

**§ 71.10 Delegation of part 71 program.**

(a) *Delegation of part 71 program.* The Administrator may delegate, in whole or in part, with or without signature authority, the authority to administer a part 71 operating permits program to a State, eligible Tribe, local, or other non-State agency in accordance with the provisions of this section. In order to be delegated authority to administer a part 71 program, the delegate agency must submit a legal opinion from the Attorney General from the State, or the attorney for the State, local, interstate, or eligible Tribal agency that has independent legal counsel, stating that the laws of the State, locality, interstate compact or Indian Tribe provide adequate authority to carry out all aspects of the delegated program. A Delegation of Authority Agreement (Agreement) shall set forth the terms and conditions of the delegation, shall specify the provisions that the delegate agency shall be authorized to implement, and shall be entered into by the Administrator and the delegate agency. The Agreement shall become effective upon the date that both the Administrator and the delegate agency have signed the Agreement. Once delegation becomes effective, the delegate agency will be responsible, to the extent specified in the Agreement, for administering the part 71 program for the area subject to the Agreement. Delegate agencies that choose to receive electronic documents as part of their delegated program must satisfy the requirements of 40 CFR part 3—(Electronic reporting).

(b) *Publication of Notice of Delegation of Authority Agreement.* The Administrator shall publish a notice in the FEDERAL REGISTER informing the public of any delegation of a portion of the part 71 program to a State, eligible Tribe, or local agency.

(c) *Revision or revocation of Delegation of Authority Agreement.* An Agreement may be modified, amended, or revoked, in part or in whole, by the Administrator after consultation with the delegate agency.

(d) *Transmission of information to the Administrator.* (1) When a part 71 program has been delegated in accordance with the provisions of this section, the delegate agency shall provide to the

Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final part 71 permit. The applicant may be required by the delegate agency to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the delegate agency may submit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(2) The Administrator may waive the requirements of paragraph (d)(1) of this section for any category of sources (including any class, type, or size within such category) other than major sources by regulation for a category of sources nationwide.

(e) *Retention of records.* The records for each draft, proposed, and final permit, and application for permit renewal or modification shall be kept for a period of 5 years by the delegate agency. The delegate agency shall also submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the delegate agency is implementing, administering, and enforcing the delegated part 71 program in compliance with the requirements of the Act and of this part.

(f) *Prohibition of default issuance.* (1) For the purposes of Federal law and title V of the Act, when a part 71 program has been delegated in accordance with the provisions of this section, no part 71 permit (including a permit renewal or modification) will be issued until affected States have had an opportunity to review the draft permit as required pursuant to § 71.8(a) and EPA has had an opportunity to review the proposed permit.

(2) To receive delegation of signature authority, the legal opinion submitted by the delegate agency pursuant to paragraph (a) of this section shall certify that no applicable provision of State, local or Tribal law requires that

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a part 71 permit or renewal be issued after a certain time if the delegate agency has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit), unless EPA has waived such review for EPA and affected States.

(g) *EPA objection.* (1) The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part. No permit for which an application must be transmitted to the Administrator under paragraph (d)(1) of this section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information. When a part 71 program has been delegated in accordance with the provisions of this section, failure of the delegate agency to do any of the following shall constitute grounds for an objection by the Administrator:

- (i) Comply with paragraph (d) of this section;
- (ii) Submit any information necessary to review adequately the proposed permit;
- (iii) Process the permit under the procedures required by §§71.7 and 71.11; or
- (iv) Comply with the requirements of §71.8(a).

(2) Any EPA objection under paragraph (g)(1) of this section shall include a statement of the Administrator's reason(s) for objection and a description of the terms and conditions that the permit must include to respond to the objection. The Administrator will provide the permit applicant a copy of the objection.

(3) If the delegate agency fails, within 90 days after the date of an objection under paragraph (g)(1) of this section, to revise and submit to the Administrator the proposed permit in response to the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this part.

(h) *Public petitions.* In the case of a delegated program, any interested person may petition the Administrator to

reopen a permit for cause as provided in §71.11(n).

(i) *Appeal of permits.* When a part 71 program has been delegated with signature authority in accordance with the provisions of this section, any person or affected State that submitted recommendations or comments on the draft permit, or that participated in the public hearing process may petition the Environmental Appeals Board in accordance with §71.11(1)(1).

(j) *Nondelegable conditions.* (1) The Administrator's authority to object to the issuance of a part 71 permit cannot be delegated to an agency not within EPA.

(2) The Administrator's authority to act upon petitions submitted pursuant to paragraph (h) of this section cannot be delegated to an agency not within EPA.

[61 FR 34228, July 1, 1996, as amended at 70 FR 59887, Oct. 13, 2005]

### **§71.11 Administrative record, public participation, and administrative review.**

The provisions of this section shall apply to all permit proceedings. Notwithstanding the preceding sentence, paragraphs (a) through (h) and paragraph (j) of this section shall not apply to permit revisions qualifying as minor permit modifications or administrative amendments, except that public notice of the granting of appeals of such actions under paragraph (1)(3) of this section shall be provided pursuant to paragraph (d)(1)(i)(E) of this section, and except that affected States shall be provided notice of minor permit modifications under §71.8 as pursuant to paragraph (d)(3)(i)(B) of this section.

(a) *Draft permits.* (1) The permitting authority shall promptly provide notice to the applicant of whether the application is complete pursuant to §71.7(a)(3).

(2) Once an application for an initial permit, permit revision, or permit renewal is complete, the permitting authority shall decide whether to prepare a draft permit or to deny the application.

(3) If the permitting authority initially decides to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the