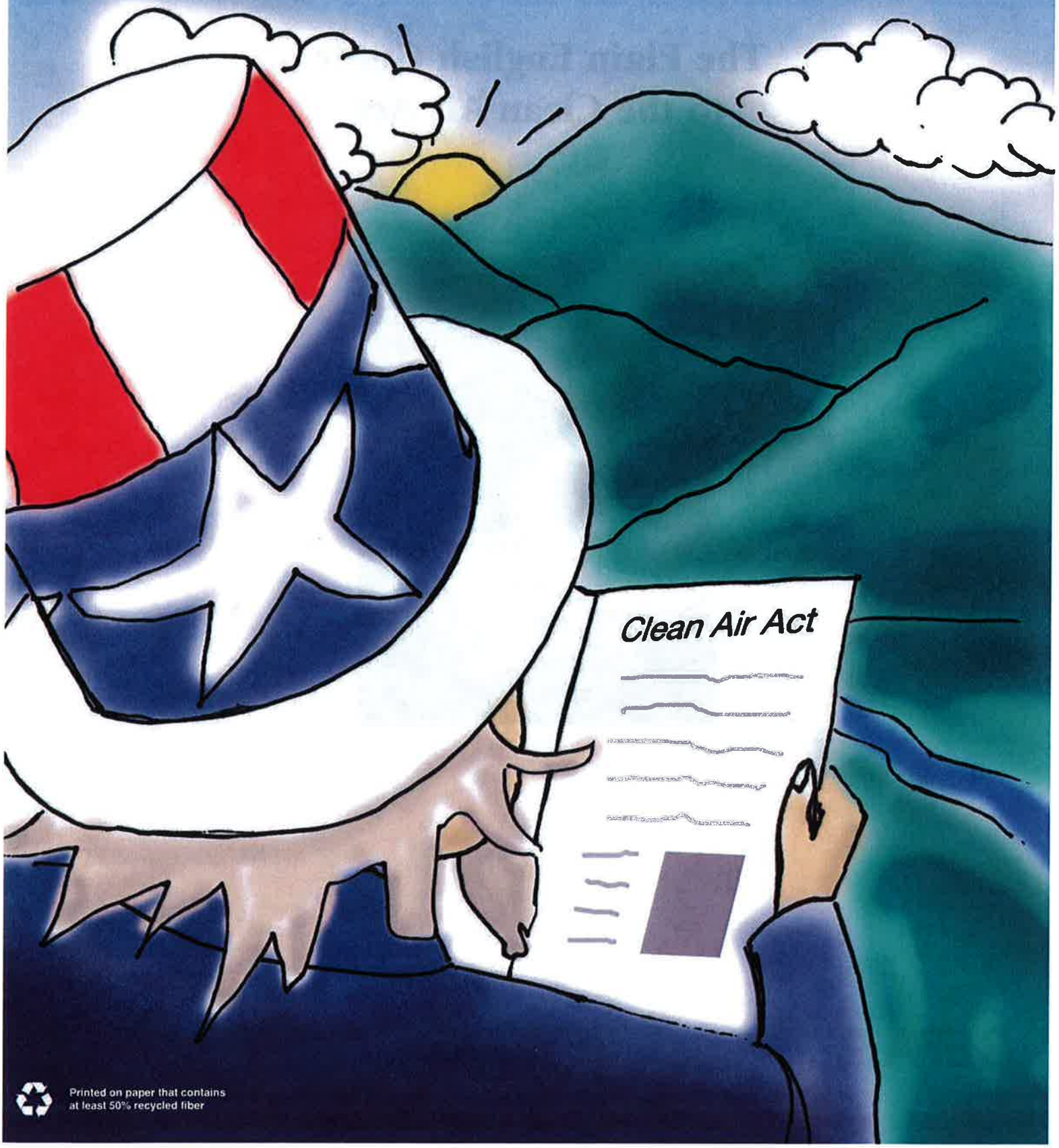
Attachment

Section – 1:

Background

EPA United States Environmental Protection Agency

The Plain English Guide To The Clean Air Act



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The Plain English Guide to the Clean Air Act

EPA United States Environmental Protection Agency

Office of Air Quality Planning and Standards
Research Triangle Park, NC

Publication No. EPA-456/K-07-001
April 2007

Contents

Why Should You Be
Concerned About Air Pollution?

You could go days without food and hours without water, but you would last only a few minutes without air. On average, each of us breathes over 3,000 gallons of air each day. You must have air to live. However, did you know that breathing polluted air can make you sick?

Air pollution can damage trees, crops, other plants, lakes, and animals. In addition to damaging the natural environment, air pollution also damages buildings, monuments, and statues. It not only reduces how far you can see in national parks and cities, it even interferes with aviation.

In 1970, Congress created the Environmental Protection Agency (EPA) and passed the Clean Air Act, giving the federal government authority to clean up air pollution in this country. Since then, EPA and states, tribes, local governments, industry, and environmental groups have worked to establish a variety of programs to reduce air pollution levels across America.

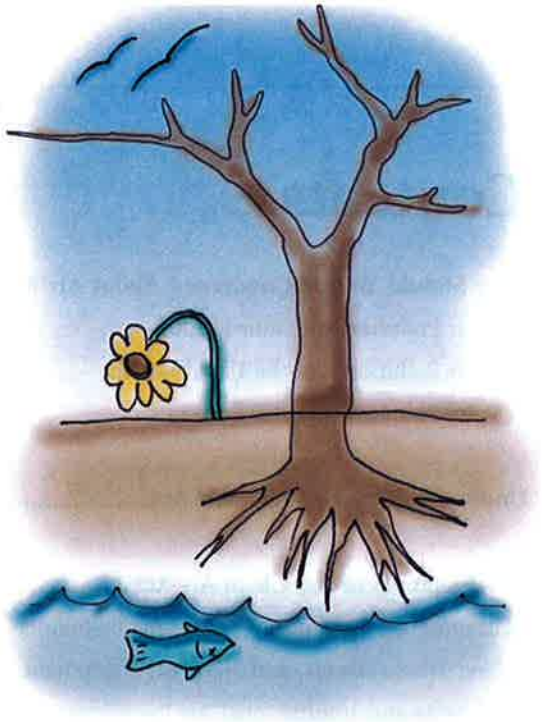
The Clean Air Act has helped change the way many of us work or do business. In some cases, it has even changed the way we live. This guide provides a brief introduction to the programs, philosophies, and policies in the Clean Air Act.

Air Pollution and Your Health

Breathing polluted air can make your eyes and nose burn. It can irritate your throat and make breathing difficult. In fact, pollutants like tiny airborne particles and ground-level ozone can trigger respiratory problems, especially for people with asthma. Today, nearly 30 million adults and children in the United States have been diagnosed with asthma. Asthma sufferers can be severely affected by air pollution. Air pollution can also aggravate health problems for the elderly and others with heart or respiratory diseases.

Testing for asthma in Minneapolis, Minnesota. Air pollution can trigger and aggravate asthma in children.

Ian Greaves, M.D., University of Minnesota School of Public Health, Minneapolis, MN



Some toxic chemicals released in the air such as benzene or vinyl chloride are highly toxic and can cause cancer, birth defects, long term injury to the lungs, as well as brain and nerve damage. And in some cases, breathing these chemicals can even cause death.

Other pollutants make their way up into the upper atmosphere, causing a thinning of the protective ozone layer. This has led to changes in the environment and dramatic increases in skin cancers and cataracts (eye damage).

Air Pollution and the Environment

Air pollution isn't just a threat to our health, it also damages our environment. Toxic air pollutants and the chemicals that form acid rain and ground-level ozone can damage trees, crops, wildlife, lakes and other bodies of water. Those pollutants can also harm fish and other aquatic life.

Air Pollution and the Economy

The health, environmental, and economic impacts of air pollution are significant. Each day, air pollution causes thousands of illnesses leading to lost days at work and school. Air pollution also reduces agricultural crop and commercial forest yields by billions of dollars each year.

By reducing air pollution, the Clean Air Act has led to significant improvements in human health and the environment in the United States.

Since 1970,

- **the six commonly found air pollutants have decreased by more than 50 percent,**
- **air toxics from large industrial sources, such as chemical plants, petroleum refineries, and paper mills have been reduced by nearly 70 percent,**
- **new cars are more than 90 percent cleaner and will be even cleaner in the future, and**
- **production of most ozone-depleting chemicals has ceased.**

At the same time,

- **the U.S. gross domestic product, or GDP, has tripled,**
- **energy consumption has increased by 50 percent, and**
- **vehicle use has increased by almost 200 percent.**

Understanding
the Clean Air Act

Brief History of the Clean Air Act

In October 1948, a thick cloud of air pollution formed above the industrial town of Donora, Pennsylvania. The cloud which lingered for five days, killed 20 people and caused sickness in 6,000 of the town's 14,000 people. In 1952, over 3,000 people died in what became known as London's "Killer Fog." The smog was so thick that buses could not run without guides walking ahead of them carrying lanterns.

Events like these alerted us to the dangers that air pollution poses to public health. Several federal and state laws were passed, including the original Clean Air Act of 1963, which established funding for the study and the cleanup of air pollution. But there was no comprehensive federal response to address air pollution until Congress passed a much stronger Clean Air Act in 1970. That same year Congress created the EPA and gave it the primary role in carrying out the law. Since 1970, EPA has been responsible for a variety of Clean Air Act programs to reduce air pollution nationwide.

In 1990, Congress dramatically revised and expanded the Clean Air Act, providing EPA even broader authority to implement and enforce regulations reducing air pollutant emissions. The 1990 Amendments also placed an increased emphasis on more cost-effective approaches to reduce air pollution.

Clean Air Act Roles and Responsibilities

The Clean Air Act is a federal law covering the entire country. However, states, tribes and local governments do a lot of the work to meet the Act's requirements. For example, representatives from these agencies work with companies to reduce air pollution. They also review and approve permit applications for industries or chemical processes.

EPA's Role

Under the Clean Air Act, EPA sets limits on certain air pollutants, including setting limits on how much can be in the air anywhere in the United States. This helps to ensure basic health and environmental protection from air pollution for all Americans. The Clean Air Act also gives EPA the authority to limit emissions of air pollutants coming from sources like chemical plants, utilities, and steel mills. Individual states or tribes may have stronger air pollution laws, but they may not have weaker pollution limits than those set by EPA.

EPA must approve state, tribal, and local agency plans for reducing air pollution. If a plan does not meet the necessary requirements, EPA can issue sanctions against the state and, if necessary, take over enforcing the Clean Air Act in that area.

EPA assists state, tribal, and local agencies by providing research, expert studies, engineering designs, and funding to support clean air progress. Since 1970, Congress and the EPA have provided several billion dollars to the states, local agencies, and tribal nations to accomplish this.

State and Local Governments' Role

It makes sense for state and local air pollution agencies to take the lead in carrying out the Clean Air Act. They are able to develop solutions for pollution problems that require special understanding of local industries, geography, housing, and travel patterns, as well as other factors.

State, local, and tribal governments also monitor air quality, inspect facilities under their jurisdictions and enforce Clean Air Act regulations.

States have to develop State Implementation Plans (SIPs) that outline how each state will control air pollution under the Clean Air Act. A SIP is a collection of the regulations, programs and policies that a state will use to clean up polluted areas. The states must involve the public and industries through hearings and opportunities to comment on the development of each state plan.

The Clean Air Act includes a variety of approaches for dealing with pollution released by large industrial sources.

Tribal Nations' Role

In its 1990 revision of the Clean Air Act, Congress recognized that Indian Tribes have the authority to implement air pollution control programs.

EPA's Tribal Authority Rule gives Tribes the ability to develop air quality management programs, write rules to reduce air pollution and implement and enforce their rules in Indian Country. While state and local agencies are responsible for all Clean Air Act requirements, Tribes may develop and implement only those parts of the Clean Air Act that are appropriate for their lands.

Key Elements
of the Clean Air Act

EPA's mission is to protect human health and the environment. To achieve this mission, EPA implements a variety of programs under the Clean Air Act that focus on:

- reducing outdoor, or ambient, concentrations of air pollutants that cause smog, haze, acid rain, and other problems;
- reducing emissions of toxic air pollutants that are known to, or are suspected of, causing cancer or other serious health effects; and
- phasing out production and use of chemicals that destroy stratospheric ozone.

These pollutants come from stationary sources (like chemical plants, gas stations, and powerplants) and mobile sources (like cars, trucks, and planes).

Cleaning Up Commonly Found Air Pollutants

Six common air pollutants (also known as "criteria pollutants") are found all over the United States. They are particle pollution (often referred to as particulate matter), ground-level ozone, carbon monoxide, sulfur oxides, nitrogen oxides, and lead. These pollutants can harm your health and the environment, and cause property damage. Of the six pollutants, particle pollution and ground-level ozone are the most widespread health threats. Details about these two pollutants are discussed below. For information about the other common pollutants, visit EPA's website at www.epa.gov/air/urbanair/.

EPA calls these pollutants "criteria" air pollutants because it regulates them by developing human health-based and/or environmentally-based criteria (science-based guidelines) for setting permissible levels. The set of limits based on human health is called primary standards. Another set of limits intended to prevent environmental and property damage is called secondary standards. A geographic area with air quality that is cleaner than the primary standard is called an "attainment" area; areas that do not meet the primary standard are called "nonattainment" areas.

How Smog Is Formed

Many pollution sources, including cars, manufacturing and chemical plants, and products used in homes, release smog-forming pollutants. Winds blow the pollutants away from their sources and the heat of the summer sun causes chemical reactions that form ground-level ozone—a principal component of smog.

Hours after the smog-forming pollutants are released from their sources, smog pollutes the air, often many miles away from where the pollutants were released.

EPA has been developing programs to cut emissions of these commonly found air pollutants since the Clean Air Act was passed in 1970. It's a big job, and although a great deal of progress has been made, it will take time to make the air healthy throughout the country. For the latest information on air quality trends in the U.S., visit www.epa.gov/airtrends. There are still several areas of the country, including many large cities, that are classified as nonattainment for at least one of the six common pollutants. Despite continued improvements in air quality, millions of people live in areas with monitoring data measuring unhealthy levels of pollution.

To see whether your area is attainment or nonattainment, contact your local air pollution control agency or visit EPA's website at: www.epa.gov/air/urbanair.

Particle Pollution

Particle pollution, also known as particulate matter (PM), includes the very fine dust, soot, smoke, and droplets that are formed from chemical reactions, and produced when fuels such as coal, wood, or oil are burned. For example, sulfur dioxide and nitrogen oxide gases from motor vehicles, electric power generation, and industrial facilities react with sunlight and water vapor to form particles. Particles may also come from fireplaces, wood stoves, unpaved roads, crushing and grinding operations, and may be blown into the air by the wind.

EPA scientists and other health experts are concerned about particle pollution because very small or "fine" particles can get deep into the lungs. These fine particles, by themselves, or in combination with other air pollutants, can cause increased emergency room visits and hospital admissions for respiratory illnesses, and tens of thousands of deaths each year. They can aggravate asthma, cause acute respiratory symptoms such as coughing, reduce lung function resulting in shortness of breath, and cause chronic bronchitis.

The elderly, children, and asthmatics are particularly susceptible to health problems caused by breathing fine particles. Individuals with pre-existing heart or lung disease are also at an increased risk of health problems due to particle pollution.

Particles also cause haze reducing visibility in places like national parks and wilderness areas that are known for their scenic vistas. These are places where we expect to see clearly for long distances. In many parts of the United States, pollution has reduced the distance and clarity of what we see by 70 percent.

Fine particles can remain suspended in the air and travel long distances with the wind. For example, over 20 percent of the particles that form haze in the Rocky Mountains National Park have been estimated to come from hundreds of miles away.

Particles also make buildings, statues and other outdoor structures dirty. Trinity Church in downtown New York City was black until a few years ago, when cleaning off almost 200 years worth of soot brought the church's stone walls back to their original light pink color.

Before the 1990 Clean Air Act went into effect, EPA set limits on airborne particles smaller than 10 micrometers in diameter called PM_{10}. These are tiny particles (seven of these particles lined up next to each other would cover a distance no wider than a human hair). Research has shown that even smaller particles (1/4 the size of a PM_{10} particle) are more likely to harm our health. So in 1997, EPA published limits for fine particles, called $PM_{2.5}$. To reduce particle levels, additional controls are being required on a variety of sources including power plants and diesel trucks.

Protecting the Public from Particle Pollution

EPA is tackling particle pollution in several different ways.

- **EPA's health-based standards include limits for smaller-sized or "fine" particles. States are taking actions to meet these standards. To learn more, visit www.epa.gov/particles.**
- **EPA's rule for Clean Diesel Trucks and Buses will result in a fleet of heavy-duty trucks and buses that will be 95 percent cleaner than today's trucks and buses. To learn more, visit www.epa.gov/otaq/diesel.**
- **Visibility protection regulations are designed to reduce emissions that cause haze in our national parks and wilderness areas. States are working together on strategies to improve visibility in these natural areas. To learn more, visit www.epa.gov/visibility.**
- **EPA created the Air Quality Index (AQI) to provide simple information on local air quality, the health concerns for different levels of air pollution, and how people can protect their health when pollutants reach unhealthy levels. To learn more, visit www.airnow.gov.**

Pollution Prevention in Consumer Products

Hair sprays, interior and exterior paints, foam plastic products (such as disposable foam cups), charcoal fire starter — all are consumer products whose production, use, or disposal can contribute to air pollution.

Volatile organic compounds (VOC) emitted from the use of consumer products can cause or contribute to ozone levels that violate the air quality standards EPA set for ground-level ozone.

In 1998, EPA issued a rule limiting VOC emissions from consumer products. It requires many United States manufacturers, importers, and distributors to limit the VOC content of their products. EPA also issued a rule limiting emissions from architectural coatings (exterior and interior house paints, wood and roof coatings).

Ground-level Ozone

Ground-level ozone is a primary component of smog. Ground-level ozone can cause human health problems and damage forests and agricultural crops. Repeated exposure to ozone can make people more susceptible to respiratory infections and lung inflammation. It also can aggravate pre-existing respiratory diseases, such as asthma. Children are at risk from ozone pollution because they are outside, playing and exercising, during the summer days when ozone levels are at their highest. They also can be more susceptible because their lungs are still developing. People with asthma and even active healthy adults, such as construction workers, can experience a reduction in lung function and an increase in respiratory symptoms (chest pain and coughing) when exposed to low levels of ozone during periods of moderate exertion.

The two types of chemicals that are the main ingredients in forming ground-level ozone are called volatile organic compounds (VOCs) and nitrogen oxides (NO_x). VOCs are released by cars burning gasoline, petroleum refineries, chemical manufacturing plants, and other industrial facilities. The solvents used in paints and other consumer and business products contain VOCs. The 1990 Clean Air Act has resulted in changes in product formulas to reduce the VOC content of those products. Nitrogen oxides (NO_x) are produced when cars and other sources like power plants and industrial boilers burn fuels such as gasoline, coal, or oil. The reddish-brown color you sometimes see when it is smoggy comes from the nitrogen oxides.

But I Thought the Ozone Layer Was a Good Thing?!

It is! In the upper atmosphere, called the stratosphere, ozone naturally occurs and forms a protective layer that shields the Earth from some of the sun's ultraviolet (UV) light. Exposure to some forms of UV light has been linked to cataracts (eye damage), skin cancer, and plant damage. This high-altitude ozone, therefore, protects human health and the environment.

Ground-level ozone, on the other hand, is harmful. It can cause serious health problems and damage forests and crops. Ground-level ozone affects the respiratory system, aggravating asthma and causing lung inflammation.

So, whether ozone is "good" or "bad" depends on its location – at ground level, it is "bad," in the upper atmosphere, it is "good."

The pollutants that react to form ground-level ozone literally cook in the sky during the hot summertime season. It takes time for smog to form—several hours from the time pollutants get into the air until the ground-level ozone reaches unhealthy levels. For more information on days when air quality is expected to be unhealthy, visit EPA's website at www.airnow.gov.

Weather and the lay of the land (for example, hills around a valley, high mountains between a big industrial city and suburban or rural areas) help determine where ground-level ozone goes and how bad it gets. When temperature inversions occur (warm air stays trapped near the ground by a layer of cooler air) and winds are calm, high concentrations of ground-level ozone may persist for days at a time. As traffic and other sources add more ozone-forming pollutants to the air, the ground-level ozone gets worse.

How the Clean Air Act Reduces Air Pollution Such as Particle Pollution and Ground-level Ozone

First, EPA works with state governors and tribal government leaders to identify "nonattainment" areas where the air does not meet allowable limits for a common air pollutant. States and tribes usually do much of the planning for cleaning up common air pollutants. They develop plans, called State/Tribal Implementation Plans, to reduce air pollutants to allowable levels. Then they use a permit system as part of their plan to make sure power plants, factories, and other pollution sources meet their goals to clean up the air.

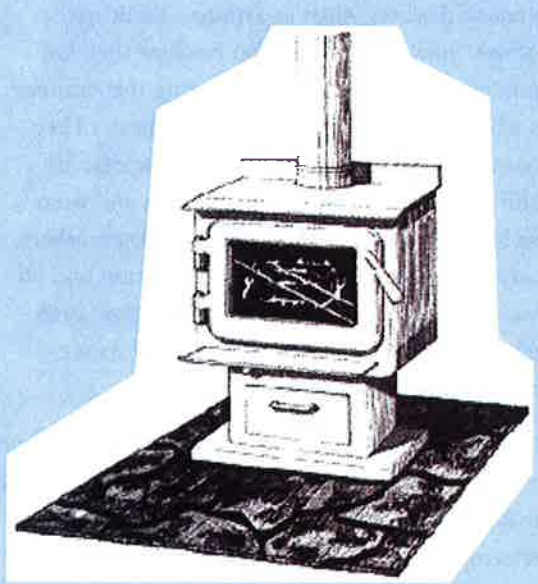
The Clean Air Act requirements are comprehensive and cover many different pollution sources and a variety of clean-up methods to reduce common air pollutants. Many of the clean-up requirements for particle pollution and ground-level ozone involve large industrial sources (power plants, chemical producers, and petroleum refineries), as well as motor vehicles (cars, trucks, and buses). Also, in nonattainment areas, controls are generally required for smaller pollution sources, such as gasoline stations and paint shops.

Wood Stoves and Fireplaces

Residential wood smoke (from wood stoves, fireplaces, and outdoor wood-fired hydronic heaters) contributes 6 percent (420,000 tons) of the total amount of fine particle pollution ($PM_{2.5}$) directly emitted in the United States each year. That contribution can be significantly higher in some areas with increased wood burning. EPA and state and local agencies are working on a number of fronts to help reduce residential wood smoke pollution. To learn more, visit www.epa.gov/woodstoves.

If you use wood:

- **replace your old wood stove or fireplace with an EPA-certified model, and get more heat and less pollution while burning less wood;**
- **burn only clean, dry, "seasoned" wood;**
- **regularly remove ashes from your wood stove and store outside away from wood.**



Cars, Trucks, Buses, and "Nonroad" Equipment

Today, motor vehicles are responsible for nearly one-half of smog-forming volatile organic compounds (VOCs), more than half of the nitrogen oxide (NOx) emissions, and about half of the toxic air pollutant emissions in the United States. Motor vehicles, including nonroad vehicles, now account for 75 percent of carbon monoxide emissions nationwide.

The total vehicle miles people travel in the United States increased 178 percent between 1970 and 2005 and continues to increase at a rate of two to three percent each year. In the United States, there are more than 210 million cars and light-duty trucks on the road. In addition, the types of cars people drive have changed greatly since 1970. Beginning in the late 1980s, Americans began driving more vans, sport utility vehicles (SUVs), and pickup trucks as personal vehicles. By the year 2000, these "light-duty trucks" accounted for about half of the new passenger car sales. These bigger vehicles typically consume more gasoline per mile and many of them pollute three to five times more than cars.

The Clean Air Act takes a comprehensive approach to reducing pollution from these sources by requiring manufacturers to build cleaner engines; refiners to produce cleaner fuels; and certain areas with air pollution problems to adopt and run passenger vehicle inspection and maintenance programs. EPA has issued a series of regulations affecting passenger cars, diesel trucks and buses, and so-called "nonroad" equipment (recreational vehicles, lawn and garden equipment, etc.) that will dramatically reduce emissions as people buy new vehicles and equipment.

Cleaner Cars

The Clean Air Act required EPA to issue a series of rules to reduce pollution from vehicle exhaust, refueling emissions and evaporating gasoline. As a result, emissions from a new car purchased today are well over 90 percent cleaner than a new vehicle purchased in 1970. This applies to SUVs and pickup trucks, as well. Beginning in 2004, all new passenger vehicles – including SUVs, minivans, vans and pick-up trucks – must meet more stringent tailpipe emission standards. This marks the first time that light-duty trucks, including SUVs, pickups, and minivans are subject to the same national pollution standards as cars. As more of these cleaner vehicles enter the national fleet, harmful emissions will drop dramatically.

These reductions would not be possible without cleaner, very low sulfur gasoline and diesel fuel. In addition to their direct emissions benefits, cleaner fuels enable sophisticated emission control devices to effectively control pollution. Congress recognized the importance of cleaner fuels to reducing motor vehicle emissions and gave EPA authority to regulate fuels in the Clean Air Act.

Lead and Other Toxic Pollutants

One of EPA's earliest accomplishments was the elimination of lead from gasoline. Elevated levels of lead can damage organs and the brain and nervous system, and affect the heart and blood. Adverse health effects range from behavior disorders and anemia to mental retardation and permanent nerve damage. Children are especially susceptible to lead's toxic effects on the nervous system, which can result in learning deficits and lowered IQ. In the mid-1970s, EPA began its lead phase-out effort by proposing to limit the amount of lead that could be used in gasoline. By the summer of 1974, unleaded gasoline was widely

available around the country, improving public health and providing protection for the catalytic converters that manufacturers began to install on all new vehicles. This effort was followed by even stronger restrictions on the use of lead in gasoline in the 1980s. In 1996, leaded gasoline was finally banned as a result of the Clean Air Act.

Under the Clean Air Act, EPA has also put into place standards to reduce toxic air emissions from mobile sources. These standards will cut toxic emissions from gasoline, vehicles, and even gas containers.

Reformulated Gasoline

The Clean Air Act requires certain metropolitan areas with the worst ground-level ozone pollution to use gasoline that has been reformulated to reduce air pollution. Other areas, including the District of Columbia and 17 states, with ground-level ozone levels exceeding the public health standards, have voluntarily chosen to use reformulated gasoline. Reformulated gasoline reduces emissions of toxic air pollutants, such as benzene, as well as pollutants that contribute to smog.

Low Sulfur Fuels

Beginning in 2006, refiners have been supplying gasoline with sulfur levels much lower than in the past, reducing the sulfur levels in gasoline by 90 percent. Sulfur in gasoline inhibits a vehicle's catalytic converter from effectively cleaning up the exhaust. The advanced vehicle emission control systems in passenger cars and light trucks are even more sensitive to sulfur, so reducing the sulfur content of gasoline will ensure that vehicle emission control devices are effective in reducing pollution. In addition to cutting emissions from new vehicles, lower sulfur fuel will result in lower emissions from vehicles currently on the road.

Since 2006, refiners have begun supplying diesel fuel with very low sulfur levels for highway diesel vehicles. As with gasoline vehicles, efficient new emission controls on diesel engines require this "Ultra-Low Sulfur Diesel" (ULSD) fuel to function properly. Highway diesel fuel sulfur levels are 97 percent cleaner than diesel prior to 2006. In 2007, refiners began reducing sulfur in diesel fuel used for nonroad diesel engines, such as construction equipment.

The Clean Air Act requires the installation of vapor recovery nozzles at gas stations in certain areas. These gas pump nozzles reduce the release of gasoline vapor into the air when people put gas in their cars.

Alternative Fuels

The Clean Air Act encourages development and sale of alternative fuels. Alternative fuels are transportation fuels other than gasoline and diesel, including natural gas, propane, methanol, ethanol, electricity, and biodiesel. These fuels can be cleaner than gasoline or diesel and can reduce emissions of harmful pollutants. Renewable alternative fuels are made from biomass materials like wood, waste paper, grasses, vegetable oils, and corn. They are biodegradable and reduce carbon dioxide emissions. In addition, most alternative fuels are produced domestically, which is better for our economy, energy security and helps offset the cost of imported oil.

The Clean Air Act also requires EPA to establish a national renewable fuel (RF) program. This program is designed to significantly increase the volume of renewable fuel that is blended into gasoline and diesel.

Cleaner Trucks, Buses and "Nonroad" Equipment

Diesel engines are more durable and are more fuel efficient than gasoline engines, but can pollute significantly more. Heavy-duty trucks and buses account for about one-third of nitrogen oxides emissions and one-quarter of particle pollution emissions from transportation sources. In some large cities, the contribution is even greater. Similarly, nonroad diesel engines such as construction and agricultural equipment emit large quantities of harmful particle pollution and nitrogen oxides, which contribute to ground-level ozone and other pervasive air quality problems.

Photo - Steve Delaney

In the past, buses released large quantities of pollutants. Cleaner, less-polluting buses resulted from the 1990 Clean Air Act Amendments.

EPA has issued rules to cut emissions from onroad and nonroad vehicles by more than 90 percent by combining stringent emissions standards for diesel engines and clean, ultra-low sulfur diesel fuel. Under the Clean Air Act, EPA is also addressing pollution from a range of nonroad sources, including locomotives and marine vessels, recreational vehicles, and lawn and garden equipment. Together these sources comprise a significant portion of emissions from the transportation sector.

Transportation Policies

Congress required "conformity" in the Clean Air Act Amendments of 1990. In other words, transportation projects such as construction of highways and transit rail lines cannot be federally funded or approved unless they are consistent with state air quality goals. In addition, transportation projects must not cause or contribute to new violations of the air quality standards, worsen existing violations, or delay attainment of air quality standards.

The conformity provisions require areas that have poor air quality now, or had it in the past, to examine the long-term air quality impacts of their transportation system and ensure that it is compatible with the area's clean air goals. In doing so, those areas must assess the impacts of growth on air pollution and decide how to manage growth. State and local agencies must work together to either change the transportation plan and/or the state air plan to achieve the necessary emission reductions.

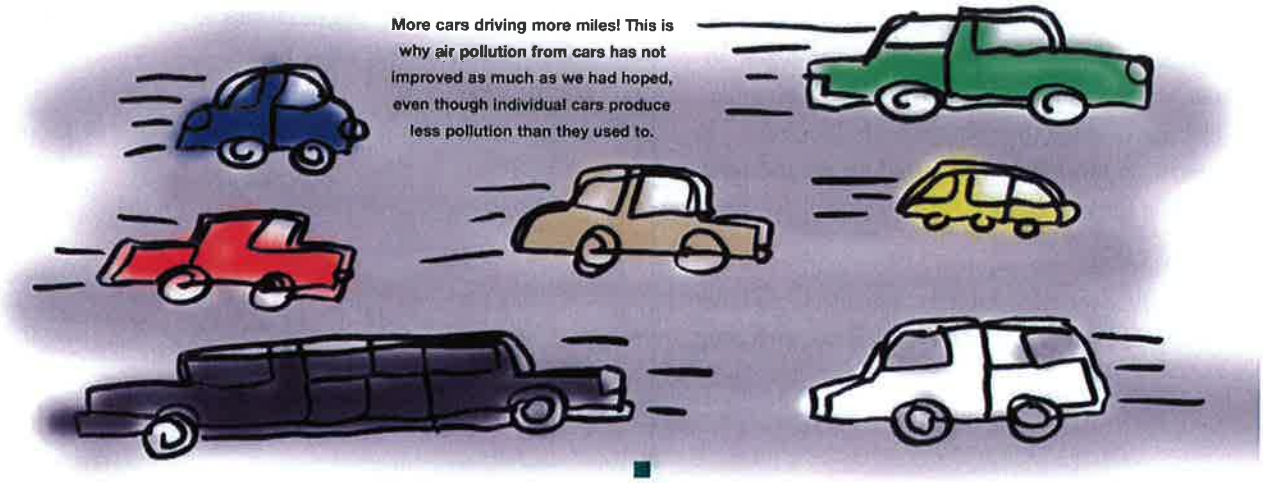
Inspection and Maintenance Programs

Proper maintenance of a car's engine and pollution control equipment is critical to reduce excessive air pollution. To help ensure that such maintenance occurs, the Clean Air Act requires certain areas with air pollution problems to run inspection and maintenance (I/M) programs. The 1990 Act also established the requirement that passenger vehicles be equipped with on board diagnostics. The diagnostics system is designed to trigger a dashboard "check engine" light alerting the driver of a possible pollution control device malfunction. To help ensure that motorists respond to the "check engine" light in a timely manner, the Act requires that I/M programs include an inspection of the on board diagnostic system.

Interstate and International Air Pollution

Air pollution does not recognize state or international boundaries. Pollutants can be carried long distances by the wind. Dirty air even turns up in places where you least expect it, like national parks or wilderness areas in remote parts of the United States.

Taller smokestacks can lift pollutants high above a local community but help pollutants get into



More cars driving more miles! This is why air pollution from cars has not improved as much as we had hoped, even though individual cars produce less pollution than they used to.

wind currents that can carry them hundreds, even thousands, of miles. For example, emissions from power plants and industrial boilers can travel hundreds of miles and contribute to smog, haze, and air pollution in downwind states. One family of pollutants, nitrogen oxides, also reacts with other chemicals, sunlight and heat to form ground-level ozone. The nitrogen oxides and the ozone itself can be transported with the weather to help cause unhealthy air in cities and towns far downwind.

