section will not preclude the closure of the channel as part of a security exercise; however, such closures of said channel will be limited in duration and scope to the maximum extent so as not to interfere with the ability of private vessels to use the channel for navigation in public waters adjacent thereto not otherwise limited by this regulation.

(3) The regulations in this section shall be enforced by the Commanding Officer of the Naval Air Station, Pensacola, Florida, and such agencies he/she may designate.

12. Amend § 334.780 by revising paragraphs (b)(1) through (3) to read as follows:

**§ 334.780 Naval Air Station Pensacola, Pensacola, FL; restricted area.**

* * * * *

(b) *The regulations.* (1) The area is established as a Naval Air Station small boat operations and training area.

(2) All persons, vessels, and other craft are prohibited from entering the waters described in paragraph (a) of this section for any reason. All vessels and craft, including pleasure vessels and craft (sailing, motorized, and/or rowed or self-propelled), private and commercial fishing vessels, other commercial vessels, barges, and all other vessels and craft, except vessels owned or operated by the United States and/or a Federal, State, or local law enforcement agency are restricted from entering, transiting, anchoring, drifting or otherwise navigating within the area described in paragraph (a) of this section.

(3) The regulations in this section shall be enforced by the Commanding Officer, Naval Air Station Pensacola and/or such persons or agencies he/she may designate.

Dated: March 16, 2005.

**Michael B. White,**

*Chief, Operations, Directorate of Civil Works.*

[FR Doc. 05–5905 Filed 3–24–05; 8:45 am]

**BILLING CODE 3710–92–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 63, 70, and 71

**[OAR–2004–0010; FRL–7889–5]**

**RIN 2060–AM31**

## Proposal To Exempt Area Sources Subject to NESHAP From Federal and State Operating Permit Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rulemaking.

**SUMMARY:** The EPA is proposing to exempt permanently from the title V operating permit program five categories of nonmajor (area) sources subject to national emission standards for hazardous air pollutants (NESHAP). The EPA is proposing to make a finding for these categories, consistent with the Clean Air Act requirement for making such an exemption, that compliance with Title V permitting requirements is impracticable, infeasible, or unnecessarily burdensome on the categories. The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. The EPA is proposing to decline making such a finding for a sixth category, area sources subject to the secondary lead smelter NESHAP. A previous deferral from permitting for these six categories expired on December 9, 2004, subjecting all such sources to the title V program unless and until EPA finalizes an exemption for a category.

**DATES:** Comments must be received on or before May 24, 2005.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR–2004–0010, by one of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: Send electronic mail (e-mail) to EPA Docket Center at *a-and-r-docket@epamail.epa.gov.*
- Fax: Send faxes to EPA Docket Center at (202) 566–1741.
- Air and Radiation Docket, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: Air and Radiation Docket, U.S. Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. OAR–2004–0010. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

*Docket:* All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information may not be publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeff Herring, Information Transfer and Program Integration Division, Office of Air Quality Planning and Standards, Mail Code C304–04, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3195; fax number:

(919) 541–5509; and e-mail address: *herring.jeff@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Outline.* The contents of the preamble are listed in the following outline:



## I. Background

### *A. Affected Entities*

The entities affected by this rulemaking are area sources subject to a NESHAP promulgated under section 112 of the Clean Air Act (Act) since 1990 and listed in the table below. An ''area source'' is a source that is not a ''major source'' of hazardous air pollutants (HAP) under the NESHAP regulations. A ''major source'' under the NESHAP regulations is ''any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any [HAP] or 25 tons per year or more of any combination of [HAP] * * *'' See definitions of ''area source'' and ''major source'' at 40 CFR 63.2.

This proposal, if finalized, would affect only whether an area source regulated by a NESHAP is required to obtain a title V operating permit and whether States are allowed to issue title V permits to exempt sources. It would have no other effect on any other requirements of the NESHAP regulations, nor on the requirements of the State or Federal title V operating permit programs.

The affected categories are:

| Category | NESHAP | Estimated number of sources [1] |
|---|---|---|
| Perchloroethylene dry cleaning | Part 63, Subpart M | 30,000 |
| Hard and decorative chromium electroplating and chromium anodizing | Part 63, Subpart N | 5,000 |
| Commercial ethylene oxide sterilization | Part 63, Subpart O | 40 |
| Halogenated solvent cleaning | Part 63, Subpart T | 3,800 |
| Secondary aluminum production | Part 63, Subpart RRR | 1,316 |
| Secondary lead smelting | Part 63, Subpart X | 3 |

[1] This estimated number includes both major and area sources, even though only area sources would be affected by this rulemaking. For dry cleaners and ethylene oxide sterilizers, almost all sources are area sources. For other categories listed here, EPA does not have information on the number of area sources.

### *B. Statutory and Regulatory Requirements*

Section 502(a) of the Clean Air Act (Act) sets forth the sources required to obtain operating permits under title V. These sources include: (1) Any affected source subject to the acid deposition provisions of title IV of the Act; (2) any major source; (3) any source required to have a permit under Part C or D of title I of the Act; (4) ''any other source (including an area source) subject to standards or regulations under section 111 or 112'' [*i.e.*, a source subject to new source performance standards (NSPS) under section 111 or NESHAP under section 112], and (5) any other stationary source in a category designated by regulations promulgated by the Administrator. See §§ 70.3(a) and 71.3(a). The requirements of section 502(a) are primarily implemented through the operating permit program rules: Part 70, which sets out the minimum requirements for title V operating permit programs administered by State, local, and tribal permitting authorities (57 FR 32261, July 21, 1992), and part 71, the Federal operating permit program requirements that apply where EPA or a delegate agency authorized by EPA to carry out a Federal permit program is the title V permitting authority (61 FR 34228, July 1, 1996). The area sources subject to NSPS under section 111 or NESHAP under section 112 [addressed in category (4) above] are identified in §§ 70.3(a)(2) and (3) and §§ 71.3(a)(2) and (3) as among the sources subject to title V permitting requirements.

Section 502(a) of the Act also provides that ''the Administrator may, in the Administrator's discretion and consistent with the applicable provisions of [the Clean Air Act], promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements [of section 502(a)] if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.'' Under current regulations, area sources subject to a NSPS or NESHAP may be deferred from permitting, permanently exempt from permitting, or required to get a permit.

In the part 70 final rule issued on July 21, 1992, EPA permanently exempted from title V two categories of area sources that are subject to section 111 and 112 standards established prior to the part 70 rule (pre-1992 standards): New residential wood heaters subject to subpart AAA of part 60 (NSPS), and asbestos demolition and renovation operations subject to subpart M of part 61 (NESHAP). See §§ 70.3(b)(4) and 71.3(b)(4). The EPA also allowed permitting authorities under part 70 the option to defer permitting for other area sources subject to pre-1992 standards, while for part 71 purposes, we simply deferred them. The rationale for these deferrals was based on factors such as the burden imposed on the area sources and the impact on permitting authorities. See 57 FR 32261–32263 (July 21, 1992), and §§ 70.3(b)(1) and 71.3(b)(1).

The post-1992 standards, including the NESHAP for area sources that are the subject of today's proposal, previously have been addressed in §§ 70.3(b)(2) and 71.3(b)(2), which states that EPA will determine whether to exempt from title V permitting any or all area sources subject to post-1992 NSPS or NESHAP at the time each new standard is promulgated. Consequently, EPA issued title V exemptions for several area sources subject to NESHAP in final rules under part 63:

- All area sources within the NESHAP for publicly owned treatment works (POTW), Subpart VVV. See 63 FR 64742, October 21, 2002 and § 63.1592.
- Those area sources conducting cold batch cleaning within the NESHAP for halogenated solvent cleaning, Subpart T. See 59 FR 61802, December 2, 1994, and § 63.468(j). [Note that there are other area sources subject to this NESHAP that were subject to the deferral from permitting that expired on December 9, 2004; see next paragraph.]
- Three types of area sources (any decorative chromium electroplating operation or chromium anodizing operation that uses fume suppressants as an emission reduction technology, and any decorative chromium electroplating operation that uses a trivalent chromium bath that incorporates a wetting agent as a bath ingredient) within the NESHAP for hard and decorative chromium electroplating and chromium anodizing tanks, Subpart T. See 61 FR 27785, June 3, 1996, and § 63.340(e)(1). [Note that there are other area sources subject to this NESHAP that were subject to the deferral from permitting that expired on December 9, 2004; see next paragraph.]

