

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.