) Where the preconstruction permitting agency did not affirmatively approve the change pursuant to a preconstruction review that provided for at least a 21-day public comment period, the addendum shall take effect [30–90] days after the date public notice is given under paragraph (f)(3)(iii) of this section if the part 71 permitting authority does not disapprove the request within that time period. The part 71 permitting authority shall retain the authority to disapprove such a change made through the de minimis permit revision process for a period of [30–90] days following the date public notice is given under paragraph (f)(3)(iii) of this section.

(v) *EPA and affected State notification.*

(A) In the case of a program delegated pursuant to § 71.10, the permitting authority shall send a copy of the addendum to the permit to EPA within 7 days of the date the addendum takes effect.

(B) In all cases, the permitting authority shall send a copy of the addendum to any affected State within 7 days of the date the addendum takes effect.

(vi) *Public request for disapproval.*

(A) Within [15–45] days of the date public notification is given, any person may request that the permitting authority disapprove the change if the permitting authority retained authority to disapprove the de minimis permit revision as described under paragraph (f)(3)(iv)(B) of this section.

(B) Where the permitting authority was not required to retain authority to disapprove the de minimis permit revision, the public may petition the permitting authority to revoke the permit revision allowing the change.

(4) *Source liability.* If, after a source makes the requested change, the permitting authority disapproves the change or EPA objects to the change (in the case of a program delegated pursuant to § 71.10), the source shall be liable for having operated in violation of its existing permit from the time at which the source made the change. Notwithstanding the preceding sentence, the permitting authority may issue a permit revision that varies from the source's proposed addendum without rendering the source liable for violating its existing permit if the proposed addendum includes enforcement terms sufficient to support an enforcement action and the permitting authority's revisions are not necessary to make the change eligible for de minimis permit revision procedures and do not change the applicant's determination of which requirements of the Act apply to the source as a result of the requested change. The source would remain liable for any violations of the requirements which are applicable as a result of the change and the source's proposed permit revision.

(5) The permit shield under § 71.6(n) may not extend to de minimis permit revisions.

(g) *Minor permit revision procedures.*

(1) *Criteria.*

(i) Minor permit revision procedures may be used only for those permit revisions that:

(A) Do not affect permit terms or conditions that the source is violating;

(B) Do not involve changes to existing monitoring, reporting, or recordkeeping requirements in the permit, unless such changes are necessary to implement other changes that qualify for minor permit revision procedures [OPTION: REPLACE PARAGRAPH (g)(1)(i)(B) WITH THE FOLLOWING:

(B) Involve changes to monitoring or recordkeeping requirements that are:

(*1*) Changes in the enforceable operating level of the method that, prior to the source's submission of a minor permit revision application, the permitting authority has affirmatively determined the source has demonstrated to be correlated to the source's existing or proposed compliance emissions rate, but such changes may not involve a switch to a new or alternative monitoring or recordkeeping operating parameter;

(*2*) Changes to a monitoring or recordkeeping method that affect the measurement sensitivity of the method and representativeness of the data (e.g., precision, accuracy, measurement location, or averaging time) such that there may be a measurable effect in relation to the relevant source compliance emissions rate; changes that affect the scope and intent of the existing monitoring method (e.g., modified sample conditioning system, upgraded detector, upgraded data management system); or changes that may be generally applicable to similar monitoring methods in the same or other source categories (e.g., equipment modification for interference avoidance). Such changes may not involve a switch to new or alternative monitoring methods. Prior to the source's submission of a minor permit revision application, the permitting authority shall have affirmatively determined that the monitoring or recordkeeping change has been demonstrated by the source to have a known relationship and ability to determine compliance with the applicable source compliance emissions rate; or

(*3*) In the case of a program delegated pursuant to § 71.10, changes to monitoring or recordkeeping methods that have been approved pursuant to major or minor NSR and that are demonstrated therein to have a known relationship and ability to determine compliance with the applicable source compliance emissions rate. The application for the minor permit revision must include supporting documentation from the major or minor NSR permit approval, information regarding the demonstration and approval of the requested monitoring or recordkeeping method, and information in accordance with § 71.7(g)(2) as related to the monitoring change. END OF OPTION];

(C) Do not involve or depend on netting transactions undertaken to avoid being subject to preconstruction review under part C or D of title I of the Act unless such emissions reductions:

(*1*) Have been approved pursuant to a minor NSR process for which a 30-day public comment period was provided; or

(*2*) Do not involve any single emissions increase that exceeds the applicable threshold for being a major modification under part C or D of title I of the Act, and the sum of all the contemporaneous increases does not exceed the applicable threshold for determining whether a source is major;

(D) Do not involve offsets or modifications under section 112(g) of the Act, unless the change has been approved pursuant to a review process under section 112(g) of the Act;

(E) Are not modifications subject to part C or D of title I of the Act, unless the change has been approved pursuant to major NSR and would incorporate all applicable requirements determined therein into the part 70 or part 71 permit;

(F) [OPTION: ADD TO BEGINNING OF SENTENCE: Except for permit revisions solely involving monitoring or recordkeeping requirements,] Do not seek to establish or change a permit term or condition established to limit emissions which is federally enforceable only as a part 70 or part 71 permit term or condition. Such terms and conditions include:

(*1*) A federally-enforceable emissions cap assumed in the part 70 or part 71 permit to avoid classification as a modification under any provision of title I of the Act;

(*2*) An alternative emission limit established under the provisions of § 71.6(a)(1)(iii) equivalent to a requirement contained in an applicable implementation plan;

(*3*) An alternative emissions limit established in the part 70 or part 71 permit pursuant to regulations promulgated under section 112(i)(5) of the Act;

(*4*) An emissions limit established in the part 70 or part 71 permit pursuant to regulations promulgated under section 112(j) of the Act; and

(*5*) Any other term or condition for which there is no corresponding underlying applicable requirement and the establishment of which allows the source to avoid an applicable requirement to which the source would otherwise be subject.

(ii) Notwithstanding paragraph (g)(1)(i) of this section, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit revision procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA.

[OPTION: ADD NEW PARAGRAPH:

(iii) Any demonstration required by paragraph (g)(1)(i)(B) of this section shall include an analysis conducted in accordance with 40 CFR 64.4(b)(5) and 64.4(c) utilizing appendices A, B, C, and D of 40 CFR part 64.]

