

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
- II. Proposal Summary
- III. Detailed Discussion of Key Aspects of the Proposed Regulations
 - A. Section 71.2—Definitions
 - B. Section 71.3—Sources Subject to Permitting Requirements
 - C. Section 71.4—Program Implementation
 - D. Section 71.5—Permit Applications
 - E. Section 71.6—Permit Content
 - F. Section 71.7—Permit Review, Issuance, Renewal, Reopenings, and Revisions
 - G. Section 71.8—Affected State Review
 - H. Section 71.9—Permit Fees
 - I. Section 71.10—Delegation of Part 71 Program
 - J. Section 71.11—Administrative Record, Public Participation, and Administrative Review
 - K. Section 71.12—Prohibited Acts
- IV. Administrative Requirements
 - A. Reference Documents

- B. Office of Management and Budget (OMB) Review
- C. Regulatory Flexibility Act Compliance
- D. Paperwork Reduction Act

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