

it may be more cost effective if contracts for part 71 programs were independently bid. Therefore, EPA solicits comments on whether fees for part 71 programs should be based on contractor costs established by a new competitive bid process. While not wanting to dismiss this alternative, the EPA is concerned about the costs involved with preparing the documentation required for the competitive bid process and that the length of time required to undertake this process (usually 12–18 months) would make this alternative impractical in light of the program's effective date. In particular, EPA solicits comments on whether this approach would result in cost savings.

The EPA considered several other options for setting fees. For example, EPA considered the possibility of basing fees for each part 71 program on the fee structure submitted by a State or local government as part of its part 70 submittal. This approach, however, has limited utility in that it is not appropriate where the submittal contains an inadequate fee program or where no submittal is made. Furthermore, the administrative burden (and the delay in program implementation) involved with completing individual rulemakings for each part 71 program made this option infeasible.

Given that it is not practical to craft a fee schedule that fits each State, and given that EPA is unable to foresee with certainty when and where it may be necessary to implement part 71 programs, EPA proposes to base its fees on the average cost of implementing a part 71 program.

The EPA considered whether the average cost of the part 71 program would be recovered by charging a fee of \$25 per ton/yr (1989 baseline with CPI adjustments), which is the amount of fee revenue that EPA would presume is adequate for purposes of funding State operating permits programs under part 70. For fiscal year 1995, this fee would equal \$30.18. However, EPA believes that there would be some differences in costs between the Federal program and State programs which made use of the presumptive fee inappropriate.

Using the approach outlined above, EPA has developed a proposed fee structure that will reflect the cost of the Federal operating permits program, though not necessarily the cost of implementing the program in any particular State. The proposed fee is expected to be adequate for nearly all part 71 programs and should, on average, collect sufficient revenue to fund permitting under this part.

However, if EPA determines that the fee structure provided in proposed § 71.9(c)(1)–(4) does not adequately reflect the program costs for a particular area, such as a Tribal area, then EPA may by separate rulemaking establish a different fee for a part 71 program.

b. *Minimizing Administrative Burdens.* Although EPA could design a fee system that imposes different fees based on such factors as source categories, the particular pollutants emitted, or the type of permitting action requested, EPA proposes a straight forward emissions-based fee system. For sources, the fee computation would be simple. Similarly, EPA's administrative burden related to assessing fees and monitoring compliance with fee requirements would be minimized.

c. *Fees Calculated Based on Existing Information.* The EPA would provide sources with fee calculation work sheets. Using these work sheets, sources would compute their actual emissions of the appropriate pollutants and multiply by the appropriate per ton/yr rate. Sources would submit fees within the first 12 months of the effective date of the program, and annually thereafter. Many sources are already subject to annual emissions reporting requirements. Thus, except for new sources, there would generally be no requirement that sources develop any information for the work sheets that would not already be required on the application form or as an emission reporting requirement.

d. *Fees Imposed in Advance of EPA's Rendering Services.* Under the proposal, all part 71 sources would remit fees within 12 months of the effective date of the permit program, even if the source is not issued a part 71 permit within that time. Those fees will provide a stable source of revenue from which to fund the initial start-up costs of the program, the costs of issuing permits within the first year of the program, as well as cover ongoing activities such as inspections, reviewing monitoring reports, and other compliance and enforcement activities.

This procedure would comply with Federal policy for user fees established in OMB Circular A–25 (July 8, 1993), which provides that fees are to be collected before services are administered or goods provided to ensure that fees are actually paid for the services provided, that the Treasury receives funds in a timely manner, and that additional administrative burdens and costs for collecting fees are avoided.

4. Revision of Fee Structure

To reflect changes in operating costs, fees would be adjusted automatically

every year (after 1997) by the same percentage as the percent change in the CPI. Also, the fee schedule would be revisited every two years as required by section 902(a)(8) of the Chief Financial Officer's Act of 1990. (31 U.S.C. 501 *et seq.*)

I. Section 71.10—Delegation of Part 71 Program

1. Delegation Process

Section 301(a)(1) of the Act provides that the Administrator is authorized to prescribe such regulations as are necessary to carry out his or her functions under the Act. Pursuant to this authority, proposed § 71.10 provides that a part 71 program may be delegated in whole or in part, with or without signature authority (i.e., the authority to issue permits) to any State or local agency or eligible Tribe that is found to have the requisite legal authority to administer such a program. For purposes of the rule, an eligible Indian Tribe would be a Tribe that EPA has determined meets the criteria for being treated in the same manner as a State, pursuant to regulations implementing section 301(d)(2) of the Act.

The EPA recognizes that in some cases States could fail to receive part 70 program approval due to program flaws that are not related to the permitting authority's practicable ability to implement a title V program. For example, the submitted part 70 program may contain elements in it enabling legislation or its regulations that prevent EPA from granting program approval, even though EPA may be confident that the State permitting authority could adequately administer and enforce a title V program that meets the requirements of the Act. While title V requires EPA to promulgate Federal title V programs for States that fail to receive part 70 program approval, EPA believes that in situations where State permitting authorities appear capable of implementing programs that meet the requirements of title V, it would be consistent with the general policies of the Act to involve States in implementing required Federal permits programs, rather than exclude State permitting authorities.

The Act has long provided that air pollution control is the primary responsibility of States and local governments. (See, e.g., section 101(a)(3) of the Act, 42 U.S.C. 7401(a)(3).) Moreover, while title V requires States to submit permit programs for approval by EPA, the Act does not provide that program approval is the sole mechanism available for State air pollution control