(2) *Application.* An application requesting the use of minor permit revision procedures shall meet the requirements of § 71.5(f) and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) An addendum containing the terms and conditions of the source's suggested draft permit revision;

(iii) A demonstration that the proposed change is eligible to be processed as a minor permit revision;

(iv) Certification by a responsible official, consistent with § 71.5(i), that:

(A) The proposed change meets the criteria for use of minor permit revision procedures;

(B) The source is in compliance with the permit terms or conditions it seeks to revise;

(C) Public notice of the proposed revision has been provided pursuant to paragraph (g)(3) of this section; and

(D) Notice to the Administrator (in the case of a program delegated pursuant to § 71.10), and affected States of the proposed revision has been provided pursuant to paragraph (g)(4) of this section; and

(v) An affidavit signed by a responsible official stating that the source accepts all legal risks of making the requested change prior to final permitting authority action to revise the source's permit.

[OPTION: ADD NEW PARAGRAPH:

(vi) For a change involving changes to monitoring or recordkeeping requirements, a summary of any demonstration required by paragraph (g)(1)(i)(B) of this section and performed in accordance with paragraph (g)(1)(iii) of this section and verification of its approval by the permitting authority. If in approving the demonstration the permitting authority determines that subsequent verification testing of the change is necessary, the permitting authority may establish a compliance schedule for performing verification testing to further demonstrate, consistent with paragraph (g)(1)(iii) of this section, the adequacy of the change. Such compliance schedule, after approval by the permitting authority, shall be attached to the addendum described in paragraph (g)(2)(ii) of this section and be processed as a permit term and shall not allow the source to begin verification testing in advance of the time when the source would be allowed to implement the minor permit revision requested change. The approved compliance schedule shall include a commitment by the source to provide the results of the verification testing to the permitting authority within 90 days of submittal of the minor permit revision application. Upon

receipt of the verification testing results, the permitting authority shall determine whether the results demonstrate the adequacy of the change consistent with paragraph (g)(1)(iii) of this section. The permitting authority shall promptly notify the source in writing of its determination, and place a copy of such notice in the public docket. The permit shield under § 71.6(n) may extend to minor permit revisions involving monitoring and recordkeeping changes only after any required further verification testing of the change has been completed.]

(3) *Public notification.*

(i) Immediately upon filing an application for a minor permit revision, the source shall provide notice to the public of the requested minor permit revision by:

(A) Publication of a notice in a newspaper of general circulation in the area where the source is located or in a State publication designed to give the general public notice; and

(B) Sending a letter to persons on a mailing list developed by the permitting authority, including those who previously participated in any public comment process provided for the source's permit and those who request to be placed on a list to receive notification of permit issuance, revision, reopening, or renewal requests.

(ii) In addition to the elements required under § 71.11(d)(4), the public notice shall describe the requested change and state that if no germane and non-frivolous objection to the requested change is received by the permitting authority within 21 days of publication of the notice, the source may implement the change without the permitting authority providing further opportunity for public participation. For purposes of this paragraph (g)(3)(ii), a germane objection is one that objects to the use of minor permit revision procedures for the requested change on the grounds that the source has failed to comply with the procedural and notification requirements of paragraphs (g)(3) and (4) of this section or that the requested change is ineligible for the use of minor permit revision procedures under paragraph (g)(1)(i) of this section. For purposes of this paragraph (g)(3)(ii), a non-frivolous objection must specify the basis for its objection and present factual or other relevant information in support of its objection.

(iii) The permitting authority shall place a copy of the minor permit revision request in a public docket. [OPTION: ADD A NEW SENTENCE: The permitting authority shall also place in the docket any complete demonstration required by § 71.7(g)(1)(i)(B), a summary of the demonstration, the permitting authority's analysis of the demonstration, and an affirmative statement of the demonstration's adequacy.]

(4) *EPA and affected State notification.*

(i) In the case of a program delegated pursuant to § 71.10, immediately upon filing an application for a minor permit revision, the source shall notify the Administrator of the requested permit revision in the same manner and subject to the same conditions required of permitting authorities under § 71.10(d). Such notification shall relieve the permitting authority of the requirement to provide notice to the Administrator of the requested minor permit revision under § 71.10(d), but shall not relieve the permitting authority of the requirement to promptly send to the Administrator any notice under § 71.8(b).

(ii) In all cases, immediately upon filing an application for a minor permit revision, the source shall notify affected States of the requested permit revision in the same manner and subject to the same conditions required of the permitting authority under § 71.8(a). Such notification shall relieve the permitting authority of the requirement to provide notice to affected States of the requested minor permit revision under § 71.8(a), but shall not relieve the permitting authority of the requirement to send any affected State any notice under § 71.8(b).

(5) *Timetable for issuance.* Upon receipt of an application for a minor permit revision, the permitting authority shall provide at least 21 days for public comment on the requested change, and shall keep a record of the commenters and the issues raised during the public comment period. Such records shall be made available to the public. The minor permit revision shall occur according to the following procedures:

(i) If the permitting authority receives no public objection to the requested change within 21 days of publication of the public notice, the source may implement the requested change on the 22nd day after publication of the public notice, provided that:

(A) The permitting authority has neither denied the minor permit revision nor determined that the requested revision does not meet the minor permit revision criteria and should be reviewed under significant permit revision procedures; and

(B) In the case of a program delegated pursuant to § 71.10, the Administrator has not objected to the proposed minor permit revision.

(ii) If the permitting authority receives a public objection to the requested change within 21 days after publication of the public notice, the permitting authority must determine within 28 days of publication of the public notice whether the objection is germane and non-frivolous, and proceed according to the following procedures:

(A) If the permitting authority within 28 days of public notification finds the public objection to be either frivolous or not germane, the permitting authority may respond to the public objection in the course of processing the minor permit revision request as a minor permit revision, and the source may implement the requested change on the 29th day after publication of the public notice or upon notification from the permitting authority that the permitting authority has determined the public objection to be frivolous or not germane, whichever is first, provided that:

(*1*) The permitting authority has neither denied the minor permit revision application nor determined that the request fails to meet the minor permit revision criteria and should be reviewed under significant permit revision procedures; and

(*2*) In the case of a program delegated pursuant to § 71.10, the Administrator has not objected to the proposed minor permit revision.

(B) If the permitting authority fails to determine within 28 days after publication of the public notice of the request for a minor permit revision whether a public objection submitted within 21 days of such notice is germane and nonfrivolous, the source may implement the requested change on the 29th day after publication of the public notice, provided that:

(*1*) The permitting authority has neither denied the minor permit revision application nor determined that the request fails to meet the minor permit revision criteria and should be reviewed under significant permit revision procedures; and

(*2*) In the case of a program delegated pursuant to § 71.10, the Administrator has not objected to the proposed minor permit revision.

