

(2) A provision that describes the source categories, geographic areas, and the administrative and enforcement activities governed by the delegation;

(3) A provision that requires the delegate agency to comply with the public notice requirements of proposed §§ 71.7 and 71.11;

(4) A provision that requires the delegate agency to provide a copy, through the appropriate Regional Office, of each permit application, proposed permit, and final permit to the Administrator as required in proposed § 71.10(d);

(5) A provision that any permit issued by a delegate agency contain a statement identifying the permit as a title V, part 71 permit;

(6) A provision that requires EPA's concurrence on any applicability determination or policy statement regarding title V or parts 70 or 71 not covered by determinations or guidance provided to the delegate agency;

(7) A provision that requires immediate notification to be provided to EPA if the delegate agency is unable or unwilling to administer or enforce a provision of the delegated part 71 program with respect to any source; and

(8) A provision that the delegate agency may not grant any waiver to a permit requirement or issue any order that violates an effective provision or requirement of part 71 or the Act.

J. Section 71.11—Administrative Record, Public Participation, and Administrative Review

Section 71.11 of the proposal establishes procedures by which the part 71 permitting authority would act on permit applications, issue draft permits, provide opportunities for public comment, and issue final permits. The emphasis in proposed §§ 71.11(a)–(j) is on a description of the notice and public participation procedures for initial permit issuance, permit renewals, permit reopenings, and significant permit revisions. The notice and public participation procedures for administrative amendments, de minimis permit revisions, and minor permit revisions are described in proposed § 71.7.

Proposed §§ 71.11(k)–(m) describe the administrative record for permits, the procedure for appeal of permits, and the determination of the beginning and ending days for any scheduled time period. Unlike proposed §§ 71.11(a)–(j), provisions in proposed §§ 71.11(k)–(m) would apply to all permit actions, including administrative amendments, de minimis permit revisions, minor permit revisions and significant permit revisions.

The EPA considered two alternative methods of establishing the public participation and administrative review procedural requirements. The first alternative would be to amend the existing procedures in 40 CFR part 124, which establishes specific decision making procedures for RCRA, Underground Injection Control (UIC), PSD, and NPDES permits, so that the procedures would be compatible with the part 71 program. The EPA would then incorporate those provisions by reference into the part 71 permit rule. The second alternative was to establish public participation and administrative appeal procedures as a separate section of this rule. This alternative has the advantage of allowing these procedures to focus specifically on the needs of the part 71 program as well as appear in close proximity to the permit program requirements in the Code of Federal Regulations.

Today's proposal follows the second alternative. The proposed public participation and administrative appeals procedures are set out at § 71.11 and are based closely on selected provisions of part 124, subpart A. The EPA does not believe the choice of one format over the other will have a substantial impact on the implementation of this rule.

Once a permit application is complete, including an application to revise an existing permit, the permitting authority would tentatively decide whether to prepare a draft permit. Such draft permits would contain permit conditions specified in proposed § 71.6, public notice of the draft permit would be issued and the draft would be made available for comment. Administrative amendments of permits would not be subject to draft permit or public notice requirements. Public notice of de minimis permit revisions would be on a post hoc basis, and draft permits for minor permit revisions would be publicly noticed by the applicant source. All draft permits issued by the permitting authority would be accompanied by a statement that briefly describes the derivation of the conditions of the draft permit and the reasons for them.

Proposed § 71.11(d) would establish public notice and comment procedures for part 71 permit actions not addressed elsewhere in the proposal, including application denials, draft permit preparation, scheduling of public hearings, reopening of the public comment period, and granting of appeals. Where other provisions of this proposal establish permitting procedures for specific types of actions, such as in the provisions on administrative amendments, de minimis

permit revisions, and minor permit revisions, those provisions would govern. Notice of draft permits under proposed § 71.11(d) (including permit revisions) would provide at least 30 days for public comment, and notices of hearings would be issued at least 30 days before hearings are held. Notice would be provided by mail to interested persons, by publication, or by other reasonable means and would include information on the permittee, contact persons, and general procedures on submitting comments and requesting to speak at hearings. In addition, notices of hearings would provide information on dates, times, and places of hearings, as well as applicable rules and procedures. The permitting authority could hold hearings either upon the basis of requests or on its own initiative.

Proposed § 71.11(e) would establish requirements for consideration of comments on a draft permit. It would require that a request for a public hearing be in writing and include a statement of the nature of the issues proposed to be raised at the hearing. It would also stipulate that all comments be considered in making the final decision on the draft permit, and that a publicly available record be kept of commenters and issues raised.

Proposed § 71.11(f) on public hearings would require that a public hearing be held if there was a significant degree of interest in a draft permit. The permitting authority would designate a Presiding Officer who would be responsible for conducting the hearing. This proposed procedure would allow statements from any person, with reasonable limits on time allowed for oral statements. A tape recording or written transcript would be required to be made available to the public.

Proposed § 71.11(g) would require that all reasonably ascertainable issues and all reasonably ascertainable arguments be raised or submitted by the close of the public comment period. It would require that supporting materials be submitted in full, rather than incorporated by reference. In order to comply with this proposed requirement, the comment period could be longer than 30 days, at the discretion of the permitting authority.

Proposed § 71.11(h) would allow the permitting authority to reopen the public comment period if any person believed that a condition of the draft permit is inappropriate, or that the permitting authority's decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate. If information submitted during the public comment period appeared to raise substantial new questions, the