

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that had already received part 70 permits, if any, would continue to operate under those permits, unless EPA had withdrawn part 70 approval due to the inadequacy of the part 70 permits, in which case those sources would be required to obtain part 71 permits.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and enforce part 70 permits issued by a permitting authority under a previously-approved part 70 program after EPA has withdrawn approval of such program until they are replaced by part 71 permits issued by EPA.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