(C) If the permitting authority finds the public objection to be germane and nonfrivolous, the permitting authority shall not issue a final minor permit revision for the change, and shall either deny the minor permit revision application or determine that the requested change does not meet the minor permit revision criteria and should be reviewed under significant permit revision procedures. If the permitting authority continues to process the requested change under

significant permit revision procedures, public notice of the proposed change must be provided in the manner required for significant permit revisions under § 71.11. Such notice shall provide at least 30 days for public comment on the requested change, shall identify the time and place of any hearing that may be held, and shall include a statement of procedures to request a hearing if a hearing has not already been scheduled. For purposes of this paragraph, such a hearing may be held as soon as 14 days after publication of a notice that the requested change is being processed as a significant permit revision. The source shall not implement the requested change unless and until the permitting authority approves it as a significant permit revision.

(iii) Any person who filed a public objection pursuant to this paragraph which the permitting authority within 28 days of public notification does not determine to be germane and nonfrivolous may bring suit in Federal court to compel action by the permitting authority and, in accordance with applicable standards for obtaining such relief under Federal law, seek an injunction in Federal court prohibiting the source from implementing the requested change.

(iv) In the case of a program delegated pursuant to § 71.10, where the minor permit revision has not been denied or required to be reviewed under significant permit revision procedures, the permitting authority may issue a final minor permit revision after EPA's 45-day review period has elapsed provided the Administrator has not objected to the requested change, or after EPA has notified the permitting authority after the close of the public comment period that EPA will not object to issuance of the minor permit revision, whichever is first, provided that the final minor permit revision does not differ from the draft permit except to the extent any changes to the draft permit qualify for administrative permit amendment procedures under paragraph (e) of this section.

(v) Within 60 days after the permitting authority's receipt of an application for a minor permit revision, or 15 days after the expiration of EPA's 45-day review period (in the case of a program delegated pursuant to § 71.10), whichever is later, the permitting authority shall:

(A) Issue the minor permit revision as proposed;

(B) Deny the minor permit revision application;

(C) Determine that the requested revision does not meet the minor permit revision criteria and should be reviewed under significant permit revision procedures; or

(D) Revise the draft minor permit revision and, in the case of a program delegated pursuant to § 71.10, if such revision includes any changes that do not qualify for processing as administrative permit amendments under paragraph (e) of this section, transmit to the Administrator the new proposed permit revision as required by § 71.10(d).

(vi) Any person who objected to a minor permit revision request during the public comment period shall be notified by the permitting authority upon final approval of the request. The permitting authority shall also place a copy of its final approval decision in the public docket in which it places minor permit revision requests when received or provide a substantially equivalent means of public access to its final decision.

(6) *Reopening of the public comment period.* If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the permitting authority may reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice shall define the scope of the reopening.

(7) *Issuance and effective date of permit.*

(i) After the close of the public comment period on a draft permit, the permitting authority shall issue a final permit decision. The permitting authority shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit.

(ii) A final permit decision shall become effective immediately upon issuance of the decision unless a later effective date is specified in the decision.

(8) *Source's ability to make change.* The source may make the change proposed in its minor permit revision application in accordance with paragraph (g)(5) of this section. After the source makes the change allowed by the preceding sentence, and until the permitting authority takes any of the actions specified in paragraphs (g)(5)(v)(A) through (D) of this section, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to revise. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to revise may be enforced against it.

(9) *Source liability.* If, after a source makes the requested change but prior to a permitting authority's final action to approve the change and revise the permit, the Administrator objects to the proposed minor permit revision (in the case of a program delegated pursuant to § 71.10), or the permitting authority either denies the minor permit revision or determines that the requested revision does not meet the minor permit revision criteria and should be reviewed under significant permit revision procedures, the source shall be liable for having operated in violation of its existing permit from the time at which it implemented the requested change. Notwithstanding the preceding sentence, the permitting authority may issue a permit revision that varies from the source's application without rendering the source liable for violating its existing permit if the permitting authority's revisions are not necessary to make the change eligible for minor permit revision procedures and do not change the applicant's proposed determination of which requirements of the Act apply to the source as a result of the requested change and if the source demonstrates to the satisfaction of the permitting authority its compliance with the applicable requirement to which it is subject as a result of the change and the source's proposed permit revision. However, the source would remain liable for any violations of the requirements of the Act applicable as a result of the change and the source's proposed permit revision. [OPTION: ADD NEW SENTENCE: If, after the permitting authority's final action to revise the permit, any verification testing of the new operating level or revised monitoring approach as required by paragraph (g)(2)(vi) of this section demonstrates that the new operating level or revised monitoring approach fails to demonstrate compliance, the source then shall comply with the monitoring and recordkeeping permit terms and conditions that applied to the source before the minor permit revision, the minor permit revision shall be null and void and cease to have effect, and the source shall be liable for operating in violation of its permit from the time it implemented the change.]

(10) *Permit shield.* The permit shield under § 71.6(n) may extend to minor permit revisions, provided that the permitting authority has taken final action to issue the minor permit revision as a permit revision.

(h) *Significant permit revision procedures.*

(1) *Criteria.* Significant permit revision procedures shall be used for applications requesting permit revisions that do not qualify as administrative amendments, de minimis permit revisions, or minor permit revisions. At a minimum, every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered a significant change. [OPTION: DELETE PRECEDING SENTENCE] Nothing herein shall be construed to preclude the permittee from making changes consistent with this part that would render existing permit compliance terms and conditions irrelevant.

(2) Significant permit revisions shall meet all requirements, including those for applications, public participation, review by affected States, and in the case of a program delegated pursuant to § 71.10, review by EPA, as they apply to permit issuance and permit renewal. The permitting authority shall implement this review process to complete review on the majority of significant permit revisions within 9 months after receipt of a complete application.

[OPTION: ADD NEW PARAGRAPH (h)(3):

(3) Changes involving new or alternative monitoring methods that have not been approved pursuant to major or minor NSR under criteria equivalent to those contained in this paragraph (h)(3) shall be processed as significant permit revisions. Permitting authorities may approve such changes only where the new or alternative monitoring or recordkeeping method is demonstrated to have a known relationship and ability to determine compliance with the applicable standard. Such demonstration shall include an analysis conducted in accordance with 40 CFR 64.4(b)(5) and 64.4(e) utilizing appendices A, B, C, and D of 40 CFR part 64. The permitting authority shall include the demonstration and written evidence of the permitting authority's evaluation of the demonstration in the proposed permit it sends to EPA (in the case of a program delegated pursuant to § 71.10) for review as required by § 71.10.]

(i) *Reopening for cause.*

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(i) Additional applicable requirements under the Act become applicable to a major part 70 or part 71 source with a remaining permit term of 3 or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to § 71.6 or paragraph (c)(3) of this section.