The EPA has also issued deferrals from title V permitting for area sources subject to post-1992 NESHAP in three final rules under part 63. These final rules deferred title V permitting for all remaining areas sources subject to the NESHAP above (those not exempted), and deferred title V permitting for all area sources subject to various other NESHAP:

- Area sources subject to the NESHAP for Perchloroethylene dry cleaning, subpart M; chromium electroplating and anodizing, subpart N; commercial ethylene oxide sterilization, subpart O; and secondary lead smelting, subpart X. See 61 FR 27785, June 3, 1996;
- Area sources subject to the NESHAP for halogenated solvent cleaning, subpart T. See 59 FR 61801, December 2, 1994, as amended by a June 5, 1995 correction notice (60 FR 29484); and
- Area sources subject to the NESHAP for secondary aluminum production, subpart RRR. See 65 FR 15690, March 23, 2000.

These rules established an initial 5-year deferral of area source permitting, which expired on December 9, 1999. The expiration date for the deferrals was extended to December 9, 2004 in a another final rule (64 FR 69637, December 14, 1999), which justified the extension on the grounds that the conditions that prompted the previous deferrals had not changed. Today's notice addresses all six categories of area sources subject to a post-1992 NESHAP that were subject to deferrals from permitting that expired on December 9, 2004.

The deferral to date of title V permitting for the six categories of area sources subject to NESHAP addressed in this proposal was based, in large part, on the belief that requiring permitting in the earlier stages of program implementation would impose an impracticable, infeasible and unnecessary burden on the sources due to their substantial lack of technical and legal expertise and experience in environmental regulations. In addition, permitting of area sources would strain the resources of permitting authorities and compete with resources needed for major sources, which would make it difficult for area sources to obtain assistance from the permitting authorities. See 61 FR 27785, June 3, 1996; 59 FR 61801, December 2, 1994; and FR 15690, March 23, 2000. Now that the implementation of State title V permit programs has reached the point where most of the major sources have been issued their initial permits, EPA is no longer considering an extension of the deferrals based on the reasons that were important years ago. Instead, we are now proposing to permanently exempt from title V permitting five of these six categories of area sources subject to NESHAP for different reasons discussed below.

Under today's proposal, an area source is only exempt from title V permitting if it is not required to get a permit for other reasons. For example, if a particular NESHAP exempts an area source of HAP from permitting, the source would be required to obtain a permit if it is also a major source for a criteria pollutant (consistent with the definition of ''major source'' in § 70.2). In such a situation, § 70.3(a)(1) would independently require a major source permit, which would include the area source.

The EPA also wishes to clarify its position with respect to title V permitting of area sources after the effective date of any permanent exemptions we may finalize. To date, the deferrals from title V permitting for these area sources have been optional for State part 70 permit programs. A few States have reported to us that they have issued title V operating permits for various area sources that have been subject to these deferrals. See docket items 0002 and 0008. However, EPA believes that the Act does not authorize permitting authorities, including State and local agencies and EPA, to permit area sources under title V after EPA finalizes exemptions from title V for them. The EPA believes the Act contemplates that only those area sources required to be permitted under section 502(a), and not exempted by the Administrator through notice and comment rulemaking, are properly subject to title V requirements. Section 506(a) provides that permitting authorities ''may establish additional permitting requirements not inconsistent with this Act.'' The EPA believes that it would be inconsistent with the Act for States to include sources in their title V programs that EPA has exempted from title V because section 502(a) of the Act grants the Administrator alone discretion to define the universe of area sources subject to the title V programs. The EPA interprets Section 506(a) as preserving for States the ability to establish additional permitting requirements, such as procedural requirements, for sources properly covered by the program. In addition, EPA interprets Section 116 of the Act as allowing States to issue non-title V permits to sources that have been exempted from, or are outside the scope of, the title V program. If such programs are approved in a SIP, they would be federally enforceable. The EPA believes that State issuance of title V permits to area sources that EPA has exempted from title V permitting requirements would conflict with Congress's intent that EPA define the universe of sources subject to title V and would be an obstacle to the implementation of the title V program. Even if the statute were ambiguous in this regard, EPA would exercise its discretion to interpret it this way to promote effective title V implementation.

This means that State or local permitting authorities must stop issuing new title V permits to area sources after the effective date of any EPA exemption for such area sources, unless the sources are subject to title V for other reasons. Also, under the proposal's approach, if a State has already issued a permit to an area source and the area source is not subject to title V for other reasons, the

State would have to take an action to revoke, terminate, or deny the permit, after the effective date of any EPA exemption for such an area source. Unless a State permitting authority has a more specific procedure for terminating such permits, they must normally use the procedures for reopening for cause under § 70.7(f). Section 70.7(f)(1)(i) would require reopening for cause in this circumstance because once EPA has promulgated a title V exemption within the NESHAP (applicable requirement), the title V permit would no longer assure compliance with the applicable requirement. For the same reasons, State permitting authorities would generally be required to deny any application for a permit renewal for an area source EPA has exempted from title V, and EPA could find it necessary to object to the issuance of a permit for any such source or to take action to terminate or revoke such permit. (*See* section 505(e) of the Act, 40 CFR 70.7(c), (f) and 70.8(c).) The EPA requests comment on our interpretation that States may not issue title V permits to area sources we have permanently exempted from title V and that any existing permits for such sources must be terminated, revoked, or denied.

If we finalize this proposal to exempt certain area sources from title V and to not allow States to permit such sources, certain revisions to part 70 will also be necessary. First, § 70.3(a) requires State title V programs to provide for permitting ''at least the following sources,'' and then §§ 70.3(a)(1) through (5) provides a specific list of sources to be permitted. The ''at least'' language has been interpreted by some to mean that States may require permits from area sources exempted from title V through notice and comment rulemaking by EPA. However, because EPA believes the Act does not allow the issuance of title V permits to area sources that we have exempted from title V, we propose to delete this ''at least'' language from § 70.3(a). No similar changes are necessary for part 71. Second, § 70.3(b)(3) allows any exempt source to ''opt to apply for a permit under a part 70 program.'' Section 71.3(b)(3) contains similar language. Because EPA believes the Act does not allow States to permit area sources subject to permanent exemptions from permitting, we propose to delete these provisions from part 70 and part 71. This proposed change means that area sources that have been exempted through rulemaking by EPA would not be able to volunteer for a title V permit because the permitting authority would not be allowed by our interpretation of sections 502(a) and 506(a) of the Act to permit such sources under title V. Third, the prefatory phrase of § 70.3(b)(4), ''Unless otherwise required by the state to obtain a part 70 permit,'' suggests that States may require title V permits from area sources we have exempted from title V, including sources subject to part 60 (NSPS), subpart AAA, for residential wood heaters; and sources subject to part 61 (NESHAP), subpart M, for asbestos demolition and renovation. Because the prefatory phrase of § 70.3(b)(4) is inconsistent with our interpretation of section 502(a) and 506(a) of the Act, we propose to delete it from part 70. No changes are necessary to the parallel regulatory provision of § 71.3(b)(3) to conform with this interpretation.

## II. Rationale for Today's Proposed Exemptions from Title V

### *A. General Approach*

Section 502(a) of the Act provides that '' * * * the Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this Act, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.''

The legislative history of the provision is not extensive, but does suggest that EPA should not grant exemptions where doing so would adversely affect public health, welfare, or the environment. See Chafee-Baucus Statement of Senate Managers, Environment and Natural Resources Policy Division 1990 CAA Leg. Hist. 905, Compiled November, 1993 (in that ''[t]he Act requires EPA to protect the public health, welfare and the environment, * * * this provision of the permits title prevents EPA from exempting sources or source categories from the requirements of the permit program if such exemptions would adversely affect public health, welfare, or the environment'').