States and tribes seeking to clean up air pollution are sometimes unable to meet EPA's national standards because of pollution blowing in from other areas. The Clean Air Act has a number of programs designed to reduce long-range transport of pollution from one area to another. The Act has provisions designed to ensure that emissions from one state are not contributing to public health problems in downwind states. It does this, in part, by requiring that each state's implementation plan contain provisions to prevent the emissions from the facilities or sources within its borders from contributing significantly to air pollution problems "downwind" – specifically in those areas that fail to meet EPA's national air quality standards. If a state or tribe has not developed the necessary plan to address this downwind pollution, EPA can require the state to do so. If the state still does not take the necessary action, EPA can implement a federal plan to achieve the necessary emission reductions.

Also, the Act gives any state or tribe the authority to ask EPA to set emission limits for specific sources of pollution in other (upwind) areas that significantly contribute to its air quality problems. States and tribes can petition EPA to require the upwind areas to reduce air pollution.

The Act provides for interstate commissions to develop regional strategies for cleaning up air pollution. For instance, state and tribal governments from Maine to Virginia, the government of the District of Columbia, and EPA are working together through the Ozone Transport Commission (OTC) to reduce ground-level ozone along the east coast.

The Clean Air Act also requires EPA to work with states to reduce the regional haze that affects visibility in 156 national parks and wilderness areas, including the Grand Canyon, Yosemite, the Great Smokies, and Shenandoah National Parks. During much of the year in these areas, a veil of white or brown haze hangs in the air blurring the view. Most of this haze is not natural. It is air pollution, carried by the wind often many hundreds of miles from where it originated. Under the regional haze provisions of the Clean Air Act, the states and tribes, in coordination with the EPA, the National Park Service, U.S. Fish and Wildlife Service, the U.S. Forest Service, and others, develop and implement air quality protection plans to reduce the pollution that causes visibility impairment. EPA has worked with states and tribes across the country to form Regional Planning Organizations to develop plans to reduce pollutants that cause haze.

Air Pollution Travels Long Distances

- **Toxaphene, a pesticide used in the U. S. corn belt has been found in fatty tissues of polar bears and other Arctic animals – thousands of miles from any possible source.**
- **Nitrogen oxides deposited from the air have contributed to fish kills by increasing the growth of oxygen-depleting algae in the Chesapeake Bay. Over a quarter of the nitrogen in the Bay and its tidal rivers and streams is estimated to come from air pollution carried by the wind from power plants and industrial sources far away.**
- **Emissions of sulfur oxides from power plants in the Midwest contribute to acid rain, haze and particle pollution problems in the eastern United States hundreds of miles away.**

Clearing the Air in Our National Parks

Yellowstone

poor

good

Rocky Mountains

poor

good

Big Bend

poor

good

You might not expect air pollution in our national parks, especially since many are far from big cities and polluting industries. However, air pollution carried far from its sources has caused major reduction in visibility in some of our best-loved national parks. The Clean Air Act has provisions for reducing "regional haze," air pollution that reduces visibility in the national parks. To learn more, visit www.epa.gov/visibility.

These photos show how good and bad the visibility can be at national parks from coast to coast. You can see real-time pictures of visibility at several national parks by visiting the National Park Service Website, www.nps.gov. Air resource specialists at the national parks—rangers who specialize in air pollution—present visitor programs, participate in air pollution monitoring and research, and provide information to visitors interested in air quality.

Photos - National Park Service and Colorado State University

Acadia

poor

good

Shenandoah

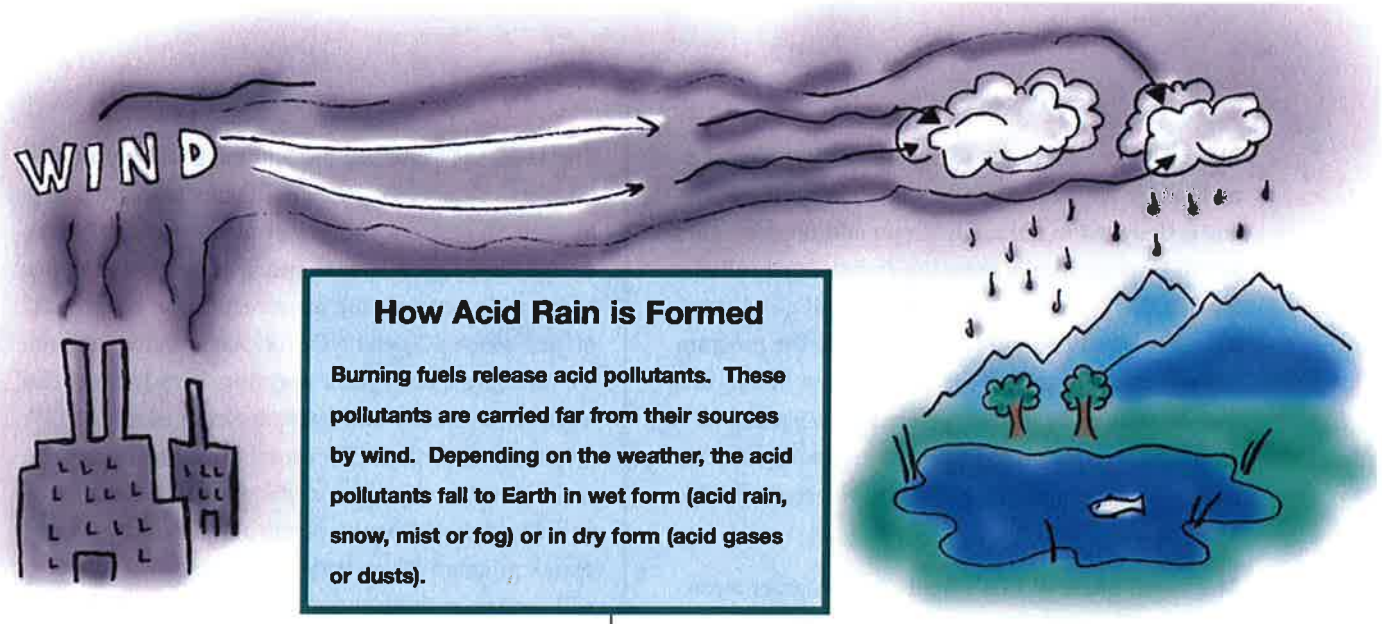
poor

good

Great Smoky Mountains

poor

good



How Acid Rain is Formed

Burning fuels release acid pollutants. These pollutants are carried far from their sources by wind. Depending on the weather, the acid pollutants fall to Earth in wet form (acid rain, snow, mist or fog) or in dry form (acid gases or dusts).

Reducing Acid Rain

You have probably heard of "acid rain." But you may not have heard of other forms of acid precipitation such as acid snow, acid fog or mist, or dry forms of acidic pollution such as acid gas and acid dust. All of these can be formed in the atmosphere and fall to Earth causing human health problems, hazy skies, environmental problems and property damage. Acid precipitation is produced when certain types of air pollutants mix with the moisture in the air to form an acid. These acids then fall to Earth as rain, snow, or fog. Even when the weather is dry, acid pollutants may fall to Earth in gases or particles.

Sulfur dioxide (SO_2) and nitrogen oxides (NO_X) are the principal pollutants that cause acid precipitation. SO_2 and NO_X emissions released to the air react with water vapor and other chemicals to form acids that fall back to Earth. Power plants burning coal and heavy oil produce over two-thirds of the annual SO_2 emissions in the United States. The majority of NO_X (about 50 percent) comes from cars, buses, trucks, and other forms of transportation. About 40 percent of NO_X emissions are from power plants. The rest is emitted from various sources like industrial and commercial boilers.

Heavy rainstorms and melting snow can cause temporary increases in acidity in lakes and streams, primarily in the eastern United States. The temporary increases may last for days or even weeks, causing harm to fish and other aquatic life.

The air pollutants that cause acid rain can do more than damage the environment—they can damage our health. High levels of SO_2 in the air aggravate various lung problems in people with asthma and can cause breathing difficulties in children and the elderly. In some instances, breathing high levels of SO_2 can even damage lung tissue and cause premature death.

Acid Rain's Harmful Effects

Acid lakes and streams have been found all over the country. For instance, lakes in Acadia National Park on Maine's Mt. Desert Island have become acidic due to pollution from the midwest and the east coast. Streams in Maryland and West Virginia, as well as lakes in the Upper Peninsula of Michigan, have been damaged by acid rain. Since the wind can carry pollutants across the country, the effects of acid rain can be seen far from the original source of the acid-forming pollutant.

Acid rain has damaged trees in the mountains of Vermont and other states. Red spruce trees at high altitudes appear to be especially sensitive to acid rain. The pollutants that cause acid rain can make the air hazy or foggy; this occurs in the eastern United States in areas like the Great Smokies and Shenandoah National Park, areas where vacationers go to enjoy the beautiful scenery and awe-inspiring views. In addition to damaging the natural environment, acid rain can damage manmade objects such as stone statues, buildings, and monuments.

The 1990 changes to the Clean Air Act introduced a nationwide approach to reducing acid pollution. The law is designed to reduce acid rain and improve public health by dramatically reducing emissions of sulfur dioxide (SO_2) and oxides of nitrogen (NO_x). Using a market-based cap and trade approach, the program sets a permanent cap on the total amount of SO_2 that may be emitted by electric power plants nationwide. As of 2005, emission reductions were more than 7 million tons from power plants, or 41 percent below 1980 levels.

The initial phase of EPA's Acid Rain Program went into effect in 1995. The law required the highest emitting units at 110 power plants in 21 Midwest, Appalachian, and Northeastern states to reduce emissions of SO_2. The second phase of the program went into effect in 2000, further reducing SO_2 emissions from big coal-burning power plants. Some smaller plants were also included in the second phase of the program. Total SO_2 releases for the nation's power plants are permanently limited to the level set by the 1990 Clean Air Act — about 50 percent of the levels emitted in 1980.

Each allowance is worth one ton of SO_2 emissions released from the plant's smokestack. Plants may only release the amount of SO_2 equal to the allowances they have been issued. If a plant expects to release more SO_2 than it has allowances, it has to purchase more allowances or use technology and other methods to control emissions. A plant can buy allowances from another power plant that has more allowances than it needs to cover its emissions.

There is an allowances market that operates like the stock market, in which brokers or anyone who wants to take part in buying or selling allowances can participate. Allowances are traded and sold nationwide.

EPA's Acid Rain Program has provided bonus allowances to power plants for installing clean coal technology that reduces SO_2 releases, using renewable energy sources (solar, wind, etc.), or encouraging energy conservation by customers so that less power needs to be produced. EPA has also awarded allowances to industrial sources voluntarily entering the Acid Rain Program.

The 1990 Clean Air Act has stiff monetary penalties for plants that release more pollutants than are covered by their allowances. All power plants covered by the Acid Rain Program have to install continuous emission monitoring systems, and instruments that keep track of how much SO_2 and NO_x the plant's individual units are releasing. Power plant operators keep track of this information hourly and report it electronically to EPA four times each year. EPA uses this information to make sure that the plant is not releasing quantities of pollutants exceeding the plant's allowances. A power plant's program for meeting its SO_2 and NO_x limits will appear on the plant's permit, which is filed with the state and EPA and is available for public review.

You can also help to reduce SO_2 and NO_x emissions from power plants by conserving energy and promoting conservation and renewable energy efficiency in your community. Check www.epa.gov/air/actions/at_home.html for energy conservation tips.

Market Approaches and Economic Incentives

Besides the ground-breaking features in the Acid Rain Program, the 1990 Clean Air Act encouraged other innovative approaches that spur technology. These approaches allow businesses greater flexibility in how they comply with the law, and thus clean-up air pollution as efficiently and inexpensively as possible. For example:

- EPA's new cleaner vehicle standards include an averaging system that allows manufacturers to choose how to produce a mix of more- or less-polluting vehicles, as long as the overall fleet average is lower.
- Gasoline refiners can receive credits if they produce cleaner gasoline than required, and they use those credits when their gasoline does not quite meet the clean-up requirements.

Reducing Toxic Air Pollutants

Toxic air pollutants, or air toxics, are known to cause or are suspected of causing cancer, birth defects, reproduction problems, and other serious illnesses. Exposure to certain levels of some toxic air pollutants can cause difficulty in breathing, nausea or other illnesses. Exposure to certain toxic pollutants can even cause death.

Some toxic air pollutants are of concern because they degrade slowly or not at all, as in the case of metals such as mercury or lead. These persistent air toxics can remain in the environment for a long time and can be transported great distances. Toxic air pollutants, like mercury or polychlorinated biphenyls, deposited onto soil or into lakes and streams persist and bioaccumulate in the environment. They can affect living systems and food chains, and eventually affect people when they eat contaminated food. This can be particularly important for American Indians or other communities where cultural practices or subsistence life styles are prevalent.

The majority of air toxics come from manmade sources, such as factory smokestack emissions and motor vehicle exhaust.

Gasoline also contains air toxics. When you put fuel in your car, gases escape and form a vapor. You can smell these vapors when you refuel your vehicle.

When cars and trucks burn gasoline, toxic air pollutants are emitted from the tailpipe. Those air toxics are combustion products—chemicals that are produced when gasoline is burned. EPA is working with industries to develop cleaner-burning fuels and more efficient engines, and is taking steps to make sure that pollution control devices installed in motor vehicles work properly. EPA has issued requirements that are leading to cleaner-burning diesel engines, reducing releases of particle pollution and air toxics.

Air toxics are also released from industrial sources, such as chemical factories, refineries, and incinerators, and even from small industrial and commercial sources, such as dry cleaners and printing shops. Under the 1990 Clean Air Act, EPA has regulated both large and small sources of air toxics, but has mainly focused efforts on larger sources.

Before the 1990 Clean Air Act Amendments, EPA regulated air toxics one chemical at a time. This approach did not work well. Between 1970 and 1990, EPA established regulations for only seven pollutants. The 1990 Clean Air Act Amendments took a completely different approach to reducing toxic air pollutants. The Amendments required EPA to identify categories of industrial sources for 187 listed toxic air pollutants and to take steps to reduce pollution by requiring sources to install controls or change production processes. It makes good sense to regulate by categories of industries rather than one pollutant at a time, since many individual sources release more than one toxic chemical. Developing controls and process changes for industrial source categories can result in major reductions in releases of multiple pollutants at one time.

Persistent Bioaccumulative Toxics (PBTs)

PBTs such as mercury and DDT last for a long time in the environment with little change in their structure or toxic effects. This means that a persistent toxic chemical transported in the wind can be just as toxic 10,000 miles away as it was at the smokestack from which it was released. Some PBTs, such as polychlorinated biphenyls (PCBs), have been found in remote parts of the Arctic, far away from the industrial sources that produce them.

Some of the PBTs that move through the air are deposited into water bodies and are concentrated up through the food chain, harming fish-eating animals and people. Small fish may consume plants that live in water contaminated by PBTs, which are absorbed into plant tissues. Big fish eat smaller fish and as the PBTs pass up the food chain, their levels go up. So a large fish consumed by people may have a much higher concentration of PBTs in its tissues than the simple plant first absorbing the PBTs. PBTs can concentrate in big fish to levels thousands of times the levels found in the contaminated water.

Over 2000 U.S. water bodies are covered by fish consumption advisories, warning people not to eat the fish because of contamination with chemicals, usually PBTs. Those compounds have been linked to illnesses such as cancer, birth defects, and nervous system disorders.

The 1990 Clean Air Act gave EPA the authority to reduce PBT levels by requiring pollution sources to install control devices or change production methods.

EPA has published regulations covering a wide range of industrial categories, including chemical plants, incinerators, dry cleaners, and manufacturers of wood furniture. Harmful air toxics from large industrial sources, such as chemical plants, petroleum refineries, and paper mills, have been reduced by nearly 70 percent. These regulations mostly apply to large, so-called "major" sources and also to some smaller sources known as "area" sources. In most cases, EPA does not prescribe a specific control technology, but sets a performance level based on a technology or other practices already used by the better-controlled and lower emitting sources in an industry. EPA works to develop regulations that give companies as much flexibility as possible in deciding how they reduce their toxic air emissions—as long as the companies meet the levels required in the regulations.

The 1990 Clean Air Act requires EPA to first set regulations using a technology-based or performance-based approach to reduce toxic emissions from industrial sources. After EPA sets the technology-based regulations, the Act requires EPA to evaluate any remaining ("residual") risks, and decide whether it is necessary to control the source further. That assessment of remaining risk was initiated in the year 2000 for some of the industries covered by the technology-based standards.

Chemical Emergencies

The 1984 chemical disaster that resulted in thousands of deaths in Bhopal, India, inspired sections of the 1990 Clean Air Act that require factories and other businesses to develop plans to prevent accidental releases of highly toxic chemicals.

The 1990 Act also established the Chemical Safety Board, an independent agency that investigates and reports on accidental releases of toxic chemicals from industrial facilities. The Board operates much like the National Transportation Safety Board, the agency that investigates airplane and train crashes. The Chemical Safety Board assembles the information necessary to determine how and why an accident involving toxic chemicals happened. The goal is to apply understanding of accidents to prevent other accidents involving toxic chemicals.

Air Toxics and Risk

The Clean Air Act requires a number of studies to help EPA better characterize risks to human health and the environment from air toxics. Those studies provide information for rulemaking and support national and local efforts to address risks through pollution prevention and other voluntary programs. Among these risk reduction initiatives are:

- The Integrated Urban Air Toxics Strategy includes local and community-based initiatives to reduce local toxic air emissions. The primary goal of the strategy is to reduce public health risks from both indoor and outdoor sources of toxic air pollutants. More information can be found at www.epa.gov/ttn/atw.
- The Great Waters Program incorporates activities to investigate and reduce the deposition of toxic air pollutants to the "Great Waters," which include the Chesapeake Bay, Lake Champlain, the Great Lakes, National Estuary Program areas, and National Estuarine Research Reserves. To learn more, visit www.epa.gov/glnpo.
- Initiatives targeting emission reductions of persistent bioaccumulative toxics (PBTs) like mercury, DDT (a pesticide banned in the United States), and dioxins.

Protecting the Stratospheric Ozone Layer

Ozone can be good or bad depending on where it is located. Close to the Earth's surface, ground-level ozone is a harmful air pollutant. Ozone in the stratosphere, high above the Earth, protects human health and the environment from the sun's harmful ultraviolet radiation. This natural shield has been gradually depleted by manmade chemicals. So in 1990, Congress added provisions to the Clean Air Act for protecting the stratospheric ozone layer.

Ozone in the stratosphere, a layer of the atmosphere located 10 to 30 miles above the Earth, serves as a shield, protecting people and the environment from the sun's harmful ultraviolet radiation. The stratospheric ozone layer filters out harmful sun rays, including a type of sunlight called ultraviolet B. Exposure to ultraviolet B (UVB) has been linked to cataracts (eye damage) and skin cancer. Scientists have also linked increased UVB exposures to crop injury and damage to ocean plant life.

In the mid-1970s, scientists became concerned that chlorofluorocarbons (CFCs) could destroy stratospheric ozone. At that time, CFCs were widely used as aerosol propellants in consumer products such as hairsprays and deodorants, and as coolants in refrigerators and air conditioners. In 1978, the U.S. government banned CFCs as propellants in most aerosol uses.

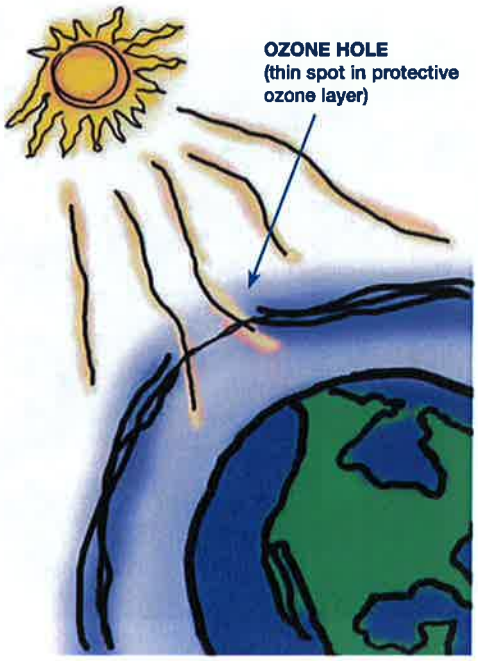
Scientists have been monitoring the stratospheric ozone layer since the 1970s. In the 1980s, scientists began accumulating evidence that the ozone layer was being depleted. The ozone hole in the region of the South Pole, which has appeared each year during the Antarctic winter (our summer), often is bigger than the continental United States. Between 1978 and 1997, scientists have measured a 5 percent loss of stratospheric ozone—a significant amount.

Over 190 countries, including the major industrialized nations such as the United States, have signed the 1987 Montreal Protocol, which calls for elimination of chemicals that destroy stratospheric ozone. Countries that signed the Protocol are committed to limiting the production and use of those chemicals.

The 1990 Clean Air Act required EPA to set up a program for phasing out production and use of ozone-destroying chemicals. In 1996, U.S. production ended for many of the chemicals capable of doing the most serious harm such as CFCs, halons, and methyl chloroform.

Photo - Steve Delaney

Service stations must have special equipment that prevents release of refrigerant chemicals to the air when they are recharging car air conditioning systems.

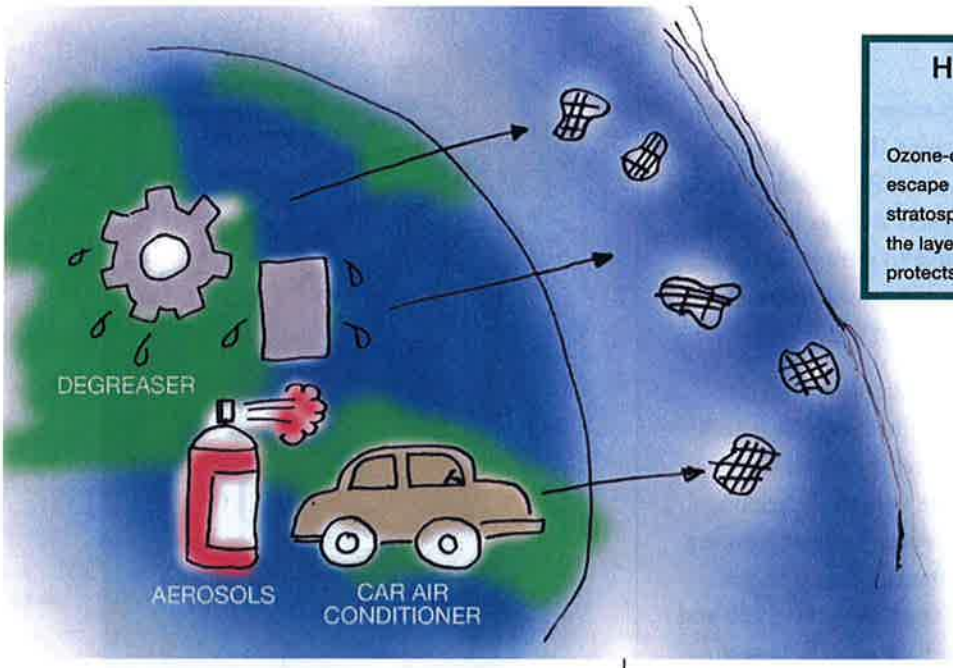


When the protective ozone layer is damaged, there is an increase in harmful rays from the sun reaching the Earth. These rays can harm both health and the environment.

Unfortunately, it will be about 60 years before the stratospheric ozone layer heals. Because of the ozone-destroying chemicals already in the stratosphere and those that will arrive within the next few years, stratospheric ozone destruction will likely continue throughout the decade. September 24, 2006, tied for the largest ozone hole on record at 29 million square kilometers (11.4 million square miles). The year 2006 also saw the second largest sustained ozone hole.

The Clean Air Act includes other steps to protect the ozone layer. The Act encourages the development of "ozone-friendly" substitutes for ozone-destroying chemicals. Many products and processes have been reformulated to be more "ozone-friendly." For instance, refrigerators no longer use CFCs.

Sometimes it isn't easy to phase out an ozone-destroying chemical. For instance, substitutes have not been found for CFCs used in certain medical applications. The limit on the production of methyl bromide, a pesticide, was extended because farmers did not yet have an effective alternative. Despite the inevitable delays because of technical and economic concerns, ozone-destroying chemicals are being phased out, and, with continued work, over time the protective ozone layer will be repaired.



How Ozone Holes Are Formed

Ozone-destroying chemicals escape into the air and reach the stratosphere. Over time they reduce the layer of stratospheric ozone that protects us.

Permits

One of the major initiatives Congress added to the Clean Air Act in 1990 is an operating permit program for larger industrial and commercial sources that release pollutants into the air. Operating permits include information on which pollutants are being released, how much may be released, and what kinds of steps the source's owner or operator is required to take to reduce the pollution. Permits must include plans to measure and report the air pollution emitted. States and tribes issue operating permits. If those governments do not do a satisfactory job of carrying out the Clean Air Act permitting requirements, EPA can take over issuing permits.

Operating permits are especially useful for businesses covered by more than one part of the Clean Air Act and additional state or local requirements, since information about all of a source's air pollution is in one place. The permit program simplifies and clarifies businesses' obligations for cleaning up air pollution and can reduce paperwork. For instance, an electric power plant may be covered by the acid rain, toxic air pollutant, and smog (ground-level ozone) sections of the Clean Air Act. The detailed information required by those separate sections is consolidated into one place in an operating permit.

Thousands of operating permits that have been issued across the United States are available to the public. Contact your state or regional air pollution control agency or EPA for information on access to those documents.

Businesses seeking permits have to pay permit fees, much like car owners paying for car registrations. These fees pay for the air pollution control activities related to operating permits.

Enforcement

The Clean Air Act gives EPA important enforcement powers. In the past, it was difficult for EPA to penalize a company for violating the Clean Air Act–the Agency had to go to court for even minor violations. The 1990 Amendments strengthened EPA's power to enforce the Act, increasing the range of civil and criminal sanctions available. In general, when EPA finds that a violation has occurred, the agency can issue an order requiring the violator to comply, issue an administrative penalty order (use EPA administrative authority to force payment of a penalty), or bring a civil judicial action (sue the violator in court).

Public Participation

Public participation is a very important part of the 1990 Clean Air Act. Throughout the Act, different provisions give the public opportunities to take part in determining how the law is carried out.

Often, when EPA is working on a major rule, the Agency will hold hearings in various cities across the country, at which the public can comment. You can also submit written comments directly to EPA for inclusion in the public record associated with that rule. Or, for instance, you can participate in development of a state or tribal implementation plan. Commenting on a state or tribal plan could be worthwhile since approaches for cleaning up pollution could have direct effects on the way you and your family live.

The 1990 Clean Air Act gives you opportunities to take direct action to get pollution cleaned up in your community. You can get involved in reviewing air pollution permits for industrial sources in your area. You also can ask EPA, your state or tribe to take action against a polluter, and, in some cases, you may be able to take legal action against a source's owner or operator.

Reports required by the 1990 Clean Air Act are usually available to the public. Those reports include a great deal of information on how much pollution is being released by industrial and commercial sources. Monitoring data collected by EPA, states and tribes that measure the level of selected pollutants in a community's air are also available to the public. Information on air emissions and monitoring data can be found at: www.epa.gov/airtrends.

Learn More About Clean Air Act Programs

To learn more about air quality, visit www.epa.gov/air. This site contains information about the air quality in your community and provides information on topics such as: commonly found air pollutants, transportation pollution programs, air toxics, acid rain, and stratospheric ozone depletion.

How the Clean Air Act Is Working

There are several ways you can tell how well the Clean Air Act is working. Over time, the Clean Air Act will continue to reduce air pollution, but it will take time for some of the Act's provisions to have their full impact.

In general, when EPA or state, local, and tribal governments require sources of pollution to adopt control measures, you will see results right away. For instance, when large industrial facilities are required to install pollution control equipment, releases of pollutants should drop when the equipment is installed. On the other hand, in the case of cars and trucks, it may take several years for old vehicles to be retired from the road before the full effects of cleaning up cars and trucks will be seen.

You can also check on how individual facilities are meeting their clean-up requirements. Air pollutant releases at individual facilities such as power plants are set out in the facility's permit, which you can review. This document provides information on state, local, or tribal air pollution control agencies that can give you more information on how to get access to permits. (See page 23.)

Monitoring air quality is the best way to tell if the air is getting cleaner, because the monitors accurately report how much of a pollutant is in the air. You can request EPA, state, local, or tribal monitoring reports that show changes over time. It is updated frequently, so you can get recent information on what's happening to the air in your community. Visit www.epa.gov/airtrends for more information.

The "Air Quality Index" (AQI) is a "public-friendly" way of using actual monitoring data to help us assess how clean our air is. Americans are familiar with many radio, TV, and newspaper weather forecasters talking about the AQI— telling you that the air is so polluted that a "Code Orange" or "Code Red" air quality condition is in effect. The AQI tracks pollution for your local area. The color codes, which range from green to purple, correspond to specific pollution levels. As clean-up programs are implemented for the air pollutants tracked by the AQI, we hope to see a reduction in the number of Code Orange and Code Red air quality days. Information on the AQI can be found at: www.airnow.gov.

The National Air Toxics Assessment is an on-going, comprehensive evaluation of air toxics in the United States. Visit www.epa.gov/ttn/atw for air toxics information on emissions, risk, and exposure in your area.

Ways to Reduce
Air Pollution

We make choices everyday that can help reduce air pollution. Below are a few ideas that you can take to help clean our air.

At Home

- Conserve energy – turn off appliances and lights when you leave the room.
- Recycle paper, plastic, glass bottles, cardboard, and aluminum cans. (This conserves energy and reduces production emissions.)
- Keep woodstoves and fireplaces well maintained. You should also consider replacing old wood stoves with EPA-certified models. Visit www.epa.gov/woodstoves.
- Plant deciduous trees in locations around your home to provide shade in the summer, but to allow light in the winter.
- Buy green electricity–produced by low–or even zero-pollution facilities.
- Connect your outdoor lights to a timer or use solar lighting.
- Wash clothes with warm or cold water instead of hot.
- Lower the thermostat on your water heater to 120°F.
- Use low-VOC or water-based paints, stains, finishes, and paint strippers.
- Test your home for radon–a dangerous, radioactive gas that is odorless and tasteless. If the test shows elevated levels of radon, the problem can be fixed cost effectively. Visit www.epa.gov/radon.
- Choose not to smoke in your home, especially if you have children. If you or your visitors must smoke, then smoke outside. Visit www.epa.gov/smokefree.

Buy Smart

- Buy ENERGY STAR products, including energy efficient lighting and appliances. They are environmentally friendly products. For more information, visit www.energystar.gov or call 1-888-STAR-YES.
- Choose efficient, low-polluting models of vehicles. Visit www.epa.gov/greenvehicles.
- Choose products that have less packaging and are reusable.
- Shop with a canvas bag instead of using paper and plastic bags.
- Buy rechargeable batteries for devices used frequently.

Drive Wise

Plan your trips. Save gasoline and reduce air pollution.

- Keep tires properly inflated and aligned.
- In the summertime, fill gas tank during cooler evening hours to cut down on evaporation. Avoid spilling gas and don't "top off" the tank. Replace gas tank cap tightly.
- Avoid waiting in long drive-thru lines, for example, at fast-food restaurants or banks. Park your car and go in.
- When possible, use public transportation, walk, or ride a bike.
- Get regular engine tune ups and car maintenance checks (especially for the spark plugs).
- Use an energy-conserving (EC) grade motor oil.
- Ask your employer to consider flexible work schedules or telecommuting.
- Report smoking vehicles to your local air agency.
- Join a carpool or vanpool to get to work.

For Your Health

- Check daily air quality forecasts, which tell how clean or polluted your air is, and the associated health concerns. Visit www.airnow.gov.
- Remove indoor asthma triggers from your home and avoid outdoor triggers in order to effectively control your asthma. Visit www.epa.gov/asthma to learn more about asthma triggers and ways to avoid them.
- Minimize your sun exposure. Wear sun block and UV protection sunglasses. To find out about current forecasts of UV where you live, go to www.epa.gov/sunwise/uvindex.html.

State and Tribal
Contact Information

For more information on state and territorial air pollution control agencies, visit www.4cleanair.org.

For more information on tribal air pollution control agencies, visit www.epa.gov/oar/tribal or www.ntaatribalair.org.