(ii) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(iii) The permitting authority or EPA (in the case of a program delegated pursuant to § 71.10) determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(iv) The permitting authority or EPA (in the case of a program delegated pursuant to § 71.10) determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists, and shall be made as expeditiously as practicable. Notwithstanding the preceding sentence, proceedings to reopen for standards under section 112 of the Act may use the following procedures:

(i) Where the standard under section 112 of the Act is published after permit issuance, administrative amendment procedures under paragraph (e)(5) of this section may be used.

(ii) Where the standard under section 112 of the Act is published before permit issuance and a compliance statement required under the standard under section 112 of the Act is due after permit issuance, the source shall apply for a minor permit revision by the compliance statement deadline to incorporate requirements necessary to assure compliance with the standard, unless the source is exempted from this requirement under paragraph (i)(2)(iii) of this section or under the rulemaking promulgating the standard under section 112 of the Act. If the source is utilizing alternatives requiring case-by-case approval, such as emissions averaging, or if required under the rulemaking promulgating the standard under section 112 of the Act, the source shall apply for a significant permit revision by the compliance statement deadline, in lieu of the requirement in the preceding sentence to apply for a minor permit revision.

(iii) Sources subject to the following standards under section 112 of the Act published as of *[DATE OF PUBLICATION OF FINAL RULE]* are exempt from the requirements in paragraph (i)(2)(ii) of this section to apply for a minor permit revision: NESHAP for Industrial Process Cooling Towers, at 40 CFR part 63, subpart Q.

(3) Reopenings under paragraph (i)(1) of this section shall not be initiated before a notice of such intent is provided to the part 70 or part 71 source by the permitting authority at least 30 days in advance of the date that the permit is to be reopened, except that the permitting authority may provide a shorter time period in the case of an emergency. Where reopening for standards under section 112 of the Act requiring initial notification by the source, and where the source has provided such notification to the permitting authority by the applicable date, the permitting authority need not provide the notice required by the preceding sentence.

(j) *Reopenings for cause by EPA for delegated programs.*

(1) In the case of a program delegated pursuant to § 71.10 , if the Administrator finds that cause exists to terminate, revise, or revoke and reissue a permit pursuant to paragraph (i) of this section, the Administrator will notify the permitting authority and the permittee of such finding in writing.

(2) The permitting authority shall, within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, revision, or revocation and reissuance, as appropriate. The Administrator may extend this 90-day period for an additional 90 days if he or she finds that a new or revised permit application is necessary or that the permitting authority must require the permittee to submit additional information.

(3) The Administrator will review the proposed determination from the permitting authority within 90 days of receipt.

(4) The permitting authority shall have 90 days from receipt of an EPA objection to resolve any objection that

EPA makes and to terminate, revise, or revoke and reissue the permit in accordance with the Administrator's objection.

(5) If the permitting authority fails to submit a proposed determination pursuant to paragraph (j)(2) of this section or fails to resolve any objection pursuant to paragraph (j)(4) of this section, the Administrator will terminate, revise, or revoke and reissue the permit after taking the following actions:

(i) Providing at least 30 days notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in paragraphs (j)(1) through (j)(4) of this section.

(ii) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

§ 71.8 Affected State Review.

(a) *Notice of draft permits.* When a part 71 operating permits program becomes effective in a State or Tribal area, the permitting authority shall provide notice of each draft permit to any affected State, as defined in § 71.2, on or before the time that the permitting authority provides this notice to the public pursuant to §§ 71.7(e)(4), 71.7(h), 71.7(i) or 71.11(d) and shall provide any affected State a copy of the addendum for a de minimis permit revision within 7 days of the date on which the addendum takes effect.

(b) *Notice of refusal to accept recommendations.* Prior to issuance of the final permit, the permitting authority shall notify any affected State (and the Administrator, in the case of a program delegated pursuant to § 71.10) in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the permitting authority's reasons for not accepting any such recommendation. The permitting authority is not required to accept recommendations that are not based on applicable requirements or the requirements of this part.

(c) *Waiver of notice requirements.* The Administrator may waive the requirements of paragraph (a) of this section for any category of sources (including any class, type, or size within such category) other than major sources by regulation for a category of sources nationwide.

§ 71.9 Permit Fees.

(a) *Fee requirement.* The owners or operators of part 71 sources shall pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs, in accordance with the procedures described in this section.

(b) *Permit program costs.* These costs include, but are not limited to, the costs of the following activities as they relate to a part 71 program:

(1) Preparing generally applicable guidance regarding the permit program or its implementation or enforcement;

(2) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

(3) Processing permit reopenings;

(4) General administrative costs of the permit program, including transition planning, interagency coordination, contract management, training, informational services and outreach activities, assessing and collecting fees, the tracking of permit applications, compliance certifications, and related data entry;

(5) Implementing and enforcing the terms of any part 71 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(6) Emissions and ambient monitoring, modeling, analyses, demonstrations, preparation of inventories, and tracking emissions, provided these activities are needed in order to issue and implement part 71 permits; and

(7) Providing direct and indirect support to small business stationary sources in determining applicable requirements and in receiving permits under this part (to the extent that these services are not provided by a State Small Business Stationary Source Technical and Environmental Compliance Assistance Program).

(c) *Establishment of fee schedule.*

(1) For part 71 programs that are administered by EPA, each part 71 source shall pay an annual fee in the amount of $45 dollars per ton (as adjusted pursuant to the criteria set forth in paragraph (n)(1) of this section) times the total tons of the actual emissions of each regulated pollutant (for fee calculation) emitted from the source, including fugitive emissions.

(2) For part 71 programs that are delegated pursuant to § 71.10, the annual fee for each part 71 source shall be the amount specified in paragraph (c)(1) of this section plus a surcharge of $3 per ton per year. The surcharge will be used to defray the Agency's cost of administering program delegation.

(3) For part 71 programs that are administered by EPA with contractor assistance, the per ton fee will vary depending on the extent of contractor involvement and the cost to EPA of contractor assistance. The EPA shall establish a per ton fee that is based on the contractor costs for the specific part 71 program that is being administered, using the following formula:

Cost per ton=(E×$45)+[(1–$E$)×$$C$]+$3 surcharge

Where E represents EPA's proportion of total effort (expressed as a percentage of total effort) needed to administer the part 71 program, 1–E represents the contractor's effort, and C represents the contractor assistance cost on a per ton basis. The $3 surcharge covers EPA's cost for administering contractor permit program activities. C shall be computed by using the following formula:

C=[B+T+N] divided by 12,300,000

Where B represents the base cost (contractor costs), where T represents travel costs, and where N represents non-personnel data management and tracking costs.