In several previous rulemakings, EPA has stated that it would continue to evaluate the permitting authorities' implementation and enforcement of the standards for area sources not covered by title V permits. (*See* 61 FR 27785, June 3, 1996; and 64 FR 69639, December 14, 1999). In developing today's proposal, EPA sought and relied on information from State and local permitting agencies on the level of oversight they perform on the sources addressed in today's proposal. Agencies responded with information on whether they issue State permits, perform routine inspections, and provide compliance assistance to these area sources and also information on the compliance rate and number of sources in each category. These results are summarized for each category of area sources in docket item 0002.

The EPA also sought input from State small business ombudsmen and several trade associations representing dry cleaning, metal finishing, solvent cleaning and the aluminum industry. These representatives responded with recommendations and information on the area sources and compliance assistance programs currently available to them in certain States. This information is in the docket. (See docket items 0003, 0006, and 0008.)

Consistent with the statute, today's analysis focuses on whether compliance with title V permitting is ''impracticable, infeasible, or unnecessarily burdensome'' on the source categories. For the sources addressed in today's proposal, EPA has found the ''unnecessarily burdensome'' criterion to be particularly relevant. The EPA's inquiry into whether this criterion is satisfied for the area sources addressed in today's notice was primarily based on consideration of four factors, described below. The EPA determined on a case-by-case basis the extent to which one or more of the four factors is present for a given source category, and then determined whether, considered together, those factors that are present demonstrated that compliance with title V requirements would be unnecessarily burdensome.

The first factor is whether title V would add any significant compliance requirements to those already required by the NESHAP. We looked at the compliance requirements of the NESHAP to see if they were substantially equivalent to the monitoring, recordkeeping and reporting requirements of §§ 70.6 and 71.6 that we believe may be important for assuring compliance with the NESHAP. The purpose of this was to determine if title V is ''unnecessary'' to improve compliance for these NESHAP requirements at these areas sources. Thus, a finding that title V would not result in significant improvements to compliance requirements, over the compliance requirements already required by the NESHAP, would support a conclusion that title V

permitting is ''unnecessary'' for area sources in that category. One way that title V may improve compliance is by requiring monitoring (including recordkeeping designed to serve as monitoring) to assure compliance with the emission limitations and control technology requirements imposed in the standard. The authority for adding new monitoring in the permit is in the ''periodic monitoring'' provisions of §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), which only allows new monitoring to be added to the permit when the underlying standard does not already require ''periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring).'' Also see the so-called ''umbrella monitoring'' rule, which explains the minimum monitoring requirements for operating permits (69 FR 3202, January 22, 2004). Under the umbrella monitoring rule interpretation and the periodic monitoring rule, title V permits would not typically add any new monitoring for post-1992 NESHAP, including the NESHAP that are addressed in today's proposal. Because of this, title V permits are not likely to add any new or different monitoring (including recordkeeping designed to serve as monitoring) to the NESHAP, and thus, at least with regard to assuring compliance with the NESHAP through monitoring, title V permitting for area sources in that category is likely to be ''unnecessary.'' In addition, title V imposes a number of recordkeeping and reporting requirements that may be important for assuring compliance. These include requirements for a monitoring report at least every six months, prompt reports of deviations, and an annual compliance certification. See §§ 70.6(a)(3) and 71.6(a)(3), §§ 70.6(c)(1) and 71.6(c)(1), and §§ 70.6(c)(5) and 71.6(c)(5). When we use this first factor in our findings below, we will discuss the extent to which the compliance requirements of the NESHAP are substantially equivalent to the compliance requirements of part 70 and 71 discussed here.

The second factor is whether the area sources subject to a NESHAP possesses characteristics that would contribute to title V permitting imposing a significant burden on them, and whether this burden could be aggravated by difficulty in obtaining assistance from permitting agencies.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for area sources subject to a NESHAP would be justified, taking into consideration any potential gains in compliance likely to occur for such sources.

Concerning the second and third factors, subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. The EPA estimated that the true average annual cost of obtaining and complying with a title V permit was $7,700 per year per source, including fees. (See *Information Collection Request for Part 70 Operating Permit Regulations*, January 2000, EPA # 1587.05, docket item 0007.) The EPA does not have specific estimates for the burdens and costs of permitting area sources, however, the permit rules allow area source permits to have a reduced scope, compared to major source permits. Major source permits are required to include all applicable requirements for all relevant emissions units in the major source. See §§ 70.3(c)(1) and 71.3(c)(1). The permit rules require area source permits to include all applicable requirements applicable to the emissions units that cause the source to be subject to title V permitting. See §§ 70.3(c)(2) and 71.3(c)(2). Because of this, there may be emissions units at a facility that would not be included in an area source permit (because they are not subject to the NESHAP that triggered the requirement to get the permit), but would be included in any major source permit for a similar facility. In addition, EPA does not have specific estimates for source burdens and costs associated with general permits. However, we have made some assumptions about how burdens and costs would be reduced for general permits, and this is discussed more thoroughly in Section III of this preamble. Nevertheless, irrespective of the number of units included in the permit and the type of permit (standard or general), there are certain source activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on the source. They include: Reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a six-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every five years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of professional scientists and engineers (consultants) to help them understand and meet the permitting programs's requirements. The ICR for part 70 may help you to understand the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of §§ 70.3, 70.5, 70.6, and 70.7.

The fourth factor is whether adequate oversight by State and local permitting authorities could achieve high compliance with the particular NESHAP requirements without relying on title V permitting. A conclusion that high compliance can be achieved without relying on title V permitting would support a conclusion that title V permitting is ''unnecessary'' for those sources. Information contained in docket items 0002, 0003, 0006 and 0008 shows that many permitting authorities have alternative compliance oversight programs that result in high compliance with NESHAP requirements without relying on title V permits.

In addition to determining whether compliance with title V requirements would be ''impracticable, infeasible or unnecessarily burdensome'' for the area sources, EPA also considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting the area sources would adversely affect public health, welfare, or the environment.

The EPA believes the vast majority of area sources proposed today for exemption from title V permitting in this notice are typically subject to not more than one NESHAP, and few other requirements under the Act, and that these NESHAP are relatively simple in how they apply to these sources. One of the primary purposes of the title V program is to clarify, in a single document, the various and sometimes complex regulations that apply to sources in order to improve understanding of these requirements and to help sources to achieve compliance with the requirements. The vast majority of NSPS and NESHAP standards apply only to major sources, with only a small number of such standards regulating any activities at area sources. It is beyond the scope of this notice to provide a comprehensive list of Federal standards that specifically

regulate area sources, but there are currently only about 12 NESHAP and NSPS, and several categories of solid waste incinerators under section 129 that do so. Because there are so few standards that regulate areas sources, the likelihood that multiple NSPS or NESHAP would apply to these areas source is low. Also see docket item 0008, where State of Georgia officials explain that State operating permits for halogenated solvent cleaners, chrome platers, and secondary aluminum smelters are ''significantly less complex'' than title V permits, and where, for cost estimation purposes, they consider major source EO sterilizers and area MACT sources comparable because they are ''(1) relatively simple facilities with a single process, and (2) generally subject to only one applicable requirement—the ethylene oxide MACT standard.'' Aside from Federal standards that may impose applicable requirements on these area sources, EPA-approved SIP's will contain so-called ''generic'' applicable requirements that are likely to apply to these area sources. ''Generic'' applicable requirements are relatively simple requirements that apply identically to all emissions units at a facility (*e.g.*, source-wide opacity limits and general housekeeping requirements). Because of their nature, EPA has previously advised States that they did not warrant comprehensive treatment in permits. (See *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program*, March 5, 1996.) For these reasons, as well as the source-specific reasons described below, EPA believes exempting these sources will not adversely affect public health, welfare, or the environment.