EPA Regional Offices

Region 1
(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)
1 Congress Street, Suite 1100
Boston, MA 02114-2023
Phone: 888-372-7341 (Inside Region I)
Phone: 617-918-1111 (Outside Region II)
Web Site: www.epa.gov/region1

Region 2
(New Jersey, New York, Puerto Rico, Virgin Islands)
290 Broadway, 26th Floor
New York, NY 10007-1866
Phone: 212-637-3000
Web Site: www.epa.gov/region2

Region 3
(Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia)
1650 Arch Street
Philadelphia, PA 19103-2029
Phone: 800-438-2474 (Inside Region 3)
Phone: 215-814-2100 (Outside Region 3)
Web Site: www.epa.gov/region3

Region 4
(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-3104
Phone: 404-562-9900
Phone: 1-800-241-1754 (Toll-free)
Web Site: www.epa.gov/region4

Region 5
(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)
77 W. Jackson Boulevard
Chicago, IL 60604
Phone: 800-621-8431 (Inside Region 5)
Phone: 312-353-2000 (Outside Region 5)
Web Site: www.epa.gov/region5

Region 6
(Arkansas, Louisiana, New Mexico, Oklahoma, Texas)
1445 Ross Avenue, 7th Floor, Suite 1200
Dallas, TX 75202-2733
Phone: 214-665-6444
Web Site: www.epa.gov/region6

Region 7
(Iowa, Kansas, Missouri, Nebraska)
901 N 5th Street
Kansas City, KS 66101
Phone: 800-223-0425 (Toll free)
Phone: 913-551-7003
Web Site: www.epa.gov/region7

Region 8
(Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)
999 18th Street, Suite 300
Denver, CO 80202-2466
Phone: 800-227-8917 (Inside Region 8)
Phone: 303-312-6312 (Outside Region 8)
Web Site: www.epa.gov/region8

Region 9
(Arizona, California, Hawaii, Nevada, and Pacific Islands, Tribal Nations subject to U.S. law)
75 Hawthorne Street
San Francisco, CA 94105
Phone: 415-744-1500
Web Site: www.epa.gov/region9

Region 10
(Alaska, Idaho, Oregon, Washington)
1200 6th Avenue
Seattle, WA 98101
Phone: 206-553-1200
Web Site: www.epa.gov/region10

EPA United States Environmental Protection Agency

Office of Air Quality Planning and Standards
Research Triangle Park, NC

Publication No. EPA-456/K-07-001
April 2007

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 51

[EPA–HQ–OAR–2003–0076; FRL–9320–2]

RIN 2060–AH37

Review of New Sources and Modifications in Indian Country

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing a Federal Implementation Plan (FIP) under the Clean Air Act (CAA or Act) for Indian country. The FIP includes two New Source Review (NSR) regulations for the protection of air resources in Indian country. The first rule applies to new and modified minor stationary sources (minor sources) and to minor modifications at existing major stationary sources (major sources) throughout Indian country. The second rule (nonattainment major NSR rule) applies to new and modified major sources in areas of Indian country that are designated as not attaining the National Ambient Air Quality Standards (NAAQS). These rules will be implemented by EPA or a delegate Tribal agency assisting EPA with administration of the rules, until replaced by an EPA-approved implementation plan.

DATES: This final rule is effective on August 30, 2011.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0076. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* 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 through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., 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 and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Jessica Montañez, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–3407, facsimile number (919) 541–5509, e-mail address: *montanez.jessica@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this final rule include owners and operators of emission sources in all industry groups located in Indian country, EPA and Tribal governments that are delegated administrative authority to assist EPA with the implementation of these Federal regulations. Categories and entities potentially affected by this action are expected to include:

Category	NAICS [a]	Examples of regulated entities
Industry	21111	Oil and gas production/operations.
	211111	Crude petroleum and natural gas extraction
	211112	Natural gas liquid extraction.
	212321	Sand and gravel mining.
	22111	Electric power generation.
	221210	Natural gas distribution.
	22132	Sewage treatment facilities.
	23899	Sand and shot blasting operations.
	311119	Animal food manufacturing.
	3116	Beef cattle complex, slaughter house and meat packing plant.
	321113	Sawmills.
	321212	Softwood veneer and plywood Manufacturing.
	32191	Millwork (wood products mfg).
	323110	Printing operations (lithographic).
	324121	Asphalt hot mix.
	3251	Chemical preparation.
	32711	Clay and ceramics operations (kilns).
	32732	Concrete batching plant.
	3279	Fiber glass operations.
	331511	Casting foundry (Iron).
	3323	Fabricated structural metal.
	332812	Surface coating operations.
	3329	Fabricated metal products.
	33311	Machinery manufacturing.
	33711	Wood kitchen cabinet manufacturing.
	42451	Grain elevator.
	42471	Gasoline bulk plant.
	4471	Gasoline station.
	54171	Professional, scientific and technical services.
	562212	Solid waste landfill.
	72112	Other (natural gas-fired boilers).[b]
	811121	Auto body refinishing.
Federal government	924110	Administration of Air and Water Resources and Solid Waste Management Programs.
State/local/Tribal government	924110	Administration of Air and Water Resources and Solid Waste Management Programs.

[a] North American Industry Classification System.
[b] Used NAICS code designated for casino hotels. However, the projected new and modified sources listed under "other (natural gas–fired boilers)" include not only boilers at casino hotels, but also new sources listed as "boilers" and new Tribal government facilities assumed to have natural gas fired boilers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in the final minor and major NSR programs for Indian country, 40 CFR 49.151 through 49.161 and through 49.175, respectively. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted in the regulations and standards section of our NSR home page located at *http://www.epa.gov/nsr* and on the Tribal air home page at *http://www.epa.gov/oar/tribal.*

II. Overview of the Final Rules

The EPA is ensuring that air resources in Indian country will be protected in the manner intended by the Act by establishing a preconstruction permitting program for new or modified minor sources, minor modifications at major sources, and new major sources or major modifications in nonattainment areas. In addition, we are establishing a minor source permitting mechanism for major sources that wish to voluntarily limit emissions to become synthetic minor sources [1] and for approving case-by-case maximum achievable control technology (MACT) determinations.[2] Prior to this action, there has been no

[1] Sources located within the exterior boundaries of Indian reservations in Idaho, Oregon and Washington can apply for a non-title V operating permit to establish synthetic minor status under the FIPs applicable to those reservations until this rule becomes effective. *See* 40 CFR 49.139 and 40 CFR part 49, subpart M. However, after the effective date of this rule, sources seeking synthetic minor status within the exterior boundaries of Indian reservations in these three states as well as the rest of Indian country must apply for synthetic minor source permits under the provisions of this rule.

[2] Section 112(g)(2)(B) of the Act provides that you may not construct or reconstruct a major source of HAPs unless the appropriate permitting authority determines that MACT for new sources will be met. If the Administrator has not established a MACT standard for the source category, the Act requires that MACT be determined on a case-by-case basis. *See* Section IV.E. of this preamble for more information on case-by-case MACT determinations.

Federal permitting mechanism for minor sources in Indian country and for major sources in areas of Indian country that are designated as not attaining the NAAQS. These final rules will fill this regulatory gap. In addition, these rules will provide regulatory certainty to allow for environmentally sound economic growth in Indian country.

The minor NSR rule applies to new and modified minor sources and to minor modifications at major sources. New minor sources with a potential to emit (PTE) equal to or greater than the minor NSR thresholds or modifications at minor sources with allowable emissions increases equal to or greater than the minor NSR thresholds must apply for and obtain a minor NSR permit prior to commencing construction of the new source or modification. At an existing major source, if a proposed modification does not qualify as a major modification (which would be subject to major NSR) based on the actual-to-projected-actual test, it is considered a minor modification and is subject to the minor NSR program requirements, if the net emissions increase from the actual-to-projected-actual test is equal to or exceeds the minor NSR thresholds listed in Table 1 of section IV.A.3 of this preamble. A major source with such a minor modification must apply for and obtain a minor NSR permit prior to commencing construction of the minor modification. In addition, these sources must install and operate control technology as determined by the reviewing authority on a case-by-case basis. At the discretion of the reviewing authority, such sources may also be required to submit air quality impact analyses as part of their permit applications. For minor sources, as an alternative to a site-specific permit, some sources can request for coverage under a general permit.[3]

This rule will also allow otherwise major sources in Indian country to voluntarily accept emission limitations on their PTE to become "synthetic minor sources." Synthetic minor sources may include sources that emit regulated NSR pollutants and/or hazardous air pollutants (HAPs)[4] and any limitations on PTE must be enforceable as a practical matter (that is, both legally and practicably enforceable) as defined in this regulation under 40 CFR 49.152(d). The practice of creating synthetic minor sources to avoid major NSR and title V is common under most state and local minor NSR permitting programs. However, outside of Idaho, Oregon and Washington, no such minor source permitting mechanism has been available in Federal regulations for Indian country, which discouraged sources that could qualify as synthetic minors from locating in areas of Indian country outside these three states. We therefore believe that inclusion of this provision in the final rules will significantly benefit Tribes by encouraging larger sources that can qualify as synthetic minors to locate in Indian country, thereby promoting environmentally sound economic growth.

Synthetic minor sources will undergo site-specific permitting; that is, general permits will not be issued to synthetic minor sources. However, we intend to develop general permits for some common types of emissions units and minor sources to streamline the permitting process. The initial establishment of the general permit will include control technology review and associated emission limits. Thus, sources will not be required to conduct a case-by-case control technology review when they apply for coverage under a general permit.

Under the nonattainment major NSR rule, affected sources are required to comply with the provisions of 40 CFR part 51, Appendix S, a transitional rule which generally applies to areas that do not have an approved nonattainment major NSR program for a particular pollutant in their State Implementation Plan (SIP). Sources subject to this rule must meet requirements for Lowest Achievable Emission Rate (LAER) control technology, emissions offsets and compliance certification.

We are adopting these final rules after further evaluation of the proposed provisions and consideration of the public comments. On August 21, 2006 (71 FR 48696), EPA proposed the "Review of New Sources and Modifications in Indian Country" (*i.e.*, Tribal NSR rules). EPA also held an extensive outreach and consultation period (described in section III.D of this preamble), along with an extensive public comment period that ended on March 20, 2007. The comments provided detailed information specific to Indian country and the final rules incorporate many of the suggestions we received. We respond to many of these comments in explaining our rationale for the final rules, which is described in sections IV through VII.

The final rules adopt many elements of the proposal, but differ from the proposal in several important respects. For the minor NSR rule, we had proposed a 30-day public comment period for the initial establishment of the general permit and also proposed that coverage of individual sources under general permits would not undergo a public comment period. In the final rule, to address concerns from Tribes, we have slightly changed the proposed notification provisions. A source that wants to request coverage under the general permit will be required to submit such request to the reviewing authority. At the same time, the source owner must also submit a copy of this request to the Tribe in the area where the source is locating. We will also post notice of the coverage request under a general permit on our Web site. During our review of your request for coverage under the general permit, commenters can only notify us of any concerns about the eligibility of your source to obtain coverage under that general permit and not on any other issue. For the minor NSR rule, we had also proposed Plantwide Applicability Limitations (PALs) and project netting. A minor source PAL would have been a source-wide limitation on allowable emissions of a regulated NSR pollutant expressed in tons per year (tpy) that was enforceable as a practical matter. However, we are not finalizing minor source PALs after consideration of the comments we received. At this time, we are also not finalizing project netting, the calculation of the total emissions increase that would result from a proposed modification by summing both the increases and decreases resulting from the modification, since we decided not to take final action on project netting for the major NSR program. (*See* Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation and Project Netting; 74 FR 2376.)

Regarding the proposed list of emissions units and activities that will be exempted from the minor NSR program, we are finalizing an amended list. This list takes into consideration the comments received and the recent

[3] As described in section IV.C of this preamble, a general permit is a preconstruction permit that may be applied to a number of similar emission units or sources. The purpose of a general permit is to simplify the permit issuance process for similar facilities so that a reviewing authority's limited resources need not be expended for site-specific permit development for such facilities.

[4] In such cases, these sources will be subject to the minor NSR regulations under 40 CFR 49.151–49.165 and/or the applicable area source regulations under 40 CFR part 63. These sources will not be subject to the major NSR regulations under 40 CFR 52.21 (PSD) and 40 CFR 49.166 through 49.175 (nonattainment major NSR), the major source MACT regulations under 40 CFR part 63 and/or the title V operating permit regulations. For information on when a major HAP source can obtain federally enforceable limits on its potential to emit, *see* the policy memorandum titled: "Potential to Emit for MACT Standards—Guidance on Timing Issues," John S. Seitz, EPA, May 16, 1995.

developments in greenhouse gas regulations. We are also committing to the development of a supplemental rule to determine if additional exempted units/activities should be added to the list.

Furthermore, to address commenters' concerns about EPA's ability to issue minor NSR permits on a timely basis, we have decided to phase in the implementation dates of these rules. For example, we are delaying the implementation date of this rule for new and modified true minor sources by the earlier of 6 months after the general permit for a source category is published in the **Federal Register** or 36 months from the effective date of this rule, that is, September 2, 2014. Existing true minor sources will not be subject to the requirements of the minor NSR program until they propose a modification. However, true minor sources will be required to register within 18 months from the effective date of this rule, that is, by March 1, 2013, or within 90 days after the source begins operation, whichever is later (see section VII.C of this preamble for more details on these provisions).

For the major NSR rule, we are not finalizing the proposed Appendix S, paragraph VI as an option for offset [5] waivers due to certain comments raising concerns with implementation of this waiver. Relative to the compliance certification requirement,[6] we are finalizing a state-wide compliance requirement consistent with section 173(a)(3) of the Act.

We are finalizing the minor NSR and the nonattainment major NSR permit programs pursuant to section 110(a)(2)(C), part D of title I and section 301(d) of the Act.

III. Background

A. What is the New Source Review (NSR) program?

1. What are the general requirements of the major NSR program?

The major NSR program contained in parts C and D of title I of the Act is a preconstruction review and permitting program applicable to new major sources and major modifications at such sources. In areas not meeting health-based NAAQS and in ozone transport regions (OTR), the program is implemented under the requirements of part D of title I of the Act. We call this program the "nonattainment" major NSR program. In areas meeting the NAAQS ("attainment" areas) or for which there is insufficient information to determine whether they meet the NAAQS ("unclassifiable" areas), the NSR requirements under part C of title I of the Act apply. We call this program the Prevention of Significant Deterioration (PSD) program. Collectively, we also commonly refer to these programs as the major NSR program. These rules are contained in title 40 of the Code of Federal Regulations (CFR), §§ 51.165, 51.166, 52.21 and 52.24 (40 CFR 51.165, 51.166, 52.21 and 52.24) and 40 CFR part 51, Appendices S and W.

For newly constructed, "greenfield" sources, the determination of whether a source is subject to the major NSR program is based on the source's PTE. The Act, as implemented by our rules, sets applicability thresholds for major sources in both attainment and nonattainment areas. For nonattainment areas, these thresholds are 100 tpy of any pollutant subject to regulation under the Act or smaller amounts, depending on the nonattainment classification. For attainment areas the thresholds are 100 or 250 tpy, depending on the source type.[7] A new source with a PTE at or above the applicable threshold amount "triggers," or is subject to, major NSR.

For existing major sources, major NSR applies to a major modification. For a modification to be major, the following three criteria have to be met:

(1) A physical change in or change in the method of operation of a major source must occur;

(2) The increase in emissions resulting from this change must be significant (equal to or above the significance levels defined in 40 CFR 52.21(b)(23) for PSD or 40 CFR part 51, Appendix S, paragraph II.A.10 for nonattainment major NSR); and

(3) The increase in emissions resulting from the change must result in a significant net emissions increase. In other words, when the increase from the project is added to other contemporaneous increases and decreases in actual emissions [8] at the source, the net emissions increase must be significant (equal to or above the significance levels defined in 40 CFR 52.21(b)(23) for PSD or 40 CFR part 51, Appendix S, paragraph II.A.10 for nonattainment major NSR).

Major sources and major modifications subject to nonattainment major NSR must apply state-of-the-art emissions control technologies, including any pollution prevention measures, to achieve the lowest achievable emission rate. The lowest achievable emission rate is based on the most stringent emission limitation in the implementation plan of any state or achieved in practice, for the source category under review.

Each major source subject to nonattainment major NSR must also offset its emissions increase by obtaining emissions reductions from other sources in the area or in an area of equal or higher nonattainment classification that contributes to nonattainment in the proposed major source's area. The ratio of the offset relative to the proposed increase must be at least one-to-one and is based on the severity of the area's nonattainment classification. For ozone and particulate matter less than or equal to 10 microns in aerodynamic diameter (PM_{10}), the more polluted the air is where the source is locating or expanding, the greater the required offset ratio is. The emissions reductions to be used as offsets must be surplus (not otherwise required by the Act), quantifiable, Federally enforceable and permanent. *See* sections 173(a) and (c) of the Act and 40 CFR 51.165(a)(3).

Additionally, each nonattainment major NSR permit applicant must also conduct an analysis of alternative sites, sizes, production processes and environmental control techniques demonstrating that the benefits of the proposed emissions source significantly outweigh the environmental and social costs of its location, construction or modification. Moreover, each nonattainment major NSR permit applicant must demonstrate that all other major sources under her/his control in the same state are in compliance or on a schedule of compliance with all emission limitations and standards of the Act.

[5] Under the CAA, emissions reductions (offsets) from existing sources in the area of the proposed source (whether or not under the same ownership) are obtained such that there will be reasonable progress towards attainment of the applicable NAAQS. *See* section 173(a)(1) of the Act.

[6] Also under the CAA, a permit applicant must certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by or under common control with the applicant) in the same state as the proposed source are in compliance with (or under a federally-enforceable compliance schedule for) all applicable emission limitations and standards under the Act. *See* section 173(a)(3) of the Act.

[7] Sources listed in section 169(1) of the Act are subject to a threshold of 100 tpy (*see* 40 CFR 52.21(b)(1)(i)(*a*)). All other sources are subject to a 250 tpy threshold. (*See* 40 CFR 52.21(b)(1)(i)(*b*).) In addition, under the recently finalized "Greenhouse Gas Tailoring Rule," greenhouse gases will be phased into the PSD program with higher applicability thresholds (75 FR 31514).

[8] In approximate terms, "contemporaneous" emissions increases or decreases are those that have occurred between the date 5 years immediately preceding the proposed physical or operational change and the date that the increase from the change occurs. *See* 40 CFR 52.21(b)(3)(ii) for PSD. For nonattainment major NSR, *see*, 40 CFR part 51, Appendix S, paragraph II.A.6(ii).

Under the PSD program for attainment areas, a major source or modification must apply Best Available Control Technology (BACT), which may be based on pollution prevention techniques. In addition, the source must analyze the impact of the project on ambient air quality to assure that no violation of the NAAQS or PSD increments will result and must analyze impacts on soil, vegetation and visibility. Sources or modifications that would impact Class I areas (*e.g.,* national parks) may be subject to additional requirements to protect air quality related values (AQRVs) that have been identified for such areas.

2. What are the general requirements of the minor NSR program?

Section 110(a)(2)(C) of the Act requires that every SIP include a program to regulate the construction and modification of stationary sources, including a permit program as required by parts C and D of title I of the Act, to ensure attainment and maintenance of the NAAQS. Parts C and D address the major NSR program for major sources and the permitting program for minor sources is addressed by section 110(a)(2)(C) of the Act. We commonly refer to the latter program as the minor NSR program. A minor source means a source whose PTE is lower than the major NSR applicability threshold for a particular pollutant as defined in the applicable nonattainment major NSR program or PSD program.

States must develop minor NSR programs to attain and maintain the NAAQS and the Federal requirements for state minor NSR programs are outlined in 40 CFR 51.160 through 51.164. These Federal requirements for minor NSR programs are considerably less prescribed than those for major sources and as a result there is a larger variation of requirements in the state minor NSR programs.

Furthermore, Section 110(a)(2)(C) of the Act provides us with a broad degree of discretion in developing a program to regulate new and modified minor source construction activities in Indian country.

B. What is the basis for EPA's authority to implement CAA programs in Indian country?

The Tribal Authority Rule (TAR) authorizes eligible Indian Tribes to implement EPA-approved nonattainment major NSR (part D of title I of the Act), PSD (part C of title I of the Act) and other programs under the Act in the same manner as states. This is accomplished when Indian Tribes develop Tribal Implementation Plans (TIPs), which are plans similar to SIPs. If a Tribe develops a TIP to implement a CAA program, the TIP, once it is approved, will replace the Federal program as the requirement for that area of Indian country and the Tribe will become responsible for implementing that particular program. However, if Indian Tribes are unable or choose not to include a CAA program such as NSR in a TIP, we will implement the program under these rules.

The Act provides us with broad authority to protect air resources throughout the Nation, including air resources in Indian country. *See,* for example, the preamble discussion for the proposed and final TAR (59 FR 43956, 43958–61, August 25, 1994; 63 FR 7254, 7262–64, February 12, 1998) and the preamble discussion for the proposed revisions to the part 71 Federal operating permits program for Indian country (62 FR 13748, 13750, March 21, 1997). In the preambles to the proposed and final TAR, we discussed generally the legal basis under the Act for EPA and Tribal regulation of sources of air pollution in Indian country. We concluded that the Act constitutes a statutory delegation of Federal authority to eligible Tribes over all sources of air pollution within the exterior boundaries of their reservations.

Further, under the Act, Tribes may also apply to administer Tribal air quality programs for non-reservation areas over which they can show jurisdiction.[9] *See* 63 FR 7254–7259; 59 FR 43958–43960; *Arizona Public Service Co.* v. *EPA,* 211 F.3d 1280 (DC Cir. 2000), cert. den., 532 U.S. 970 (2001).

In the preamble to the TAR, we also concluded that the Act authorizes us to protect air quality throughout Indian country. *See* 63 FR 7262, 59 FR 43960–43961 citing sections 101(b)(1), 301(a) and 301(d) of the Act.

In addition, section 301(a) of the Act provides us broad authority to issue such regulations as are necessary to carry out the mandates of the Act. Several provisions of the Act call for Federal implementation of a program where, for example, a state or in this case a Tribe, fails to adopt a program or adopts an inadequate program. *See,* for example, sections 110(c)(1), 502(d)(3) and 502(i)(4) of the Act. These provisions exist in part to ensure that the benefits of the Act are realized throughout the United States, whether or not local governments choose to participate in implementing the Act. Especially in light of the problems associated with transport of air pollution across state and Tribal boundaries, it follows that Congress intended that we have the authority to operate a Federal program in the absence of an adequately implemented EPA-approved program. *See,* for example, 59 FR 43958–61, August 25, 1994; 62 FR 13750, March 21, 1997 and 63 FR 7262–64, February 12, 1998.

This interpretation is most evident from Congress' grant of authority to the EPA under section 301(d)(4) of the Act. Section 301(d)(4) authorizes the Administrator to directly administer provisions of the Act so as to achieve the appropriate purpose where Tribal implementation of those provisions is inappropriate or administratively infeasible. We determined that it is inappropriate to subject Tribes, among other things, to the mandatory submittal deadlines and to the related Federal oversight mechanisms in section 110(c)(1) of the Act, which are triggered when we make a finding that states have failed to meet required deadlines or disapprove a state plan submittal. *See* 40 CFR 49.4(d).

By determining that Tribes should not be treated similarly to states for purposes of the specific FIP obligation under section 110(c)(1) of the Act, we are not relieved of the general obligation

[9] We believe that in the context of programs under the Act, states generally lack the authority to regulate air quality in Indian country as defined in 18 U.S.C. 1151. *See Alaska* v. *Native Village of Venetie Tribal Government,* 522 U.S. 520, 527 fn. 1 (1998) ("Generally speaking, primary jurisdiction over land that is Indian country rests with the Federal Government and the Indian tribe inhabiting it and not with the States."), *California* v. *Cabazon Band of Mission Indians,* 480 U.S. 202 (1987) and *HRI* v. *EPA,* 198 F.3d 1224 (10th Cir. 2000); see also discussion in EPA's final rule for the federal operating permits program (64 FR 8251–8255, February 19, 1999). To provide additional certainty to regulated entities, we believe it is helpful to clarify the extent to which state NSR programs have force in Indian country. We interpret past approvals and delegations of NSR programs as not extending to Indian country unless the state has made an explicit demonstration of jurisdiction over Indian country and we have explicitly approved or delegated the state's program for such area. This is consistent with Congress' requirement that we approve state and tribal programs only where there is a demonstration of adequate authority. *See* sections 110(a)(2)(E), 110(o) and 301(d) of the Act and 40 CFR part 49. Since states generally lack the authority to regulate air resources in Indian country, we do not believe it would be appropriate for us to approve state programs under the Act as covering Indian country where there has not been an explicit demonstration of adequate jurisdiction and where we have not explicitly indicated our intent to approve the state program for an area of Indian country. In state NSR program approvals and delegations, we generally were not faced with state assertions of authority to regulate sources in Indian country. However, to the extent states or others may have interpreted our past approvals or delegations that were not based on explicit demonstrations of adequate authority and did not explicitly grant approval in Indian country as approvals to operate NSR programs in Indian country, we wish to clarify any such misunderstanding.

under the Act to ensure the protection of air quality throughout the Nation, including throughout Indian country. Rather, consistent with the provisions of sections 301(a) and 301(d)(4) of the Act, we expressed our intent to promulgate without unreasonable delay such FIP provisions as are necessary or appropriate to protect air quality if Tribal efforts do not result in adoption and approval of Tribal plans or programs. *See* 63 FR 7265, 40 CFR 49.11.

Under section 301(d)(4) of the Act, Congress authorized the EPA to maintain the territorial approach by implementing the Act in Indian country in the absence of an EPA-approved program. We believe that Congress authorized us, consistent with our Indian policy, to avoid the checker-boarding of Indian reservations based on land ownership by Federally implementing the Act over all reservation sources in the absence of an EPA-approved Tribal program. *See* S. Rep. No. 228, 101st Cong., 1st Sess. 79 (1989) (implementation of the Act to be in a manner consistent with EPA's Indian policy). In addition, section 301(d)(4) authorized us to implement the Act in non-reservation areas of Indian country in order to fill any gap in program coverage and to ensure an efficient and effective transition to EPA-approved programs.

Our interpretation of section 301(d) of the Act as authorizing our implementation throughout Indian country is also supported by the legislative history. *See* S. Rep. No. 228, 101st Cong., 1st Sess. 80 (1989) (noting that section 301(d) of the Act authorizes the EPA to implement provisions of the Act throughout "Indian country" when there is no approved Tribal program); *Id.* at 80 (noting that criminal sanctions are to be levied by the EPA, "consistent with the Federal government's general authority in Indian country"); *Id.* at 79 (the purpose of section 301(d) of the Act is to "improve the environmental quality of the air within Indian country in a manner consistent with the EPA Indian Policy").

Therefore, with these final rules, we will exercise our authority to administer the minor NSR permitting program and the nonattainment major NSR program in Indian country, which is generally the area over which a Tribe may potentially receive approval of programs under the Act. As noted in the final TAR, we interpret the Act as establishing a territorial approach to implementation of the Act within Indian country by delegating to eligible Tribes authority over all reservation sources without differentiating among the various categories of on-reservation lands (63 FR 7254–7258). In addition, the Act authorizes eligible Tribes to implement Tribal programs under the Act in non-reservation areas over which a Tribe has jurisdiction, generally including all areas of Indian country (63 FR 7258–7259).

In order to further our commitment to use our authority under the Act to protect air quality throughout Indian country by directly implementing the Act's requirements, we are now exercising the rulemaking authority entrusted to us by Congress to directly implement the minor NSR permitting program and nonattainment major NSR permitting program throughout all areas of Indian country. *See* generally, *Chevron USA, Inc.* v. *NRDC,* 467 U.S. 837, 842–45 (1984).

C. What is the status of the NSR air quality programs in Indian country?

No Tribe is currently administering an EPA-approved PSD program. Therefore, EPA has been implementing a FIP for major sources in attainment areas and has been issuing PSD permits in Indian country. *See* 40 CFR 52.21. For the nonattainment major NSR program or the minor NSR program in Indian country, no Tribes have been administering an EPA-approved nonattainment major NSR program and only a few Tribes have been administering EPA-approved minor NSR programs.[10] In addition, there has been no FIP in place to implement these programs until now. Hence, there was a regulatory gap in Indian country. This final rule will allow us to address that gap and more fully implement the NSR program in Indian country. We are finalizing the minor NSR program at 40 CFR 49.151 through 49.165 and the nonattainment major NSR program at 40 CFR 49.166 through 49.175 and these programs will continue to apply except where we explicitly approve an implementation plan for such programs for a specific area in Indian country.[11] The requirements finalized under these rules do not apply to State permitting programs.

As we stated previously, sections 301(d) and 110(o) of the Act give the Tribes the authority to develop their own Tribal programs and we encourage eligible Tribes to develop their own minor and nonattainment major NSR programs for incorporation into TIPs. However, we understand that not all Tribes have the resources to design and implement NSR programs; therefore, in the absence of an EPA-approved program, this final rulemaking provides a Federal program for implementing the minor NSR and the major NSR program in nonattainment areas of Indian country. Tribes may use this program as a model if they choose to develop their own Tribal Implementation plans and obtain our approval.

Since, in most cases and in the absence of an EPA-approved program, it would be neither practical nor administratively feasible for us to develop and implement a separate program for each area of Indian country,; these final rules will implement a flexible FIP for Indian country that provides new and modified minor sources and major sources in nonattainment areas with procedures to demonstrate that they will be operating in a manner that is protective of air resources and the NAAQS. In addition, these rules will ensure that any economic growth occurring in Indian country will be in harmony with the preservation of Clean Air Act resources.

D. What consultation and outreach has been done with Tribal leaders and representatives?

Prior to undertaking this rulemaking, we sought to include Tribes early in the rulemaking process. On June 24, 2002, we sent approximately 500 letters to Tribal leaders seeking their recommendations for effective consultation and their involvement in developing these rules.

We received responses from 75 Tribes. Of these 75 Tribes, 69 designated an environmental staff member to work with us on developing the rules. Aside from the designated staff, many Tribal leaders asked that we keep them informed of our progress through e-mail, meetings with the EPA Regional Offices, newsletters and Web sites. In addition, 53 percent of the Tribal leaders also requested direct phone calls or conference calls to discuss the subject and 16 percent of the respondents requested face-to-face consultation. Of these, six Tribes requested senior EPA staff to meet with Tribal leaders.

As a result of this feedback, we developed a consultation plan that included three meetings held at the reservations of the Menominee Tribe in Wisconsin, the Mohegan Tribe in Connecticut and the Chehalis Tribe in Washington. A fourth meeting was held

[10] For example, the St. Regis Mohawk Tribe has in place an EPA-approved TIP that includes provisions for minor NSR and synthetic minor permitting (*See* http://www.srmtenv.org/pdf_files/airtip.pdf). In addition, the Gila River Indian Community has developed a TIP that includes a minor NSR program (*See http://www.epa.gov/region9/air/actions/gila-river.html*).

[11] Although many states have developed regulatory programs for minor sources, those programs do not apply in Indian country unless explicitly approved by EPA for such areas.

in conjunction with the Institute of Tribal Environmental Professionals' (ITEP) 10th anniversary meeting in Flagstaff, Arizona. In addition to conducting these meetings, we also visited Tribal environmental staff in Indian country. Over 30 Tribes attended these meetings. We also participated in numerous national and regional forums including the National Tribal Forums sponsored by the ITEP, two National Tribal Air Association meetings and meetings with Tribal consortia, such as the National Tribal Environmental Council, United Southern and Eastern Tribes, Inter-Tribal Environmental Council, Inter Tribal Council of Arizona and others.

Although much of our effort focused on outreach to the Tribes, we also interacted with state and local air pollution control agencies during development of these rules. We had two meetings with the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officers (STAPPA/ALAPCO) to present the draft rules.[12]

We considered feedback from all stakeholders and proposed the "Review of New Sources and Modifications in Indian Country" rules on August 21, 2006 (71 FR 48696). However, Tribal government representatives expressed concerns that the long gap between consultation/outreach and action by the Agency undermined the effectiveness of these interactions. Thus, after proposal of the rule, we started an extensive outreach program in the years 2006 and 2007 to inform and seek comments from the public, especially Tribes.

We again sent over 500 letters to Tribal leaders to inform them about the proposal. We did not receive any formal responses to these letters and did not receive any request for formal consultation from the Tribes, but they contacted us either through e-mail or phone calls and asked to keep them informed of our progress through e-mail, meetings, training sessions, newsletters and/or Web sites. To enhance understanding of the proposal and what it would mean for Indian country, we supplemented the 2006 outreach efforts by holding four training sessions using Web conferencing not only for Tribes, but also for EPA Regional Offices, air program managers and Tribal organizations. We also held training sessions in 2006 and at the request of the Tribes for interested Tribal and other environmental professionals at the Pechanga Band of Luiseño Indians in California and Salt River Pima-Maricopa Indian Community in Arizona. In addition, we held training sessions for all interested parties at EPA Region V's Tribal Air Meeting in Illinois (2006) and EPA's Region X's office in Washington (2007).

We participated in numerous national and regional forums including the forums sponsored by the Institute of Tribal Environmental Professionals, the National Tribal Air Association and at meetings with Tribal consortia, such as the United Southern and Eastern Tribes. We also interacted with state and local air pollution agencies during this outreach period and had meetings with the NACAA.

Furthermore, we extended and reopened the comment period for the proposed rules twice (from November 20, 2006 to January 19, 2007 and from January 19, 2007 to March 20, 2007) at the request of the Tribes. During this time, we also recorded and presented a webcast video for all interested stakeholders to train more environmental professionals about the NSR program and the rules themselves.

To address the concern about the long gap between the proposal and finalization of the rules and to ensure that the Tribes are aware of the proposed rules and their provisions, we held a series of meetings in 2010 with the National Tribal Operations Committee, interested Regional Tribal Operations Committees and interested Tribal environmental staff. In 2011, we sent letters to all Tribes to ask them about their interest in an additional round of consultation and outreach and, based on their responses, we have conducted consultation and outreach meetings with several Tribes. These meetings included a face-to-face meeting in Denver, Colorado with a number of Tribes within EPA Region VIII and four conference calls with Tribes from across the country.

After these rules are promulgated, we intend to conduct similar outreach efforts with all stakeholders, including extensive training to facilitate easier implementation of the rules.

IV. Final Minor NSR Program for Indian Country

This rulemaking finalizes provisions for a minor NSR program in Indian country, codified at 40 CFR 49.151 through 49.165. The program includes requirements for preconstruction review for minor sources and minor modifications, general permits and synthetic minor source permits. The minor NSR program also serves as a mechanism for case-by-case MACT determinations and establishes a registration system for existing minor sources to improve the Tribal source emission inventory.