(4) For programs that are delegated in part and that also use contractor assistance, the fee shall be computed using the formula in paragraph (c)(3) of this section, provided that E represents the proportion of total effort (expressed as a percentage) expended by EPA and the delegate agency.

(5) The following emissions shall be excluded from the calculation of fees under paragraph (c)(1) of this section:

(i) The amount of a part 71 source's actual emissions of each regulated pollutant (for fee calculation) that the source emits in excess of four thousand (4,000) tpy;

(ii) A part 71 source's actual emissions of any regulated pollutant (for fee calculation) already included in the fee calculation; and

(iii) The insignificant quantities of actual emissions not required to be listed or calculated in a permit application pursuant to § 71.5(g).

(6) ''Actual emissions'' means the actual rate of emissions in tpy of any regulated pollutant (for fee calculation) emitted from a part 71 source over the preceding calendar year. Actual emissions shall be calculated using each emissions unit's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year.

(7) Notwithstanding the above, if the Administrator determines that the fee structures provided in paragraphs (c)(1) through (c)(4) of this section do not reflect the costs of administering a part 71 program, then the Administrator shall by rule set a fee which adequately reflects permit program costs for that program.

(d) *Prohibition on fees with respect to emissions from affected units.* Notwithstanding any other provision of this section, during the years 1995 through 1999 inclusive, no fee for purposes of title V of the Act shall be required to be paid with respect to emissions from any affected unit under section 404 of the Act.

(e) *Submission of initial fee calculation work sheets and fees.*

(1) Each part 71 source shall complete and submit an initial fee calculation work sheet as provided in paragraphs (e)(2), (f), and (g) of this section and shall complete and submit fee calculation work sheets thereafter as provided in paragraph (h) of this section. Calculations of actual or estimated emissions and calculation of the fees owed by a source shall be computed by the source on fee calculation work sheets provided by EPA. Fee payment in an amount that equals one-third of the annual fees owed must accompany each initial fee calculation work sheet. The balance of the annual fees owed must be paid within four months of the due date of the initial fee or within one year of the effective date of the part 71 program, whichever is earlier.

(2) The fee calculation work sheet shall require the source to submit a report of its actual emissions for the preceding calendar year and to compute fees owed based on those emissions. For sources that have been issued part 70 or part 71 permits, actual emissions shall be computed using compliance methods required by the most recent permit. If actual emissions cannot be determined using the compliance methods in the permit, the actual emissions should be determined using federally recognized procedures. If a source commenced operation during the preceding calendar year, the source shall estimate its actual emissions for the current calendar year. In such a case, fees for the source shall be based on the total emissions estimated.

(f) *Deadlines for submission.*

(1) When EPA withdraws approval of a part 70 program and implements a part 71 program, part 71 sources shall submit initial fee calculation work sheets and fees in accordance with the following schedule:

(i) Sources having SIC codes between 0100 and 2499 inclusive shall complete and submit fee calculation work sheets and fees within 4 months of the effective date of the part 71 program;

(ii) Sources having SIC codes between 2500 and 2999 inclusive shall complete and submit fee calculation work sheets and fees within 5 months of the effective date of the part 71 program;

(iii) Sources having SIC codes between 3000 and 3999 inclusive shall complete and submit fee calculation work sheets and fees within 6 months of the effective date of the part 71 program;

(iv) Sources having SIC codes higher than 3999 shall complete and submit fee calculation work sheets and fees within 7 months of the effective date of the part 71 program.

(2) Sources that are required under either paragraph (f)(1) or (g) of this section to submit fee calculation work sheets and fees between January 1 and March 31 may estimate their emissions for the preceding calendar year in lieu of submitting actual emissions data. If the source's initial fee calculation work sheet was based on estimated emissions for the source's preceding calendar year, then the source shall reconcile the fees owed when it submits its annual emissions report, as provided in paragraph (h)(3) of this section.

(3) When EPA implements a part 71 program that does not replace an approved part 70 program, part 71 sources shall submit initial fee calculation work sheets and initial fees when submitting their permit applications in accordance with the requirements of § 71.5(b)(1).

(4) Notwithstanding the above, sources that become subject to the part 71 program after the program's effective date shall submit an initial fee calculation work sheet and initial fees when submitting their permit applications in accordance with the requirements of § 71.5(b)(1) .

(g) *Fees for sources that are issued part 71 permits following an EPA objection pursuant to § 71.4(e).* Fees for such sources shall be determined as provided in paragraph (c) of this section. However, initial fee calculation work sheets for such sources and full payment of annual fees shall be due three months after the date on which the source's part 71 permit is issued.

(h) *Annual emissions reports.*

(1) *Deadlines for submission.* Each part 71 source shall submit an annual report of its actual emissions for the preceding calendar year, a fee calculation work sheet (based on the report), and full payment of the annual fee each year on the anniversary date of its initial fee calculation work sheet, except that sources that were required to submit initial fee calculation work sheets between January 1 and March 31 inclusive shall submit subsequent annual emissions reports and fee calculation work sheets on April 1.

(2) For sources that have been issued part 70 or part 71 permits, actual emissions shall be computed using methods required by the most current permit for determining compliance.

(3) If the source's initial fee calculation work sheet was based on estimated emissions for the source's current or preceding calendar year, then the source shall reconcile the fees owed when it submits its annual emissions report. The source shall compare the estimated emissions from the initial work sheet and the actual emissions from the report and shall enter such information on the fee calculation work sheet that accompanies the annual report. The source shall recompute the initial fee accordingly and shall remit any underpayment with the report and work sheet. The EPA shall credit any overpayment to the source's account.

(i) *Recordkeeping requirements.* Part 71 sources will retain, in accordance with the provisions of § 71.6(e), all work sheets and other materials used to determine fee payments. Records shall be retained for 5 years following the year in which the emissions data is submitted.

(j) *Fee assessment errors.*

(1) If EPA determines than a source has completed the fee calculation work sheet incorrectly, the permitting authority shall bill the applicant for the corrected fee or credit overpayments to the source's account.

(2) Each source notified by the permitting authority of additional amounts due shall remit full payment within 30 days of receipt of an invoice from the permitting authority.

(3) An owner or operator of a part 71 source who thinks that the assessed fee is in error shall provide a written explanation of the alleged error to the permitting authority along with the assessed fee. The permitting authority shall, within 90 days of receipt of the correspondence, review the data to determine whether the assessed fee was in error. If an error was made, the overpayment shall be credited to the account of the part 71 source.

