

permitting authority would have the flexibility to prepare a new draft permit, or prepare a revised statement of basis and reopen or extend the comment period.

Proposed § 71.11(i) would require the permitting authority to issue a final permit decision once the public comment period had closed. The final decision, which becomes effective immediately upon issuance of the decision or a later date specified in the decision, would be a decision to issue, deny, revise, revoke and reissue, renew, or terminate a permit.

Proposed § 71.11(j) would require the permitting authority to issue a response to comments. The response would specify what provisions, if any, of the draft permit were changed in the final permit decision, and why. It would also require a description and response to all significant comments, and require inclusion of any cited documents in the administrative record. If an affected State recommended changes to the draft permit that were not accepted by the permitting authority, proposed § 71.11(j) would require written notification to the affected State.

Final permit decisions would be based on the administrative record defined in proposed § 71.11(k), including comments received, hearing transcripts, the response to comments, the final permit, the permit application, and the draft permit and its statement of basis.

Proposed § 71.11(l) grants a right of appeal of all final permit decisions, including those taken under provisions establishing procedures for administrative amendments, de minimis permit revisions, and minor permit revisions, and establishes procedures for such appeals. Within 30 days of a final permit decision, interested persons could petition the Environmental Appeals Board to review the final permit decision. Petitions for review would be required to include a statement of the reasons supporting review and could address only issues raised during the public comment period, unless it was impracticable to raise the relevant objections during such period or the grounds for objection arose after the period closed. An example of a situation in which it is impracticable to raise an objection during the comment period would be when a significant change is made from a draft to final permit without providing an opportunity for public comment. Moreover, while persons who participated in the comment or hearing processes could petition the Board to review any condition of the final permit decision, persons who failed to file

comments or participate in hearings could petition the Board only with respect to changes from the draft to final permit decision. When a part 71 permit is appealed, it would nevertheless remain fully effective and enforceable against the permitted source.

The EPA seeks comment on its method of establishing procedures for public participation and administrative review, and on the appropriateness of the specific procedures proposed. The EPA particularly seeks comment on the issues of the statement of basis accompanying draft permits, the proposed public notice and comment requirements, and appeals of permits.

Pursuant to sections 114 and 503(e) of the Act, EPA, by this proposed rule solicits comments on the appropriateness of, and the means for, making available to the public information that a source would be required by this rule to collect. Such information might include, for example, the data resulting from use of required monitoring methods. Specifically, EPA is requesting comment on what types and amount of information required under this rule should be made available to the public, what limits, if any, to place on a requirement to make available such information, and appropriate methods for making such information publicly available (e.g., electronic reporting to a publicly accessible data base, direct access by the public to information held by sources, or reliance on EPA and/or delegated States to assist the public in obtaining the information). The EPA also solicits comment on appropriate language for a rule or policy guidance document to effectuate public availability of information required under this rule and solicits comments on whether a rule or a policy guidance document is more appropriate.

Under both delegated and nondelegated part 71 programs, interested persons (including permittees) would be authorized to petition the Administrator to reopen an already issued permit for cause as provided in proposed § 71.11(n). Petitions would be required to be in writing and to contain facts or reasons supporting the request. If the Administrator determined that cause exists to reopen the permit, he or she would revise, revoke and reissue, or terminate the permit consistent with the requirements and procedures in proposed § 71.7.

Under part 70, citizens can petition EPA to object to State issued permits and can appeal EPA's failure to object to a proposed permit. However, for both delegated and nondelegated part 71 programs, the EPA feels this type of

petition process is unnecessary because the final permit can be appealed directly to the Environmental Appeals Board (EAB) and because citizens can use the petition process provided by proposed § 71.11(n) in cases where the deadline for appeal to the EAB has passed. The EPA believes that this approach provides an adequate opportunity for EPA oversight of part 71 programs, and that consequently there is little value in providing the opportunity for citizens to petition the Administrator to object to a proposed permit, which could result in two separate and simultaneous routes to appeal EPA's permitting actions. Moreover, the approach proposed today would be more consistent with that taken in the Agency's recently promulgated rule (to be codified at 40 CFR 71.21 *et seq.*), which governs how title V specialty permits would be issued to sources seeking alternative hazardous air pollution emissions limits under section 112(i)(5) of the Act. See 59 FR 59921 (Nov. 21, 1994) ("Federal Operating Permit Programs; Permits for Early Reductions Sources"). The Agency solicits comment on this approach.

#### K. Section 71.12—Prohibited Acts

It is important to note that it is unnecessary to include an enforcement authority section in the part 71 Federal program regulations that specifically corresponds to the enforcement authority section in the part 70 State program regulations. Rather, because the program under part 71 is a Federal program, it will be enforced through the full Federal enforcement authorities in the Act.

Examples of the Federal enforcement authorities available under the Act for violations of title V and the regulations thereunder include, but are not limited to, the authority to: (1) Restrain or enjoin immediately and effectively any person by order or by suit in court from engaging in any activity in violation of the Act that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment; (2) seek injunctive relief in court to enjoin any violation of the Act; (3) issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day for each violation of the Act; and (4) assess and recover a civil penalty of not more than \$25,000 per day for each violation of the Act. Another example of enforcement authority available under the Act is the authority to assess criminal fines pursuant to title 18 of the United States Code or imprisonment for not to exceed 5 years, or both, against any person who knowingly violates title V and the