

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. Secondly, 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