(k) *Remittance procedure.*

(1) Each remittance under this section shall be in United States currency and shall be paid by money order, bank draft, certified check, corporate check, or electronic funds transfer payable to the order of the U.S. Environmental Protection Agency.

(2) Each remittance shall be sent to the Environmental Protection Agency to the address designated on the fee calculation work sheet or the invoice.

(l) *Penalty and interest assessment.*

(1) The permitting authority shall assess interest on payments which are received later than the date due. The interest rate shall be the sum of the Federal short-term rate determined by the Secretary of the Treasury in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986, plus 3 percentage points.

(2) The permitting authority shall assess a penalty charge of 50 percent of the fee amount if the fee is not paid within 30 days of the payment due date.

(3) Part 71 sources shall be assessed a penalty of 50 percent on underpayments computed under paragraph (h)(3) of this section when the underpayment is in excess of 20 percent of the initial estimated fee amount and interest as computed under paragraph (l)(1) of this section on that portion of the underpayment in excess of 20 percent of the initial fee amount.

(m) *Failure to remit fees.* The permitting authority shall not issue a final permit or permit revision until all fees, interest and penalties assessed against a source under this section are paid. The initial application of a source shall not be found complete unless the source has paid all fees owed.

(n) *Adjustments of fee schedules.*

(1) The fee schedules provided in paragraphs (c)(1) through (c)(4) of this section shall remain in effect until December 31, 1996. Thereafter, the fee schedules shall be changed annually by the percentage, if any, of any annual increase in the Consumer Price Index.

(2) Part 71 permit program costs and fees will be reviewed by the Administrator at least every two years, and changes will be made to the fee schedule as necessary to reflect permit program costs.

(3) When changes to a fee schedule are made based on periodic reviews by the Administrator, the changes will be published in the **Federal Register** as a rule.

(o) *Use of revenue.* All fees, penalties, and interest collected under this part shall be deposited in a special fund in the U.S. Treasury, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the activities required by this part.

§ 71.10 Delegation of part 71 program.

(a) *Delegation of part 71 program*. The Administrator may delegate, in whole or in part, with or without signature authority, the authority to administer a part 71 operating permits program to a State, eligible Tribe, local, or other non-State agency in accordance with the provisions of this section. In order to be delegated authority to administer a part 71 program, the delegate agency must submit a legal opinion from the Attorney General from the State, or the attorney for the State, local, interstate, or eligible Tribal agency that has independent legal counsel, stating that the laws of the State, locality, interstate compact or Indian Tribe provide adequate authority to carry out all aspects of the delegated program. A Delegation of Authority Agreement (Agreement) shall set forth the terms and conditions of the delegation, shall specify the provisions that the delegate agency shall be authorized to implement, and shall be entered into by the Administrator and the delegate agency. The Agreement shall become effective upon the date that both the Administrator and the delegate agency have signed the Agreement. Once delegation becomes effective, the delegate agency will be responsible, to the extent specified in the Agreement, for administering the part 71 program for the area subject to the Agreement.

(b) *Publication of Delegation of Authority Agreement.* The Agreement shall be published in the **Federal Register**.

(c) *Revision or revocation of Delegation of Authority Agreement.* An Agreement may be modified, amended, or revoked, in part or in whole, by the Administrator after consultation with the delegate agency.

(d) *Transmission of information to the Administrator.*

(1) When a part 71 program has been delegated in accordance with the provisions of this section, except as provided by § 71.7(a)(1)(v), the delegate agency shall provide to the Administrator a copy of each application for a permit, permit renewal, or permit revision (including any compliance plan, or any portion the Administrator determines to be necessary to review the application and permit effectively), each proposed permit, and each final part 71 permit.

(2) The applicant may be required by the delegate agency to provide a copy of the permit application (including the compliance plan) directly to the Administrator.

(3) Upon agreement with the Administrator, the delegate agency may submit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(e) *Retention of records.* The records for each draft, proposed, and final permit, and application for permit renewal or revision shall be kept for a period of 5 years by the delegate agency. The delegate agency shall also submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the delegate agency is implementing, administering, and enforcing the delegated part 71 program in compliance with the requirements of the Act and of this part.

(f) *Prohibition of default issuance.*

(1) For the purposes of Federal law and title V of the Act, when a part 71 program has been delegated in accordance with the provisions of this section, no part 71 permit (including a permit renewal or revision) will be issued until affected States have had an opportunity to review the draft permit as required pursuant to § 71.8(a) and EPA has had an opportunity to review the proposed permit.

(2) To receive delegation of signature authority, the legal opinion submitted by the delegate agency pursuant to paragraph (a) of this section shall certify that no applicable provision of State, local or Tribal law requires that a part 71 permit or renewal be issued after a certain time if the delegate agency has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit), unless EPA has waived such review for EPA and affected States. Notwithstanding this prohibition on default permit issuance, permits may be revised on a default basis pursuant to the procedures in § 71.7 (e) and (f).

(g) *EPA objection.*

(1) No permit for which an application must be transmitted to the Administrator under paragraph (d)(1) of this section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information. When a part 71 program has been delegated in accordance with the provisions of this section, failure of the delegate agency to do any of the following shall constitute grounds for an objection by the Administrator:

(i) Comply with paragraph (d) of this section;

(ii) Submit any information necessary to review adequately the proposed permit;

(iii) Process the permit under the procedures required by §§ 71.7 and 71.11;

(iv) Propose or issue a part 71 permit that complies with applicable requirements of the Act or the requirements under this part, except as provided in § 71.7(a)(6); or

(v) Comply with the requirements of § 71.8(a).

(2) Any EPA objection under paragraph (g)(1) of this section shall include a statement of the Administrator's reason(s) for objection and a description of the terms and conditions that the permit must include to respond to the objection. The Administrator will provide the permit applicant a copy of the objection.

(3) If the delegate agency fails, within 90 days after the date of an objection under paragraph (g)(1) of this section, to revise and submit to the Administrator the proposed permit in response to the objection, the proposed permit shall not issue and thereafter the Administrator shall issue a part 71 permit to the applicant in accordance with the requirements of this part.

(h) *Public petitions.* In the case of a delegated program, any interested person may petition the Administrator to reopen a permit for cause as provided in § 71.11(n).

(i) *Appeal of permits.* When a part 71 program has been delegated with signature authority in accordance with the provisions of this section, any permit applicant and any person or affected State that submitted recommendations or comments on the draft permit, or that participated in the public hearing process may petition the Environmental Appeals Board in accordance with § 71.11(l)(1).

(j) *Non-delegable conditions.*

(1) The Administrator's authority to object to the issuance of a part 71 permit cannot be delegated to an agency not within EPA.