Our primary goal in developing this program is to ensure that air resources in Indian country will be protected in the manner intended by the Act. In addition, we seek to establish a flexible preconstruction permitting program for minor sources in Indian country that is comparable to similar programs in neighboring states in order to create a more level regulatory playing field for owners and operators within and outside of Indian country.

This final rulemaking is not intended to establish a new set of minimum criteria that a Tribe or a state would need to follow in developing its own minor source permitting program. Rather, these rules simply represent how we will implement the program in Indian country in the absence of an EPA-approved Tribal implementation plan. However, if a Tribe is developing its own program, this can serve as one example of a program that meets the objectives and requirements of the Act. This final minor source permitting program addresses, on a national level, many environmental and regulatory issues that are specific to Indian country. We understand that different Tribes may face different issues and may therefore, like states developing SIPs, choose to develop TIPs tailored to their individual Tribal circumstances and needs. This rule will allow Tribes to develop their own TIPs, consistent with the overarching requirement that the Tribe ensure that the TIP will not interfere with any applicable requirement of the CAA.

A. General Provisions Under the Minor NSR Program

1. What is a minor source and which minor sources are subject to this rule?

a. Minor Source Definition

We are finalizing under 40 CFR 49.152 that a minor source, for the purposes of this rule, means a source, not including the exempt emissions units and activities listed in § 49.153(c), that has the potential to emit regulated NSR pollutants in amounts that are less than the major source thresholds in 40 CFR § 49.167 or § 52.21, as applicable, but equal to or greater than the minor NSR thresholds in § 49.153. The potential to emit includes fugitive emissions, to the extent that they are quantifiable, only if the source belongs to one of the source categories listed in 40 CFR part 51, Appendix S, paragraph II.A.4(iii) or 52.21(b)(1)(iii), as applicable.

[12] This organization has since changed its name to the National Association of Clean Air Agencies (NACAA).

A source's PTE for a pollutant is expressed in tpy and generally is calculated by multiplying the maximum hourly emissions rate in pounds per hour (lbs/hr) times 8,760 hours (which is the number of hours in a year) and dividing by 2,000 (which is the number of pounds in a ton). If a source is restricted by permit conditions that limit its emissions and are enforceable as a practical matter (as defined in 40 CFR 49.152), its PTE (and allowable emissions) are calculated based on the permit restrictions.

For the NSR program in Indian country, the major source thresholds are defined in the PSD program (*see* 40 CFR 52.21) and in the nonattainment major NSR program being finalized in this action (*see* 40 CFR 49.167), as applicable. These thresholds may differ in attainment areas and nonattainment areas for the same pollutant. For example, in attainment areas the major source threshold for nitrogen oxides (NO_X) is 250 tpy, unless the source belongs to a source category that is listed in the major NSR rules (*see* 40 CFR 52.21(b)(1)(i)(*a*)), in which case the major source threshold is 100 tpy. In contrast, the major source threshold for NO_X in ozone nonattainment areas can vary from 10 tpy in an extreme ozone nonattainment area to 100 tpy in a marginal ozone nonattainment area (*see* 40 CFR part 51, Appendix S, paragraph II.A.4(i)). The final rule establishes minor NSR thresholds as discussed in section IV.A.3 of this preamble.

This minor source definition differs from the definition in the proposal by providing the following clarifications. We clarified that *de minimis* exceptions (*i.e.,* minor NSR thresholds) and insignificant source categories or activities being finalized under this rule are not considered minor sources for purposes of this rule and eliminated the sentence in the proposed definition that stated the term "minor stationary source applies independently to each regulated NSR pollutant that the source has the potential to emit."

A few commenters asked us to accommodate in the minor source definition references to the *de minimis* exceptions (*i.e.,* minor NSR thresholds) and insignificant source categories or activities being finalized under this rule and we believe it is appropriate to do so. In addition, since the source can only be a minor source if the PTE of all regulated NSR pollutants for that source are less than the corresponding major source thresholds, we deleted from the definition the statement that read: "the term 'minor stationary source' applies independently to each regulated NSR pollutant that the source has the potential to emit."

Furthermore, we have amended the minor source definition to specify that the PTE of a source includes fugitive emissions, to the extent that they are quantifiable, only if the source belongs to one of the source categories listed in 40 CFR 52.21(b)(1)(iii) (for PSD) and 40 CFR part 51, Appendix S, paragraph II.A.4(iii) (for nonattainment major NSR) of the major NSR rules pursuant to section 302(j) of the Act. This action is explained further in the next section.

b. Determining Applicability for New Minor Sources

As stated in the proposal, in all NSR applicability determinations, you must evaluate each regulated NSR pollutant individually because the area where your source is located may be attainment for some pollutants and nonattainment for others. For a given new source or modification, a particular pollutant may be subject to review under PSD, nonattainment major NSR or minor NSR or may not be subject to any of these programs.

For proposed new sources, the first step is to calculate the potential to emit of each regulated NSR pollutant. The second step is to determine whether the source is subject to the applicable major NSR program (*i.e.,* 40 CFR 49.167 or 40 CFR 52.21 for nonattainment and attainment areas, respectively) with respect to each regulated NSR pollutant. Under the nonattainment major NSR program, this step is repeated for each regulated NSR pollutant the source has the potential to emit. Under the PSD program, if the source's potential to emit is greater than the major source threshold for one pollutant, then PSD applies to any other regulated NSR pollutants for which the potential to emit is above the level defined as "significant" in the PSD regulations.[13] The significance level is typically lower than the major source threshold; for example, the significance level for PM_{10} is 15 tpy while the major source threshold is 100 or 250 tpy.

If your proposed new source is not subject to major NSR for a particular regulated NSR pollutant, the next step is to determine whether the source is subject to the requirements of this minor NSR rule for that pollutant, *i.e.,* if the source's potential to emit of the pollutant is equal to or greater than the applicable minor NSR threshold listed in Table 1 of this final rule. These steps are repeated for every regulated NSR pollutant the source has the potential to emit. However, for a source to be considered a minor source, the PTE of all regulated NSR pollutants must be less than the corresponding major source threshold.

In determining if the source's potential to emit of a pollutant is equal to or greater than the applicable minor NSR threshold listed in Table 1 of this final rule, fugitive emissions will be included to the extent that they are quantifiable, only if the source belongs to one of the source categories listed pursuant to section 302(j) of the Act (*i.e.,* the source categories listed in 40 CFR part 51, Appendix S, paragraph II.A.4(iii) and in 40 CFR 52.21(b)(1)(iii)).

We are finalizing this provision after seeking comment in the proposal as to whether in calculating the emission levels for applicability purposes, you should include fugitive emissions, to the extent they are quantifiable, for all sources or include them only for source categories listed pursuant to section 302(j) of the Act or exclude them for all sources.

Commenters who supported the approach of including fugitive emissions for all sources believed that the mandate of the minor NSR program is based on protection of air quality throughout the nation. Additionally, they believed that fugitive emissions are a large proportion of the air pollutants in Indian country and therefore EPA must require fugitive emissions to be included in determining applicability. However, many commenters argued that fugitive emissions at minor sources are minuscule and a requirement to include them would be excessive. Some of these commenters believed that the costs for complying with minor NSR for fugitive emissions could potentially be substantial and that fugitive emissions are inherently difficult to quantify. In addition, one commenter added that fugitive emissions should only be included for source categories listed under section 302(j) of the Act, citing an extensive analysis of the history of regulating fugitive emissions under NSR.

Based on the comments received, we are finalizing provisions that require including fugitive emissions in the minor NSR applicability determination, to the extent that they are quantifiable, only if the source belongs to one of the source categories listed pursuant to section 302(j) of the Act (*i.e.,* the source categories listed in 40 CFR part 51, Appendix S, paragraph II.A.4(iii) and in 40 CFR 52.21(b)(1)(iii)), for the following reasons.

For the source categories listed pursuant to section 302(j) we have historically identified these source

[13] The significance levels are defined in 40 CFR 52.21(b)(23).

categories as having the potential to significantly degrade air quality and it has been demonstrated to be reasonable and cost effective for sources in these categories to quantify and include their fugitive emissions in applicability determinations. We will continue to require these source types to quantify fugitive emissions in determining applicability of minor NSR. While some other source categories also contribute significantly to air pollution, we have thus far not required counting their fugitive emissions in determining applicability because of unreasonable economic costs associated with doing so (See 54 FR 48879).

We have the discretion under CAA section 110(a)(2)(c) to follow a similar approach in the minor source program as long as the NAAQS are protected and we are using that discretion because we believe it would be unreasonably cumbersome and costly to expect the wide variety of minor source types not on the section 302(j) list to be able to quantify their fugitive emissions.

Without discounting the fact that fugitive emissions from individual sources or source categories may be significant contributors to air pollution, we believe that, as a whole, the air quality impacts of emissions from the number of sources that would likely be excluded from minor NSR because of exclusion of their fugitive emissions are likely to be small and therefore not commensurate with the regulatory and economic burden we would impose on minor sources in Indian country if we were to require the estimation of fugitive emissions for all minor sources and subject them to permitting based on those emissions. This is especially the case since we are developing a program that applies generically to sources in Indian country regardless of whether fugitive emissions from major or minor sources are a significant source of air pollution in a specific location. Given this diversity and the potential costs, our approach strikes a reasonable balance.

Finally, this approach in our final rule is consistent with how fugitive emissions are treated in some state minor source programs. Therefore, we are finalizing the new minor source applicability requirements mainly as proposed and under 40 CFR 49.153(a).

2. What is a modification and which modifications are subject to this rule?

a. Definition of "Modification"

Under this final rule, a modification means any physical or operational change that would cause an increase in the allowable emissions of a minor source or an increase in the actual emissions (based on the applicable test under the major NSR program) of a major source for any regulated NSR pollutant or that would cause the emission of any regulated NSR pollutant not previously emitted. Allowable emissions of a minor source include fugitive emissions, to the extent that they are quantifiable, only if the source belongs to one of the source categories listed in 40 CFR 52.21(b)(1)(iii) for PSD and 40 CFR part 51, Appendix S, paragraph II.A.4(iii) for nonattainment major NSR. The following exemptions apply:

- A physical or operational change does not include routine maintenance, repair or replacement.[14]
- An increase in the hours of operation or in the production rate is not considered an operational change unless such change is prohibited under any permit condition that is enforceable as a practical matter (as defined in 40 CFR 49.152).
- A change in ownership at a stationary source.
- The emissions units and activities listed in 40 CFR 49.153(c).

We are finalizing this definition under 40 CFR 49.152 after requesting comments as to whether the term modification should be based on an increase in allowable emissions or actual emissions.

Commenters who supported our proposal to adopt a definition of the term "modification" based on an increase in allowable emissions (allowable-to-allowable test) believed that this test would be a simpler test than the actual-to-projected-actual test that applies to the major NSR program; it will be less costly, less time consuming and less complicated for Tribal minor sources and it is legal under the CAA and consistent with some state and local minor NSR programs that we have approved in SIPs pursuant to section 110 of the Act. On the other hand, commenters who opposed the allowable emissions test believed that this test is less stringent than the alternative tests and/or it is contrary to the Act and recent court decisions. They also believed that the allowable-to-allowable test will be inconsistent with the major NSR program and it does not ensure that the NAAQS are achieved (*i.e.*, it could lead to unreviewed increases in emissions that would be detrimental to air quality). Furthermore, some of these commenters believed that an allowable-to-allowable test will not capture those sources that escape major NSR review and suggested the use of an actual-emissions-based test which could include an actual-to-potential, actual-to-projected-actual or an actual-to-future-actual test.

For the most part, we agree with those commenters that endorsed the concept of defining the term modification for the minor NSR program as a change in allowable emissions. As we stated in the proposal (71 FR 48696), we evaluated the three basic types of applicability tests (actual-to-potential, actual-to-projected-actual and allowable-to-allowable) and determined that the allowable-to-allowable test is the most suitable for Indian country because, apart from being a simple test, it will help with implementation of the program for the minor sources in Indian country that, to date, have little experience with air regulations. Since minor sources in Indian country have been unregulated until now, many of these sources have not kept track of actual emissions data, making the initial application of any test based on actual emissions virtually impossible. In addition, we understand that some state minor NSR programs use an allowable-to-allowable test which would make this program for Indian country consistent with the programs in these states.

In addition and as we discussed in the proposal preamble, we believe that we have the discretion to use an allowable-to-allowable test for this minor NSR program because the statutory basis for minor NSR is section 110(a)(2)(C) of the Act. By contrast, parts C and D of title I of the Act provide the statutory basis for the major NSR program and refer to section 111(a)(4) of the Act (the definition of "modification" for purposes of the new source performance standards (NSPS)) in defining "modification" for purposes of the major NSR program. The DC Circuit Court of Appeals has ruled that, based on the wording of the definition of

[14] "For over two decades," EPA has interpreted "the RMRR exclusion as limited to *de minimis* circumstances." *New York* v. *EPA*, 443 F.3d 880, 884 (DC Cir. 2006), cert. denied 127 S. Ct.2127 (2007) (citing *Alabama Pow. Co*, v. *Costle*, 636 F.2d 323 (DC Cir 1980)). EPA's historic policy is that "in determining whether proposed work at an existing facility is 'routine,' EPA makes a case-by-case determination by weighting the nature, extent, purpose, frequency and cost of the work, as well as other relevant factors, to arrive at a common-sense finding." Memorandum from Don R. Clay, Acting Assistant Administrator, Office of Air and Radiation, U.S. EPA, "Applicability of Prevention of Significant Deterioration (PSD) and New Source Performance Standards (NSPS) Requirements to the Wisconsin Electric Power Company (WEPCO) Port Washington Life Extension Project" (Sep. 9, 1988) (*http://www.epa.gov/region07/air/nsr/nsrmemos/wpco2.pdf*). EPA further explained these factors in letter dated May 23, 2000 from Francis X. Lyons, Regional Administrator, Region V, U.S. EPA, to Henry Nickel, Counsel for the Detroit Edison Company, Hunton & Williams (*http://www.epa.gov/region07/air/nsr/nsrmemos/detedisn.pdf*).

"modification" in section 111(a)(4) of the Act, the applicability of major NSR to modifications must be based on changes in actual emissions (*State of New York* v. *U.S. EPA,* 413 F. 3d 3 (DC Cir. 2005). However, that reasoning based on the definition in section 111 of the Act does not apply to minor source permitting because the statutory basis for the minor NSR program is section 110(a)(2)(C) of the Act, which does not define or refer to a definition of "modification." Thus, we believe that we have discretion in defining the term for the minor NSR program in Indian country and we do not believe that the decision of the DC Circuit Court of Appeals applies to the minor NSR program.

To address the concerns of those commenters who expressed that the allowable-to-allowable test is less stringent than an actual-emissions-based test or that this test is at odds with section 110(a)(2)(C) of the Act, we commit to conducting a study to collect actual emissions data for a period of 5 years from the minor source registration program [15] we are finalizing with this rule to assess the feasibility of implementing an actual-emissions-based test. If our study concludes that adequate actual emissions data are available for minor sources, we will consider undertaking a rulemaking to adopt an actual-emissions-based test within 2 years from the end of the 5-year study period.

Furthermore, because of our concern that some minor modifications at major sources might escape review under the minor NSR program as proposed, we are finalizing that the applicability of the minor NSR program to minor modifications at major sources be based on the actual-to-projected-actual test used in the applicable major NSR program. Thus, in the final rule, if a proposed modification at an existing major source does not qualify as a major modification (which would be subject to major NSR) based on the actual-to-projected-actual test, it is considered a minor modification and is subject to the minor NSR program if the net emissions increase from the actual-to-projected-actual test is equal to or exceeds the minor NSR thresholds listed in Table 1 in section IV.A.3 of this preamble. The rationale for using an allowable-to-allowable test for modifications at minor sources in Indian country—that actual emissions data are not available for minor sources and an actual-emissions-based test would be beyond the capabilities of many minor sources—does not apply to modifications at major sources. We believe this approach will be simpler and more efficient than an approach requiring the use of a second, allowable-to-allowable test for the minor NSR program. Hence, we are revising the definition of modification under 40 CFR 49.152 accordingly.

We are also making a change to the definition of modification related to the treatment of fugitive emissions. Now this definition includes provisions to account for fugitive emissions, to the extent they are quantifiable, only if the source belongs to one of the source categories listed pursuant to section 302(j) of the Act (*see* previous section for details on why we are including fugitive emissions in the minor NSR applicability determinations).

b. Determining Applicability for Modifications

To determine if your proposed physical or operational change is subject to the minor NSR program (*see* final 49.153(a)(1)(ii) and 49.153(b)), you must first determine whether the change is subject to the applicable major NSR program (*i.e.,* 40 CFR part 51, Appendix S or 40 CFR 52.21 for nonattainment and attainment areas, respectively). For physical or operational changes at your existing major source, you would determine whether the modification qualifies as a major modification using the procedures in the applicable major NSR program (*i.e.,* the actual-to-projected-actual applicability test). In addition and as discussed in the previous section, if the change does not qualify as a major modification under that test, it is considered a minor modification if the net emissions increase from the actual-to-projected-actual test is equal to or greater than the minor NSR thresholds listed in Table 1 of section IV.A.3 of this preamble. A major source with such a minor modification must apply for and obtain a minor NSR permit prior to commencing construction of the minor modification.

For a physical or operational change at your existing minor source, you will first determine if the change qualifies as a major source by itself (*e.g.,* when a source owner adds one or more large emissions units to his minor source) using the provisions of the applicable major NSR program (*see, e.g.,* 40 CFR 52.21(b)(1)(i)(*c*)). If it is, then the change is subject to the applicable major NSR program.

For modifications at existing minor sources that do not qualify as major sources by themselves, the total increase in allowable emissions resulting from the proposed change at your source, including fugitive emissions to the extent they are quantifiable, only if the source belongs to one of source categories listed pursuant to section 302(j) of the Act, would be the sum of the following:

- For each new emissions unit that is to be added, the emissions increase would be the potential to emit of the unit.
- For each emissions unit with an allowable emissions limit that is to be changed or replaced, the emissions increase would be the allowable emissions of the emissions unit after the change or replacement minus the allowable emissions prior to the change or replacement. However, this may not be a negative value. If the allowable emissions of an emissions unit would be reduced as a result of the change or replacement, use zero in the calculation.
- For each unpermitted emissions unit (*i.e.,* a unit without any enforceable permit conditions) that is to be changed or replaced, the emissions increase would be the allowable emissions of the unit after the change or replacement [16] minus the potential to emit prior to the change or replacement.[17] However, this may not be a negative value. If the allowable emissions of an emissions unit would be reduced as a result of the change or replacement, use zero in the calculation.

If the total increase in allowable emissions resulting from your proposed modification at your minor source causes an increase in allowable emissions for one or more regulated NSR pollutants above the applicable minor NSR threshold (*see* Table 1 in section IV.A.3 of this preamble), the modification is subject to this program. *See* final 40 CFR 49.153(b).

If the total allowable emissions increase from your modification is less than the corresponding minor NSR threshold listed in Table 1, the modification is not subject to this minor NSR rule. Under this scenario, if a permitted allowable emissions limit of one or more emissions units increases, you must apply for an administrative permit revision to amend the allowable

[15] We are requiring minor sources to register within 18 months from the effective date of this rule. *See* section IV.F of this preamble for more details about the registration program.

[16] The minor NSR permit for the modification must include an annual allowable emissions limit for each affected emissions unit per final 40 CFR 49.155(a)(2). The post-change allowable emissions limit can be the uncontrolled potential to emit or can be lower depending on the outcome of the reviewing authority's control technology review as well as any other restrictions that you propose for the emissions unit (*e.g.,* for purposes of NSR applicability).

[17] It is necessary to use potential to emit since these emissions units will not have an allowable emissions limit prior to the change.

emissions limit for that emissions unit(s). *See* section IV.B.5 of this preamble or final 40 CFR 49.153(a)(2) and 49.159(f) for more information on administrative permit revisions.

At proposal, we asked for comments as to whether minor sources in Indian country should be allowed to take credit for concurrent emissions reductions that would result from a proposed modification under the concept commonly known as "project netting." [18]

Several commenters supported our proposal to allow "project netting" in the minor NSR program for determining whether a proposed project qualifies as a modification. However, we are not finalizing the "project netting" concept at this time to be consistent with our position in the major NSR program (*See* final rule titled: "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation and Project Netting" January 15, 2009 (74 FR 2376)).

3. What are the minor NSR thresholds?

As proposed, the "minor NSR thresholds" in this final rule establish cutoff levels for which sources with emissions lower than the thresholds would typically be exempt from the minor NSR rules (*see* Table 1 and final 40 CFR 49.153).

Various commenters supported the development of thresholds and no comments were received against this concept. However, some commenters wanted us to finalize less [*e.g.*, volatile organic compounds (VOC) and carbon monoxide (CO)] or more stringent thresholds (for minor modifications) while other commenters expressed concern that the source distribution analysis that we used to support the proposed thresholds did not accurately reflect the number of sources currently in existence in Indian country.

TABLE 1—MINOR NSR THRESHOLDS [a]

Regulated NSR pollutant	Minor NSR thresholds for nonattainment areas (tpy)	Minor NSR thresholds for attainment areas (tpy)
Carbon monoxide (CO)	5	10
Nitrogen oxides (NO_X)	5 [b]	10
Sulfur dioxide (SO_2)	5	10
Volatile Organic Compounds (VOC)	2 [b]	5
PM	5	10
PM_{10}	1	5
$PM_{2.5}$	0.6	3
Lead	0.1	0.1
Fluorides	NA	1
Sulfuric acid mist	NA	2
Hydrogen sulfide (H_2S)	NA	2
Total reduced sulfur (including H_2S)	NA	2
Reduced sulfur compounds (including H_2S)	NA	2
Municipal waste combustor emissions	NA	2
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	NA	10

[a] If part of a Tribe's area of Indian country is designated as attainment and another part as nonattainment, the applicable threshold for a proposed source or modification is determined based on the designation where the source would be located. If the source straddles the two areas, the more stringent thresholds apply.

[b] In extreme ozone nonattainment areas, section 182(e)(2) of the Act requires any change at a major source that results in any increase in emissions to be subject to major NSR permitting. In other words, any changes to existing major sources in extreme ozone nonattainment areas are subject to a "0" tpy threshold, but that threshold does not apply to minor sources.

After consideration of comments received and further evaluation of the proposed thresholds, we are finalizing the minor NSR thresholds as proposed, except for the NO_X and VOC thresholds in extreme ozone nonattainment areas. We are amending the proposed "0" tpy NO_X and VOC thresholds for the minor NSR program in extreme ozone nonattainment areas because we believe that these thresholds, while required under section 182(e)(2) of the Act and appropriate as significance levels for major sources located in extreme ozone nonattainment areas, are not appropriate for minor sources. Therefore, we are finalizing minor NSR thresholds for NO_X and VOC in extreme nonattainment areas as 5 and 2 tpy respectively. We also want to clarify, as one commenter suggested, that the $PM_{2.5}$ threshold applies to direct $PM_{2.5}$ emissions and does not represent the contribution of its precursors (*e.g.*, SO_2 or NO_X).

Furthermore, we continue to believe that the sources with emissions below the thresholds will be inconsequential to attainment or maintenance of the NAAQS because the national source distribution analysis in the proposal (71 FR 48702) applied to the national source distribution at the time (sources inside and outside of Indian country) and not only to estimates of the possible number of existing sources in Indian country. For each pollutant, we found that only around 1 percent (or less) of total emissions would be exempt from review under the minor NSR program. At the same time, the thresholds would promote an effective balance between environmental protection and source burden because anywhere from 42 percent to 76 percent of sources (depending on the pollutant) would be too small to be subject to preconstruction review.

In addition, we believe that such thresholds are included in many of the minor NSR programs in surrounding states, which will allow us to begin leveling the playing field with the surrounding state programs and will result in a more cost-effective program by reducing the burden on sources and reviewing authorities.

These thresholds, however, are neither the most stringent nor the least stringent of the levels found in existing state minor NSR rules since they represent a reasonable balance between environmental protection and economic

[18] As proposed, "project netting" means that both increases and decreases in allowable emissions are summed when determining the total emission increase that would result from a proposed modification.

growth. We did not want the thresholds to be so high that they were not environmentally protective or so low that they ensured environmental protection at the cost of discouraging economic growth. Nevertheless, to address any concerns about the stringency of the thresholds, we will evaluate the information we collect as part of the registration provisions for minor sources we are finalizing under this rule (*see* section IV.F of this preamble for more information) and will consider changing the minor NSR thresholds as appropriate.[19]

4. What emissions units and activities at minor sources are exempt from this rule?

Certain emissions units and activities at minor sources either do not emit regulated NSR pollutants to the ambient air or emit these pollutants in negligible amounts. Therefore, under 40 CFR 49.153(c), we are finalizing a list of units and activities at minor sources that are exempt from this rule:

1. Mobile sources;
2. Ventilating units for comfort that do not exhaust air pollutants into the ambient air from any manufacturing of other industrial processes;
3. Noncommercial food preparation;
4. Consumer use of office equipment and products;
5. Janitorial services and consumer use of janitorial products;
6. Internal combustion engines used for landscaping purposes; and
7. Bench scale laboratory activities, except for laboratory fume hoods and vents.

This list we have finalized is an amended list from the exempted units and activities we proposed since we are not exempting air-conditioning units for comfort and heating units for comfort until we can study the implications of the new rules for greenhouse gases (*see* Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 FR 31514) on these units. In addition and also in light of a comment received, we are deleting the last exemption in the proposed list of exemptions (any emissions unit or activity that does not have the potential to emit a regulated NSR pollutant or HAP, so long as that emissions unit or activity is not part of a process unit that emits or has the potential to emit a regulated NSR pollutant or HAP) because we agree with the commenter that argued that this exemption can be confusing and redundant.

Furthermore, we would like to clarify that the list of exemptions included in the proposal's regulatory text included mobile sources, although mobile sources were inadvertently left out of the exempted units and activities discussion in the proposal's preamble. Therefore, we have added mobile sources to the list in this preamble and have decided to keep mobile sources in the list of exempted units and activities in this final rule because we continue to believe that it is not appropriate to include mobile sources in a stationary source permitting program and we did not receive any comments suggesting that mobile sources should be removed from the list of exemptions.

Nevertheless, many commenters noted that state and local agencies often exempt many more types of emissions units and activities and suggested that we should expand the exemptions included in the final minor NSR rule. Some of these commenters also argued that failure to expand the list of exemptions will significantly burden operators of minor sources wishing to locate in Indian country, especially the oil and gas industry and will thereby disadvantage Tribes.

In light of the comments received, we agree that the list of exempted units and activities might need to be expanded. Therefore, we intend to propose and finalize a separate rule to seek public comment on the issue of whether additional units or activities should be exempted from the minor NSR program.

B. Site-Specific Permits

1. What are the requirements for permit applications?

As the owner or operator of a proposed new minor source or a proposed modification that is subject to the rule (see 40 CFR 49.154), you must submit a complete application to the reviewing authority requesting a minor NSR permit specific to your source (unless you are seeking a "general permit"). In addition to basic information identifying and describing your source, your application must include a list of all affected emissions units. "Affected emissions units" are defined as all the emissions units at your proposed new minor source or all the new, modified and replacement emissions units that comprise your proposed modification (excluding the exempt emissions units and activities listed in proposed 40 CFR 49.153(c)).

Your application must also document the increase in emissions of regulated NSR pollutants that will result from your new source or modification so that the reviewing authority can verify that you are subject to this minor NSR program, rather than to major NSR. For each new emissions unit that you list, you must provide the PTE in tpy for each regulated NSR pollutant, along with supporting documentation. For any modified or replacement unit that you list, you must provide the allowable emissions of each regulated NSR pollutant in tpy before and after the modification or replacement, along with supporting documentation. For emissions units that do not have an established allowable emissions level prior to the modification, you must provide the pre-change PTE. For the post-change allowable emissions for these units, you may provide the unrestricted post-change PTE or may propose a lower level of allowable emissions. The allowable emissions for any emissions unit are calculated considering any emissions limitations that are enforceable as a practical matter on the unit's PTE. In calculating these emissions levels for applicability purposes you should include fugitive emissions, to the extent they are quantifiable, only for source categories listed pursuant to section 302(j) of the Act (and as described in sections IV.A.1 and IV.A.2 of this preamble).

Furthermore, you may include in your application proposed emission limitations for the listed emissions units. If you do, you must account for these limitations in your calculations for post-construction PTE and/or allowable emissions.

The application also must identify and describe any existing air pollution control equipment and compliance monitoring devices or activities relevant to the affected emissions units, as well as any existing emissions limitations or work practice requirements to which any affected emissions units are subject.

No commenters expressed concern with the proposed permit application requirements described above except for the concept of PAL.[20] One commenter believed such provisions will not ensure compliance with the statutory mandates applicable to minor NSR programs under section 110(a)(2)(C) of the Act to ensure that NAAQS are attained and maintained. Further, the commenter maintained that such limits would likely be unenforceable as a practical

[19] We might also consider proposing thresholds for greenhouse gases and in accordance with any future rulemakings to address small greenhouse gas sources as outlined in the rule titled: "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (75 FR 31514).

[20] A minor source PAL determination is a sourcewide limitation on allowable emissions of a regulated NSR pollutant, expressed in tpy, that is enforceable as a practical matter and we had proposed that you may request that the reviewing authority establish an annual minor source PAL for one or more of the regulated NSR pollutants emitted by your new or existing minor source.

matter at most sources and offered extensive arguments for his position. On the other hand, a couple of commenters expressed support for minor source PALs, with one of these commenters believing that it is very important that aspects of permitting programs at the Federal and state levels outside of Indian country that provide operator flexibility, including the creation of PALs, should also be afforded to operators currently in or wishing to locate in Indian country.

Based on the comments received, we are finalizing the permit application requirements mainly as proposed, with only two exceptions. *See* final 40 CFR 49.154. First, we are not finalizing the minor source PAL provisions at this time because we agree with the opposing commenter that stated, for example, that finalizing the PAL provisions without more specific criteria, including provisions for extensive monitoring, would not be enforceable. Second and as we explained in sections IV.A.1 and IV.A.2, we are finalizing provisions that will require you, the source owner, to include fugitive emissions in the minor NSR applicability determinations, to the extent they are quantifiable, only for those source categories listed pursuant to section 302(j) of the Act.

In addition, we would like to clarify that if your source is in a source category covered by a general permit issued under proposed 40 CFR 49.156, you may apply for the general permit for that source category instead of a site-specific permit. The permit application requirements for a particular general permit will be specified in that general permit. General permits, including the comments we received about them, are discussed further in section IV.C of this preamble.

2. What technical reviews must the reviewing authority conduct?

After determining that your application is complete (*see* section IV.B.4 for more information about this process), the reviewing authority must do 2 types of technical reviews—a control technology review and a review of the probable impact on air quality of the proposed new source or modification. These reviews are discussed further in the following subsections.

a. Control Technology Review

As required under section 110(a)(2)(C) of the Act, this minor NSR permitting program for Indian country is primarily designed to assure that the NAAQS are achieved and to prohibit any minor source from emitting any air pollutant in amounts that would contribute to nonattainment or interfere with maintenance of the NAAQS. Therefore, with this single program applicable to all areas of Indian country where there is no EPA-approved implementation plan, we are trying to ensure the NAAQS protection required by the CAA, while still allowing sufficient flexibility in control technology requirements for minor sources located in Indian country. By control technology, we mean pollution prevention techniques; add-on pollution control equipment; design and equipment specifications; work practices and operational restrictions.

For this review, the reviewing authority will consider local air quality needs, typical control technology used by similar sources in surrounding areas, anticipated economic growth in the area and cost-effective control alternatives. At a minimum, the reviewing authority must require control technology that assures that the NAAQS are achieved and that each affected emissions unit will comply with all requirements of 40 CFR parts 60, 61 and 63 that apply. The required control technology resulting from such a review may range from no control technology, to control technology that is less stringent than the reasonably available control technology (RACT) level of control (which is typically required for existing major sources in nonattainment areas), to technology that is the BACT level of control (which is the level required for new major sources and major modifications in attainment areas). The control technology chosen would depend on the air quality needs of the area, other applicable regulatory programs of the Act and technical and economic feasibility.

Furthermore and based on the results of the control technology review, the emission limitations required by the reviewing authority may consist of numerical limits on the quantity, rate or concentration of emissions; pollution prevention techniques; design standards; equipment standards; work practice standards; operational standards or any combination thereof. If it is technically and economically feasible, the reviewing authority must require a numerical limit on the quantity, rate or concentration of emissions for each affected emissions unit at your source.

For a new minor source that is subject to this rule, the case-by-case control technology review would be conducted for all emissions units (except the exempt emissions units and activities discussed in section IV.A.4 and listed in the final 40 CFR 49.153(c)) that emit or have the potential to emit the pollutant(s) for which the source is subject to this rule. For a modification, such control technology review would apply only to the affected emissions unit(s) at your source.

At proposal, we sought comment on the proposed case-by-case control technology review for all new and modified sources subject to this minor NSR program. Therefore, we sought comment on whether a control technology requirement is necessary to achieve the purposes of the Act or whether other approaches can achieve these purposes just as well with less cost and administrative burden.