Also, requiring permitting of area sources will likely cause, at least in the first few years of implementation, permitting authorities to shift resources away from assuring compliance for major sources with existing permits, to issuing new permits for area sources. This has the potential, at least temporarily, to reduce the overall effectiveness of the States' title V permit programs, which could potentially adversely affect public health, welfare, or the environment. See docket item 0008, where State of Georgia officials explain that permitting all the area sources proposed for exemption in today's notice would triple the number of title V permits issued in the State of Georgia, and that, among other possible implementation concerns, it would be ''difficult if not impossible'' for them to obtain approval to obtain additional full time employees. Although State permit programs have authority to raise whatever fees are necessary to cover the costs of the program, in most States, the program does not have independent authority to increase its budget or fees. In many States, any such increases must be approved by the legislature within the State budget process, which can lead to significant delays in getting necessary authority to meet new demands.

Finally EPA solicits comment on our general approach to determining if these area sources should be exempt from permitting. First, we solicit comment on whether the factors we used to reach the findings in today's proposal are the most appropriate factors to use for these purposes, and if there are other factors that may be more appropriate. Second, we solicit comment on how these NESHAP apply to these area sources, any circumstances where multiple NESHAP may apply to area source subject to these NESHAP, the other applicable requirements that apply to these area sources, and the nature of these other applicable requirements. Third, we solicit input on the likelihood that requiring permits of area sources subject to these NESHAP will cause permitting authorities to shift resources away from major sources, at least on a temporary basis, the potential affect this may have on assuring compliance with existing permits for major sources, and the potential for this to adversely affect public health, welfare, or the environment. Fourth, we solicit comment on the specific burdens and costs on these area sources in the event that they are required to get permits, including the potential for difficulty for the source in obtaining assistance from the permitting authority, and whether the costs for sources are justified with respect to any potential compliance gains that may be achieved through permitting. Fifth, we solicit comment seeking more accurate data on the number of area sources subject to each specific NESHAP addressed in today's proposal.

*B. Dry Cleaning*

The dry cleaning NESHAP applies to an estimated 30,000 area source dry cleaning facilities using Perchloroethylene, or PCE, which is known to cause cancer in animals, which is suspected to cause cancer in humans, and which also has non-cancer toxic effects.

The EPA proposes to exempt area source dry cleaners from title V for three reasons.

First, requiring title V permits would impose a relatively significant burden on these sources. Dry cleaners are typically very small ''mom and pop'' retail establishments employing only a few people. Dry cleaners have extremely limited technical and economic resources. According to the International Fabricare Institute, 85 percent of dry cleaners are small, single-family, independent operations. The average dry cleaner employs 5 people. Profit margins are less than 1% on average, and the average (median) dry cleaner has annual revenues (sales) of $200,000. (See economic profile in docket Item 0004.) Unlike the larger major sources, area source dry cleaners would typically have no staff trained in environmental requirements and would find it difficult to hire outside professionals to help them understand and assure compliance with the permitting requirements. Also see discussion in section II.A of this preamble on the burdens and costs that title V permitting imposes on sources generally.

In EPA's outreach in recent years, several State agencies have told us that, in their experience, implementing area source emissions standards, such as the dry cleaning NESHAP, through permits did not result in increased compliance with the emissions standards. They reported that successful implementation of emission standards at area sources could only be achieved by spending significant one-on-one effort explaining the requirements in simple, non-regulatory terms the operators could understand. Even so, agencies reported that many follow-up visits were needed to verify that the requirements were understood and followed. (See docket items 0003, 0006, and 0008.) This experience illustrates that permitting may not significantly help area sources to reach compliance with the standards, and that permitting would impose an added burden that they would find difficult to meet, given the lack of financial and technical resources of the majority of such sources.

Adding to this burden on dry cleaners is the difficulty they may encounter in obtaining adequate and timely assistance from permitting authorities. The addition of 30,000 area source dry cleaners to the national title V universe of approximately 18,000 major sources would substantially increase the volume of sources requiring operating permits. In some jurisdictions, the number of area source dry cleaners needing permits would dwarf the current title V source universe. For example, Sacramento County (15 title V sources) reports 400 dry cleaners; Puget Sound (44 title V sources) estimates over 500 dry cleaners. State and local permitting authorities are beginning to renew significant numbers of title V permits

and the resources needed to permit area source dry cleaners would likely compete with the resources needed for the permitting of major sources.

Second, the costs associated with title V permitting would be significant for the average dry cleaner. While there are no cost estimates for area sources in the ICR, it is reasonable to assume that the cost of permitting area sources will be less because they are generally less complex than major sources and the permits contain fewer emissions units and fewer applicable requirements. Even if costs for dry cleaners were only half the average cost for a major source, the costs would still represent an excessively high percentage of sales for the average dry cleaner. This would be especially true for the smallest dry cleaners, those that collect only $75,000 per year in revenue. (See *Economic Impact Analysis of Regulatory Controls in the Dry Cleaning Industry*, EPA–45/3–91–021b.) Also, as described above, the judgement of many permitting authorities is that implementing area source emissions standards, such as the dry cleaning NESHAP, through permits would not result in increased compliance with the emissions standards. Thus, EPA believes that the costs of title V permitting for area sources subject to the drycleaner NESHAP would not be justified taking into consideration the low potential for compliance gains from permitting such sources.

Third, title V permitting is not necessary to improve compliance for dry cleaners. Based on EPA's outreach, out of 25 State and local agencies that reported a compliance rate for area sources dry cleaners, 13 reported that they were able to achieve high compliance rates without title V permits. (See table for dry cleaners in docket item 0002.) These agencies employ a mix of State permits, frequent inspections and appropriate compliance assistance. While the remaining permitting authorities reported lower compliance rates, the outreach shows that title V permitting is not a necessary element for achieving high levels of compliance with the NESHAP for area sources, when States have other options available to them, such as inspection and oversight programs.

Furthermore, resources needed to permit dry cleaners would compete with resources needed to permit major sources, and might actually reduce the overall effectiveness of the title V program. This is especially true for area source dry cleaners because we estimate there are as many as 30,000 of them nationally, with the total number of major sources required to get permits estimated at about 18,000 nationally.

Taken together, these factors support a finding that title V permitting would be unnecessarily burdensome on area sources subject to the dry cleaner NESHAP and that title V exemption for these sources would not adversely affect public health, welfare, or the environment. Therefore, EPA proposes that area sources subject to this NESHAP be exempt from title V permitting.

*C. Chrome Plating*

The NESHAP for hard and decorative chrome electroplating and chromic acid anodizing, subpart N, regulates a number of different operations, which are significant emitters of chromium compounds to the atmosphere. About two-thirds of the chromium compound emissions from all chromium sources are in the form of chromium VI. Human studies have established that inhaled chromium VI is a human carcinogen, resulting in an increased risk of lung cancer. Chromium VI also has acute noncancer effects on the respiratory, gastrointestinal and neurological systems.

The EPA permanently exempted from title V permitting several area source operations that are regulated by the standard (any decorative chromium electroplating operation or chromium anodizing operation that uses fume suppressants as an emission reduction technology, and any decorative chromium electroplating operation that uses a trivalent chromium bath that incorporates a wetting agent as a bath ingredient), see § 63.340(e)(1). (Also see the final rule, 61 FR 27785, June 3, 1996.) The rationale used to exempt these operations was that the standard could be implemented outside of a title V permit, and that the standard had recordkeeping and reporting requirements similar to what title V would impose.

Although no specific cost or burden estimates are available to EPA for area sources subject to this NESHAP, EPA believes that the costs and burdens of title V permitting for an area source subject to this NESHAP would be significant. For information on burdens and cost associated with title V permitting in general, see the detailed discussion in section II.A of this preamble.