(2) The Administrator's authority to act upon petitions submitted pursuant to paragraph (h) of this section cannot be delegated to an agency not within EPA.

§ 71.11 Administrative record, public participation, and administrative review.

The provisions of paragraphs (a) through (j) of this section shall apply to initial permit issuance, permit renewals, permit reopenings, and significant permit revisions but not to permit revisions qualifying for minor permit revision procedures, de minimis permit revision procedures, or administrative amendments. The provisions of paragraphs (k), (l), and (m) of this section shall apply to all permit proceedings.

(a) *Draft permits.*

(1) The permitting authority shall promptly provide notice to the applicant of whether the application is complete pursuant to § 71.7(a)(3).

(2) Once an application for an initial permit, permit revision, or permit renewal is complete, the permitting authority shall decide whether to prepare a draft permit or to deny the application.

(3) If the permitting authority initially decides to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit and follows the same procedures as any draft permit prepared under this section. If the permitting authority's final decision is that the initial decision to deny the permit application was incorrect, it shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (a)(4) of this section.

(4) If the permitting authority decides to prepare a draft permit, it shall prepare a draft permit that contains the permit conditions required under § 71.6.

(5) All draft permits prepared under this section shall be publicly noticed and made available for public comment.

(b) *Statement of basis.* The permitting authority shall prepare a statement of basis for every draft permit subject to this section. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the initial decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

(c) *Administrative record for draft permits.*

(1) The provisions of a draft permit shall be based on the administrative record defined in this section.

(2) For preparing a draft permit, the administrative record shall consist of:

(i) The application and any supporting data furnished by the applicant;

(ii) The draft permit or notice of intent to deny the application or to terminate the permit;

(iii) The statement of basis;

(iv) All documents cited in the statement of basis; and

(v) Other documents contained in the supporting file for the draft permit.

(3) Material readily available at the permitting authority or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this section need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis.

(d) *Public notice of permit actions and public comment period.*

(1) *Scope.*

(i) The permitting authority shall give public notice that the following actions have occurred:

(A) A permit application has been initially denied under paragraph (a) of this section;

(B) A draft permit has been prepared under paragraph (a) of this section;

(C) A hearing has been scheduled under paragraph (f) of this section;

(D) A public comment period has been reopened under paragraph (h) of this section;

(E) An appeal has been granted under paragraph (l)(3) of this section.

(ii) No public notice is required in the case of administrative permit revisions, or when a request for permit revision, revocation and reissuance, or termination has been denied under paragraph (a)(2) of this section. Written notice of that denial shall be given to the requester and to the permittee.

(iii) Public notices may describe more than one permit or permit action.

(2) *Timing.*

(i) Public notice of the preparation of a draft permit, (including a notice of intent to deny a permit application), shall allow at least 30 days for public comment.

(ii) Except as provided under § 71.7(g)(5)(ii)(C), public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(iii) The permitting authority shall provide such notice and opportunity for participation to affected States on or before the time that the permitting authority provides this notice to the public.

(3) *Methods.* Public notice of activities described in paragraph (d)(1)(i) of this section shall be given by the following methods:

(i) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under paragraph (d) of this section may waive his or her rights to receive notice for any permit):

(A) The applicant;

(B) Affected States;

(C) Air pollution control agencies of affected States, Tribal and local air pollution control agencies which have jurisdiction over the area in which the source is located, the chief executives of the city and county where the source is located, any comprehensive regional land use planning agency and any State

or Federal Land Manager whose lands may be affected by emissions from the source;

(D) Any unit of local government including the local emergency planning committee, having jurisdiction over the area where the source is located and to each State agency having any authority under State law with respect to the operation of such source;

(E) Persons on a mailing list developed by:

(*1*) Including those who request in writing to be on the list;

(*2*) Soliciting persons for ''area lists'' from participants in past permit proceedings in that area; and

(*3*) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and, where deemed appropriate by the permitting authority, in such publications as regional and State funded newsletters, environmental bulletins, or State law journals. The permitting authority may update the mailing list from time to time by requesting written indication of continued interest from those listed. The permitting authority may delete from the list the name of any person who fails to respond to such a request.

(ii) By publication of a notice in a daily or weekly newspaper of general circulation within the area affected by the source.

(iii) By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) *Contents.*

(i) *All public notices.* All public notices issued under this subpart shall contain the following minimum information:

(A) The name and address of the permitting authority processing the permit;

(B) The name and address of the permittee or permit applicant and, if different, of the facility regulated by the permit, except in the case of draft general permits;

(C) The activity or activities involved in the permit action;

(D) The emissions change involved in any permit revision;

(E) The name, address, and telephone number of a person whom interested persons may contact for instructions on how to obtain additional information, such as a copy of the draft permit, the statement of basis, the application, relevant supporting materials, and other materials available to the permitting authority that are relevant to the permitting decision.

(F) A brief description of the comment procedures required by paragraph (e) of this section, a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

(G) The location of the administrative record, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant are available as part of the administrative record; and

(H) Any additional information considered necessary or proper.

(ii) *Public notices for hearings.* Public notice of a hearing may be combined with other notices required under paragraph (d)(1) of this section. Any public notice of a hearing under paragraph (f) of this section shall contain the following information:

(A) The information described in paragraph (d)(4)(i) of this section;

(B) Reference to the date of previous public notices relating to the permit;

(C) The date, time, and place of the hearing; and

(D) A brief description of the nature and purpose of the hearing, including the applicable rules and the comment procedures.

(5) All persons identified in paragraphs (d)(3)(i) (A), (B), (C), (D), and (E) of this section shall be mailed a copy of the public hearing notice described in paragraph (d)(4)(ii) of this section.

(e) *Public comments and requests for public hearings.* During the public comment period provided under paragraph (a) of this section, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised at the hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph (j) of this section. The permitting authority will keep a record of the commenters and of the issues raised during the public participation process, and such records shall be available to the public.

(f) *Public hearings.*

(1) The permitting authority shall hold a hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit.

(2) The permitting authority may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(3) Public notice of the hearing shall be given as specified in paragraph (d) of this section.

(4) Whenever a public hearing is held, the permitting authority shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(5) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under paragraph (d) of this section shall be automatically extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(6) A tape recording or written transcript of the hearing shall be made available to the public.

(g) *Obligation to raise issues and provide information during the public comment period.* All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the permitting authority's initial decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably ascertainable arguments supporting their position by the close of the public comment period (including any public hearing). Any supporting materials that are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. In the case of a program delegated pursuant to § 71.10, if requested by the Administrator, the permitting authority shall make supporting materials not already included in the administrative record available to EPA. The permitting authority may direct commenters to provide such materials directly to EPA. A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Additional time shall be granted to the extent that a commenter who requests additional time demonstrates the need for such time.