Several commenters supported the case-by-case control technology review. These commenters believed that a case-by-case control technology review would allow and promote economic growth and development that is tailored to the needs in Indian country, while one of these commenters added that having no capacity to impose controls on minor sources would seem to defeat the purpose of a permitting process for such facilities because a paper permit that could not impose any controls adds nothing to existing regulation or protection of public health and the environment. Furthermore, several commenters supported a clearly defined, standardized method for determining the required level of control, while one commenter stated that a system that requires a single set of controls for all minor sources across Indian country does not provide the needed flexibility to adapt regulation to the needs of individual areas of Indian country or to take into account the benefit of a level playing field with the surrounding areas.

On the other hand, other commenters opposed any control technology requirement. These commenters believed that a Federal program is likely to be applied inconsistently, resulting in a competitive disadvantage for sources located in certain areas; EPA has no authority to impose a control technology requirement under section 110(A)(2)(C) of the Act and a separate control technology review process under minor NSR is unnecessary when the threat of PSD review will otherwise accomplish the ultimate objective—protection of air resources (*i.e.*, the PSD review is generally so complex, time-consuming and expensive, that most sources will design their projects to remain below the applicable PSD thresholds, even if that means installing more efficient controls, switching to cleaner fuel or restricting production or operating hours).

We disagree with commenters that oppose any control technology requirement or who suggested that we have no authority to require such controls. Section 110(a)(2)(c) requires us to assure that the NAAQS are achieved and we believe that requiring control technologies when necessary will ensure the NAAQS are protected as established in this section. Furthermore, section 110(a)(2)(c) does not preclude us from requiring additional provisions that will further the goal of NAAQS protection and the fact that the statutory language requires a control technology review under some statutory provisions does not mean that the statute prohibits EPA from requiring it under other provisions.

We also disagree with those commenters that would like us to implement consistent control technologies across the nation. As we stated in the proposal, it would be impossible to create a single program that creates precisely equivalent regulations among all areas of Indian country. We wish to ensure that Indian country is not seen as a potential "pollution haven" where minor sources can go to escape air pollution control requirements and we also do not want to put Tribes or owners and operators locating in Indian country at a competitive disadvantage by requiring substantially more stringent controls in a particular area of Indian country than are required in the surrounding areas. Therefore, a case-by-case control technology review provides the reviewing authority with the flexibility to create requirements that protect public health and environment, but also takes into consideration the needs of the area in question based on its current air quality situation, the potential air quality impacts from the growth associated with the source and the technological and economic feasibility of the control technology as well as the control technologies in use in the surrounding states.

Therefore, we are finalizing the case-by-case control technology review requirements as proposed. The final rules require your reviewing authority to perform a control technology review on a case-by-case basis when issuing a site-specific minor NSR permit. *See* the final 40 CFR 49.154(c). For general permits, the control technology review will be performed at the time when the general permit is developed. More details on general permits are provided in section IV.C of this preamble.

b. Air Quality Impacts Analysis (AQIA)

If your reviewing authority has reason to be concerned that the construction of your minor source or modification could cause or contribute to a NAAQS or PSD increment violation, your reviewing authority may require you to conduct an AQIA using dispersion modeling in accordance with 40 CFR part 51, Appendix W, to determine the impacts that will result from your new source or modification. If the AQIA demonstrates that the construction of your source or modification would cause or contribute to a NAAQS or PSD increment violation, you would be required to further reduce its impact before you could obtain a permit.

Various commenters supported requiring an AQIA and added that they would like us to develop guidance on when and how an AQIA analysis should be performed. On the other hand, several commenters believed that AQIAs would be excessive, very costly and time consuming for small businesses.

Based on the comments received, we are finalizing the AQIA provisions as proposed at 40 CFR 49.154(d). We continue to believe that allowing reviewing authority discretion for when an AQIA might be required ensures that construction of new minor sources or modifications at existing minor sources do not cause or contribute to a NAAQS or PSD increment violation when needed, but limits overburdening all minor sources in Indian country with these types of air quality analysis. Nevertheless, to aid the reviewing authorities in the determination of when an AQIA might be needed for minor NSR sources in Indian country and to address the commenters' suggestions, we intend to develop guidance on the scope of the AQIA that will consider the suggestions presented by these commenters. We are also eliminating the language in the proposal preamble that stated (71 FR 48704) that AQIAs will be required "[i]n rare instances." Since the reviewing authority has the discretion to require an AQIA, it is difficult to predict that such AQIAs will be required only in rare instances.

3. What are the permit content requirements?

The requirements for permits issued pursuant to site-specific preconstruction review include the following (*see* 40 CFR 49.155):

- The effective date of the permit and the date by which you must commence construction on your approved project in order for your permit to remain valid (*i.e.*, 18 months after the permit effective date).
- The emissions units subject to the permit and their associated emissions limitations.
- Monitoring, recordkeeping, reporting and testing requirements to assure compliance with the emission limitations.

In addition, the permit should include a number of standard permit terms. These include emission limitations, monitoring recordkeeping and reporting requirements as well as terms such as a severability clause (to ensure the continued validity of the other portions of the permit in the event of a challenge to a portion of the permit), a requirement to comply with all conditions of the permit, a requirement that the permitted source does not cause or contribute to a NAAQS violation and inspection and entry provisions requiring that you allow representatives of the reviewing authority to enter and inspect your source.

a. Emissions Limitations

Your permit must include 2 types of emission limitations:

- The emissions limitations for each affected emissions unit determined by the reviewing authority based on the case-by-case technology review discussed previously in section IV.B.2 of this preamble.
- Limits on annual allowable emissions in tpy.

Emission limitation, as defined in 40 CFR 49.152, means a requirement established by the reviewing authority that limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emissions reduction and any design standard, equipment standard, work practice, operational standard or pollution prevention technique. Allowable emissions (also as defined under 40 CFR 49.152) means "allowable emissions" as defined in 40 CFR 52.21(b)(16), except that the allowable emissions for any emissions unit are calculated considering any emissions limitations that are enforceable as a practical matter on the emissions units' potential to emit. Once established in the permit, annual allowable emissions become the basis for determining whether a later change at your source will result in an increase in allowable emissions subject to permitting under this program.

We did not specifically receive comments on these two types of emissions limitations that must be included in your permit. Therefore we are finalizing these emissions limitations at 40 CFR 49.155(a)(2) as proposed.

Additionally, we would like to clarify, as some commenters requested, a couple

of terms or conditions. One commenter interpreted the proposal to only require annual emissions limits in the minor source permits, while one commenter asked us to clarify if the term "on a continuous basis" in the definition of emissions limitation implies that every emission limitation must be complied with on an instantaneous time period and accompanied by a continuous emission monitoring system (CEMS).

Therefore, we want to clarify that the reviewing authority may not only require annual emissions limits in the minor NSR permits, but also short-term limits as necessary. Short-term emission limits may also be required as part of any enforceable emission limitation and, if applicable, depending on the relevant ambient air quality standard associated with the regulated pollutant.

Furthermore, the term "on a continuous basis" in the definition of emission limitation does not imply that every emission limitation must be complied with on an instantaneous time period and accompanied by a CEMS. The term "on a continuous basis," as the commenter suggests, means that the limitation applies "at all times," but not that the emission limitation has to be accompanied by a CEMS. There are various ways to monitor compliance with limitations that apply on a continuous basis as we mention in the next section.

b. Monitoring, Recordkeeping and Reporting

The monitoring, recordkeeping and reporting requirements have been finalized under 40 CFR 49.155. Specifically, the final monitoring requirements are under 40 CFR 49.155(a)(3), the final recordkeeping requirements under 49.155(a)(4) and the final reporting requirements under 40 CFR 49.155(a)(5).

(1) Monitoring requirements. The permit must include monitoring requirements sufficient to assure compliance with any emissions limitations contained in the permit. Monitoring approaches may include CEMS, predictive emissions monitoring systems (PEMS), continuous parameter monitoring systems (CPMS), periodic manual logging of monitor readings, equipment inspections, mass balances, periodic performance tests and/or emission factors, as appropriate for your minor source based on the types of emissions units, magnitude of emissions and air quality considerations. Such monitoring shall assure use of terms, test methods, units and averaging periods consistent with the control technology and emission limitations required for your source.

(2) Recordkeeping requirements. The permit must include recordkeeping requirements sufficient to assure compliance with the enforceable emission limitations in your permit. Records of required monitoring information must include all calculations using emissions factors, all stack tests or sampling information including date and time of test or sampling, the name of the company or entity that performed the analyses, the analytical techniques or methods used, the results of such analyses and the operating conditions existing at the time of sampling or measurement. All such records including support information must be retained for 5 years from the date of the record. Support information may include all calibration and maintenance records and all original strip-chart recordings or electronic records for continuous monitoring instrumentation.

(3) Reporting requirements. You must provide annual monitoring reports showing whether you have complied with your permit emission limitations. You also must provide prompt reports of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations and any corrective actions or preventive measures taken. Within a permit, the reviewing authority must define "prompt" in relation to the degree and type of deviation likely to occur.

We did not receive any specific comments regarding the monitoring and recordkeeping requirements, but several commenters commented on the reporting requirements. Some of these commenters specifically asserted that requiring annual monitoring reports for minor sources is overly burdensome, while another commenter would like us to require monitoring reports to be submitted at least annually, to give the reviewing authority flexibility to require semiannual monitoring reports and in accordance with the title V reporting schedule. Other commenters recommended that for reporting deviations the word "prompt" should be defined within the regulation.

We disagree with those commenters that state that the monitoring, recordkeeping and reporting requirements are too burdensome because, as stated in the proposal, sections 110(a)(2)(A) and 110(a)(2)(C) of the Act require that a preconstruction permitting program provide for the enforcement of measures that include "enforceable emission limitations and other control measures, means or techniques * * * as well as schedules and time-tables for compliance." In addition, section 110(a)(2)(F) requires that a permitting program may require "the installation, maintenance and replacement of equipment and the implementation of other necessary steps by owners and operators of stationary sources to monitor emissions from such sources," as well as periodic reports on the nature and amounts of emissions and emissions-related data from such sources. Therefore, we believe that, for example, annual reporting requirements will ensure that sources are complying with their annual emissions limits as well as any other limits determined by the reviewing authority.

However, we do not believe that requiring monitoring reports more frequently than annually, as one commenter suggested, would be appropriate for minor sources. Minor sources are typically much smaller than the title V sources the commenter is referring to and therefore requiring monitoring reports more frequently than annually might be overly burdensome for these sources. However, we encourage reviewing authorities to develop annual monitoring schedules in accordance with title V permit monitoring schedules if that facilitates the reporting of emissions to the reviewing authority.

We also disagree with the commenters that would like us to define the word "prompt" for the reporting of deviations. We continue to believe that deferring the definition of this term to the reviewing authority is more appropriate to ensure that the respective permits are protective of the NAAQS while also ensuring that the particular needs of the area where the source is being permitted are considered. For example, if a source is locating in a particular area of Indian country, the reviewing authority might define this term by considering the provisions of the state and/or the air quality control districts surrounding the area of Indian country where the source is locating as well as technical and economical feasibility. Therefore, we are finalizing the monitoring, recordkeeping and reporting requirements as proposed and these requirements will be included in each permit as necessary to assure compliance with the source's emission limitations.

c. Other Permit Content Requirements

Under 40 CFR 49.155(a)(7), we have finalized other permit requirements. Specifically, these requirements include inspection and entry provisions under 40 CFR 49.155(a)(7)(vii) that state that upon presentation of proper credentials, you, as the permittee, must allow a

representative of the reviewing authority to:

- Enter upon your premises where a source is located or emissions-related activity is conducted or where records are required to be kept under the conditions of the permit;
- Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
- Inspect, during normal business hours or while the source is in operation, any facilities, equipment (including monitoring and air pollution control equipment), practices or operations regulated or required under the permit;
- Sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or other applicable requirements; and
- Record any inspection by use of written, electronic, magnetic and photographic media.

Commenters on these requirements wanted us to clarify that as the reviewing authority representative enters the source premises for any inspection, the reviewing authority "must comply with the safety requirements of the permittee." Upon further evaluation of these provisions, we do believe that the representative of the reviewing authority should follow standard safety requirements identical to the ones that apply to the permittee's employees.

4. What are the permit issuance procedures, permit term and public participation requirements?

a. Permit Issuance Process

Under 40 CFR 49.154(b), we have finalized definite timelines for the overall minor source permit issuance process that vary depending on the type of source being regulated under the minor NSR program. The timelines are described as follows:

- For minor sources seeking a site-specific permit, the permit issuance process timeline includes a period of 45 days for the application completeness review as well as a 30-day public comment period. Any site-specific permit will be granted or denied no later than 135 days after the date the application is deemed complete and all additional information necessary to make an informed decision has been provided.
- For minor modifications at major sources seeking coverage under a site-specific permit, the permit issuance process timeline includes a period of 60 days for the application completeness review as well as a 30-day public comment period. Any site-specific permit will be granted or denied no later than 1 year after the date the application is deemed complete and all additional information necessary to make an informed decision has been provided.
- For minor sources seeking coverage under a general permit (discussed in section IV.C of this preamble and under 40 CFR 49.156), the permit issuance process timeline includes a completeness review period of 45 days. Any request for coverage by individual sources under a general permit will be granted or denied within 90 days of the receipt of such request for coverage by the reviewing authority. We believe that since the general permit requirements have been subject to public notice when the general permit was developed, a shorter permit issuance process is warranted for determining whether a source is eligible for coverage under the general permit.
- For synthetic minor sources (discussed in section IV.D of this preamble and under 40 CFR 49.158), the permit issuance process timeline includes, as proposed, a period of 60 days for the application completeness review as well as a 30-day public comment period. Any synthetic minor permit will be granted or denied no later than 1 year after the date the application is deemed complete and all additional information necessary to make an informed decision has been provided.

The application for a permit under this program will be reviewed by the reviewing authority within 45 days of its receipt for site-specific permits (60 days from its receipt for synthetic minor permits and minor modification at major sources) to determine whether the application contains all the information necessary for processing the application. If the reviewing authority determines that the application is not complete, it will request additional information as necessary to process the application. If the reviewing authority determines that the application is complete, it will notify you in writing. The reviewing authority's completeness determination or request for additional information should be postmarked within 45 days of receipt of the permit application by the reviewing authority for site-specific permits (60 days of receipt of the permit application by the reviewing authority for synthetic minor permits and minor modifications at major sources). If you do not receive a request for additional information or a notice of complete application postmarked within 45 days of receipt of the permit application by the reviewing authority for site-specific permits (60 days for synthetic minor permits and minor modification at major sources), your application will be deemed complete. Once the application is complete, your reviewing authority will develop a draft permit and provide public notice seeking comments on the draft permit for a 30-day period. After considering all timely, relevant comments, if your reviewing authority determines that your new source or modification meets all applicable requirements, it will issue you a final permit. Otherwise, the reviewing authority will send you a letter denying your permit application with reasons for the denial.

We decided to finalize a definite timeline for the overall minor source permit issuance process that varies depending on the type of source being regulated under the minor NSR program because we agree with those commenters who believed that this timeline will provide regulatory certainty for the regulated community and the public, as well as time for the regulated community and the reviewing authority to plan for the permit issuance process. Specifically, commenters believed that the proposed permit issuance process was too lengthy and/or too uncertain for minor sources. They argued that state minor NSR programs are bound by shorter and more definite time lines. In addition, a few commenters believed that the proposed language could allow a permit application to be held without a final decision for an unreasonable period, resulting in serious financial burden, lost business opportunities, a delay in the project and even cancellation of the project.

Furthermore, we have amended our proposed completeness review procedures, as suggested by some commenters and we will no longer require that if the source has not received a notice of completeness or a request for additional information in 50 days, that the application would be deemed complete. We agree with those commenters that expressed concerns that this provision can be confusing. Therefore and as we stated previously, if you do not receive a request for additional information or a notice of complete application postmarked within 45 days of receipt of the permit application by the reviewing authority for site-specific permits (60 days for synthetic minor permits and minor modification at major sources), your application will be deemed complete. The permit issuance procedures for general permits are discussed in section IV.C.5 of this preamble.

b. Permit Term

Under 40 CFR 49.155(b), we have finalized provisions that state that your permit remains valid as long as you commence construction on your project within 18 months after the effective date of the permit, you do not discontinue construction for a period of 18 months or more and you complete construction in a reasonable time. The reviewing authority may extend the 18-month period where justified and that 18-month limit does not apply to the time period between construction of approved phases of a phased construction program. In those cases, you must commence construction of each such phase within 18 months of the approved commencement date for that phase.

We received only one comment about the permit term provisions. This commenter had concerns about the proposal preamble language that stated that: "a preconstruction permit does not expire." Specifically, this commenter stated that it may be appropriate to specify that the permit does expire after a specified period, subject to renewal for a specified period upon showing of diligence by the source. If a preconstruction permit does not expire, the commenter argues that the permit term provisions may be administratively impractical to implement.

Upon further review of these provisions, we have noticed that the language we used in the proposal preamble was not consistent with the provisions we proposed under 40 CFR 49.155(b). Under 40 CFR 49.155(b), we proposed provisions for when permits become invalid and did not state that "a preconstruction permit does not expire." Therefore, we have eliminated the proposal preamble language that stated that permits do not expire and we are finalizing the proposed provisions as stated under 40 CFR 49.155(b).

In addition, we would like to clarify that permits under this program would not be revoked at the source's request when there is a rapid decrease in production, as a few commenters recommended. In such a case, the limits of these permits might be revised appropriately to account for the reduction, but the permit would not be revoked. Permits will be revoked only if the source officially shuts down its operation and notifies the reviewing authority about the business closure.

c. Public Participation Requirements

We have finalized our public participation requirements under 40 CFR 49.157 for site-specific permits, minor modification at major sources, synthetic minor sources and the initial development of a general permit for a source category. Pursuant to these requirements, the reviewing authority is required to prepare a draft permit and provide adequate public notice to ensure that the affected community and the general public have reasonable access to the application and draft permit information. The reviewing authority must make such information available for public inspection at the appropriate EPA Regional Office and in at least one location in the area affected by the source, such as the Tribal environmental office or a local library. The public notice must provide an opportunity for public comment and a public hearing on the draft permit. The appropriate types of notice may vary depending on the proposed project and the area of Indian country that would be affected.

In all cases, the reviewing authority must mail a copy of the notice to you (the permit applicant); the appropriate Indian governing body and the Tribal, state and local air pollution authorities having jurisdiction adjacent to the area of Indian country potentially impacted by the air pollution source. In addition, the reviewing authority may elect to provide public notice for a given situation as appropriate and depending on such factors as the nature and size of your source, local air quality considerations and the characteristics of the population in the affected area. The optional methods of notifying the public include the following:

- Mailing or e-mailing a copy of the notice to persons on a mailing list developed by the reviewing authority consisting of those persons who have requested to be placed on such a mailing list.
- Posting the notice on its Web site.
- Publishing the notice in a newspaper of general circulation in the area affected by the source. Where possible, the notice may also be published in a Tribal newspaper or newsletter.
- Providing copies of the public notice for posting at locations in the area affected by your source. We expect that such locations might include post offices, libraries, Tribal environmental offices, community centers and other gathering places in the community.
- Other appropriate means of notification.

Furthermore, the reviewing authority must provide for a 30-day public comment period on the draft permit. After considering all relevant public comments, the reviewing authority will make a final decision to issue or deny your permit. The public (including you, the permit applicant) will have an opportunity to appeal the final decision under 40 CFR 49.159. Final permit issuance and the opportunity for appeal are discussed further in the next section of this preamble.

Several commenters supported the proposed public participation requirements stating that they like the proposed mix of mandatory and optional approaches to notices, while others suggested that the overall permitting process should be shortened. On the other hand, other commenters argued that the proposed public participation requirements were too burdensome, time consuming and will be open to abuse by persons who oppose any sort of development including development from very small projects. Therefore, some of these opposing commenters suggested adding a *de minimis* threshold below which sources would be exempt from the public notice and participation requirements in order to match the level of public participation to the environmental significance of the project. In addition, one commenter believed that we should strengthen the proposed public participation requirements by requiring notices to be sent by mail or e-mail to all persons requesting such notice, by requiring notices to be published in a Tribal newspaper or newsletter and by requiring other means of publication customary to the Tribe, where possible. They also wanted us to hold a public hearing whenever one is requested.

After careful consideration of these comments, we are finalizing our public participation requirements for site-specific permits, minor modifications at major sources, synthetic minor permits and the initial development of a general permit for a source category as proposed, with the clarification that the appropriate types of notice will take into consideration any seasonal activities that may conflict with the public participation of the local community (*e.g.,* subsistence hunting and fishing or other seasonal cultural practices). We believe these requirements are consistent with the current public availability of information requirements under our existing regulations at 40 CFR 51.161 and they add optional public noticing and participation provisions that will enhance the permitting process. All the requirements will ensure that the public is informed about the permitting actions occurring in Indian country and will also ensure that the particular public noticing needs in Indian country are considered.

We are not matching the public participation requirements to the environmental significance of the project, as some commenters suggested, because we believe that the public has the right to know about any permitting actions occurring in their area notwithstanding the environmental significance of the project and that a 30-day public comment period on a permitting action, as in our existing regulations, is an appropriate timeline for this purpose.

In addition, we do not believe that our public participation requirements need to be strengthened at this time, as some commenters suggested, because we used the existing regulations under 40 CFR 51.161 as the basis for our public noticing requirements and added additional optional provisions to ensure that factors such as the nature and size of the source, the local air quality and the characteristics of the population in the area are considered. Therefore, we believe that these requirements are more detailed than the requirements in our existing regulations under 40 CFR 51.161 and do not need to be strengthened even further at this time.

We also continue to believe that, as proposed, the reviewing authority should be able to hold a public hearing at its own discretion. We believe that the reviewing authority is in the best position to determine whether there is significant interest in a hearing on a case-by-case basis and to decide whether it is more administrative and economically prudent to ask a small number of commenters to submit their comments in writing.

To address any concerns about the length of the entire permit issuance process, we are finalizing definite timelines for the overall permitting process depending on the source type. *See* section IV.B.4.a of this preamble for more details about the permit issuance process timeline.

5. What are the provisions for final action on a permit, permit reopenings, administrative permit revisions and administrative and judicial review procedures?

In general, these provisions are based closely on selected provisions of part 124, subpart A. The specific provisions are as follows:

a. Final Action on a Permit

Under 40 CFR 49.159(a), we have finalized provisions regarding how final action on a permit will occur. Specifically we state that after a decision to issue or deny your permit, the reviewing authority must notify you, the permit applicant, of the decision in writing and, if the permit is denied, provide the reasons for the denial and the procedures for appeal. If the reviewing authority issues a final permit to you, the reviewing authority must provide adequate public notice of the final permit decision to ensure that the affected community, general public and any individuals who commented on the draft permit have reasonable access to the decision and supporting materials.

Furthermore, under 40 CFR 49.159(b) we have finalized provisions regarding how long the reviewing authority will retain permit-related records and under 40 CFR 49.159(c) the requirements on what must be in that record. For example, the records must be kept by the reviewing authority for not less than 5 years. The administrative record must include the application and any supporting data furnished by the applicant and all comments received during the public comment period, including any extension or reopening.

A few commenters supported the proposed provisions for providing notice of final permit actions, which included making a copy of the final permit available at all of the locations where the draft permit was made available. These commenters believed that such notice should be provided in the same manner that it was provided during the public comment on the draft permit and not depend, as we proposed, "upon the circumstances of your permit".

On the other hand, a few commenters indicated that the proposed notification requirements are excessive. They believed that the proposed requirements are more stringent than the requirements for major sources under the PSD program and/or the part 71 program, which they believed is unwarranted because the impact for minor sources on public health and/or the environment would be much lower than major sources. Furthermore, some of these commenters argued that EPA may find the proposed requirements burdensome and expensive unless the method of notice is limited to something such as publication on EPA's Web site.

Based on the comments received, we agree that, for site-specific permits, making a copy of the permit available at all of the locations where the draft permit was made available might be too burdensome for the reviewing authorities. Accordingly, we are amending 40 CFR 49.159(a) to require copy of the final permit decision to be made available at all of the locations where the draft permit was made available for synthetic minor sources and minor modifications at major sources, but we are requiring the reviewing authority to only elect one or more of the methods for public noticing under 40 CFR 49.157(b)(1)(ii) for site-specific permits. As proposed, sources are required to post, prominently, a copy of the letter granting the request for coverage under the general permit at the site where the source is locating. More details about the general permit provisions are provided in section IV.C of this preamble.

Regarding the administrative record for a permit decision, several commenters commented on how long the reviewing authority should retain permit-related records. These commenters agreed with the provision of keeping records for not less than 5 years, while one commenter specifically asked us to require the reviewing authority to retain permit records for the life of the source. We believe that keeping permit records for the life of the source will be too burdensome, especially when we do not require permit records for major sources under some provisions of the major NSR program to be kept for more than 5 years either. Therefore, we have finalized, as proposed and under 40 CFR 49.159(b), that the reviewing authority must retain permit-related records for not less than 5 years.

No comments were received on what must be kept on the administrative record and thus, we have also finalized these provisions, under 40 CFR 49.159(c), as proposed.

b. Permit Reopenings

Under 40 CFR 49.159(e) we have finalized provisions regarding when your permit can be reopened. These provisions state that the reviewing authority may reopen a final, currently-in-effect permit for cause on its own initiative, such as if the permit contains a material mistake or fails to assure compliance with applicable requirements. However, except for those permit reopenings that do not increase the emissions limitations in the permit, such as permit reopenings that correct typographical errors, all other permit reopenings shall be carried out after the opportunity for public notice and comment and in accordance with one or more of the public participation requirements under 40 CFR 49.157(b)(1)(ii).

These final provisions amend the proposed provisions, which stated, among other requirements, that any person (including the permittee) may petition the reviewing authority to reopen a permit for cause, based on the comments we received. Commenters were concerned about allowing anyone—regardless of motive or lack of

factual support—to petition to reopen permits issued to sources of insignificant emissions. Furthermore, they argued that the proposed provisions were more stringent than the reopening provisions in the major source permitting programs, which they contend is unwarranted for minor sources and that these provisions are inconsistent with state minor NSR programs.

We agree, as some commenters suggested, that the provisions we proposed might open potential avenues for any person, even if uninformed or maliciously intentioned, to harass and disrupt permitting operations. In addition, we did not intend to excessively restrict the reasons for why a permit should be reopened by us, as the reviewing authority, by stating in the proposal that the reviewing authority may not reopen a permit for a cause unless it contains a material mistake or fails to assure compliance with the applicable requirements. We do agree that the reasons for reopening the permit by the reviewing authority should not be limited to the permit containing a material mistake or failing to assure compliance with applicable requirements. Therefore and as stated previously, we have amended the proposed provisions by adopting the language finalized at 40 CFR 49.159(e).

c. Administrative Permit Revisions

Under 40 CFR 49.159(f), we have finalized provisions to allow for minor changes in the permit without these changes being subject to the permit application, issuance, public participation or administrative and judicial review requirements of the program. For example, an administrative permit revision is a permit revision that could make a change such as: (1) Correcting a typographical error, (2) requiring more frequent monitoring or reporting by the permittee or (3) identifying a change in the name, address or phone number of any person identified in the permit. However, proposed physical or operational changes that could not be implemented within the requirements of an existing permit would necessitate a permit revision, even if they are not otherwise subject to major or minor NSR. (*See* final 40 CFR 49.159(f) for more information on the provisions that govern administrative permit revisions). A few commenters supported our proposed administrative permit revision provisions [21] because they believed that these provisions will allow a source to make minor changes without being subject to the overall permit process, while one commenter specifically opposed the provision to allow increases in allowable emission limits through an administrative permit revision since the commenter believed. According to the commenter, increases in allowable emission rates must be subject to NSR permitting, review of impacts on air quality and public notice and review.

We agree with those commenters that support the administrative permit revision provisions for the situations outlined in the proposal and hence we are finalizing these provisions as proposed at 40 CFR 49.159(f). We believe that permit changes involving typographical errors, more frequent monitoring and reporting requirements and/or changes in ownership should not go through the overall permitting process.

We understand, however and as the opposing commenter suggested, that there might be particular concerns with the provision at 40 CFR 49.159(f)(v) where an administrative permit revision is allowed for an increase in an emissions unit's annual allowable emissions limit for a regulated NSR pollutant, when the action that necessitates such increase is not otherwise subject to review under major NSR or under this program. For example, this case could be one where a source introduces a new coating to a process line that will increase the emissions of that unit but the emissions increases from the source will not trigger the minor NSR requirements.

Although this type of change does not trigger the major or the minor NSR thresholds, we continue to believe that we need to account for these changes in emissions in the permit to know the source's current allowable emissions and to ensure that the source is complying with the applicable requirements. Therefore, an administrative permit revision can be used when the increase in an unit's allowable emissions limit for a regulated NSR pollutant is not subject to major or minor NSR.

d. Administrative and Judicial Review Procedures

At 40 CFR 49.159(d), we have finalized the provisions under which permit decisions may be appealed. Permit decisions may be appealed to the Environmental Appeals Board (EAB) within 30 days after a final permit decision has been issued and a final permit typically will not become effective until 30 days after the service of notice of the final permit decision. Upon filing a petition for review, the permit would be stayed (*i.e.*, not go into effect) until the EAB decides whether to review any condition of the permit and the reviewing authority takes any action required by the EAB. When the EAB has issued its final order on an appeal, a motion to reconsider the final order may be filed with the EAB within 10 days. Only after all the administrative remedies under proposed 40 CFR 49.159 have been exhausted could the person(s) filing the petition seek review in the Federal Court of Appeals with jurisdiction over the area of Indian country in which the source is located. We proposed and took comment on two options for reviewing final permit decisions by reviewing authorities under 40 CFR 49.159(d). The option described above or Option 1 (where review of minor NSR permits will be similar to review of major PSD permits issued under 40 CFR 52.21 and which occurs in accordance with EPA's permitting regulations at 40 CFR part 124) and an alternative Option 2, where the reviewing authority's initial permit could be appealed directly to the appropriate Federal Court of Appeals without a requirement to appeal to the EAB first.

Several commenters supported Option 1 because they believed that the EAB has greater environmental expertise and is likely to resolve issues more quickly. These commenters also argued that citizen appeals to the EAB represent an easier threshold to meet for the layperson that is aggrieved by a final agency action. They believed it is easier for most citizens to write a letter to the EAB requesting an appeal than it is to hire an attorney to sue a governmental agency.

Supporting commenters also argued that it makes more sense to delay the effective date of the permit while the issues are being resolved (rather than allowing the source to begin construction), while some of these supporting commenters would like us to allow the permit to become effective immediately upon issuance unless a later date is specified. These latter commenters believed this option will allow for development in Indian country while encouraging participation from environmental experts should an appeal occur.

Other commenters opposed Option 1. These commenters stated that delaying final permit effectiveness for 30 days after issuance will compound an already lengthy permitting process. They also argued that these provisions are not consistent with the process that most states follow with their minor NSR programs and that these provisions are

[21] *See* 71 FR 48743 for more information on the proposed list of administrative permit revisions.

ripe for abuse and would encourage challenges from anti-development stakeholders.

On the other hand, several commenters specifically endorsed Option 2 because it allows the source to determine whether to commence construction at its own risk. Some of these commenters also noted that this option is more consistent with most state minor NSR programs and it eliminates an intermediate step, the EAB review. These commenters also argued that Option 2 is more appropriate due to the size and amount of emissions from minor NSR sources and it expedites the permitting process. Another commenter added that for Tribes that have or will be seeking, delegation of the NSR program, the rule should allow for Tribal administrative and Tribal court review prior to going to Federal court.

Based on the comments received, we agree with those commenters that support the option of filing a petition for permit review through the Environmental Appeals Board. We believe, as some commenters stated, that the EAB has greater environmental expertise, is likely to solve issues more quickly and it will be easier for the public to file a petition through the EAB than to hire an attorney to go through the appeals process.

However, we are not allowing permits to become effective immediately upon the service of notice of the final permit decision under the EAB option, as some commenters suggested, because the proposed provisions are based upon the EAB regulations under 40 CFR 124.15 and we did not propose to allow a different approach under this rule. The EAB regulations clearly state, under 40 CFR section 124.15(b), that a final permit decision shall become effective 30 days after the service of notice of the decision unless: (1) A later effective date is specified in the decision; (2) a review is requested on the permit under 40 CFR 124.19 or (3) no comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance. In other words, EPA regulations specify that the only permits that become effective upon issuance are those for which no comments were submitted. Furthermore, we do not believe we can allow sources to construct while the EAB process is pending, because while a permit is being reviewed by the EAB, it is not effective and thus it does not authorize construction.

Regarding the commenter that stated that delegated programs should allow for Tribal administrative and Tribal court review prior to going to Federal court, we disagree. This is because under a delegated Federal program, the delegated Indian Tribe would be assisting EPA with the administration of Federal requirements on EPA's behalf and under these Federal regulations. Any Federal requirement administered by a delegated Tribe and any permit issued by such a delegated Tribe would remain Federal actions subject to EPA enforcement and EPA appeal procedures under Federal law. On the other hand, if a Tribe develops and EPA approves a TIP that includes a NSR program, Tribally-issued NSR permits would be subject to administrative and judicial review under the applicable Tribal program as approved by EPA. Therefore, we are finalizing the administrative and judicial review procedures for Option 1 as proposed at 40 CFR 49.159(d).

C. General Permits

1. What is a "General Permit?"

A "general permit" is a preconstruction permit that may be applied to a number of similar emissions units or minor sources. The purpose of a general permit is to simplify the permit issuance process for similar facilities so that a reviewing authority's limited resources need not be expended for site-specific permit development for such facilities. A general permit may be written to address a single emissions unit, a group of the same type of emissions units or an entire minor source. We believe that general permits offer a cost-effective means of issuing permits and provide a quicker and simpler alternative mechanism for permitting minor sources than the site-specific permitting process discussed previously.

