providing for public participation for general permits.

In the most recent part 70 proposal, the following items concerning general permits were proposed: (1) authorization to operate under a general permit is a final action subject to judicial review; and (2) the permitting authority is required to notify the public of sources who have been authorized to operate under a general permit. The latter action could be done as a monthly summary. Proposed § 71.6 follows the approach of the recent part 70 proposal for general permits.

#### 3. Emergency Defense

As provided in proposed § 71.6(o), part 71 permits could contain permit terms that provide that a source can establish an affirmative defense to an enforcement action based on noncompliance due to an emergency. The affirmative defense would not apply to permit terms other than technology-based emission limitations (e.g., MACT standards) and would not apply unless the source provides appropriate documentation as specified in proposed  $\S 71.6(o)(3)$ . The emergency defense would be independent of any emergency or upset provision contained in an applicable requirement.

Although part 71 permits could contain provisions for an emergency defense, EPA notes that sources that produce, process, handle or store a listed substance under section 112(r) or any other extremely hazardous substance nonetheless have a general duty in the same manner and to the same extent as section 654, title 29 of the United States Code, to identify hazards assessment techniques, to design and maintain a safe facility, and to minimize the consequences of accidental releases.

The EPA is reevaluating the provisions in parts 70 and 71 relating to the emergency defense in light of concerns identified in legal challenges to the part 70 rule. The EPA may propose revisions to the part 70 and part 71 sections providing for the emergency defense before EPA would include such defense in any part 71 permits. In the interim, to ensure consistency with currently promulgated part 70, EPA would include in part 71 provisions allowing permit terms to establish an emergency defense.

### 4. Operational Flexibility

Section 502(b)(10) of the Act requires that the minimum elements of an approvable permit program include provisions to allow changes within a permitted facility without requiring a permit revision. In the current part 70

rule, EPA included three different methods for implementing this mandate. However, in response to concerns raised by petitioners and State permitting authorities charged with implementing part 70, EPA recently proposed to revise part 70 to eliminate one of those methods and clarify the operation of the others. Today's part 71 proposal adopts the same approach to operational flexibility as discussed in the proposed revision to part 70. The rationale for EPA's position on operational flexibility is set out in the proposed revisions to part 70 (59 FR 44460 (Aug. 29, 1994)), which today's notice incorporates by reference.

# 5. Referencing of Requirements

Petitioners in the part 70 litigation have asked EPA for clarification on the subject of data that may be referenced but not included in the permit.

In the recently proposed revisions to part 70, EPA has indicated that some referencing might be appropriate, and has requested comment on whether referencing should be allowed for: (1) test methods, (2) definitions, (3) startup, shutdown, or malfunction requirements or plans, and (4) detailed emission calculation protocols. The EPA solicits comments on referencing for part 71 permits.

### F. Section 71.7—Permit Review, Issuance, Renewal, Reopenings, and Revisions

This section of the preamble describes EPA's proposed regulations governing permit issuance, renewal, reopening, and revision procedures under part 71. Generally, under a part 71 program such procedures would follow the procedures in the currently promulgated part 70 rule, as recently proposed to be revised. See 40 CFR 70.7 and 59 FR 44460 (Aug. 29, 1994). To the extent part 71 would follow the procedures in existing part 70 and the proposed revisions thereto, this notice incorporates the rationale for those procedures by reference. Where possible, EPA believes it is appropriate to model part 71 procedures on those required by part 70, in order to promote national consistency between the title V permit programs that will be administered throughout the country. National consistency will ensure that sources are not faced with substantially different programs when EPA, as opposed to State agencies, is the permitting authority. Moreover, as most part 71 programs are likely to be of limited duration, consistency with part 70 will enable smooth transition between Federal and State programs, encourage States to take delegation of administration of part 71 programs, help States that have been unable to obtain part 70 approval to phase into the title V program, promote uniformity in public and affected State participation, and provide a level playing field for sources.

In certain respects, the procedures under proposed part 71 would vary from the procedures in part 70. This is usually due to the fact that EPA, as a Federal permitting authority, will not be implementing State air programs in general when it assumes title V responsibilities. Consequently, certain opportunities under part 70, such as new source review merged with title V permit revision procedures, would not be available where EPA is the permitting authority. However, where a State takes delegation of the administration of a part 71 program, some of these opportunities would be available. These variations are discussed in the relevant sections of the discussion below. In other cases, where part 70 and the proposed revisions thereto provide States with flexibility to decide among alternative approaches or define specific elements of permit program procedures in developing their State programs, part 71 would decide these issues in the regulation itself, rather than rely upon further program development. Moreover, in today's notice EPA proposes detailed procedures for permitting actions, similar to those found at 40 CFR part 124 governing other permit programs administered by EPA.

## 1. Permit Issuance and Renewal

Part 71 would generally follow the currently promulgated part 70, as proposed to be revised in the August 29, 1994, **Federal Register** notice, in establishing procedures for permit issuance and renewal. These procedures are set forth in proposed § 71.7(a)–(c) and are discussed in greater detail in section 3–F–1 of the Supplementary Information Document.

In certain respects, part 71 would differ from part 70 and the proposed revisions thereto. For example, part 71 permitting authorities would be required to provide EPA with statements describing the legal and factual basis for draft permit terms only where the part 71 program has been delegated to a State or Tribal agency for administration. Also, only in cases where EPA has delegated part 71 administration to a State or Tribal agency would EPA would reserve the right to terminate or revoke and reissue a permit when the delegate permitting authority is not taking appropriate action to expeditiously process a permit renewal application.