

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