We received strong support for the development of general permits. These commenters believed that the development of general permits for sources of similar operation and emissions will simplify the permit issuance process. On the other hand, one commenter urged EPA to issue guidance for particular source categories, rather than use general permits to streamline permitting. The commenter believed that developing guidance documents is a better method.

We agree with those commenters who supported the development of general permits because we believe, as some commenters suggested, that general permits will simplify the permit issuance process, avoid the need for case-by-case control technology review for those source categories/units for which the general permit was established and reduce the administrative burden of the reviewing authorities. However, we disagree with the commenter that preferred guidance rather than general permits for the minor NSR program in Indian country. We understand that general permits are not appropriate in all circumstances, but we believe it is appropriate to develop general permits for certain source categories/units, especially for those source categories/units for which the control technology or technologies available are fairly standard. Therefore, we are finalizing the option of developing general permits as proposed under 40 CFR 49.156.

In addition, upon consideration of other alternatives to streamline minor source permitting, we plan to propose permits-by-rule for suitable source categories not covered by general permits. The permits-by-rule content and requirements will be addressed in a separate rulemaking action.

2. What is the process for issuing general permits?

Under 40 CFR 49.156(b), we have finalized the provisions for the general permits issuance process. The reviewing authority may issue a general permit for a category of emissions units or sources that are similar in nature, have substantially similar emissions and would be subject to the same or substantially similar requirements governing operations, emissions, monitoring, reporting and recordkeeping. "Similar in nature" refers to size, processes and operating conditions.

A general permit must be issued according to the requirements for public participation in 40 CFR 49.157 and the requirements for final permit issuance and administrative and judicial review in 40 CFR 49.159. Issuance of a general permit is considered final action with respect to all aspects of the general permit except its applicability to an individual source. The sole issue that may be appealed after an individual source is approved to construct under a general permit is the applicability of the general permit to a particular source. We did not receive comments regarding the proposed general permit issuance procedures under 49.156(b). Consequently, we are finalizing the provisions under 49.156(b) as proposed.

3. For what categories will general permits be issued?

Under 40 CFR 49.156(c), we have finalized provisions allowing the reviewing authority to determine which categories of individual emissions units, groups of similar emissions units or

sources are appropriate for general permits in its area.

General permits may be issued to cover any category of numerous similar sources, provided that such sources meet the appropriate criteria. For example, permits can be issued to cover small businesses such as gas stations or dry cleaners. General permits may also, in some circumstances, be issued to cover discrete emissions units, such as individual solvent cleaning machines at industrial complexes.

In addition, in setting criteria for sources to be covered by general permits, your reviewing authority will consider the following factors. First, categories of sources or emissions units covered by a general permit should be generally homogeneous in terms of operations, processes and emissions. All sources or emissions units in the category should have essentially similar operations or processes and emit pollutants with similar characteristics. Second, the sources or emissions units should be expected to warrant the same or substantially similar permit requirements governing operation, emissions, monitoring, recordkeeping and reporting.

A few commenters specifically requested establishing general permits for the oil and gas sector. Other commenters were more general in their general permits recommendations and stated that general permits should be adopted for categories of similar sources and emissions units and developed before the minor NSR program is adopted in Indian country. These commenters also added that EPA needs to define further the criteria for developing general permits and the categories of emissions sources to which the program may apply. For example, some of these commenters would like us to develop general permits that are consistent across all of Indian country.

Based on the comments received, we are in the process of developing general permits for various source categories under the factors mentioned. The permits will be consistent across all of Indian country, as some commenters suggested, unless there is a need to develop specific provisions or a specific general permit, for a particular area of Indian country. We also plan to develop these general permits, after the opportunity for public notice and comment, using the public noticing procedures under 40 CFR 49.157. Furthermore, we plan to update general permits, also after the opportunity of notice and comment under 40 CFR 49.157, as appropriate to account for advances in control technology or for other pertinent reasons. However, when we update a general permit, sources operating under the existing general permit will be able to continue to operate under that existing permit until such time when the source is modified.

4. What are the permit content requirements for general permits?

General permits must contain the same permit elements required for permits issued under the site-specific preconstruction review rules. These permit elements are described in section IV.B of this preamble and listed in final 40 CFR 49.155(a).

In addition, the general permit must identify the specific category of emissions units or sources to which the general permit applies, including any criteria that your emissions unit must meet to be eligible for coverage under the general permit. The general permit must also include information required to apply for coverage under the general permit, such as the name and address of your reviewing authority, how to obtain application forms and the information you must provide to demonstrate that you are eligible for coverage. Finally, the reviewing authority may include other general permit terms and conditions as it deems necessary.

We did not receive any comments on the permit content requirements for general permits. Therefore, we are finalizing the general permit content requirements as proposed under 49.156(d).

5. What is the process that you may use for obtaining coverage under a general permit?

Under 40 CFR 49.156(e), we have finalized provisions that state that once a general permit has been issued for a source category or category of emissions units, you may submit a request for coverage under that general permit if your proposed new minor source or modification qualifies for that permit. Alternatively, you may apply for a site-specific permit under the provisions of 40 CFR 49.154.

If your source qualifies for a general permit, you may request coverage under that general permit to the reviewing authority 4 months after the effective date of the general permit, that is, 6 months after publication of the general permit in the **Federal Register**. The reviewing authority must act on your request for coverage under the general permit as expeditiously as possible, but it must notify you of the final decision within 90 days of its receipt of your coverage request.

Your reviewing authority must comply with a 45-day completeness review period to determine if your request for coverage under a general permit is complete. Therefore, within 30 days after the receipt of your coverage request, your reviewing authority must make an initial request for any additional information necessary to process this request and you must submit such information within 15 days. If you do not submit the requested information within 15 days from the date of the request for additional information and this results in a delay that is beyond the 45-day completeness review period, the 90-day permit issuance period for your general permit will be extended by the additional days you take to submit the requested information beyond the 45-day period. If the reviewing authority fails to notify you within a 30-day period of any additional information necessary to process your coverage request, you will still have 15 days to submit such information and the reviewing authority must still grant or deny your request for coverage under a general permit within the 90-day general permit issuance period and without any time extension.

If the reviewing authority determines that your request for coverage under a general permit has all the relevant information and is complete, we will notify you in writing as soon as that determination is made. If you do not receive from the reviewing authority a request for additional information or a notice that your request for coverage under a general permit is complete within the 45-day completeness review period described previously, your request for coverage under a general permit will be deemed complete.

As proposed, your reviewing authority shall grant or deny your request for coverage under a general permit without another 30-day public comment period. However, you must submit a copy of such request to the Tribe in the area where your source is locating. We will also post notice of the coverage request under the general permit on our Web site. During our review of your request for coverage under the general permit, commenters can only notify us of any concerns about the eligibility of your source to obtain coverage under that general permit and not on any other issue. Your reviewing authority shall grant or deny your request for coverage under a general permit as expeditiously as possible by sending you a letter notifying you of the approval or denial of your request. This letter is a final action for purposes of judicial review (*see* 40 CFR 49.159) only for the issue of whether your source qualifies for coverage under the general permit. If your request for coverage under a general permit is approved, you

must post, prominently, a copy of the letter granting such request at the site where your source is locating and you must comply with all the condition and terms of the general permit.

You will be subject to enforcement action for failure to obtain a preconstruction permit if you construct the emission unit(s) or source under the general permit and your source is later determined not to qualify for the conditions and terms of the general permit. Any source eligible to request coverage under the general permit may alternatively apply for a site-specific permit under 40 CFR 49.154.

We received a few comments regarding the timeline in which the reviewing authority must notify you of the final decision on a request for coverage under a general permit. These commenters argued that the 90-day period we proposed for the reviewing authority to determine coverage under the general permit should be eliminated or at least reduced to 30 days. However, we continue to believe that a 90-day permit issuance timeframe is appropriate since reviewing authorities need adequate time to determine if your request for coverage has all the relevant information and is complete. If not, the reviewing authority will need to request additional information.

Moreover, we believe it is appropriate to add a completeness review time period for sources requesting coverage under a general permit, as one commenter suggested, to ensure that both sources and reviewing authorities act on the request for coverage under a general permit as expeditiously as possible.

In regards to a 30-day public comment period for when a source requests to be covered under a general permit, some commenters expressed concerns about this provision arguing that this will significantly delay or disrupt the permitting process. Other commenters were more concerned about being informed about the sources planning to construct in their area. To address these comments, we have decided not to require a 30-day comment period for sources seeking coverage under a general permit. However, as stated previously, you and the reviewing authority must implement the other notification procedures.

Regarding the requirement to post prominent notice of the letter approving your request for coverage under a general permit, we received two comments. One of these commenters believed that we should allow the general permit and letter to be maintained at the operator's office closest to the emission source since, specifically, many oil and gas sites are unmanned. Another commenter believed that requiring an applicant to post information at the source about the fact that now a general permit will be applied to this source is duplicative of the public review and comment period and thus unnecessary.

We continue to believe that posting, prominently, a copy of the letter granting your request for coverage under a general permit at the site where the source is locating is appropriate since this will facilitate any inspection by the reviewing authority. Moreover, this will allow the public to be informed about the sources locating in their area. The original copy of this letter of approval can be kept in a safe place, for example, a corporate office, especially for source locations that are unmanned.

Accordingly, we are finalizing the general permit issuance procedures under 40 CFR 49.156(e) mainly as proposed. In addition, in the final rule we are including provisions for addressing when a general permit becomes invalid that mirror the corresponding site-specific permit provisions (see section IV.B.4.b of this preamble for more information on these provisions).

Finally we want to add that if a general permit has been issued for your source category, you have the option to request coverage under that general permit 4 months after the effective date of the permit (*i.e.*, 6 months after the general permit is published) or you can apply for a site-specific permit according to the provisions under 40 CFR 49.154. However we want to clarify that since we are delaying the implementation date of this minor NSR program to true minor sources for 36 months after the effective date of this rule (see section VII.C of this preamble for an explanation of these implementation provisions), if you elect not to seek coverage under the general permit available for your source category, you will have to apply for a site-specific permit prior to construction if that occurs prior to the 36 month implementation date. In other words, there will be no permitting grace period if a general permit exists for your source category prior to the 36-month period and you elect not to seek coverage under that general permit.

D. Synthetic minor source permits

Some sources have the potential to emit one or more pollutants in major source amounts, but have actual emissions that are below the major source thresholds. These sources are called "synthetic minor sources" and the term means a source that otherwise has the potential to emit regulated NSR pollutants in amounts that are at or above those for major sources in 40 CFR 49.167, 40 CFR 52.21 or 40 CFR 71.2, as applicable, but has taken a restriction so that its potential to emit is less than such amounts for major sources. Such restrictions must be enforceable as a practical matter (as defined in 40 CFR 49.152).

The designation of synthetic minor source is allowed for both regulated NSR pollutants and HAPs and although you may choose to obtain such emission limitations at your own discretion, once you have accepted an enforceable emission limitation, you must comply with that limitation. This is necessary to ensure that you are legally prohibited from operating as a major source. In addition, if you apply for a synthetic minor source or synthetic minor HAP source, you must comply with the same public participation requirements and the same procedures for final permit issuance and administrative and judicial review found at 40 CFR 49.157 and 40 CFR 49.159 respectively.

In our proposal we explained that our 1999 policy memo on synthetic minor sources in Indian country currently provides guidance on how sources that would otherwise be major sources under section 302 or part D of title I of the Act can become synthetic minor sources if their actual emissions remain below 50 percent of the relevant major source PTE threshold and they comply with all other requirements of the policy memo.[22] However, as the memo specifies, this PTE transition policy terminates when we adopt and implement a mechanism that you can use to limit your potential to emit or we explicitly approve a program providing such a mechanism. This minor NSR program adopts and implements a mechanism that you can use to limit your potential to emit and as such it terminates the PTE transition policy.

Several commenters supported the proposal to allow synthetic minor source permits because this option has been previously available for sources located outside of Indian country. On the other hand, two commenters opposed the proposal to allow for synthetic minor source permits since they believe that synthetic minor source permits are not available outside of Indian country and therefore HAP sources would rush to Indian country to avoid MACT standards.

[22] John S. Seitz and Eric V. Schaeffer. Policy memo. "Potential to Emit Transition Policy for Part 71 Implementation in Indian Country." March 7, 1999.

Another commenter opined that the proposed synthetic minor rule will hinder some Tribes' ability to develop or maintain their own sustainable title V major source permitting programs. This commenter argued that allowing for synthetic minor source permits in Indian country will decrease the number of major sources under this program thereby reducing the permitting fees collected and used by Tribes to run their title V permitting programs. One commenter also added that general permits should be allowed for synthetic minor sources.

We agree with those commenters that would like us to allow synthetic minor source permits for both criteria pollutants and HAPs. We believe that allowing synthetic minor source permits could be beneficial to the environment by reducing the amount of pollution that could have been emitted to the air otherwise. In addition, this option has been available for sources outside of Indian country for both regulated NSR pollutants and HAP sources for many years. Thus, we disagree with the commenters who believed that we will be creating pollution havens in Indian country for HAP sources because HAP sources who obtain synthetic minor permits need to comply with emissions limits that are enforceable as a practical matter (as defined in 40 CFR 49.152) and with the applicable regulations under 40 CFR Part 63.

We do not believe that synthetic minor source permits will significantly reduce the number of title V major sources in Indian country and hence the associated permit fees, since we do not anticipate many sources to change their current status to synthetic minor status once this rule is final. The PTE transition policy had already allowed sources in Indian country, until this FIP becomes final, to limit their potential to emit to avoid major source status for purposes of the title V program. However, if a Tribe is concerned that existing title V programs may be unsustainable after a certain number of sources change their existing title V permits to synthetic minor source permits, the Tribe will have to consider raising their title V fees as necessary to ensure that, as stated in section 502(b)(3) of the Act, the fees collected under the title V program are "sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements."

We also disagree with the commenter that would like us to allow the use of general permits for synthetic minor sources since these sources are major sources until they are approved to construct under a synthetic minor source permit. We believe that the size and amount of emissions from these sources warrants a case-by-case review of the source and their proposed emission limitations. Therefore, in the final rule, we are not allowing general permits for synthetic minor sources.

In this final rule apart from specifying the circumstances under which a new source may obtain a synthetic minor source permit, we are also clarifying the possible mechanisms under which synthetic minor source permits have been issued to date and the requirements these sources may have to comply with after the effective date of this rule.

Consequently, we are finalizing provisions under 40 CFR 49.158 that state that you may obtain a synthetic minor source permit under this program to establish a synthetic minor source for PSD, nonattainment major NSR and title V purposes and/or a synthetic minor HAP source for MACT standards and title V purposes. Any source that becomes a synthetic minor for NSR and title V purposes but has other applicable requirements or becomes a synthetic minor for NSR but is major for title V purposes, must also apply for a part 71 title V permit. In addition, you, as the permit applicant, will have to submit a permit application pursuant to the provisions of 40 CFR 49.158(a) and 40 CFR 49.154 and you will also be subject to the permit requirements at 40 CFR 49.155 and 49.158 which include, among other things, case-by-case control technology review as well as monitoring, recordkeeping and reporting requirements.[23]

Hence, we are finalizing the synthetic minor source permit application procedures mainly as proposed, with the exception that we are requiring the reviewing authority to notify you of the permit application completeness determination in writing and thus eliminating the requirement that you, as the permit applicant, should contact the reviewing authority to find out the date of receipt of the application. The final synthetic minor source permit application requirements state that you must submit a permit application to the reviewing authority and within 60 days after receipt of an application, the reviewing authority will determine if it contains the information specified in 40 CFR 49.158(a). If the reviewing authority determines that the application is not complete, it will request additional information from you as necessary to process the application. If the reviewing authority determines that the application is complete, it will notify you in writing. The reviewing authority's completeness determination or request for additional information should be postmarked within 60 days of receipt of the permit application by the reviewing authority.

We are also adding a provision, to be consistent with the site-specific and general permit provisions, to state that if you do not receive a request for additional information or a notice of complete application postmarked within 60 days of receipt of the permit application by the reviewing authority, your application would be deemed complete. The reviewing authority must provide an opportunity for public participation and public comment on the draft synthetic minor source permit as set out in 40 CFR 49.157. The final synthetic minor source permit will be issued and will be subject to administrative and judicial review as set out in 40 CFR 49.159.

The provisions of the final rule address the various possible scenarios for synthetic minor source permits as follows:

- If you own or operate an existing major source and you wish to obtain a synthetic minor source permit pursuant 40 CFR 49.158 to establish a synthetic minor source and/or a synthetic minor HAP source,[24] you may submit a synthetic minor source permit application on or after the effective date of the final rule, that is, on or after August 30, 2011. However, if your

[23] Please note that if you propose to construct or modify a synthetic minor source, you are subject to the synthetic minor source provisions under 40 CFR 49.158 and the preconstruction permitting requirements in 40 CFR 49.154 and 49.155, except for the completeness review and permit issuance timeline provisions. The permit completeness review and permit issuance timeline provisions that apply for sources seeking a synthetic minor permit are specified in 40 CFR 49.158(b).

[24] EPA's historic policy is "that facilities may switch to area source status [in this case through a synthetic minor permit] at any time until 'the first compliance' of the standard. The "first compliance date" is defined as the first date a source must comply with an emission limitation or other substantive regulatory requirement (i.e., leak detection and repair programs, work practice measures, housekeeping measures, etc * * *, but not a notice requirement) in the applicable MACT standard. Facilities that are major sources for HAPs on the "first compliance date" are required to comply permanently with the MACT standard to ensure that maximum achievable reductions in toxic emissions are achieved and maintained." Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, U.S. EPA, "Potential to Emit for MACT Standards—Guidance on Timing Issues" (May 16, 1995). EPA continues to believe that this policy best reflects the way Congress intended the MACT program to function. As a result, if you own or operate a major source subject to a MACT standard for which the initial compliance date has already passed, you cannot become a synthetic minor source for purposes of or otherwise avoid continuing to comply with, that particular MACT standard.

permit application for a synthetic minor source and/or synthetic minor HAP source pursuant to the FIPs for reservations in Idaho, Oregon and Washington has been determined complete prior to August 30, 2011, you do not need to apply for a synthetic minor source permit under this program.

- If you wish to commence construction of a new synthetic minor source and/or a new synthetic minor HAP source,[25] or a modification at an existing synthetic minor source and/or synthetic minor HAP source, on or after the effective date of the final rule (that is, on or after August 30, 2011), you must obtain a permit pursuant to 40 CFR 49.158 prior to commencing construction.
- If your existing synthetic minor source and/or synthetic minor HAP source was established pursuant to the FIPs applicable to the Indian reservations in Idaho, Oregon and Washington or was established under an EPA-approved rule or permit program limiting potential to emit, you do not need to take any action under this program unless you propose a modification for your existing synthetic minor source and/or synthetic minor HAP source on or after the effective date of this rule, that is, on or after August 30, 2011. For these modifications, you must obtain a permit pursuant to 40 CFR 49.158 prior to commencing construction.
- If your existing synthetic minor source and/or synthetic minor HAP source was established under a permit with enforceable emissions limitations issued pursuant to the part 71 program, the reviewing authority has the discretion to require you to submit a permit application pursuant to 40 CFR 49.158 for a synthetic minor source permit under this program within 1 year after the effective date of the final rule (that is, by September 4, 2012) or to require you to submit a permit application for a synthetic minor source permit under this program (pursuant to 40 CFR 49.158) at the same time that you apply to renew your part 71 permit or to allow you to continue to maintain synthetic minor status through your part 71 permit. If the reviewing authority requires you to obtain a synthetic minor source permit and/or a synthetic minor HAP source permit under this program (pursuant to 40 CFR 49.158), it also has the discretion to require any additional requirements, including control technology requirements, based on the specific circumstances of the source.
- If your existing synthetic minor source and/or synthetic minor HAP source[26] was established through a mechanism other than those described in preceding paragraphs, you must submit an application for a synthetic minor source permit pursuant to 40 CFR 49.158 within 1 year of the effective date of the final rule, that is, by September 4, 2012. The reviewing authority has the discretion to require any additional requirements, including control technology requirements, based on the specific circumstances of the source.

If you submit your application and any requested additional information in the timelines indicated above, your source will continue to be considered a synthetic minor source or synthetic minor HAP source (as applicable) until your synthetic minor source permit under this program has been issued. Should you fail to submit your application and any requested additional information in the timelines indicated above, your source will no longer be considered a synthetic minor source or synthetic minor HAP source (as applicable) and will become subject to all requirements for major sources.

E. Case-by-Case MACT Determinations Under Section 112(g) of the Act

Section 112(g)(2)(B) of the Act provides that you may not construct or reconstruct a major source of HAPs unless the appropriate permitting authority determines that MACT for new sources will be met. If the Administrator has not established a MACT standard for the source category, the Act requires that MACT be determined on a case-by-case basis.

The regulations implementing section 112(g)(2)(B) are at 40 CFR 63.40 through 63.44. The regulations at 40 CFR 63.43(c) set forth several options for procedures that can be used to accomplish case-by-case MACT determinations. These options include using title V administrative procedures if a pre-construction or reconstruction (63.43(c)(1)) title V permit is required or can be obtained, applying for and obtaining a Notice of MACT Approval (63.43(c)(2)(i)) and "any other administrative procedures for preconstruction review and approval established by the permitting authority for a state or local jurisdiction which provide for public participation * * *" (63.43(c)(2)(ii)).[27]

Currently, no Tribes have an EPA-approved title V permitting program or have adopted any other program to implement section 112(g), although one Tribe has been delegated authority to assist us with implementation of the Federal part 71 operating permit program (*i.e.*, the Federal program for issuing title V permits). Therefore, EPA expects that it will conduct case-by-case MACT determinations for sources in Indian country.

Furthermore, while we can accomplish a section 112(g) case-by-case MACT determination through a part 71 permit issued pre-construction or reconstruction or a Notice of MACT Approval, we believe that if your source is a major source only for HAPs and a minor source for regulated NSR pollutants, the minor NSR program is an appropriate "other administrative procedures" under 63.43(c)(2)(ii) for obtaining a case-by-case MACT determination. In addition, if your source is or could be minor for regulated NSR pollutants and is or could be major for HAPs, it would also be administratively convenient for you and for us, as the reviewing authority, to combine the construction permit process for both regulated NSR pollutants and case-by-case MACT determinations under the final minor NSR program, rather than to address regulated NSR pollutants under the minor NSR program and also go through the part 71 permit for preconstruction or reconstruction or Notice of MACT Approval process to address case-by-case MACT requirements. Note that even with this approach to preconstruction review, the source is still a major source for HAP under the MACT program (unless the source becomes a synthetic minor source) and thus you ultimately will have to obtain a part 71 operating permit for your major source of HAPs.

Several commenters supported the proposal to provide for case-by-case MACT determinations in the minor NSR program because they stated this will be consistent with the practice of most state programs, it would be administratively convenient and regulation of HAPs is important to health. On the other hand, one commenter argued that if a source is major for HAPs, the source should not apply for a minor source permit because

[25] *See* previous footnote regarding the timing for obtaining potential to emit restrictions on sources seeking a synthetic minor HAP permit.

[26] You can only be an existing synthetic minor HAP source if your current PTE limits are federally enforceable. 40 CFR 63.2. As a result, a source located in Indian country can only be an existing synthetic minor HAP source if the limits on its PTE were established through a mechanism administered by or on behalf of EPA.

[27] See also 63.42(b) for an additional option where the permitting authority has not adopted a 112(g) program but has authority to make case-by-case MACT determinations.

applying for a case-by-case MACT determination under the minor NSR program would exempt the source from the MACT program.

We agree with those commenters that supported the use of the minor NSR program as one of the mechanisms for obtaining a case-by-case MACT determination. As we stated previously, it is administratively convenient for us, as the reviewing authority and for you as the source owner to combine the preconstruction permit review process for both regulated NSR pollutants and case-by-case MACT determinations under this minor NSR program. If not, the minor NSR source that is also major for HAPs would have to apply for a minor NSR permit and a separate preconstruction or reconstruction part 71 permit or Notice of MACT Approval for its case-by-case MACT determination of its HAP emissions. We want to clarify, however and as the opposing commenter suggested, that using the minor NSR program as the mechanism for a section 112(g) case-by-case MACT determination does not mean that a major source will escape the major source requirements under the MACT program. The source still needs to comply with the requirements of 40 CFR 63.40 through 63.44 that apply to case-by-case MACT determinations using "other administrative procedures." In addition, any source that is required to obtain a case-by-case MACT determination is a major source of HAPs and will have to obtain a part 71 permit.

In addition, we would like to clarify that for case-by-case MACT determinations under this minor NSR program, we will apply the public noticing requirements under 40 CFR 49.157 and the administrative and judicial review procedures under 40 CFR 49.159. *See* final 40 CFR 49.153(a)(4) for the provisions related to section 112(g) case-by-case MACT determinations.

F. Treatment of Existing Minor Sources Under the Minor NSR Program

In the proposal preamble, we raised the question of whether it may be appropriate to also regulate existing minor sources in Indian country under this minor NSR program to help attain and maintain the NAAQS. At proposal, we discussed four options for the treatment of existing minor sources, as follows:

- *Option 1*—No requirements for existing minor sources (until a source wishes to make a modification).
- *Option 2*—Require existing synthetic minor sources to become subject to the minor NSR program requirements (including control technology review and other requirements as provided in section IV.A.5 through 9 of the proposal preamble) and to submit a permit application within 1 year after the effective date of the program.
- *Option 3*—Require all existing minor sources to register within 1 year after the effective date of this program, but not be subject to the permitting requirements.
- *Option 4*—Require all existing minor sources to be subject to the minor NSR program requirements (as provided in section IV.A.5 through 9 of the proposal preamble).

Numerous commenters supported Option 1. These commenters believed that this option is consistent with state minor NSR programs, is the least burdensome on existing sources and the EPA and Tribes do not have the resources available to implement any of the other options. In addition, these commenters opined that regulation of existing sources is not needed to maintain the NAAQS. On the other hand, a few commenters opposed this option, mainly because they believed it would not address any air quality impacts resulting from existing sources.

Regarding Option 2, a few commenters supported this option if it were to be used in combination with other options such as Option 1 or 3. However, two commenters specifically opposed Option 2 because they believe this option represents extremely onerous provisions for sources and reviewing authorities.

Several commenters supported Option 3 because they believed it would only place a small administrative burden on existing sources to report their existing emissions while providing Tribes with important information about the existing emissions within their jurisdictions. Nevertheless, one commenter opposed this option because the commenter believed Option 3 will be unduly burdensome and overbroad and could significantly disadvantage minor sources already operating in Indian country.

A few commenters supported Option 4 by noting that states have generally regulated minor sources and thus that experience could aid the implementation of this option. Another commenter added that EPA could meet the requirements under Option 4 if we used a "sunset clause." A "sunset clause" would allow sources some time to come into compliance and thereby avoid undue economic burden all at once. On the other hand, other commenters opposed this option because they generally believe it is extremely onerous for both sources and reviewing authorities.

After considering the comments, we have decided to finalize Option 3 for true minor sources. For synthetic minor sources, we are finalizing provisions as stated in section IV.D of this final rule preamble, which include provisions that require certain sources to obtain permits under this program 1 year after the effective date of this rule.

We are not finalizing our preferred option for "true" minor sources, Option 1, because even though we agree that this option is consistent with state minor NSR programs and it is the least burdensome option for existing minor sources, we believe that collecting source inventory data for minor sources in Indian country is necessary to successfully implement the minor NSR program. In addition, these source inventory data are needed to assess the feasibility of an actual emissions based applicability test and to determine if we need to modify the minor NSR thresholds at a later time. We are also not finalizing Option 4 at this time because we believe that Option 4 would overwhelm limited EPA resources even if we were to use a "sunset clause."

Thus, under the program we are finalizing, we are creating a registration program for minor sources in Indian country. Under the minor source registration program, if you own or operate an existing true minor source in Indian country (as defined in 40 CFR 49.152(d)) you must register your source with your reviewing authority in your area within 18 months after the effective date of this program, that is, by March 1, 2013. This date has been modified from the 12 months we proposed to provide existing sources additional time to comply with these requirements. These provisions are discussed further in section VII.C of this preamble. If your true minor source commences construction in the time period between the effective date of this rule and September 2, 2014, you must register your source with the reviewing authority in your area within 90 days after the source begins operation.

If construction or modification of your source commenced any time on or after September 2, 2014 and your source is subject to this rule, you must report your source's actual emissions (if available) as part of your permit application and your permit application information will be used to fulfill all the other registration requirements described in 40 CFR 49.160(c)(2).

This registration will be a one-time registration (not an annual registration) of your source's estimated actual and allowable emissions as provided in 40

CFR 49.160. For the Indian reservations subject to the registration requirements under 40 CFR 49.138 ("Rule for the registration of air pollution sources and the reporting of emissions"), the data being collected under that rule will be used to fulfill the requirements of this national registration program.

V. Final Major NSR Program for Nonattainment Areas in Indian Country

In this final action, we are establishing a major NSR program for new major sources and major modifications at existing major sources in nonattainment areas of Indian country at 40 CFR 49.166 through 49.175. This program is designed to meet the requirements of part D of title I of the Act and, as proposed, sources subject to this program would be required to comply with the requirements of 40 CFR part 51, Appendix S (Appendix S).

Appendix S is titled "Emission Offset Interpretative Ruling" and sets forth preconstruction review requirements for major sources and modifications locating in nonattainment areas where the state does not have an EPA-approved nonattainment major NSR program. In general, Appendix S is a transitional nonattainment major NSR program that covers the period after an area has been newly designated as nonattainment, up until the time that the state has amended its SIP's nonattainment major NSR program, as needed, to address the new nonattainment area. The requirements under Appendix S are essentially the same as our requirements for state nonattainment major NSR programs at 40 CFR 51.165.

We are finalizing our proposal to apply Appendix S to nonattainment areas in Indian country for a number of reasons. Primarily, we believe it is appropriate to apply Appendix S provisions in Indian country for administrative convenience. Additionally, since Appendix S generally applies in nonattainment areas where there is no approved nonattainment major NSR program and since no Tribe currently has such a program, we believe that Appendix S should also apply in Indian country. Another reason for requiring sources subject to this program to comply with Appendix S requirements is that the EPA Regional Offices (which will be implementing the program until an EPA-approved implementation plan is in place) and owners/operators of several major sources in Indian country are familiar with the implementation and provisions of Appendix S.

We considered and rejected the option of amending Appendix S to extend its application to Indian country, since we believe that sources in Indian country are more likely to look for regulations applicable to them under part 49, which is solely dedicated to regulations that apply in Indian country. We also considered drafting a parallel major NSR regulation to apply to sources in Indian country, but rejected this option since it would essentially re-propose Appendix S provisions, which have been in effect outside of Indian country for many years. We wanted to avoid any potential confusion or possible perception that these parallel regulation requirements would be different than the Appendix S requirements.

A. What are the requirements for major source permitting?

Pursuant to paragraph IV of Appendix S, we have finalized that a reviewing authority may issue a permit for a new major source or a major modification locating in a nonattainment area, if it complies with the following conditions:

1. The new major source or a major modification meets the LAER for that source using add-on controls or pollution prevention measures.

2. The applicant certifies that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by or under common control with the applicant) in the same state as the proposed source are in compliance with (or under a Federally-enforceable compliance schedule for) all applicable emission limitations and standards under the Act.

3. Emission reductions (offsets) from existing sources in the area of the proposed source (whether or not under the same ownership) are obtained such that there will be reasonable progress towards attainment of the applicable NAAQS.[28]

4. The emission offsets provide a net air quality benefit in the affected area.

5. The permit applicant conducts an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

We received only a few comments regarding the use of Appendix S for Indian country. A couple of commenters did not explicitly support or oppose the use of Appendix S in Indian country, while one commenter suggested that Appendix S failed to address provisions under the CAA. The commenter pointed out that section 173(a)(5) of the Act provides for permits in a nonattainment area to be issued if "an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification." However, the provisions under 40 CFR Part 51, Appendix S did not include such requirement even when this requirement is included in every approved SIP in the country. Therefore, by requiring only the provisions of Appendix S, the commenter believed that the proposed nonattainment major NSR program failed to satisfy the requirements of the Act. The commenter suggested that a requirement for an adequate alternate site assessment should be added to the proposed regulations as a complementary requirement to Appendix S.

Upon further review of Appendix S, we agree that the section 173 alternate site provision was inadvertently missing from Appendix S regulations. Therefore, we have amended Appendix S to include the section 173 alternatives site provision to ensure that the provisions of the 1990 amendments, including the CAA section 173 alternative sites analysis provision, is codified in implementing regulations. *See* section V.F. of this preamble for more details on the Appendix S amendments.

B. How is EPA addressing the lack of available offsets in Indian Country?

Tribal representatives have repeatedly stated that requirements for emission offsets are problematic in Indian country because: (1) Many Tribes believe that transport is a major cause of pollution in Indian country, (2) Tribes generally do not have many existing sources within their area of Indian country from which offsets can be obtained, and (3) administrative barriers may hinder Tribal access to otherwise available offsets. Therefore, Tribal representatives have advocated for additional flexibility to address offsets, such as the provision of NSR offset set-

[28] In general, only intrapollutant offsets are permitted (*e.g.*, NO_X for NO_X). As part of the rulemaking to implement the NSR program for $PM_{2.5}$, Appendix S and 40 CFR 51.165 were revised to allow interpollutant trading of emissions of $PM_{2.5}$ and its precursors under certain conditions (73 FR 28321, May 16, 2008). However, this aspect of the regulations is currently under reconsideration by EPA. *See* letter from Lisa P. Jackson, EPA Administrator, to Paul R. Cort, Earthjustice, April 24, 2009. *http://www.epa.gov/nsr/documents/Earthjustice.pdf.*

asides (which we expect would come from state offset pools or banks).[29]

We recognize the unique circumstances that Tribes face. Unlike states that have a SIP, a huge industrial base with several hundred existing sources and a broad range of measures to attain and maintain NAAQS, a Tribe generally has neither a TIP nor many existing sources from which to generate offsets. Because of these circumstances, we proposed two options to address the lack of availability of offsets for Tribes: (1) The Economic Development Zone (EDZ) option, and (2) the Appendix S, paragraph VI option.

