

§ 71.3 Sources subject to permitting requirements.

(a) *Part 71 sources.* The following sources are subject to the permitting requirements under this part:

(1) Any major source, except that a source is not required to obtain a permit if it would be classified as a major source solely because it has the potential to emit major amounts of a pollutant listed pursuant to section 112(r)(3) of the Act and is not otherwise required to obtain a permit under this part;

(2) Any source, including an area source (i.e., a nonmajor source), subject to a standard, limitation, or other requirement under section 111 of the Act;

(3) Any source, including an area source (i.e., a nonmajor source), subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Act;

(4) Any source required to have a permit under part C or D of title I of the Act;

(5) Any affected source; and

(6) Any source in a source category designated by the Administrator pursuant to this section.

(b) *Source category exemptions.*

(1) All sources listed in paragraph (a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act are exempted from the obligation to obtain a part 71 permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions in addition to those provided for in paragraph (b)(4) of this section.

(2) Nonmajor sources subject to a standard or other requirement under either section 111 or 112 of the Act after July 21, 1992 shall be exempted from the obligation to obtain a part 71 permit if the Administrator exempts such sources from the requirement to obtain a part 70 or part 71 permit at the time that the new standard is promulgated.

(3) Any source listed in paragraph (a) of this section that is exempt from the requirement to obtain a permit under this section may opt to apply for a permit under a part 71 program.

(4) The following source categories are exempted from the obligation to obtain a part 71 permit:

(i) All sources and source categories that would be required to obtain a

permit solely because they are subject to 40 CFR part 60, Subpart AAA—Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 61, Subpart M—National Emission Standard for Hazardous Air Pollutants for Asbestos, § 61.145, Standard for Demolition and Renovation.

§ 71.4 Program implementation.

(a) *Part 71 programs for States.* The Administrator will administer and enforce a full or partial operating permits program for a State (excluding Tribal areas) in the following situations:

(1) A program for a State meeting the requirements of part 70 of this chapter has not been granted full approval under § 70.4 of this chapter by the Administrator by November 15, 1995, and the State's part 70 program has not been granted interim approval under § 70.4(d) of this chapter for a period extending beyond November 15, 1995. The effective date of such a part 71 program is November 15, 1995.

(2) An operating permits program for a State which was granted interim approval under § 70.4(d) of this chapter has not been granted full approval by the Administrator by the expiration of the interim approval period or November 15, 1995, whichever is later. Such a part 71 program shall be effective upon expiration of the interim approval or November 15, 1995, whichever is later.

(3) Any partial part 71 program will be effective only in those portions of a State that are not covered by a partial part 70 program that has been granted full or interim approval by the Administrator pursuant to § 70.4(c) of this chapter.

(b) *Part 71 programs for Tribal areas.* The Administrator may administer and enforce an operating permits program for a Tribal area, as defined in § 71.2, when an operating permits program for the area which meets the requirements of part 70 of this chapter has not been granted full or interim approval by the Administrator by November 15, 1995.

(1) Determining the boundaries of a Tribal area. At least 90 days prior to the effective date of a part 71 program for a Tribal area, the Administrator shall notify all appropriate governmental entities of the proposed geographic boundaries of the program.

(i) For programs solely addressing air resources within the exterior boundaries of the Reservation, EPA's notification of other governmental entities shall specify the geographic boundaries of the

Reservation. For programs also addressing off-reservation areas, EPA's notification of other governmental entities shall include the substance and bases of the Tribe's assertions of jurisdiction over such off-reservation area(s), including:

(A) A map or legal description of the off-reservation area(s) over which the Tribe asserts jurisdiction.

(B) A statement by the Tribe's legal counsel (or equivalent official) which describes the basis for the Tribe's assertion of jurisdiction which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of jurisdiction over the off-reservation area(s).

(ii) The appropriate governmental entities shall have 15 days to provide written comments to the Administrator regarding any dispute concerning the boundary of the Reservation. Where a Tribe has asserted jurisdiction over off-reservation areas, appropriate governmental entities may request a single 15-day extension to the general 15-day comment period.

(iii) In all cases, comments must be timely, limited to the scope of the Tribe's jurisdictional assertion, and clearly explain the substance, bases and extent of any objections. If a Tribe's assertion is subject to a conflicting claim, the EPA may request additional information and may consult with the Department of the Interior.

(iv) The Administrator shall promptly decide the scope of the Tribe's jurisdiction. If a conflicting claim cannot be promptly resolved, the Administrator shall implement a part 71 program encompassing all undisputed areas.

(v) The part 71 program will extend to all areas within the exterior boundaries of the Tribe's reservation, as determined by the Administrator, and any other areas the Administrator has determined to be within the Tribe's jurisdiction.

(vi) The Administrator's determination of the scope of the Tribe's jurisdiction shall be published in the **Federal Register** at least 30 days prior to the effective date of the part 71 program.

(2) The effective date of a part 71 program for a Tribal area shall be November 15, 1997.

(3) Notwithstanding paragraph (b)(2) of this section, the Administrator, in consultation with the governing body of the Tribal area, may adopt an earlier effective date.

(4) Notwithstanding paragraph (i)(2) of this section, within two years of the