

70 operating permits program reviews. The EPA notes, however, that the part 70 provisions on insignificant activities and emissions levels are the subject of ongoing litigation settlement discussions, and that a possible result of these discussions could be a modification of the part 70 provisions on this issue. To the extent any future proposed revisions to the part 70 insignificant activities and emissions level criteria are more stringent than the provisions proposed for part 71, EPA may have to supplement this proposal to make the two rules consistent.

In this rulemaking, EPA proposes to exempt all information required by proposed § 71.5(f) concerning insignificant activities inclusion in the permit application, while for insignificant emission levels, application information completeness requirements would vary from proposed § 71.5(f). To ensure that all significant information is included in the permit application, the proposed rule includes a provision stating that no activities or emission levels shall be exempt from proposed § 71.5(g) if the information omitted from the application is needed to determine or impose any applicable requirement, to determine whether a source is major, to determine whether a source is subject to the requirement to obtain a part 71 permit, or to calculate the fee amount required under the fee schedule established pursuant to proposed § 71.9. The proposed prohibition against omitting information from the application that is relevant to the determination or imposition of applicable requirements means that an activity (or emissions unit) that has applicable requirements could not be considered as an insignificant activity or to have insignificant emission levels. Applicable requirements in this context include any standard or requirement as defined in proposed § 71.2. The proposed provision that the exemption not interfere with the requirement to obtain a part 71 permit is necessary to insure that all the requirements of the Act are met, because the requirements of title V of the Act are not included in the proposed definition of applicable requirements. An activity or emission level could not be insignificant if it constitutes a major source. An activity or emission level could not be insignificant if omitting the emissions from the application would prevent the aggregate source emissions from exceeding the major source threshold or a threshold that would trigger an applicable requirement, such as a modification under section 112(g). This proposal would further prohibit these

exemptions from being used by applicants when information needed to calculate the fee amount required under the fee schedule would be omitted from the application. Although the fee schedule provided in proposed § 71.9(c)(1) would exclude insignificant emissions from being counted for fee purposes, this provision would be retained for instances where the Administrator promulgates a different fee schedule for a particular state pursuant to proposed § 71.9(c)(7). Under such a fee schedule, information concerning insignificant activities or emissions may be needed to calculate the fee amount.

a. *Insignificant Activities.* To meet the requirements of part 70, States submitted rules incorporating a wide variety of approaches for implementing these provisions. Many State part 70 program submittals included extensive lists of insignificant activities. Some of the listed activities were so broadly defined that it was difficult to determine if they would interfere with the determination or imposition of applicable requirements or affect major source status, seemingly inviting the omission of significant information. Some were so narrowly defined that industry would be invited to propose an endless number of additional listings for inclusion in the rules in future years, creating an administrative burden on the States. In the course of EPA's review of part 70 permit program submittals, it was also clear that there were very few insignificant activities that are common among the States. The EPA proposes to include a short list of broadly-defined insignificant activities that are frequently included in State part 70 program submittals. These activities commonly occur in residential settings, are not subject to applicable requirements (with the possible exception of certain SIP-based requirements for residential heating sources that are not commonly adopted on a nation-wide basis), and normally have small quantities of emissions. Emission units at a source that are on the list of insignificant activities in proposed § 71.5(g)(1) could not be treated as insignificant (1) when the activities are subject to an applicable requirement, including an applicable requirement of a Federal or Tribal implementation plan, (2) if information concerning the activities would interfere with any applicability determination, (3) if the insignificant activities constitute a major source, (4) if not counting the emissions from insignificant activities in the total source emissions would prevent the

source from being determined to be a major source, or (5) if any information that would otherwise be left off of the permit application would be needed to calculate the fee amount required under the fee schedule established under proposed § 71.9.

b. *Insignificant Emission Levels.* The proposal would further allow emission units or activities with small emissions to be included in the application in a streamlined manner, as long as the application did not exclude information needed to (1) determine or impose applicable requirements, (2) determine the requirement to obtain a permit, (3) determine whether the source is a major source, or (4) calculate the fee amount, and provided the emissions caps of proposed § 71.5(g)(2) were not exceeded. The EPA believes that this would ensure that enough information will be provided that the permitting authority can make a quick assessment of whether the emissions are insignificant. Nevertheless, to ensure that the rule is being applied properly by the applicant, the permitting authority could request additional information if needed. Note that to qualify as insignificant emissions, the emissions could not count toward or trigger a unit-based de minimis permit revision under proposed § 71.7(f). The only emissions units that would have emissions levels qualifying as insignificant under proposed § 71.5(g) would be units that would not be included in the part 71 permit anyway because they could not be subject to applicable requirements, contribute to the triggering of an applicable requirement, or affect a major status determination. Therefore, for existing units with insignificant emissions there would not be any permit terms or conditions to revise and for new units with insignificant emissions there would not be any permit terms or conditions to add to the part 71 permit.

The emissions caps of proposed § 71.5(g)(2) are expressed in terms of potential to emit, not actual emissions. The use of potential to emit is consistent with how major source thresholds (which were used in developing the proposed caps) are defined. Furthermore, EPA believes that basing the caps on potential to emit provides greater assurance that only truly insignificant levels of emissions would be eligible for streamlined treatment on the permit application form.

In commenting on the necessity of de minimis levels to be established in the part 70 rulemaking, one commenter suggested the level be set at 5 tpy or 20 percent of the applicable major source threshold. An examination of these