1. Economic Development Zone Option

For this option we rely on section 173(a)(1)(B) of the Act under which the Administrator, in consultation with the Secretary of Housing and Urban Development (HUD), may identify zones within nonattainment areas as EDZs such that sources subject to major NSR located in EDZs in Indian country would be exempt from the offset requirement in section 173(a)(1)(A) of the Act.

Section 173(a)(1) of the Act provides for the issuance of permits to construct and operate a new or modified major stationary source if the reviewing authority determines that (A) "* * * sufficient offsetting emissions reductions have been obtained * * *" or (B) "in the case of a new or modified major stationary source which is located in a zone (within a nonattainment area) identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under section 172(c)."

Once the Administrator has identified an area that should be targeted for economic development in consultation with HUD, major sources that construct or modify within that area are relieved of the offset requirement if the state/Tribe can demonstrate that the new permitted emissions are consistent with the achievement of reasonable further progress pursuant to section 172(c)(4) of the Act and will not interfere with attainment of the applicable NAAQS by the applicable attainment date.

To be identified as an EDZ, HUD's Initiative for Renewal Communities, Urban Empowerment Zones and Urban Enterprise Communities generally require that participating communities demonstrate pervasive poverty, high unemployment and general distress throughout the designated area. The United States Department of Agriculture requires similar eligibility criteria for participating communities located in rural areas. We believe that some areas of Indian country may meet these criteria and hence could qualify for this offset relief provision.

As we proposed, the Administrator will consult with HUD only once to develop a general set of approval criteria, such that a consultation with HUD is not required every time a Tribe applies for its area of Indian country to be designated as an EDZ. Also as proposed, EPA intends to provide assistance as needed for a Tribe to complete an EDZ designation request. If the Administrator approves such a request from a Tribe, a new major source or a major modification locating in that EDZ would be exempt from the offset provisions.

2. Appendix S, Paragraph VI Option

Paragraph VI of Appendix S notes that in some cases the dates for attainment of the primary or secondary NAAQS may not have passed. In such cases, Appendix S provides that a new source locating in a nonattainment area may be exempt from the requirements of paragraph IV.A of Appendix S (discussed in section VI.A of this preamble), including the offset requirement, if the following conditions are met:

- The new source complies with the applicable implementation plan emission limitations;
- The new source will not interfere with the attainment date for a regulated NSR pollutant; and
- We have determined that the preceding two conditions are satisfied and such determination is published in the **Federal Register**.

It is important to note that this option only provides temporary offset relief because it will cease to be available once the attainment date for a pollutant has passed.

Several commenters gave general support to waiving the requirement for offsets in Indian country, either through support of one or both of the proposed options or through advocating a general waiver on other grounds. For example, some commenters suggested that:

- EPA should allow sources in Indian country to obtain offsets not just from the Indian country area itself, but from adjacent or upwind areas. Section 173(c) of the Act specifically provides that offsets may be used if they are from an area with an equal or higher nonattainment classification and if emissions from that area contribute to a violation of the NAAQS in the area needing the offsets.
- EPA should allow Tribes to participate in state offset pools. With the approach of opening offset pools to Tribes, those Tribes wishing to develop major sources in nonattainment areas would still be able to do so, but would be treated like other sources needing to obtain an offset to maintain air quality.
- EPA should implement a set-aside program in which Tribes receive a certain amount of offset emissions that would need to be made up by the other sources in the state. The commenter believed that this would be fair because most nonattainment problems in Indian country are caused by sources that are not under Tribal control.
- EPA, the states, the Tribe and sources could collaborate to identify acceptable offsets outside of Indian country.
- EPA should launch a concerted effort to improve the availability of offsets in all areas that need them (not just in Indian country) by encouraging the development of protocols to allow the creation of offsets from nontraditional sources, especially mobile and area/minor sources.
- Tribes should be afforded the opportunity to request a permanent offset waiver based on language in the TAR. The TAR: "provide[s] an opportunity for Indian Tribes to assume responsibility for the development and implementation of CAA programs on lands within the exterior boundaries of their reservations or other areas within their jurisdiction." Thus, the commenter believed that the waiver will allow the opportunity for Tribes to be able to develop and implement the nonattainment major NSR program.

However, other commenters believe that offsetting of major NSR projects should be a requirement of the nonattainment major NSR program and no waivers should be given. These commenters opined that offset waivers would: (1) Likely be illegal under the Act, (2) cause air quality concerns, and (3) be unfair for sources located or locating outside of Indian country. For example, one of the commenters indicated that there is a significant shortage of offsets in virtually every

[29] Tribal representatives have raised these and other concerns in discussions on implementation of the 8-hour ozone and $PM_{2.5}$ standards and in comments on the 8-hour ozone implementation rule. For example, *see* the letter from Bill Grantham, National Tribal Environmental Council, to docket EPA–HQ–OAR–2003–0076, providing comments on the proposed 8-hour ozone implementation rule (66 FR 32802).

district in California, while another commenter added that the proposal would create an incentive for industrial sources to find Indian country a kind of refuge from regulatory requirements—resulting in a tilted playing field and exacerbating air quality and public health problems on reservations. Other commenters stated that:

- Setting up an offset bank within an area of Indian country would be difficult because no source on Tribal land is currently subject to NSR and therefore there are currently no offsets from sources on Tribal land to be bought or sold. The commenter believed that with no available offsets, when NSR is enacted on Tribal lands, the price of the first offsets will be unaffordable for most if not all sources on Tribal lands.
- There would be problems in allowing sources on Tribal lands access to the State offset banks. The commenter believed that states will be apprehensive to allow sources on Tribal lands access to state-established offset banks because states will not receive the tax revenue from offsets purchased by sources on Tribal lands as they do with sources within the state.
- EPA, state and Tribal collaboration should not make it necessary for Tribes to go to the states to obtain offsets for economic development on the reservation since it denigrates the government-to-government relations.
- Offsets should not be traded between Indian country and the states due to Tribal sovereignty issues and potential for confusion involving monitoring and tracking costs, as well as who receives tax revenue from the offsets.

In regards to the EDZ option, supporting commenters believed that this option provides the flexibility for EPA not to require emissions offsets for a project where economic development and environmental protection are equally important concerns, while opposing commenters believed that the EDZ option cannot lawfully be applied in the present circumstances. According to one commenter, under section 173(a)(1)(B) of the Act, the affected source must not cause or contribute to emissions levels "which exceed the allowance permitted for such pollutant for such area from new or modified stationary sources under section 172(c)." The latter section, at section 172(c)(4) of the Act, provides that the implementation plan shall identify and quantify the emissions, if any, that will be allowed to be used under section 173(a)(1)(B) (the EDZ section) and shall "demonstrate to the satisfaction of the Administrator that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable national ambient air quality standard by the applicable attainment date." Thus, the commenter believed that, in the absence of a TIP that quantifies the allowance and makes the required demonstration, this precondition for offset relief in EDZs would not generally be met within Indian country.

Furthermore, another commenter believed that, by definition, the proposed rule does not apply where there is a TIP and thus EPA would need to look at the relevant SIP of the surrounding or adjacent state for the applicable "allowance of emissions" for EDZ sources. The commenter noted that in many cases there may be no such allowance and that even if the relevant State SIP includes an allowance, that allowance would almost certainly not have been calculated under the assumption that areas in Indian country could access the allowance. Under these circumstances, the commenter asserted, the affected state would be entitled under the Act to determine in the first instance what, if any, access to the allowance it wished to make available to sources in Indian country. The commenter concluded that as a matter of law the EDZ option is unavailable unless and until the relevant state creates and makes available an appropriate allowance.

Another commenter also noted that as proposed, EPA would consult with the Secretary of Housing and Urban Development only once to develop a general set of approval criteria for EDZs. The commenter stated that this approach appears to conflict with the language of the Act, which requires consultation on each individual zone.

In regards to the Appendix S, paragraph VI option, several commenters supported it because, as one of these commenters stated, this option provides equivalent environmental protection. The reviewing agency has to demonstrate that the proposed source will not interfere with the attainment date for the regulated NSR pollutant(s) in the area.

However, a number of commenters had misgivings about the paragraph VI option, generally based on legal or environmental grounds. Two commenters stated that the paragraph VI option is inapplicable and unlawful because: (1) There is no applicable implementation plan in Indian country, so no source can "comply with applicable implementation plan emissions limitations" (in addition, one of these commenters conceded that if we interpret this to require the source to meet the SIP limits in the surrounding or adjacent state, this requirement could be met), (2) if there is no applicable implementation plan, it will be impossible to demonstrate that a source will not interfere with the attainment date for a nonattainment pollutant, (3) the Act requires that for every major source, the source must provide sufficient offsetting emissions reductions such that there is a reduction in emissions amounting to reasonable further progress, when considered together with emissions from other new and existing sources (*see* section 173(a)(1)(A) of the Act) and (4) the 1990 Amendments to the Act set out specific offset ratios which major sources must meet, such as 1.5 to 1 for Extreme Areas, 1.3 to 1 for Severe Areas, *etc.* (section 182 of the Act). These ratios may be met on an aggregate basis (*i.e.,* individual sources may be exempt from offsets if the state makes an equivalency demonstration showing that the universe of new sources as a whole meets the applicable ratios). However, nothing in paragraph VI requires that equivalency demonstration to be made. Therefore, the commenter noted that paragraph VI on its face violates the 1990 Amendments to the Act.

Other commenters stated that the paragraph VI option is not acceptable because it would be difficult for some Tribes to meet the criteria. They stated that such a waiver does not balance legitimate development needs with environmental protection or that a major source could not interfere with attainment. One of these commenters also noted that these waivers would expire at attainment dates and added that these "expiration dates" established by states should not be imposed on Tribes.

As we stated previously, we recognize the unique circumstances that Tribes face as well as the difficulty in obtaining offsets in certain parts of the country; however, we do not have the legal authority to waive the offset requirement under section 173 of the Act or under the TAR.

Thus and to address the lack of offsets availability, both inside and outside of Indian country, we encourage states and Tribes to work together in the creation and use of offset banks for their lands since we agree that, where appropriate, Tribes can obtain offsets from surrounding areas. For example, Tribes may enter into a Memorandum of Understanding (MOU) with their neighboring states to allow Tribal access to offsets in the state offset bank and vice-versa if and when Tribes develop

their own offset banks. This MOU would contain provisions establishing the criteria for emissions reductions to be used as offsets such as real, quantifiable, surplus, permanent and enforceable.

Furthermore, we are addressing the lack of availability of offsets in general. For example, in the final rule titled, "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)" (73 FR 28340), we finalized provisions that allow for inter-pollutant and inter-precursor trading of offsets between direct PM2.5 emissions and its precursor emissions. We believe this is a first step in the process of addressing the shortage of offsets in the nation and we will continue to explore and implement, as one commenter suggested, the use of non-traditional sources of offsets such as offsets from mobile sources and area or minor sources.

Regarding the offset waivers we proposed, we want to clarify that these waivers are currently available under the CAA and implementing regulations for both states and Tribes. The EDZ option is currently available under section 173(a)(1)(B) of the Act and the Appendix S paragraph VI option is currently available under 40 CFR part 51 Appendix S. Therefore, we disagree with those commenters that believed that if the proposed offset waivers would only be available for Indian country, then states would be at an economic disadvantage and/or that we would be creating pollution havens in Indian country.

Nevertheless, based on the opposing comments we received, including comments from the Tribes, regarding the implementation issues under the Appendix S Paragraph VI option, we are only allowing the EDZ option that is currently available under the statute for both Tribes and States as a potential option for offset waiver and we are not finalizing the Appendix S Paragraph VI option in this final rule.

After reviewing all the comments received, we believe that the EDZ option as established by statute is available for offset relief as long as the area meets the statutory criteria in order to qualify. In other words, Tribes who develop TIPs might request EPA to establish their area as an EDZ so they can avail themselves of the offset provision under section 173 of the Act.

However, we disagree with the commenter who believed that, by definition, the proposed rule does not apply where there is a TIP and thus EPA would need to look at the relevant SIP of the surrounding or adjacent state for the applicable "allowance of emissions" for EDZ sources. We do not see why the commenter believed that a TIP is not an appropriate mechanism for the EDZ provision under section 173 since the TAR provides that Tribes will be treated in the same manner as states for virtually all CAA programs and states generally lack jurisdiction under the Act over facilities in Indian country.

The ability of an area to qualify would be determined on a case-by-case basis, but criteria for including Tribes in the EDZs and for consultation with the Tribes will need to be developed in advance and in coordination with the Secretary of Housing and Urban Development. These criteria will ensure that Tribal and state input are included and that considerations are put in place to avoid industries coming into an area strictly for the offset relief. Therefore, we disagree with the commenter that believed that a general set of approval criteria will be in conflict with the language of the Act.

We are not finalizing the Appendix S provision as an option for offset waiver, since the provision is only available temporarily and it will be challenging for EPA or the Tribe to demonstrate that the proposed source will not interfere with the attainment date.

C. How do I meet the statewide compliance certification requirement of the Act and Appendix S?

Pursuant to the statewide compliance certification requirements of section 173(a)(3) of the Act, as reflected in Appendix S at Condition 2 of paragraph IV.A, an owner or operator of a proposed new or modified major stationary source must demonstrate that all other major sources under his/her control in the same state are in compliance or on a schedule for compliance with all emission limitations and standards under the Act. In the context of Indian country, we sought comment on whether this requirement should be expressed as an Indian country-wide compliance certification or remain a statewide certification. In other words, we requested comment on whether you should be required to certify that all your sources in the state where your proposed source is locating are in compliance or that all your sources in all of Indian country are in compliance.

We received a variety of comments on this issue. Several commenters believed that the certification should be on a state-wide basis because: (1) It will not provide sources in Indian country with a competitive advantage over sources in non-Indian country, and (2) obtaining certification for all of Indian country would be very difficult since it is a vast area and sources under common control may be operated by different business units of the same parent company. On the other hand, one commenter believed that state-wide compliance certification would give EPA overreaching authority to facilities that are operating under SIP-approved programs within the state since other sources within the same state may not be within Indian country and thus regulated by the state rather than EPA.

Regarding the Indian country-wide certification, one commenter supported it. The commenter believed this type of certification will benefit Tribes by allowing for the development of compliance databases, assisting Tribes with monitoring patterns of noncompliance, minimizing risk of noncompliance and building and enhancing consumer and market confidence.

Other commenters provided comments supporting a national certification (not proposed) since they believed that expanding the requirement will ensure that the sources attempting to locate in Indian country will operate within regulatory parameters and several reservations exist in more than one state. Other commenters supported a certification for each applicable area of Indian country since these commenters believe that: (1) It would be too burdensome to require such certification across all of Indian country and (2) this is more consistent with treatment of individual Tribes as states under applicable EPA regulations.

After consideration of comments, we are finalizing a state-wide compliance certification requirement consistent with section 173(a)(3) of the Act. We believe that a state-wide compliance certification: (1) Provides a broad enough look at the compliance history of the company, without overburdening the review process and (2) reflects a geographic approach to the certification rather than an approach based on the entity that is sovereign. An Indian country-wide certification would not have the proximity and geographic contiguity that a state-wide approach would have.

D. What are the public participation requirements for this program?

We believe that the public participation requirements of 40 CFR 51.161 apply to permitting under Appendix S. Additionally, for the nonattainment major NSR program in Indian country, we are finalizing detailed public participation requirements at 40 CFR 49.171. As proposed, the final public participation

requirements for the nonattainment major NSR program are very similar to those finalized for the minor NSR program at 40 CFR 49.157. *See* section IV.B of this preamble for more information on these requirements and the comments we received.

E. What are the provisions for final action on a permit, permit reopenings and administrative and judicial review procedures?

In general, these provisions are based closely on selected provisions of part 124, subpart A. The specific provisions are as follows:

1. Final Action on a Permit

This final rule requires that after making a decision to issue or deny your permit, the reviewing authority must notify you of the decision in writing and, if the permit is denied, provide the reasons for the denial. If the reviewing authority issues a final permit to you, it must make a copy of the permit available at any location where the draft permit was made available. In addition, the reviewing authority must provide adequate public notice of the final permit decision to ensure that the affected community, general public and any individuals who commented on the draft permit have reasonable access to the decision and supporting materials. *See* final 40 CFR 49.172(a).

The reviewing authority's final decision on your permit must be based on an administrative record and the final rule includes requirements on what must be in that record. For example, the administrative record must include the application and any supporting data furnished by the applicant and all comments received during the public comment period, including any extension or reopening. *See* final 40 CFR 49.172(b) and (c) for a listing of all the requirements.

A few commenters largely supported the proposed provisions for providing notice of final permit actions. However, the commenters recommended that such notice be provided in the same manner that it was provided during the public comment on the draft permit. The commenters believed that numerous inconsistencies will occur if the agency uses subjective discretion based, as we proposed, "upon the circumstances of your permit."

Based on the comments received, we are finalizing slightly different final permit public notice requirements for the nonattainment major NSR program and the minor NSR program. We believe that for major sources in nonattainment areas making a copy of the permit available at all of the locations where the draft permit was made available will not be too burdensome for the reviewing authorities and will ensure that the affected community and the general public have reasonable access to the applicable information. These provisions are included in 40 CFR 49.171 of this final rule. However, for minor sources, we continue to believe that depending on the circumstances of your permit, the reviewing authority may elect to provide notice directly to the individuals who commented on the draft permit and/or use any of the other methods of public notice discussed in section IV.B.4 of this preamble because providing the same public noticing procedures as those that were used during the comment period for the draft permit might be too burdensome for minor sources. These provisions are included in 40 CFR 49.157 of this final rule.

Regarding the administrative record for a permit decision, we are finalizing these provisions as proposed and under 40 CFR 49.172(b) and (c). The records, including any required applications for each draft and final permit or application for permit revision, must be kept by the reviewing authority for no less than 5 years. These provisions are the same as the ones for the minor NSR program and details of the comments received and the rationale behind finalizing these provisions are included in section IV.B.3 of this preamble. We did not receive any comments about these provisions specifically for the nonattainment major NSR program.

2. Permit Reopenings

Regarding the permit reopening provisions, the final rule requires that a permit may be reopened for cause by the reviewing authority on its own initiative, such as if it contains a material mistake or fails to assure compliance with permit requirements. *See* final 40 CFR 49.172(e). Details of the comments received and the rationale behind finalizing these provisions are included in section IV.B.5 of this preamble. We did not receive any comments about these provisions specifically for the nonattainment major NSR program.

3. Administrative and Judicial Review Procedures

At 40 CFR 49.172(d), we have finalized the provisions under which permit decisions for major nonattainment NSR permits may be appealed. Details of the comments received and the rationale behind finalizing these provisions are included in section IV.B.5 of this preamble. We did not receive any comments about these provisions specifically for the nonattainment major NSR program.

F. How is EPA revising Appendix S?

As we explain in more detail in section V.A. of this preamble, we are amending Appendix S to include the alternative sites analysis provisions of CAA section 173. Therefore, we are finalizing a change to Appendix S that will add a Condition 5 to the provisions under 40 CFR Appendix S Paragraph IV.A. This condition will state that the permit applicant shall conduct an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

In addition and as proposed, we are finalizing a minor change to Appendix S that is related to the "emission limitations and standards of the Act." Existing paragraph II.B of Appendix S requires the reviewing authority to review each proposed new major source and major modification to determine whether it will meet "any applicable NSPS in 40 CFR part 60 or any national emission standard for HAPs in 40 CFR part 61." While we have incorporated this requirement into final 40 CFR 49.169(a), we believe that it should be expanded to include the newer national emission standards for HAPs codified at 40 CFR part 63 (commonly referred to as MACT standards). Accordingly, we are revising paragraph II.B of Appendix S to add these standards under the Act and to match the revised language of this paragraph with the final 40 CFR 49.169(a). We did not receive any comments for this proposed provision.

VI. Legal Basis, Statutory Authority and Jurisdictional Issues

A. What is the basis for EPA's authority to implement these NSR programs in Indian country?

As we have described in section III of this preamble, in the absence of an EPA-approved program, we are authorized to develop a FIP to protect air quality by directly implementing provisions of the Act throughout Indian country. *See, e.g.,* 59 FR 43958–61 (August 25, 1994), 63 FR 7262–64 (February 12, 1998) and 62 FR 13750 (March 21, 1997). For the PSD program, no Tribe is currently administering an EPA-approved PSD program.[30] Therefore, EPA has been

[30] Under the Act and the TAR (*see* 40 CFR part 49, subpart A), eligible tribes may seek approval of

Continued

implementing a FIP and issuing PSD permits for major sources in attainment areas in Indian country. *See* 40 CFR 52.21.

For the nonattainment major NSR program and the minor NSR program in Indian country, no Tribes have been administering an EPA-approved nonattainment major NSR program and only a few Tribes have been administering EPA-approved minor NSR programs.[31] In addition, there has been no FIP in place to implement these programs until now. Hence, there was a regulatory gap in Indian country. This final rule will allow us to address that gap and more fully implement the NSR program in Indian country. We are finalizing the minor NSR program at 40 CFR 49.151 through 49.165 and the nonattainment major NSR program at 40 CFR 49.166 through 49.175.

It is important to recognize, however, that even though we are adopting this Federal program that applies in Indian country, the Tribes may still develop TIPs, similar to SIPs, to implement these programs. If a Tribe develops a TIP to implement NSR, the TIP, once it is approved by EPA, will replace the Federal program as the requirement for that area of Indian country and the Tribe will become the reviewing authority under its TIP.

A few commenters remarked upon EPA's analysis of its jurisdiction in Indian country (citing various court cases as well as legislative history). These commenters believed that in general Congress placed the primary responsibility of preventing air pollution on states and thus states have the responsibility to adopt or enforce any emission standards in Indian country. Some of these commenters also added that this FIP violates the CAA because the Administrator has failed to make a finding that any specific state or Tribe has failed to submit an implementation plan or that any specific implementation plan either fails to satisfy the minimum criteria under the Act or has been disapproved in whole or in part. In addition, the commenter believed that the Act only authorizes the adoption of a FIP on a jurisdiction-by-jurisdiction basis, not nationally. Two of these commenters also stated that even if the EPA adopts the proposed nationwide FIP, the FIP cannot supersede and EPA must acknowledge, the State of Oklahoma's right to administer its state air quality programs in areas of Indian country within Oklahoma under the Federal Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (2005). We disagree with these commenters to the extent they believe EPA does not have authority under the Act to implement these programs in Indian country.

EPA's Authority To Implement the CAA in Indian Country. In the final rule titled, "Indian Tribes: Air Quality Planning and Management," generally referred to as the "Tribal Authority Rule" or "TAR," EPA explains that it intends to use its authority under the CAA "to protect air quality throughout Indian country" [32] by directly implementing the CAA's requirements where Tribes have chosen not to develop or are not implementing an EPA-approved CAA program. 63 FR 7254, February 12, 1998. The final TAR at 40 CFR 49.11 states that EPA would "promulgate without unreasonable delay such FIP provisions as are necessary or appropriate to protect air quality" for these areas. The EPA is exercising its authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate FIPs in order to remedy an existing regulatory gap under the CAA with respect to Indian country.

Although many facilities in these areas may have historically followed state and local government air quality programs, with rare exception, EPA has never approved those governments to exercise regulatory authority under the CAA in any area of Indian country. In addition, EPA has never approved a state or local government to implement a minor NSR or nonattainment major NSR program in Indian country.[33] Since the CAA was amended in 1990, EPA has been clear in its approvals of state programs that the approved state program does not extend into Indian country. It is EPA's position that, absent an explicit demonstration of authority by a state to administer a CAA program in Indian country and absent an explicit finding by EPA of such jurisdiction and explicit approval of the state in Indian country, state and local governments lack authority under the CAA over air pollution sources and the owners or operators of air pollution sources throughout Indian country.

Because only a few Tribes have yet sought eligibility to administer a minor NSR program and no Tribe has yet sought eligibility for the nonattainment major NSR program, a gap for implementation of these programs currently exists in Indian country. Given the longstanding air quality concerns in some areas and the need to establish requirements in all areas to maintain CAA standards, EPA believes that these FIP provisions are appropriate to protect air quality in Indian country where no EPA-approved minor NSR or nonattainment major NSR program is in place.

The rules published here are based on the same CAA authority as EPA has used elsewhere in rulemaking that have been affirmed by the courts. The EPA's interpretation of its authority has been affirmed by the U.S. Court of Appeals for the District of Columbia Circuit in *Arizona Public Service Co.* v. *EPA,* 211 F.3d 1280 (DC Cir. 2000), *cert. denied* 121 S. Ct. 1600 (2001). In addition, EPA's authority to issue operating permits to major sources located in Indian country under title V of the Act, pursuant to nationwide regulations at 40 CFR part 71, was affirmed in *State of Michigan* v. *EPA,* 268 F.3d 1075 (DC Cir. 2001). The EPA has used this same authority to issue a number of FIPs to address air pollution concerns on a regional basis and at specific facilities located in Indian country. *See* Federal Implementation Plans Under the Clean Air Act for Indian Reservation in Idaho, Oregon, Washington, 40 CFR part 49, subpart M (70 FR 18074, April 8, 2005) (upheld in *Safe Air for Everyone* v. *EPA,* 2006 WL 3697684 (9th Cir. 2006)); FIP for Tri-Cities landfill, 40 CFR 49.22 (64 FR 65664, November 23, 1999); Salt River Pima-Maricopa Indian Community, 40 CFR 49.22 (64 FR 65663, November 23, 1999); FIP for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort

their own PSD programs for their reservations and/or for other areas under their jurisdiction.

[31] For example, the St. Regis Mohawk Tribe has in place an EPA-approved TIP that includes provisions for minor NSR and synthetic minor permitting (See *http://www.srmtenv.org/pdf_files/airtip.pdf*). In addition, the Gila River Indian Community has developed a TIP that includes a minor NSR program (*See http://www.epa.gov/region9/air/actions/gila-river.html*).

[32] "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof and whether within or without the limits of a state, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a tribe even if the trust lands have not been formally designated as a reservation.

[33] For purposes of approving the Washington Department of Ecology (WDOE) operating permits program under 40 CFR part 70, EPA explicitly found that WDOE demonstrated that the Washington Indian (Puyallup) Land Claims Settlement Act, 25 U.S.C. 1773, gives explicit authority to state and local governments to administer their environmental laws on all nontrust lands within the 1873 Survey Area of the Puyallup Reservation in Tacoma, Washington.

Hall PM–10 Nonattainment Area, 40 CFR 49.10711 (65 FR 51412, August 23, 2000) and FIP for Four Corners Power Plant, Navajo Nation, 40 CFR 49.23 (72 FR 25698, May 7, 2007) (upheld in *Arizona Public Service Co.* v. *EPA,* 562 F.3d 1116 (10th Cir. 2009)).

Effects of State Law. The rules established by EPA here are in effect under the CAA. The EPA recognizes that in a few cases, other state or local governmental entities may have established air quality requirements that the commenters believe apply to activities in Indian country. However, unless those rules or requirements have been explicitly approved by EPA under the CAA to apply in Indian country, compliance with those other requirements does not relieve a source from complying with the applicable provision of this FIP. As EPA has stated elsewhere, states generally lack the authority to regulate air quality in Indian country. *See Alaska* v. *Native Village of Venetie Tribal Government,* 522 U.S. 520, 527 fn.1 (1998) ("Generally speaking, primary jurisdiction over land that is Indian country rests with the Federal Government and the Indian Tribe inhabiting it and not with the States."), *California* v. *Cabazon Band of Mission Indians,* 480 U.S. 202, 216 and n.18 (1987); see also *HRI* v. *EPA,* 198 F.3d 1224, 1242 (10th Cir. 2000); see also discussion in EPA's final rule for the Federal operating permits program, 64 FR 8251–8255, February 19, 1999.

Furthermore, with regard to Indian reservations, EPA interprets the CAA as establishing unitary management of air resources and as a delegation of Federal authority to eligible Tribes to implement the CAA over all sources within reservations, including non-Indian sources on fee lands. Accordingly, even if a state could demonstrate authority over non-Indian sources on fee lands within an Indian reservation, EPA believes that the CAA generally provides the Agency the discretion to Federally implement the CAA over all Indian reservation sources in order to ensure an efficient and effective transition to Tribal CAA programs and to avoid the administratively undesirable checker-boarding of reservation air quality management based on land ownership. The EPA believes that Congress intended that EPA take a territorial view of implementing air programs within reservations. The EPA also believes that air quality planning for a checker-boarded reservation area would be more difficult and that it would be inefficient if a state were to exercise regulation over piecemeal tracts of land within such areas, possibly with similar Indian country sources being subject to different substantive requirements. The EPA's approach provides for coherent and consistent environmental regulation within Indian country.

Although EPA does not recognize state or local air regulations as being effective within Indian country for purposes of the CAA, absent an express approval by EPA of those regulations for an area of Indian country, this rulemaking does not address the validity of state and local law and regulations with respect to sources in Indian country or the authority of state and local agencies to regulate such sources, for purposes other than the Federal CAA. We are specifically not making a determination that these Federal CAA rules override or preempt any other laws that have been established outside the scope of the Federal CAA. The EPA does not, therefore, believe that any further preemption analysis suggested by the commenters is needed in these circumstances. As described above, EPA believes that its authority under the CAA to implement these programs in Indian country is clear and well-established and has been upheld by reviewing courts in similar circumstances.

With regard to the comments relating to Indian country and the State of Oklahoma, EPA recognizes that the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 (SAFETEA) contains a provision (section 10211) relating to implementation of environmental regulatory programs under Federal environmental laws, including the CAA, in Indian country in Oklahoma. However, to date, neither the State of Oklahoma, nor any Indian Tribe in Oklahoma, has applied for EPA approval to administer either of the CAA programs included in this rulemaking for any area of Indian country. In the absence of an EPA-approved program, these FIPs will apply throughout Indian country, including Indian country in Oklahoma. In promulgating these FIPs, EPA is not acting on any potential request by the State of Oklahoma to administer any CAA or other regulatory program in Indian country, nor is EPA acting on any potential treatment-in-the-same-manner-as-a-state application for an environmental regulatory program by any Indian Tribe in Oklahoma. The EPA would address any such applications when necessary and on a case-by-case basis and in full consideration of the requirements of Section 10211 of SAFETEA. Section 10211 of the SAFETEA is thus not implicated in this rulemaking and is not a relevant consideration in EPA's promulgation of the minor and nonattainment major NSR programs for Indian country, including Indian country in Oklahoma.

B. How does a Tribe receive delegation to assist EPA with administration of the Federal minor and major NSR rules?

With this action, we are finalizing the provisions on administrative delegation to Tribes as proposed. Our authority for such delegations is discussed in the following paragraphs.

Under the procedures set forth in the TAR, Tribes may seek to demonstrate eligibility for approval of Tribal programs under the Act, including a Tribal NSR program, under Tribal law.[34] The TAR allows Tribes to seek approval for such programs covering their reservations or other areas within their jurisdiction. However, we recognize that some Tribes may choose not to develop Tribal NSR programs for submission to EPA for approval under the TAR, but that these Tribes may still wish to assist us in implementing all or some portion of the Federal NSR program for their area of Indian country. In addition, although sections 110(o) and 301(d) of the Act and the TAR authorize us to review and approve TIPs, neither the Act nor the regulations provide that approval of Tribal programs under Tribal law is the sole mechanism available for Tribal agencies to take on permitting responsibilities. Accordingly, we are exercising our discretion to delegate administration of the Federal NSR program to interested and qualified Tribal agencies satisfying the requirements of final provisions at 40 CFR 49.161 and 49.173. By assisting us with administration of the Federal program through delegation, Tribes may remain appropriately involved in implementation of an important air quality program and may develop their own capacity to manage such programs in the future should they choose to do so. Therefore final 40 CFR 49.161 and 49.173 of the minor and major NSR rules, respectively, provide Tribal governments the option of seeking delegation from us of the administration of the Federal NSR program or aspects of the program, for their area of Indian country.

We have well-established processes for delegating our Federal authority to states and/or Tribes for administering Federal rules under the Act, including

[34] As noted elsewhere, the TAR contains a process, pursuant to section 301(d) of the Act, for tribes to seek treatment in a similar manner as a state (TAS), for various provisions and programs of the Act.

conducting NSR under 40 CFR 52.21(u),[35] issuing Federal operating permits under 40 CFR 71.4(j) and 71.10 and delegation to Tribes of elements of the Federal air rules for Indian country in the Pacific Northwest under 40 CFR 49.122. The process we will follow to delegate the administration of the Federal NSR program to a Tribal agency is similar to the process we follow to delegate the administration of Federal programs under those provisions.