For today's proposal, EPA also considered whether title V would add any significant compliance requirements to those already required by the NESHAP. After a comparison of the compliance requirements of the NESHAP to those of title V, EPA concludes that they are substantially equivalent. As explained in section II.A, chrome electroplaters already have ''periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring),'' thus, title V's periodic monitoring rules would not apply to these sources, and title V would not add any monitoring for these sources over what is already required by the NESHAP. The chromium NESHAP requires area sources to submit ongoing compliance status reports, which must include a description of the NESHAP limitations or work practice standards, the operating parameters monitored to show compliance, information about the results of monitoring, including about excess emissions and exceedances, and a certification by a responsible official that work practices were followed. See § 63.347(h). Similarly, title V rules require a 6-month monitoring report, prompt reporting of deviations, and an annual compliance certification. See §§ 70.6(a)(3)(iii) 71.6(a)(3)(iii), and §§ 70.6(c)(5) and 71.6(c)(5). Title V requires deviation reports and monitoring reports to be submitted at least every 6 months, while the NESHAP requires excess emissions reports to be submitted on an annual basis, unless periods of excess emissions exceed 1 percent of operating time, or malfunctions exceed 5 percent of operating time, in which case the reports must be submitted on a semiannual basis. The NESHAP requirement for an on-going compliance status reports also satisfies many of the requirements of title V for the annual compliance certification. Although these two sets of requirements are not exactly the same, they are very similar, and the differences are not significant. Thus, EPA believes the compliance requirements of title V and the NESHAP are substantially equivalent, such that title V permitting will likely result in added burdens, which are unnecessary to improve compliance.

Taken together, these factors support a finding that title V permitting would be unnecessarily burdensome on area sources subject to the chromium electroplating NESHAP and that title V exemption for these sources would not adversely affect public health, welfare, or the environment. Therefore, EPA proposes that area sources subject to this NESHAP be exempt from title V permitting.

*D. Halogenated Solvent Degreasing*

The EPA proposes to exempt area sources regulated by solvent degreasing NESHAP from title V for two reasons.

First, requiring title V permits would impose a significant burden on area source solvent cleaners (degreasers) subject to this NESHAP. Area source degreasing operations are typically very small operations employing only a few people. (See economic data in docket item 0004.) We believe these operations have limited technical and economic resources and little experience in environmental regulations. Unlike the larger major sources, area source degreasing operations typically have no staff trained in environmental requirements and are generally unable to afford to hire outside professionals to assist them with understanding and meeting the permitting requirements. In addition, our outreach to States showed a general preference by them for implementing each of the NESHAP addressed in today's proposal through one-on-one outreach, including followup visits, rather than by using title V permits. (See docket items 0003, 0006, and 0008.) Thus, EPA believes title V permits will not significantly help these sources to comply with the NESHAP requirements, and that the permitting requirements would be an additional burden they would have difficulty meeting. Although no specific cost or burden hour estimates are available to EPA for area sources in general, or for sources subject to this NESHAP in particular, EPA believes that the costs and burdens of title V permitting for an area sources subject to this NESHAP would be significant. For information on burdens and cost associated with title V permitting in general, see the detailed discussion in section II.A of this preamble.

Second, requiring title V permits of area source solvent degreasers does not appear necessary to improve compliance with the NESHAP. From EPA's research on area source oversight, 10 State and local agencies (of 48 reporting) have shown the ability to achieve high compliance rates with area source halogenated solvent cleaners without title V permits. See table for degreasers in docket item 0002. These agencies employ a mix of State permits, frequent inspections and appropriate compliance assistance. While the remaining permitting authorities reported lower (or unknown) compliance rates, EPA believes this outreach shows that title V permitting is not a necessary element for achieving high levels of compliance by these area sources with the NESHAP.

Taken together, these factors support a finding that title V permitting would be unnecessarily burdensome on area sources subject to the halogenated solvent degreaser NESHAP and that title V exemption for these sources would not adversely affect public health, welfare, or the environment. Therefore, EPA proposes that area sources subject to this NESHAP be exempt from title V permitting.

*E. Ethylene Oxide Sterilizers*

Ethylene oxide (EO) sterilizers are a source of emissions of ethylene oxide, which is classified as a probable human carcinogen and has adverse effects on the reproductive system. Although no specific cost or burden hour estimates are available for area sources in general, or for sources subject to this NESHAP, EPA believes that the costs and burdens of title V permitting for these sources would be significant. For information on burdens and cost associated with title V permitting in general, see the detailed discussion in section II.A of this preamble.

First, EPA considered whether title V added any significant compliance requirements to those already required by the EO sterilizer NESHAP. We compared the compliance requirements of the NESHAP with title V's requirements, and found that the requirements are substantially equivalent when the source employs continuous monitoring methods to assure proper operation and maintenance of its control equipment. The EPA also notes that although we have no data to show the percentage of area sources regulated by this standard that actually employ continuous monitoring methods, we believe most EO sterilizers will use both thermal oxidizers and scrubbers to meet the emission limitations of the standard, that continuous monitoring methods (instrumentational temperature readings) will be used to show compliance when thermal oxidizers are employed, and that noncontinuous monitoring methods (*e.g.*, weekly readings of glycol levels in tanks) will be used to show compliance when scrubbers are employed.

Both the continuous and noncontinuous monitoring methods required by these standards provide ''periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring),'' thus, title V's periodic monitoring rules would not apply to these sources, whether they employ continuous or noncontinuous monitoring methods, and title V would not add any monitoring for these sources over what is already required by the NESHAP.

When continuous monitoring is used, the NESHAP requires excess emissions reports to be submitted on a semiannual basis. These excess emissions reports must include information about continuous monitoring of process and control system parameters, and periods of excess emissions, including any corrective actions taken (§ 63.10(e)(3)). This information is similar to the information required in the prompt deviation and monitoring reports under the title V rules (§§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii)). The annual compliance certification report requirement of title V is not met by the NESHAP, so the permit would impose this additional compliance obligation, if the source were required to get a permit. When monitoring is not continuous, the NESHAP does not require excess emissions reports to be submitted, and consequently, title V would add more requirements, such as prompt deviation reporting, six-month monitoring reports, and an annual certification of compliance.

At least for sources with continuous monitoring methods, EPA believes the absence of the annual certification report is not likely to have a significant impact on compliance with the NESHAP. In particular, EPA points to the monitoring requirements of the standards, which meets all title V requirements, and the excess emission report requirements, which provide useful compliance data based on the monitoring results, including identification of all periods of noncompliance with the emission standard or control system parameters. Even though the differences between the NESHAP and the title V compliance requirements are more pronounced in this case (compared to chrome electroplaters, for example), we believe the differences are not significant enough to find that requiring title V permits would result in significant improvements to compliance requirements, compared to the compliance requirements required by the NESHAP. Thus, at least for sources using continuous monitoring methods, we believe title V would not add requirements that would significantly improve compliance with the EO sterilizer NESHAP, and thus, title V would be unnecessary for these area sources. Although EPA believes the typical source subject to this NESHAP uses both continuous and noncontinuous monitoring, we solicit comment on the percentage of area sources subject to this NESHAP that use continuous monitoring methods. In addition, we solicit comment on the extent to which NESHAP compliance may be improved by requiring these area sources to conduct annual

compliance certification under title V, including the extent to which any such improvements would be derived from the threat of enforcement for a false compliance certification.

Second, regardless of the type of monitoring used, requiring title V permits of these area sources is not necessary to achieve compliance. Based on EPA's outreach, 10 State and local agencies reported their compliance rates for area sources regulated by the EO sterilizer NESHAP as either high (in 9 cases) or ''in compliance'' (in 1 case) without relying on title V operating permits. (See table for EO sterilizers in docket item 0002.) These agencies employ a mix of State permits, frequent inspections and appropriate compliance assistance. This shows that title V permitting is not a necessary element for achieving high levels of compliance for these area sources.

Taken together, these factors support a finding that title V permitting would be unnecessarily burdensome on area sources subject to the EO sterilizer NESHAP and that title V exemption for these sources would not adversely affect public health, welfare, or the environment. Therefore, EPA proposes that area source subject to this NESHAP be exempt from title V permitting.