(h) *Reopening of the public comment period.*

(1) The permitting authority may order the public comment period reopened if the procedures of paragraph (h) of this section could expedite the decision making process. When the public comment period is reopened under paragraph (h) of this section, all

persons, including applicants, who believe any condition of a draft permit is inappropriate or that the permitting authority's initial decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date not less than 30 days after public notice under paragraph (h)(2) of this section, set by the permitting authority. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than 20 days after the date set for filing of the material, set by the permitting authority.

(2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of § 71.11 (h)(1) through (h)(4) shall apply.

(3) On its own motion or on the request of any person, the permitting authority may direct that the requirements of paragraph (h)(1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (h)(1) of this section will substantially expedite the decision making process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 30 days may be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they may be granted to the extent the permitting authority finds it necessary.

(5) If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the permitting authority may take one or more of the following actions:

(i) Prepare a new draft permit, appropriately modified;

(ii) Prepare a revised statement of basis, and reopen the comment period; or

(iii) Reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted.

(6) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused the reopening. The public notice shall define the scope of the reopening.

(7) Public notice of any of the above actions shall be issued under paragraph (d) of this section.

(i) *Issuance and effective date of permit.*

(1) After the close of the public comment period on a draft permit, the permitting authority shall issue a final permit decision. The permitting authority shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, revise, revoke and reissue, renew, or terminate a permit.

(2) A final permit decision shall become effective immediately upon issuance of the decision unless a later effective date is specified in the decision.

(j) *Response to comments.*

(1) At the time that any final permit decision is issued, the permitting authority shall issue a response to comments. This response shall:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(2) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in paragraph (k) of this section. If new points are raised or new material supplied during the public comment period, the permitting authority may document its response to those matters by adding new materials to the administrative record.

(3) The response to comments shall be available to the public.

(4) The permitting authority will notify in writing any affected State of any refusal to accept recommendations for the permit that the State submitted during the public or affected State review period.

(k) *Administrative record for final permits.*

(1) The permitting authority shall base final permit decisions on the administrative record defined in paragraph (k)(2) of this section.

(2) The administrative record for any final permit shall consist of:

(i) All comments received during any public comment period, including any extension or reopening;

(ii) The tape or transcript of any hearing(s) held;

(iii) Any written material submitted at such a hearing;

(iv) The response to comments and any new materials placed in the record;

(v) Other documents contained in the supporting file for the permit;

(vi) The final permit;

(vii) The application and any supporting data furnished by the applicant;

(viii) The draft permit or notice of intent to deny the application or to terminate the permit;

(ix) The statement of basis for the draft permit;

(x) All documents cited in the statement of basis;

(xi) Other documents contained in the supporting file for the draft permit.

(3) The additional documents required under paragraph (k)(2) of this section should be added to the record as soon as possible after their receipt or publication by the permitting authority. The record shall be complete on the date the final permit is issued.

(4) Material readily available at the permitting authority, or published materials which are generally available and which are included in the administrative record under the standards of paragraph (j) of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or in the response to comments.

(l) *Appeal of permits.*

(1) Within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. Except for revisions qualifying for minor permit revision procedures, de minimis permit revision procedures, or administrative amendments, the 30-day period within which a person may request review under this section begins with the service of notice of the permitting authority's action unless a later date is specified in that notice. For revisions processed pursuant to minor permit revision procedures, the 30-day period within which a person may request review under this section begins on the date after the permitting authority notifies the source and commenters of the final permit action. For revisions processed pursuant to de minimis permit revision procedures, the 30-day period within which a person may request review under this section begins

on the date after the expiration of the permitting authority's period to disapprove the revision or revoke the revision in response to a citizen petition, whichever is applicable. For revisions processed pursuant to administrative amendment procedures, the 30-day period within which a person may request review under this section begins on the date following the expiration of the 60-day period after which the administrative amendment is effective. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues raised were raised during the public comment period (including any public hearing) to the extent required by these regulations unless the petitioner demonstrates that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period, and, when appropriate, a showing that the condition in question is based on:

(i) A finding of fact or conclusion of law which is clearly erroneous; or

(ii) An exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.

(2) The Board may also decide on its initiative to review any condition of any permit issued under this part. The Board must act under paragraph (l) of this section within 30 days of the service date of notice of the permitting authority's action.

(3) Within a reasonable time following the filing of the petition for review, the Board shall issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. Public notice of any grant of review by the Board under paragraph (l) (1) or (2) of this section shall be given as provided in paragraph (d) of this section. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent only to the permit applicant and to the person(s) requesting review.

(4) A petition to the Board under paragraph (l)(1) of this section is, under 42 U.S.C. 307(b), a prerequisite to seeking judicial review of the final agency action.

(5) For purposes of judicial review, final agency action occurs when a final permit is issued or denied by the permitting authority and agency review procedures are exhausted. A final permit decision shall be issued by the permitting authority:

(i) When the Board issues notice to the parties that review has been denied;

(ii) When the Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(6) Neither the filing of a petition for review of any condition of the permit or permit decision nor the granting of an appeal by the Environmental Appeals Board shall stay the effect of any contested permit or permit condition.

(m) *Computation of time.*

(1) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(2) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event, except as otherwise provided.

(3) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(4) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

(n) *Public petitions to the Administrator.*

(1) Any interested person (including the permittee) may petition the Administrator to reopen a permit for cause, and the Administrator may commence a permit reopening on his or her own initiative. However, the Administrator shall not revise, revoke and reissue, or terminate a permit except for the reasons specified in § 71.7(i)(1) or § 71.6(a)(5)(i). All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the Administrator decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for revision, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Administrator may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts. The Board may direct the Administrator to begin revision, revocation and reissuance, or termination proceedings under paragraph (n)(3) of this section. The appeal shall be considered denied if the Board takes no action within 60 days after receiving it. This informal appeal is, under 42 U.S.C. 307, a prerequisite to seeking judicial review of EPA action in denying a request for revision, revocation and reissuance, or termination.

(3) If the Administrator decides the request is justified and that cause exists to revise, revoke and reissue or terminate a permit, he or she shall initiate proceedings to reopen the permit pursuant to § 71.7(i) or § 71.7(j).

§ 71.12 Prohibited acts.

Violations of any applicable requirement; any permit term or condition; any fee or filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or order issued by the permitting authority pursuant to this part are violations of the Act and are subject to full Federal enforcement authorities available under the Act.

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