affected State and would provide the Tribe notice of draft permits, permit renewals, permit reopenings, and permit revisions. Such notice would also be provided when a part 71 program is implemented outside of a Tribal area and an applicant source is within 50 miles of the Tribal area, or is in an area that is contiguous to the Tribal area and may affect the air quality in that area, provided the Indian Tribe meets the eligibility criteria for being treated in the same manner as a State for programs under the Act. See 59 FR 43956 (Aug. 25, 1994).

The definition of "affected State" for purposes of proposed § 71.8 would also include the State or Tribal area and the area within the jurisdiction of the air pollution control agency in which the part 71 permit, permit revision, or permit renewal is being proposed. EPA believes this provision is necessary for part 71, while not for part 70. In some cases under a part 71 program, the title V permitting authority (EPA) would not be the same as the governmental body with general jurisdiction over the area (i.e., the State, Tribe, or local air pollution control agency). When EPA is the permitting authority, EPA believes it is necessary to notify the States, Tribal authorities, and local agencies with jurisdiction over the areas in which EPA's action is proposed. Otherwise, these authorities would be less apprised of EPA's actions than the neighboring areas that do not have jurisdiction over these areas and are less likely to be impacted by EPA's actions. The EPA solicits comment on this expansion of the term "affected State," and on whether other mechanisms might adequately serve to apprise "host" jurisdictions of EPA part 71 actions.

## 2. Applicable Requirements

An "applicable requirement" is any standard or other requirement that applies to a source. This includes any relevant requirement in an approved SIP or preconstruction permit. It also includes any pertinent standard or other requirement imposed pursuant to any title of the Act, such as sections 111, 112, 114(a)(3), 129, 183(e), 183(f), 328, 504(b), 504(e), 608, or 609. However, EPA does not believe that the provisions of sections 604 through 606 and 610 through 612 of title VI of the Act must be considered as applicable requirements for title V and included in title V permits. The rationale for this determination can be found in the preamble to the proposed revision of the part 70 regulations, at IV.A.1(b). See 59 FR 44460 (Aug. 29, 1994).

For purposes of part 71, EPA today incorporates that rationale by reference.

The EPA also incorporates by reference that notice's rationale for adding to the list of applicable requirements any requirements that create offsets or limit emissions for the purpose of complying with, or avoiding applicable requirements. The proposed addition to the part 70 list and today's proposal for part 71 would add as an applicable requirement any emissions-limiting requirement that is enforceable by citizens or EPA under the Act and that is placed on a source for purposes of creating an offset credit or avoiding the applicability of applicable requirements.

## 3. Tribal Areas

The EPA has published a proposed rule, pursuant to section 301(d)(2), specifying the provisions of the Act for which EPA believes it is appropriate to treat Indian Tribes in the same manner as States. See 59 FR 43956 (Aug. 25, 1994) ("Indian Tribes: Air Quality Planning and Management," hereafter "proposed Tribal rule"). The proposed Tribal rule also addresses the criteria a Tribe must meet in order to be eligible for treatment in the same manner as a State for the specified provisions of the Act.

For a Tribe to be eligible for treatment in the same manner as a State, it must be Federally recognized (section 302(r)) and must meet the three criteria set forth in section 301(d)(2)(A)-(C). Briefly, these criteria consist of the following: (1) The Tribe must have a governing body carrying out substantial governmental duties and powers; (2) the functions to be exercised by the Tribe must pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the Tribe's jurisdiction; and (3) the Tribe must be capable of carrying out the functions to be exercised consistent with the terms and purposes of the Act and applicable regulations. These criteria and EPA's streamlined process for determining compliance with these criteria are described in detail in the Tribal rule (59 FR 43961-43964).

In the Tribal rule, EPA proposes to interpret the Act as granting, to Tribes approved by EPA to administer programs under the Act in the same manner as States, authority over all air resources within the exterior boundaries of an Indian reservation. This would enable Tribal-approved programs under the Act to address conduct on all lands, including non-Indian owned fee lands, within the exterior boundaries of a reservation. The proposed Tribal rule would also authorize an eligible Tribe to develop and implement programs under the Act for off-reservation lands that are

determined to be within a Tribe's inherent sovereign authority to regulate. The rationale for this proposed interpretation of Tribal jurisdiction under programs under the Act is set out in detail in the proposed Tribal rule, and is incorporated here by reference. See 59 FR 43958–43961.

EPA's final interpretation of Tribal jurisdiction under this Act may affect the scope of a part 71 program administered by EPA for Tribes. When, pursuant to Federal implementation authority, EPA is acting in the place of a State or Tribe under the Act, all of the rights and duties that would otherwise fall to the State or Tribe accrue instead to EPA. See Central Arizona Water Conservation Dist. v. EPA, 990 F.2d 1531, 1541 (9th Cir. 1993), cert. denied, 114 S.Ct. 94 (1993). Therefore, the scope of Tribal authority under the Act may inform EPA's authority in administering a part 71 program for Tribes.

More specifically, EPA would have authority to implement a Tribal part 71 program for any lands within the exterior boundaries of a reservation and any off-reservation land over which a Tribe has inherent sovereign authority. Tribes determined eligible to be treated in the same manner as a State under the Act would be given notice under proposed §§ 71.8 and 71.10 of certain permit actions. All land within the exterior boundaries of a reservation and any other lands over which a Tribe has demonstrated inherent authority would be considered in providing notice to a Tribe. Further, the proposed part 71 rules provide that, in all instances, the Tribe for the area in which a part 71 permit program is being administered will receive notice.

The EPA's proposed Tribal rule is subject to public comment and may be modified before it is issued in final form. The EPA may need to make conforming changes to the part 71 rules proposed today to reflect any relevant revisions made to the Tribal rule.

## 4. Major Source

The EPA is proposing to utilize the same approaches to defining "major source" as were used for 40 CFR parts 63 and 70, except that today's proposal, like the recently proposed revisions to part 70, would change the definition of major source to conform to the definition in section 112(a) of the Act and to implementing regulations governing hazardous air pollutants (HAP) sources recently promulgated in 40 CFR part 63. Section 501(2) of the Act provides, in relevant part, that the term "major source" means "any stationary source (or any group of stationary sources located within a