*F. Secondary Aluminum*

The EPA proposes to exempt area sources subject to the secondary aluminum NESHAP from title V permitting for three reasons.

First, title V permitting would impose a burden on area sources subject to the secondary aluminum NESHAP that would be difficult for them to meet with current resources. In 2001, there were over 1,300 facilities in the secondary aluminum industry. Half of these facilities employed fewer than 20 employees. (See economic data in docket item 0004.) These small sources would likely lack the technical resources needed to comprehend and comply with permitting requirements and the financial resources needed to hire the necessary staff or outside consultants. Although no specific cost or burden hour estimates are available for area sources subject to this NESHAP, EPA believes that the costs and burdens of title V permitting for an area source subject to this NESHAP would be significant. For information on burdens and cost associated with title V permitting in general, see the detailed discussion in section II.A of this preamble.

Second, EPA considered whether title V added any significant compliance requirements to those already required by the secondary aluminum NESHAP. We compared the compliance requirements of the NESHAP with title V's requirements, and found that the requirements are substantially equivalent when the source employs continuous monitoring of temperature to show compliance with the NESHAP. The EPA also notes that no specific data are available, but EPA believes most secondary aluminum facilities will comply with the standard using baghouses or thermal oxidizers (using continuous temperature monitoring to show compliance), while a few will use scrubbers (using noncontinuous compliance methods). Both the continuous and noncontinuous monitoring methods required by these standards provide ''periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring).'' Thus, title V's periodic monitoring rules would not apply to these sources, whether they employ continuous or noncontinuous monitoring methods, and title V permits would not add any monitoring for these sources over what is already required by the NESHAP.

For most sources (where continuous temperature monitoring is used), the NESHAP requires excess emissions reports to be submitted on a semiannual basis. These excess emissions reports must include information about continuous monitoring of process and control system parameters, and periods of excess emissions, including any corrective actions taken [see § 63.10(e)(3)]. This information is similar to the information required in the prompt deviation and six-month monitoring reports of the title V rules (§§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii)). The requirement of title V for an annual compliance certification report is not met by the NESHAP, so this obligation would be added to the requirements imposed by the permit, if the source were required to get a permit. The EPA believes the absence of the annual certification report for these area sources is not likely to have a significant impact on compliance. In particular, EPA points to the monitoring requirements of the standards, which meets all title V requirements, and the excess emission report requirements, which provide useful compliance data based on the monitoring results, including identification of all periods of noncompliance with the emission standard or control system parameters. Although there are differences between the NESHAP and title V compliance requirements, we believe the differences are not great enough to have a significant affect on compliance with the NESHAP for these area sources. Thus, for most area sources subject to the secondary aluminum NESHAP, title V would not add requirements that would significantly improve compliance with the NESHAP, and thus, title V would be unnecessary for these area sources. The EPA solicits comment on the percentage of area sources subject to this NESHAP that use continuous monitoring methods. In addition, we solicit comment on the extent to which NESHAP compliance may be improved by requiring these area sources to conduct annual compliance certification under title V, including the extent to which any such improvements would be derived from the threat of enforcement for a false compliance certification.

Third, requiring title V permits of these area sources is unnecessary to improve compliance. Four out of five State and local agencies have shown that they are able to achieve high compliance rates with area source secondary aluminum facilities without title V permits. (See table for secondary aluminum in docket item 0002.) These agencies employ a mix of State permits, frequent inspections and appropriate compliance assistance. This shows that title V permitting is not a necessary element for achieving high levels of compliance with the secondary aluminum standard for area sources.

Taken together, these factors support a finding that title V permitting would be unnecessarily burdensome on area sources subject to the secondary aluminum NESHAP and that title V exemption for these sources would not adversely affect public health, welfare, or the environment. Therefore, EPA proposes that area source subject to this NESHAP be exempt from title V permitting.

**III. General Permits**

In the preceding Section of this preamble, EPA discusses proposed findings of unnecessary burden for five categories of area sources. In doing so, we generally discussed burdens and costs associated with title V permitting for sources. This information was focused primarily on the area sources being issued standard (non-general) title V permits. However, title V allows issuance of general permits in appropriate circumstances. See section 504(d) of the Act, and §§ 70.6(d) and 71.6(d). A general permit is issued by the permitting authority for a source category as defined by certain types of equipment, operations, processes, and emissions. A general permit under title V provides a streamlined process for

issuing permits to a large number of similar sources. Specifically, this means that, compared to standard permits under title V, general permits typically require less comprehensive permit applications and have simpler permit application procedures. Area sources in the NESHAP categories addressed in today's proposal have essentially similar operations or processes, emit pollutants with similar characteristics, and are subject to the same or substantially similar requirements governing emissions, operation, monitoring, recordkeeping and reporting, thus, such sources may be candidates for general permits.

Although general permits could potentially reduce the burdens and costs of permitting area sources, when all of the factors used in our analysis in Section II of this preamble are considered for general permits, EPA believes the potential burden and cost reduction is not sufficient enough to cause us to alter the findings we made in the preceding Section of the preamble. The following analysis looks at how each of the factors we used in Section II might be affected under a general permitting approach.

The first factor, whether title V would add significant compliance requirements, chiefly monitoring recordkeeping, and reporting, to those already required by the NESHAP, was cited in Section II of this preamble for area sources subject to the NESHAP for chrome plating, EO sterilizing, and secondary aluminum. Under the permit rules, general and standard permits are subject to the same permit content requirements under §§ 70.6 and 71.6, including recordkeeping, reporting, and monitoring requirements. Thus, with respect to the first factor, title V would affect units to which the NESHAP applies in the same manner for general permits, as for standard permits.

The second factor, the overall burdens on the sources and whether permitting authorities can provide adequate assistance to the sources, was cited in Section II of this preamble for area sources subject to NESHAP for dry cleaning, solvent degreasing, and secondary aluminum. For these sources, the previous analysis pointed out that these sources lacked resources and experience with environmental regulations. Although general permit would potentially simplify the permit application process, a general permit would still contain the same applicable requirements of the NESHAP. This is true because the permit content requirements of §§ 70.7 and 71.6, such as monitoring, recordkeeping and reporting, are the same for standard and general permits. Thus, even if applying for a general permit is less of a burden, sources will have significant burdens and costs associated with understanding and complying with the general permit requirements. (Also see section II.A of this preamble for a discussion of the costs and burdens imposed by title V on sources). Accordingly, although general permits may reduce the cost of applying for a permit, there is a possibility that the remaining burdens of complying with the permit and obtaining assistance to understand it will continue to be significant for these area sources.

The third factor, whether costs of title V permitting are excessive with respect to any expected gains in compliance that may be achieved from permitting, was cited in Section II of this preamble for area sources subject to the NESHAP for dry cleaning. Many area source dry cleaners and degreasers are small businesses with limited resources and environmental experience. Even though general permits may reduce the costs of applying for a permit, we believe the economic data in the docket for these sources shows that the remaining costs of complying with the permit and obtaining assistance to understand it will continue to be significant for these area sources. Also, EPA's outreach in recent years has shown that some State agencies generally do not believe that implementing area source standards through permits will result in increased compliance, and EPA believes this will be as true with general permits as with standard permits.

The fourth factor, whether adequate oversight by the permitting authority would result in compliance without permitting, was cited in Section II of this preamble for area sources subject to NESHAP for dry cleaning, solvent degreasing, EO sterilizing, and secondary aluminum. In our analysis in Section II of this preamble, we looked at the compliance rates that permitting authorities could achieve without permits, such as through State permit programs and comprehensive oversight programs. In effect, we considered whether title V was necessary for compliance with the NESHAP to be achieved. As we explained in Section II of this preamble, the permit content requirements of §§ 70.6 and 71.6 for monitoring, recordkeeping and reporting are identical for general and standard permits. Because of this, we believe the analysis done in section II of this preamble will apply with equal force for general permits. Consistent with that analysis, compliance can largely be achieved for these source categories without relying on operating permits.

Nevertheless, as an alternative to today's proposal, EPA seeks comment on the option of requiring permitting authorities to issue general permits to the five categories of area sources proposed for exemption from title V. Specifically, EPA invites comment on the extent to which there would be ''unnecessary burden'' on the area sources if general permits were issued to them, or if compliance with general permits would be impracticable or infeasible for them. The EPA notes that while some States claim that the permitting of area sources will strain the resources of permitting authorities, a few States have successfully implemented a general permit program for area sources. The sources in these five source categories of area sources may be good candidates for general permits. For example, the State of Florida currently issues general permit under its title V program for these five categories of area sources. Under this program, an area source in Florida mails in a notification form that informs the Florida Air Quality Division that it is eligible for a general permit. In the form the source agrees to comply with all the specific conditions of the general permit rule.

## IV. Request for Comment on Secondary Lead Area Sources

In contrast to the five categories discussed above, we propose to decline making a finding that title V permitting for secondary lead area sources is impracticable, infeasible, or unnecessarily burdensome. Although it is not necessary for EPA to issue a proposed rule before declining to make such a finding, we are requesting comment here to determine whether or not EPA should make such a finding, and, in turn, whether or not EPA should finalize an exemption for this source category as well. At this time we are proposing to decline making such a finding because we did not find that an exemption from title V permitting is warranted for area sources subject to the NESHAP for secondary lead smelters. We considered the same factors as for the previous categories, but we did not find information or data at this time that would lead us to a finding that an exemption from title V permitting is warranted in the same manner as we believe exemptions are warranted for area sources subject to other NESHAPS addressed in today's notice. (*See* section II of this notice.) Although we are proposing to decline making such a finding, in the alternative, if EPA receives information or data sufficient to support a finding that permitting area source lead smelters would be

''impracticable, infeasible, or unnecessarily burdensome'' on such sources and we determine that title V exemption for these sources would ''not adversely affect public health, welfare, or the environment'' we could opt to make such a finding and exempt this source category from permitting as well.

Secondary lead smelters have been identified by the EPA as significant emitters of several chemicals identified in the Act as hazardous air pollutants (HAP) including but not limited to lead compounds, arsenic compounds, and 1,3-butadiene. Chronic exposure to arsenic and 1,3-butadiene is associated with skin, bladder, liver and lung cancer and other developmental and reproductive effects. Exposure to lead compounds results in adverse effects on the blood, central nervous system and kidneys.

Section 502(a) of title V does not require EPA to offer any justification for not exempting area sources from title V permitting. A justification is required only if an area source is exempted from title V. Nevertheless, we offer the following explanation to help the public understand EPA's reasons for proposing to allow the deferrals to expire.

The EPA is proposing to allow the title V deferrals to expire for area sources subject to the secondary lead smelter NESHAP because, unlike the five source categories we are proposing to exempt, EPA could not find, consistent with the Act, that compliance with the title V requirements is impracticable, infeasible, or unnecessarily burdensome on such source categories. Only 3 secondary lead smelters area sources are believed by EPA to exist. (Also see section I.A. of this preamble for an estimate of affected entities for each source category addressed by this proposal.) Also, EPA believes that two of these sources already have been issued title V permits by their respective permitting authorities. Thus, requiring title V permits for these area sources appears neither impracticable nor infeasible. We also do not have any information to suggest that it has been unnecessarily burdensome, but we ask for comment on whether there is additional information that could further inform EPA's decision whether to make such a finding.

If EPA reaches a final decision that a 502(a) finding for secondary lead smelters is unwarranted, any secondary lead area source that has not already applied for a title V permit would be required to submit a title V permit application by December 9, 2005, as provided in § 63.541(c) of subpart X. Also, as provided in § 70.3(c)(2) and § 71.3(c)(2), assuming the source is not subject to title V for another reason, the permit for the source must include the requirements of subpart X and all other applicable requirements that apply to emissions units affected by subpart X, while any units not subject to subpart X may be excluded from the permit. (See 68 FR 57518, October 3, 2003, footnote #7 on page 57534.)

## V. Environmental Results Program

The EPA has a strong interest in ensuring that sources in the five area source categories proposed to be exempted from title V continue to comply with their NESHAP requirements. From our outreach, we believe that State and local permitting authorities can determine the best way to ensure compliance with these standards.

One successful alternative to case-by-case permitting is an oversight program developed by the Massachusetts Department of Environmental Protection, called the Environmental Results Program (ERP). This alternative program has proven very effective in ensuring compliance by small sources with their applicable environmental requirements. The ERP model offers a sector-based approach (which can be a multimedia approach) that replaces facility-specific State permits with industry-wide environmental performance standards and annual certifications of compliance. The ERP applies three innovative and interlinked tools to enhance and measure environmental performance. These tools supplement a State's traditional compliance inspection and compliance assistance efforts and consist of: (1) An annual facility-specific, self certification questionnaire; (2) compliance assistance to include ''plain language'' workbooks describing the applicable regulations in a user's friendly approach and outreach workshops to educate and train affected facility owner/operators; and (3) a performance measurement methodology to track and validate facility performance. This methodology includes statistically valid compliance inspections protocols to measure group performance and target inspections. The ERP compliance assistance workbooks include all applicable regulatory requirements as well as pollution prevention and best management practice opportunities.

Fourteen States now implement ERP projects (across 9 small business-dominated sectors). The EPA encourages States to investigate how the ERP model might be beneficial to their compliance and oversight efforts. The EPA can provide assistance to States interested in conducting ERP projects. To learn more on why the ERP model is unique, what problems it was designed to solve and more details on how to set up projects, contact Scott Bowles, EPA National Center for Environmental Innovation, telephone (202) 566–2208, e-mail *bowles.scott@epa.gov* and/or visit EPA's Web site at *http://www.epa.gov/permits/*.

## VI. The Effects of the End of the Deferrals for Area Sources

The deferrals from title V permitting for the six categories of areas sources addressed in this preamble expired on December 9, 2004 and those area sources became subject to title V on that date. Sections 70.5(a)(1)(i) and 71.5(a)(1) allow sources subject to the program up to one year (or such earlier date as the permitting authority may establish) to submit complete permit applications (*e.g.*, up to December 9, 2005 for sources subject on December 9, 2004). After submittal of a complete permit application, §§ 70.7(a)(2) and 71.7(a)(2) require permitting authorities to issue final operating permits within 18 months (by June 9, 2007, for applications submitted on December 9, 2005).

Because the deferrals for these five area source categories have already expired, even though EPA is proposing permanent exemptions for five of the six categories of area sources addressed in this notice, these five categories of area sources are technically subject to title V requirements until the exemptions are finalized. At the present time, EPA expects to issue a final rule in the summer of 2005, taking final action on the proposed exemptions. As noted above, State and local permitting authorities are required to receive applications within a 1-year period from the end of the deferral (*i.e.*, by December 9, 2005), although some States have shortened this period to 6 months. Given the anticipated timing of these two events, we leave it to the permitting authority to decide when to call for applications. Should an application call be made, an EPA guidance document, *EPA White Paper for Streamlined Development of Part 70 Permit Applications* (White Paper I), July 10, 1995, describes a possible method for allowing a simplified, phased, two-step approach to application preparation which may be of interest. Under the White Paper I approach, the first step consists of submittal, by the appropriate deadline, of an application that contains enough information for the permitting authority to find it administratively complete, consistent with procedures for determining applications complete

approved into their title V program by EPA, and in the second step, application updates as needed to support draft permit preparation.

## VII. Administrative Requirements

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is significant and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines significant regulatory action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of legal mandates.

### *B. Paperwork Reduction Act*

Because today's action would permanently exempt five categories of area sources subject to NESHAPs from title V permitting requirements, this action would provide a net decrease in information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The current part 70 and part 71 rules, specifically §§ 70.3(a)(3) and 71.3(a)(3), impose permitting requirements on all area sources subject to section 112 standards not previously permanently exempted through notice and comment rulemaking. The sources addressed in today's notice were subject to deferrals from permitting that expired on December 9, 2004. (*See* 59 FR 61801, December 2, 1994, amended by 60 FR 29484, June 5, 1995; 61 FR 27785, June 3, 1996; 65 FR 15690, March 23, 2000; and 64 FR 69637, December 14, 1999). Because these area sources are currently subject to permitting requirements and because today's action proposes to permanently exempt the majority of such sources from these requirements (except for secondary lead sources), this action will provide a net decrease in information collection burdens for these sources. The information collection burden for title V permitting was estimated as part of the promulgation of the part 70 and 71 rules. The Information Collection Request (ICR) for the part 70 rule (ICR 1587.06) was extended until March 31, 2007, in November 2004 by OMB (OMB 2060–0243). The ICR for the part 71 rule (ICR 1713.05) was also extended until March 31, 2007, in November 2004 by the OMB (OMB 2060–0336).

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) Small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (*See* 13 CFR part 121); (2) a governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. As explained in more detail above, today's action permanently exempts a large number of area sources from title V permitting and this action will provide a net decrease in information collection burdens for these sources. We have therefore concluded that today's proposed rule will relieve regulatory burden for these affected small entities.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995(UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. The estimated administrative burden hour and costs associated with obtaining and complying with a title V permit were

developed upon promulgation of the operating permit rules (part 70) and are presented in Chapter 6 of U.S. EPA 1999, *Regulatory Impact Analyses for the Operating Permit Program*, Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. However, as explained above, this rule would reduce burden by exempting some of these sources from permitting.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As described in section D, above (on UMRA), this rule would reduce the overall number of sources subject to the title V program. In addition, this proposed rule would not modify the relationship of the States and EPA for purposes of implementing the title V permit program. Thus, Executive Order 13132 does not apply to this proposed rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA actively engaged the States in the development of this proposed rule. The EPA periodically informed representatives of State and local air pollution control agencies of the actions EPA was considering concerning this proposed rule. The EPA also sought information from State and local agencies concerning their oversight activities for area sources and used that information in development of this rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have ''Tribal implications'' as specified in Executive Order 13175. This proposed rule concerns the exemption of area sources from the title V permit program. The Tribal Air Rule (TAR) gives Tribes the opportunity to develop and implement CAA programs such as title V, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt. This proposed rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a title V permit program at this time. Furthermore, this proposed rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes concerning title V and this proposed rule does not modify that relationship. Because this proposed rule does not have Tribal implications, Executive Order 13175 does not apply.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The proposed rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The EPA believes that this proposed rule should not raise any environmental justice issues.

**List of Subjects**

*40 CFR Part 63*

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

*40 CFR Part 70*

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

*40 CFR Part 71*

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: March 21, 2005.

**Stephen L. Johnson,**

*Acting Administrator.*

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

## PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

## Subpart M—[Amended]

2. Section 63.320 is amended by revising paragraph (k) to read as follows:

**§ 63.320 Applicability.**

* * * * *

(k) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

## Subpart N—[Amended]

3. Section 63.340 is amended by revising paragraph (e) to read as follows:

**§ 63.340 Applicability and designation of source.**

* * * * *

(e) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

4. Table 1 to Subpart N is amended by revising the entry for § 63.1(c)(2) to read as follows:

TABLE 1 TO SUBPART N OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART N

| General provisions reference | Applies to subpart N | Comment |
|---|---|---|
| * * * * * * * | | |
| § 63.1(c)(2) | Yes | § 63.340(e) of Subpart N exempts area sources from the obligation to obtain Title V operating permits. |
| * * * * * * * | | |

## Subpart O—[Amended]

5. Section 63.360 is amended by:

a. Revising the entry for § 63.1(c)(2) in Table 1; and

b. Revising paragraph (f).

The revisions read as follows:

**§ 63.360 Applicability.**

* * * * *

TABLE 1 OF SECTION 63.360—GENERAL PROVISIONS APPLICABILITY TO SUBPART O

| Reference | Applies to sources using 10 tons in subpart O* | Applies to sources using 1 to 10 tons in subpart O* | Comment |
|---|---|---|---|
| * * * * * * * | | | |
| 63.1(c)(2) | Yes | | § 63.360(f) exempts area sources subject to this subpart from the obligation to obtain Title V operating permits. |
| * * * * * * * | | | |

* * * * *

(f) If you are an owner or operator of a source using less than 10 tons that is subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

* * * * *

## Subpart T—[Amended]

6. Section 63.460 is amended by adding paragraph (h) to read as follows:

**§ 63.460 Applicability and designation of source.**

* * * * *

(h) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

**§ 63.468 [Amended]**

7. Section 63.468 is amended by removing and reserving paragraph (j).

8. Appendix B to Subpart T is amended by revising the entry for § 63.1(c)(2) to read as follows:

APPENDIX B TO SUBPART T—GENERAL PROVISIONS APPLICABILITY TO SUBPART T

| Reference | Applies to subpart T | | Comment |
|---|---|---|---|
| | BCC | BVI | |
| * | * * | * | * * * |
| § 63.1(c)(2) | Yes | Yes | Subpart T, § 63.460(h) exempts area sources subject to this subpart from the obligation to obtain Title V operating permits. |
| * | * * | * | * * * |

**Subpart RRR—[Amended]**

9. Section 63.1500 is amended by revising paragraph (e) to read as follows:

**§ 63.1500 Applicability.**

* * * * *

(e) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

* * * * *

10. Appendix A to Subpart RRR is amended by revising the entry for § 63.1(c)(2) to read as follows:

APPENDIX A TO SUBPART RRR—GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR

| Citation | Requirement | Applies to RRR | Comment |
|---|---|---|---|
| * | * * | * | * * * |
| § 63.1(c)(2) | | Yes | § 63.1500(e) exempts area sources subject to this subpart from the obligation to obtain Title V operating permits. |
| * | * * | * | * * * |

**PART 70—[AMENDED]**

1. The authority citation for part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

2. Section 70.3 is amended as follows:

a. By revising paragraph (a) introductory text.

b. By removing and reserving paragraph (b)(3).

c. By revising paragraph (b)(4) introductory text.

**§ 70.3 Applicability.**

(a) *Part 70 sources.* A State program with whole or partial approval under this part must provide for permitting of the following sources:

* * * * *

(b) * * *

(4) The following source categories are exempted from the obligation to obtain a part 70 permit:

* * * * *

**PART 71—[AMENDED]**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**§ 71.3 [Amended]**

2. Section 71.3 is amended by removing and reserving paragraph (b)(3).

[FR Doc. 05–5932 Filed 3–24–05; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### 42 CFR Parts 405, 482, and 488

**[CMS–3835–N]**

**RIN 0938–AH17**

## Medicare Program; Hospital Conditions of Participation: Requirements for Approval and Re-Approval of Transplant Centers To Perform Organ Transplants; Extension of Comment Period

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of extension of comment period for proposed rule.

**SUMMARY:** This notice extends the comment period for a proposed rule published in the **Federal Register** on February 4, 2005, (70 FR 6140). The proposed rule sets forth the requirements that heart, heart-lung, intestine, kidney, liver, lung, and pancreas transplant centers would be required to meet to participate as Medicare-approved transplant centers. These proposed revised requirements focus on an organ transplant center's ability to perform successful transplants and deliver quality patient care as evidenced by good outcomes and sound policies and procedures. We also proposed that approval, as determined by a center's compliance with the proposed data submission, outcome, and process requirements would be granted for 3 years. Every 3 years, approvals would be renewed for transplant centers that continue to meet these requirements. We proposed these revised requirements to ensure that transplant centers continually provide high-quality transplantation services in a safe and efficient manner. The comment period for the proposed rule is extended for 60 days.

**DATES:** The comment period is extended to 5 p.m. on June 6, 2005.

**ADDRESSES:** In commenting, please refer to file code CMS–3835–P. Because of