This administrative delegation is to be distinguished from the TAS process under the TAR whereby Tribes seek approval to run programs under Tribal law. Tribes would not need to seek TAS under the TAR in order to request delegation of administration of aspects of these Federal NSR programs. Tribes would, however, need to provide the relevant application information described in sections 40 CFR 49.161 and 49.173.[36] In addition, program functions delegated under final 40 CFR 49.161 or 49.173 remain part of the relevant FIP administered under Federal law. The delegate Tribal agency would simply assist EPA with administration of the program to the extent of the functions delegated.

As described in the preamble to the TAR,[37] it is our position that the TAS provision of the Act constitutes a statutory delegation of authority to eligible Tribes over their reservations. As described earlier, the TAR established procedures for our approval of Tribal eligibility applications to operate the programs of the Act under Tribal law. Where we approve a Tribal eligibility application and approve a Tribal NSR program, the approved Tribe will manage the program under Tribal law and the Tribal program becomes Federally enforceable. Among the required elements of a Tribal eligibility application under the TAR is a demonstration of the Tribe's authority, including appropriate enforcement authority, to regulate air quality for the areas to be covered by the program. For air resources within the exterior boundaries of a Tribe's reservation, the Tribe may rely on the Congressional delegation of Federal authority to operate approved Tribal programs. Tribes may also attempt to demonstrate authority to operate the programs of the Act over other areas outside of their reservations, generally including non-reservation areas of Indian country. *Arizona Public Service Co.* v. *EPA,* 211 F. 3d 1280 (DC Cir. 2000), cert. den., 532 U.S. 970 (2001).

In contrast, the administrative delegation approach finalized in these rules provides for us to delegate administration of the Federal program operating under Federal law to interested Tribes that provide the information described in final 40 CFR 49.161(b)(1) and 49.173(b)(1). Since this program operates throughout Indian country under Federal authority, Tribes will not need to demonstrate either Congressionally-delegated authority over air resources within the exterior boundaries of their reservations or authority of non-reservation areas of Indian country. Instead, Tribal agencies will assist us in implementing the Federal program by taking delegation of the administration of particular activities conducted under our authority in Indian country. Under final 40 CFR 49.161(b)(1)(iii)(C) and 49.173(b)(1)(iii)(C), Tribes will only need to show that their laws provide adequate capacity and authority to carry out the delegated activities. For example, where a Tribe seeks administrative delegation for permit issuing activities of the Federal program, the Tribe may, among other things, need to show it has in place an appropriate agency with legal authority to review applications and issue permits on behalf of the delegate Tribal government. For these administratively delegated programs, Federal program requirements will continue to be subject to enforcement by EPA, not the delegate Tribal agency, under Federal law. Administrative appeals of permitting decisions will also continue to be made directly to the EAB under our administrative procedures with any subsequent judicial review to be conducted in Federal court. In the final rules we make it clear that we will not delegate enforcement or appeal components of the program to Tribal agencies.

When delegation is approved, a Partial Delegation of Administrative Authority Agreement between the Administrator and the Tribal agency will set forth the terms and conditions of the delegation and will also specify the rules and provisions that the Tribal agency is authorized to implement. Once the delegation becomes effective, the Tribal agency will have the authority under the Act, to the extent specified in the Agreement, to administer the rules in effect for the particular area of Indian country and to act on behalf of the Administrator. The Federal requirements administered by the delegate Tribal agency will be subject to enforcement by EPA under Federal law.

When we have delegated administration of the portion of the Federal minor or major NSR program that includes receipt of permit application materials and preparation of draft permits, the delegate Tribal agency must provide us a copy of each permit application (including any application for permit revision) and each draft permit.[38] In any such delegation, we retain the authority to object to the issuance of any permit that we determine not to be in compliance with the requirements under the program or other requirements pursuant to regulations under the Act. For any such objections, we will outline the reasons for the objection in writing and we will provide a copy of the written statement to the permit applicant. The delegate Tribal agency may not issue a permit if we object to its issuance in writing. The delegate Tribal agency may submit a revised draft permit to us in response to the objection. However, if it does not do so within 90 days, we will issue or deny the permit in accordance with the requirements of the Federal minor or major NSR program, as applicable.

We did not receive any comments expressly supporting our delegation provisions. However, a number of commenters opined that when a Tribe has administrative delegation of the program, enforcement authority should be delegated to the Tribes as well. These comments are addressed in section VII.B of this preamble.

Other commenters oppose delegation of the program to the Tribes. One of these commenters believed that

[35] The current provisions under 40 CFR 52.21(u) do not allow a tribe to request delegation of the PSD program. However, we are aware of this deficiency and we are currently working on a rulemaking that will amend this provision.

[36] This information includes identifying the specific rules and provisions and the area of Indian country for which the delegation is requested. In addition, tribal agencies seeking delegation must provide a statement by the tribe's legal counsel or equivalent official including a statement that the tribe is recognized by the Secretary of the Interior, a descriptive statement demonstrating that the tribe is currently carrying out substantial governmental duties and powers over a defined area (this statement should be consistent with the type of information described in 40 CFR 49.7(a)(2), which relates to the separate process by which tribes apply to be treated in a similar manner as states for various purposes under the Act), a description of the laws of the tribe that provide adequate authority to administer the federal rules and provisions for which the delegation is requested and a descriptive statement demonstrating that the tribal agency has, or will have, the technical capability and adequate resources to administer the federal rules and provisions for which the delegation is requested.

[37] *See* 63 FR 7254–59.

[38] The proposed minor and major NSR programs provide that the delegate tribal agency may require the applicant to provide a copy of the permit application directly to us. In addition, with our consent, the delegate tribal agency may submit to us a permit application summary form and any relevant portion of the permit application.

delegation demonstrations will be approved by EPA based on their administrative completeness, rather than on their technical merit and thus recommends that any delegation be contingent upon an approved TIP. Another commenter maintained that only the TAS process should be used to delegate authority of environmental programs to Tribes to avoid jurisdictional conflicts between EPA, Tribes and the state (especially in Oklahoma because there have been, according to the commenter, significant problems there with Tribes providing adequate jurisdiction of lands they claim) and to avoid confusion for the regulated community. The commenter suggested that if the administrative delegation process is included in the final NSR program, it should include a **Federal Register** public notice and comment provision. Another commenter believed that because EPA has not made any jurisdictional determinations in connection with the proposed FIP, delegation of authority to Tribes to assist in administering the FIP violates the plain requirements of the Act.

As described previously, EPA continues to believe that the CAA authorizes us to use the administrative delegation approach to assist EPA in carrying out implementation of our Federal program. *See* CAA section 301(a).[39] The EPA believes that the administrative delegation provisions provide additional flexibility for implementation of the Federal rules and establish an appropriate means for Tribal involvement in EPA's Federal implementation of CAA requirements.

As described above, delegation of the authority to assist EPA with administration of elements of the Federal NSR programs is a process that is distinct from approval of Tribal eligibility and Tribal programs under CAA section 301(d) and the TAR. To the extent the commenters are concerned that administrative delegation acts as an approval of Tribal authority, EPA reiterates that irrespective of any such delegation, the minor NSR and nonattainment major NSR programs established here will continue to operate under Federal authority subject to EPA appeal procedures before EPA's Environmental Appeals Board and to enforcement solely by EPA. The administrative delegation provision simply allows EPA to delegate certain functions to qualified Tribes that may then assist EPA with administration of the programs.

EPA also notes that because the minor and nonattainment major NSR programs will continue to operate under Federal authority (irrespective of administrative delegation of any functions to qualified Tribes), none of the jurisdictional issues raised in the comments should arise. Indeed, as described elsewhere, EPA's well-established Federal authority to implement CAA programs in Indian country in the absence of an EPA-approved program should provide jurisdictional certainty to all sources covered by these programs. Similarly, issues of Tribal jurisdiction over covered sources should not arise since no showing or finding of such jurisdiction is needed for administration of the Federal programs.

As noted in EPA's proposal of the minor NSR and nonattainment major NSR rules, EPA also intends to consult with other Federal, state, Tribal or local governmental entities or other governmental agencies in the area, prior to finalizing a delegation agreement with a Tribal agency. Although the CAA does not require such consultations or any specific process, to approve administrative delegations, EPA believes that this approach provides an appropriate opportunity for such governmental entities to express views regarding the potential delegation agreement and will assist EPA in identifying any unanticipated issues.

The EPA also notes that our establishment of criteria for the delegation provisions of the minor and nonattainment major NSR rules for Tribes seeking to assist EPA with administration of the Federal programs does not change the criteria EPA would evaluate in reviewing and acting upon Tribal applications for TAS under CAA section 301(d) and the TAR. CAA section 301(d) and the TAR at 40 CFR 49.6 and 49.7 establish the criteria Tribes must demonstrate and the types of information to be included in Tribal applications, to obtain TAS eligibility to administer Tribal programs under Tribal law.

Although the TAS and delegation criteria overlap in certain respects, they also contain significant differences, most notably in the required demonstration of authority. Tribes seeking TAS eligibility to administer approved Tribal regulatory programs under Tribal law must demonstrate their relevant authority, including appropriate enforcement authority, to regulate air quality in the areas to be covered by the program. *See* 40 CFR 49.6(c) and 49.7(a)(3). By contrast, because the minor and nonattainment major NSR programs will, in all circumstances, operate under Federal authority, Tribes requesting to assist EPA through administrative delegation need not demonstrate Congressionally-delegated authority over air resources within the exterior boundaries of their reservations or authority over non-reservations areas of Indian country. Instead, such Tribes would only need to show that their laws provide adequate capacity and authority to carry out the delegated activities. These distinctions between the TAS and administrative delegation requirements are important and EPA reiterates that nothing in either process is intended to affect the criteria and requirements for the other.

C. What happens to permits previously issued by states to sources in Indian country?

In the past, sources in some areas of Indian country may have received permits from states. However, states generally lack jurisdiction under the Act over these facilities and generally were not authorized under the Act to issue such permits in Indian country. *See* sections III.B and VI.A. of this preamble for more information. Therefore, this final rulemaking provides a mechanism to change state permits issued to major sources of regulated NSR pollutants in nonattainment areas of Indian country to Federal major NSR permits. If you own or operate a major source with a state-issued nonattainment major NSR permit, you must apply to convert the permit to a Federal permit under this program within 1 year of the effective date of this program. *See* final 40 CFR 49.168(b). We believe that transforming the state permits into Federal major NSR permits for major sources in Indian country is appropriate to protect air quality in Indian country.

A couple of commenters believed that the permit reapplication process set out in the proposed 40 CFR 49.158(c)(1) and 49.168(b) seems unnecessarily complex and thus these commenters argued that these permits should be transferred "en masse" from one agency to the other with a simple notification to the operator of the transfer or jurisdiction. One of these commenters added that if EPA feels that the "en masse" transfer methods are impracticable, then the source should be able to transfer the permit by submitting a transfer request (not a complete application) with a copy of the permit to both agencies, while the other commenter stressed that sources with state minor NSR permits should be

[39] Section 301(a)(1) of the Act provides that the Administrator is authorized to prescribe such regulations as are necessary to carry out his or her functions under the Act. This authority supports EPA's finalization of 40 CFR 49.161 and 49.173 of the minor and major NSR rules, respectively, which provide for partial administrative delegations to tribal agencies. However, nothing in the final rules requires us to delegate administration of any aspect of the federal program to a tribal agency.

grandfathered into the Indian country program and not required to conduct minor NSR permitting.

On the other hand, one commenter maintained that while previous state permit conditions may be appropriate to be included in the new Federal permit, this should not be automatic. The commenter also stated that government-to-government consultation between EPA and the affected Tribe must take place during this process. Furthermore, two commenters pointed out that the proposal did not discuss what enforcement mechanism would be used if a source failed to convert a state permit to a Federal permit in the given time frame and thus one of these commenters recommended that EPA should consider using Tribal courts for this purpose since the infraction would occur on Tribal lands and within Tribal jurisdiction.

After considering these comments, we believe that transforming state nonattainment major NSR permits into Federal nonattainment major NSR permits in Indian country is appropriate to protect air quality in Indian country. However, we do not believe that these permits should be transferred "en masse" from one agency to another or be automatically transferred because we need to determine if the permit complies with the applicable requirements under the NSR program. If it does not, a new permit with appropriate requirements would have to be public noticed and issued. If a source fails to obtain a required Federal permit by the established timeline and/or does not meet the applicable requirements under this rule, it may be subject to potential enforcement action. We also believe that since any failure of a source to convert a state permit into a Federal permit would be a violation of this rule, the violation is of the Federal requirement and thus administratively enforceable by EPA and in Federal court, not Tribal court. Because these programs are operated under Federal authority, there is no finding (and no need for a finding) of Tribal jurisdiction.

VII. Implementation Issues

A. Are Tribes allowed to collect fees for NSR permitting?

Many Tribal commenters suggested that the NSR program should include a mechanism that allows Tribes or the EPA to collect fees to offset the costs of the program, especially when a Tribe has been given delegation of the program. Two of these commenters pointed out that Tribes that do accept delegation of the program will need resources, such as funds to train and support personnel who will be reviewing and commenting on the permitting applications and funds for providing technical assistance to businesses regarding compliance issues. Some of these commenters also indicated that EPA should provide funding for Tribal implementation of the NSR program, for example, through cooperative agreements and grants.

The Agency is aware of and concerned about the resource needs of the rule, but the CAA does not give the Agency explicit authority to charge permit fees for pre-construction permitting. However, under a delegation agreement, EPA and the delegated Tribe could, as appropriate, establish mechanisms to fund the work by Tribal staff, that may include Federal funding assistance through cooperative agreements and grants and/or user fees and charges established by the Tribe [under Tribal law] for the purpose of funding its administrative activities on behalf of EPA (*See* Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington (70 FR 18080)). In addition, Tribes that develop TIPs can charge for permits under their authority. Furthermore, the final rule includes a number of mechanisms to address concerns regarding the resource burden, including: Encouraging delegation of the program through trainings (face-to-face training sessions and through ITEP training) and developing and using general permits.

B. Who retains enforcement authority in Indian country?

Numerous Tribal commenters recommended that administrative delegation of the program to Tribes should include enforcement authority. Where they were specific, most of these commenters specified delegation of civil enforcement authority (including the ability to collect civil penalties to help support the program), but a number of commenters also favored delegation of criminal enforcement authority. In addition, commenters stated that by declining to administratively delegate enforcement (whether civil or criminal) of Federal permits to Tribes, EPA is acting inconsistently with other delegations which, in the commenters' view, withhold only criminal enforcement, but include civil enforcement. Other commenters also added that Tribes should be allowed to negotiate the level of enforcement authority on a case-by-case basis. We disagree with these commenters.

The EPA believes that these commenters mistake the distinction between approvals of Tribal programs under Tribal law provided for in the TAR and the administrative delegations at issue here. Where EPA approves an eligible Tribe for TAS under CAA section 301(d) and the TAR, EPA will continue to review the applicant Tribe's authority, including its authority to enforce, in an appropriate Tribal forum, any approved Tribal program operated under Tribal law. In such circumstances, EPA has recognized that certain limitations on Tribal criminal authority should not constitute a bar to Tribal program approval and has determined to fill any gap in Tribal criminal authority by retaining primary criminal enforcement at the Federal level for all circumstances in which a Tribe is precluded from exercising such authority. *See* 40 CFR 49.7(a)(6), 49.8. In such situations EPA would, however, generally expect the applicant Tribe to demonstrate authority to pursue appropriate civil enforcement under Tribal law of any approved Tribal program.

By contrast, any permits issued under the Federal NSR programs (even where issued by a Tribe acting on EPA's behalf pursuant to a delegation agreement) remain Federal in character and continue to be enforceable (whether civilly or criminally) in Federal court. EPA does not believe that it would be appropriate to delegate enforcement of a Federal permit in Federal court to an Indian Tribe assisting EPA with administration of the NSR program. Indeed, in similar circumstances EPA has consistently withheld enforcement in Federal court from any administratively delegated entity, whether a state or a Tribe. For instance, under certain other CAA programs (*e.g.*, EPA's major source operating permit program under 40 CFR part 70 and EPA's PSD program under 40 CFR 52.21) EPA may, in appropriate circumstances, delegate administration of elements of the program to non-Federal entities. However, while such entities may pursue enforcement in their own courts of parallel non-Federal air quality requirements, enforcement of the Federal permit in Federal court will always be retained and conducted by EPA.[40] *See* also 40 CFR 49.122; 70 FR 18074, 18080–81, April 8, 2005 (discussing EPA's similar approach to administrative delegation in the context

[40] Most states have sought and obtained EPA approval to administer their own minor and nonattainment major NSR programs administered under state law. To the extent the commenters believe that states are pursuing enforcement of NSR programs, EPA notes that such enforcement is likely being taken pursuant to State law under such approved state programs.

of FIPs for Indian reservations in the Pacific Northwest).

The EPA's approach to administrative delegation of the Federal NSR programs is thus consistent with other administrative delegation regulations and with EPA's approach to approval of Tribal programs under the TAR. The EPA notes that Tribes interested in enforcing NSR permits issued in their areas may continue to seek TAS eligibility and program approval pursuant to established procedures under the TAR. Indeed, EPA expects that the approach to administrative delegation of elements of the Federal NSR program may benefit such Tribes by providing opportunities for Tribes that are building air quality programs to gain experience by assisting EPA with administration of the Federal rules without needing to first develop Tribal air programs under Tribal law. To the extent such Tribes do subsequently obtain TAS eligibility and NSR program approval, their approved Tribal programs under Tribal law would replace the relevant Federal rule. In addition, EPA recognizes that some Tribes may choose not to develop air programs under Tribal law, but may still want to participate in air quality management in their areas of Indian country. Administrative delegation of elements of the Federal rules may provide an appropriate opportunity for such Tribal involvement.

Consequently, EPA believes the distinction between delegation of administration of aspects of the Federal NSR rules and approval of eligible Tribal programs under CAA section 301(d) and the TAR is significant and warrants EPA's retention of Federal enforcement of Federal NSR permits in Federal court. The EPA also believes that this approach does not create any inconsistency with its treatment of Tribal programs under the TAR or with EPA's approach to administrative delegations of other CAA programs to Tribes and states.

C. What is the implementation schedule for the final rules?

At proposal we stated that all the provisions of these final rules will be effective 60 days from publication of the final rule based on the information we had at the time about the number of sources that might need to seek permits under the minor NSR program. In the proposal, we noted that the data on minor sources in Indian country were very limited, but we projected that 288 new minor sources and 112 modifications will be required to obtain permits during the first six years of implementation of the minor NSR program (71 FR at 48724). Since then, however, the Agency has obtained additional information about sources in Indian country and the Agency now estimates that several thousand new and modified minor sources will be created in Indian country during the first six years following issuance of this rule (see section VIII of this preamble for more information about the projected number of new and modified sources that might be subject to this program).

Furthermore, a few commenters believed that neither EPA nor Tribal agencies had adequate resources to implement the NSR program without significant permitting delays. One commenter in particular was very concerned about the workload EPA Regions will have, especially those Regions that oversee large areas of Indian country, given EPA's presupposition that few, if any, Tribes will be prepared to pursue delegation of the responsibility to implement these requirements.

Therefore, upon review of our updated estimate of the projected number of covered sources and the comments we received pertaining to this issue, we agree that it would be very challenging for us, as the reviewing authority until a Tribe requests delegation or obtains approval of a TIP, to implement all elements of the final rules simultaneously beginning on the rules' effective date. We currently experience resource constraints and these rules will create new workload for the Agency, especially for those EPA Regions where EPA, as the reviewing authority, would oversee a large number of Tribes. Consequently, to ensure timely permit issuance, we have decided to delay the implementation date of the minor NSR permitting requirement for true minor sources for a period of 36 months after this rule's effective date, that is, September 2, 2014. The implementation dates of other parts of the program depending on the type of source being permitted are as follows:

Existing major sources.

- If you wish to commence construction of a minor modification at an existing major source on or after the effective date of the final rule (that is, on or after August 30, 2011), you must obtain a permit pursuant to 40 CFR 49.154 and 49.155 (or a general permit pursuant to 40 CFR 49.156, if applicable) prior to commencing construction.
- If you wish to obtain a synthetic minor source permit pursuant to 40 CFR 49.158 to establish a synthetic minor source and/or a synthetic minor HAP source at your existing major source, you may submit a synthetic minor source permit application on or after August 30, 2011. However, if your permit application for a synthetic minor source and/or synthetic minor HAP source pursuant to the FIPs for reservations in Idaho, Oregon and Washington has been determined complete prior to August 30, 2011 you do not need to apply for a synthetic minor source permit under this program.

Synthetic minor sources.

- If you wish to commence construction of a new synthetic minor source and/or a new synthetic minor HAP source [41] or a modification at an existing synthetic minor source and/or synthetic minor HAP source on or after the effective date of the final rule (that is, on or after August 30, 2011), you must obtain a permit pursuant to 40 CFR 49.158 prior to commencing construction.
- If your existing synthetic minor source and/or synthetic minor HAP source was established pursuant to the FIPs applicable to the Indian reservations in Idaho, Oregon and Washington or was established under an EPA-approved rule or permit program limiting potential to emit, you do not need to take any action under this program unless you propose a modification for this existing synthetic minor source and/or synthetic minor HAP source, on or after the effective date of this rule, that is, on or after August 30, 2011. For these modifications, you need to obtain a permit pursuant to 40 CFR 49.158 prior to commencing construction.
- If your existing synthetic minor source and/or synthetic minor HAP source was established under a permit with enforceable emissions limitations

[41] EPA's historic policy is "that facilities may switch to area source status [in this case through a synthetic minor permit] at any time until "the first compliance" of the standard. The "first compliance date" is defined as the first date a source must comply with an emission limitation or other substantive regulatory requirement (i.e., leak detection and repair programs, work practice measures, housekeeping measures, etc * * *, but not a notice requirement) in the applicable MACT standard. Facilities that are major sources for HAPs on the "first compliance date" are required to comply permanently with the MACT standard to ensure that maximum achievable reductions in toxic emissions are achieved and maintained." Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, U.S. EPA, "Potential to Emit for MACT Standards—Guidance on Timing Issues" (May 16, 1995). EPA continues to believe that this policy best reflects the way Congress intended the MACT program to function. As a result, if you own or operate a major source subject to a MACT standard for which the initial compliance date has already passed, you cannot become a synthetic minor source for purposes of or otherwise avoid continuing to comply with that particular MACT standard.

issued pursuant to the part 71 program, the reviewing authority has the discretion to require you to submit a permit application for a synthetic minor source permit under this program within 1 year after the effective date of the final rule (that is, by September 4, 2012, and pursuant to 40 CFR 49.158), to require you to submit a permit application for a synthetic minor source permit under this program (pursuant to 40 CFR 49.158) at the same time that you apply to renew your part 71 permit or to allow you to continue to maintain synthetic minor status through your part 71 permit. If the reviewing authority requires you to obtain a synthetic minor source permit and/or a synthetic minor HAP source permit under this program (pursuant to 40 CFR 49.158), it also has the discretion to require any additional requirements, including control technology requirements, based on the specific circumstances of the source.

- If your existing synthetic minor source and/or synthetic minor HAP source was established through a mechanism other than those described in the preceding paragraphs, you must submit an application pursuant to 40 CFR 49.158 for a synthetic minor source permit within 1 year after the effective date of the final rule, that is, by September 4, 2012. The reviewing authority has the discretion to require any additional requirements, including control technology requirements, based on the specific circumstances of the source.

True minor sources.

- If you own or operate an existing true minor source in Indian country (as defined in 40 CFR 49.152(d)), you must register your source with your reviewing authority in your area within 18 months after the effective date of this program, that is, by March 1, 2013. If your true minor source commences construction in the time period after the effective date of this rule and September 2, 2014, you must also register your source with the reviewing authority in your area within 90 days after the source begins operation. You are exempt from this registration requirement if your source is subject to 40 CFR 49.138—"Rule for the registration of air pollution sources and the reporting of emissions."
- If you wish to commence construction of a new true minor source or a modification at an existing true minor source that is subject to this program, you must obtain a permit pursuant to 40 CFR 49.154 and 49.155 (or a general permit pursuant to 40 CFR 49.156, if applicable) by the earlier of 6 months after the general permit for a source category is published in the **Federal Register** or on or after 36 months from the effective date of this rule, that is, September 2, 2014. The proposed new source or modification will be subject to the registration requirements of 40 CFR 49.160, except for sources that are subject to the registration requirements of 40 CFR 49.138—"Rule for the registration of air pollution sources and the reporting of emissions."

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and impacts associated with this action. This rule is not considered economically significant because EPA estimates the total annualized costs of the rule to be substantially lower than $100 million.

Given that during the first three years following the rule's effective date, all new and modified sources are either required to register or request coverage under the general permit available for their source category (unless the source decides to apply for a site-specific permit at the time the source had to request coverage under that general permit), the EPA estimates lower bound [42] total annualized costs of the rule to be $4.6 million, including $2.3 million for industry and $2.3 million for the Agency ($2008) while upper bound [42] total annualized costs of this rule are estimated to be approximately $4.7 million per year, including $2.4 million for industry and $2.3 million for the Agency ($2008). After the first 36 months, total annualized costs for true minor sources would increase, since all new and modified true minor sources will have to apply for a site-specific permit or request coverage under a general permit. However, EPA believes that costs for sources choosing to request coverage under a general permit would remain low, as would cost for the Agency. This analysis is contained in the EIA for this final rule. A copy of the analysis is available in the docket for this action.

[42] "Lower Bound" costs in the Economic Impact Analysis (EIA) of this rule only include monitoring, recordkeeping and reporting costs computed under the conservative assumption that all facilities choose site-specific permitting (cost burden for development and implementation of general permits is unknown at this time). Under the "Upper Bound" cost estimates some facilities area assumed to be subject to BACT.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information collection requirements resulting from this final rule are associated with certain records and reports that are necessary for the Tribal agency (or the EPA Administrator in non-delegated areas), for example, to: (1) Confirm the compliance status of stationary sources, (2) identify any stationary sources not subject to the standards and identify stationary sources subject to the rules, and (3) ensure that the stationary source control requirements are being achieved. The information would be used by the EPA or Tribal enforcement personnel to (1) identify stationary sources subject to the rules, (2) ensure that appropriate control technology is being properly applied, and (3) ensure that the emission control devices are being properly operated and maintained on a continuous basis. Based on the reported information, the delegate Tribes (or the EPA Administrator in non-delegated areas) can decide which plants, records or processes should be inspected.

The nonattainment major NSR rule would have little impact on existing major sources in Indian country because it would only affect such owners and operators if they propose a major modification and only one is expected during the first 6 years after promulgation (*See* the Economic Impact Analysis in the docket for this action for more information). In addition, the final rule would only result in an administrative change for new major sources in Indian country because, although the regulatory mechanism to issue permits is not yet available in the form of either a Federal nonattainment major NSR rule or a TIP, we are already required to implement the program in Indian country and have developed source-specific FIPs to do so. As a result, there would be no new or additional burden on industry.

With regard to the minor source permitting rule (including new minor

sources, minor modifications at minor sources, minor modifications at major sources and new synthetic minor sources), it is estimated that 4,326 new or modified facilities will be affected for the first 3 years after promulgation of the rule.

Minor sources will incur approximately 47,220 hours in monitoring, recordkeeping and reporting burden, incurring an estimated $549,402 ($2008) in burden during this 36 month period to complete registration or request coverage under a general permit. In addition, 32,970 existing true and synthetic minor sources will incur a one-time burden of 169,590 hours or an estimated $2.1 million, to complete registration for true minor sources and to secure new permits for existing synthetic minor sources. The Agency is estimated to incur 76,550 hours or $6.91 million ($2008) in burden to administer the minor source program during the first 3 years after rule promulgation. This Agency burden does not include costs associated with development and implementation of new general permits, as these costs are not known at this time. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that 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 this final rule on small entities, "small entity" is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government or 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 this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities potentially regulated by this final rule in Indian country are:

- New and modified minor sources of regulated NSR pollutants;
- Sources of regulated NSR pollutants choosing to accept enforceable emission limitations to avoid major source regulations (synthetic minors);
- Sources of HAP choosing to accept enforceable emission limitations to avoid major source regulations (synthetic minors);
- Minor modifications to major sources of regulated NSR pollutants;
- New major sources of regulated NSR pollutants in nonattainment areas; and
- Major modifications to major sources of regulated NSR pollutants in nonattainment areas.

We have determined that the new major sources and major modifications at existing major sources in nonattainment areas will incur no incremental costs or will experience cost savings due to the final rule because the rule only changes the regulatory mechanism in which these sources can request a permit (it does not change the compliance requirements). The costs of the source-specific FIP (the alternative mechanism in the absence of this rule) would have been comparable to the estimated costs of complying with this rule. In addition, since the permitting process may be less uncertain under the final rule, new and modifying major sources could potentially experience cost savings compared to baseline conditions.

Therefore, the screening assessment focused on costs for new and modified minor sources, minor modifications at major sources and synthetic minor sources. To analyze potential impacts to small companies owning such sources, we first estimated the number of new sources that would be sited in Indian country over the period of 2011 through 2016. However, since data on minor sources in Indian country are generally very limited, we conducted an exhaustive search for information currently available from EPA databases, the Small Business Administration and EPA Regional Offices. We then collected data from the Economic Census (2002) on the number of establishments of each type in each state and allocated the establishments to Indian country based on Tribes' share of state income. Then, we projected the number of new minor sources of each type that would be created in Indian country by applying the estimated growth rate for American Indian/Alaska Native (AI/AN) population in each state to the estimated baseline number of sources in Indian country in the state. Over the 6-year period after the effective date of the rule (2011 through 2016), we estimate that 7,606 new minor sources will be created in Indian country.

Based on our analysis,[43], EPA also estimates that fewer than 20 percent of new minor sources in Indian country (20 percent of 7,606) will be owned by small businesses. Thus, we estimate that 1,521 new minor source facilities will be created in Indian country by small businesses during the first 6 years after promulgation. Additionally, we project that 197 of the total estimated 984 minor modifications to existing minor sources during the period 2011 through 2016 will occur at facilities owned by small businesses. Furthermore, we estimate that 10 synthetic minor sources owned by small businesses will be created during the period 2011 through 2016.

Finally, we estimate that 2 of the 12 major sources in Indian country that make a minor modification to their operations between 2011 and 2016 will be owned by small businesses. Table 2 summarizes the estimated number of affected facilities and small businesses and table 3 disaggregates this information by source category (NAICS code).

TABLE 2—PROJECTED NUMBER OF AFFECTED SMALL BUSINESSES

[2011 through 2016] [a]

Source type	Projected number of new and modified sources owned by small businesses
New Minor Sources	1,521
Modified Minor Sources	197
Synthetic Minor Sources	10
Minor Modifications to Major Sources	2

[43] We used data from financial databases to compute the share of companies in each sector that are owned by small businesses (based on the Small Business Administration small business size definitions at 13 CFR 121.201). We also examined the share of existing major and synthetic minor sources in Indian country that are owned by small businesses.

TABLE 2—PROJECTED NUMBER OF AFFECTED SMALL BUSINESSES—Continued

[2011 through 2016] [a]

Source type	Projected number of new and modified sources owned by small businesses
Total	1,730

[a] Based on Year 2008 dollars.

TABLE 3—SOURCE CATEGORIES FOR PROJECTED NUMBER OF AFFECTED SMALL BUSINESSES

NAICS	Sector description	New minor sources	Modified minor sources	Synthetic minor sources	Minor modifications to major sources	Total projected small businesses by sector
324121	Asphalt hot mix	1				1
811121	Auto body refinishing	4	6			10
3116	Beef Cattle Complex, Slaughter House and Meat Packing Plant.	1				1
3251	Chemical preparation	1				1
32711	Clay and ceramics operations (kilns).	4	1			5
327320	Concrete batching plant	1				1
211111	Crude Petroleum and Natural Gas Extraction.	1,402	150	3	2	1,557
22111	Electric power generation	1				1
3329	Fabricated metal products		1			1
3323	Fabricated structural metal		1			1
4471	Gasoline station (storage tanks, refueling).	19	7			26
424510	Grain Elevator	2	1			3
33311	Machinery manufacturing		3			3
221210	Natural Gas Distribution	1	1			2
21111	Oil and gas production/operations.	1				1
72112	Other (natural gas-fired boilers) [a].	11	10	7		28
323110	Printing operations (lithographic).	3	1			4
54171	Professional, Scientific and Technical Services.	3	1			4
212321	Sand and Gravel Mining	1	1			2
238990	Sand and shot blasting operations.	3	1			4
321113	Sawmills	1	1			2
221320	Sewage treatment facilities	1				1
562212	Solid Waste Landfill	1				1
332812	Surface coating operations	5	3			8
	Other (costs not estimated) [b]	54	8			62
Total		1,521	197	10	2	1,730

[a] For small business analysis, used NAICS code designated for casino hotels. However, the projected new and modified sources listed under "other (natural gas-fired boilers)" include not only boilers at casino hotels, but also new sources listed as "boilers" and new Tribal government facilities assumed to have natural gas-fired boilers.

[b] Includes source categories such as crematories, restaurants, car dealers and social assistance.

To conduct our screening analysis of impacts [44] on small businesses, we compared the estimated costs of

[44] This small entity impact assessment does not reflect the final revisions to the rule's provisions. At the time this analysis was conducted, we planned to delay the implementation date of the rule for true minor sources that might be subject to the minor NSR program for a period of 18 months from the rule's effective date (60 days after the final rule is published). However, to address commenters' concerns about EPA's ability to implement this NSR permitting program in a timely manner and to provide additional time for EPA Regions to prepare for their duties as the Federal permitting authority, including the development of additional permitting tools, we have extended the implementation date of the rule for true minor sources to 36 months from the effective date of this final rule. In addition, sources eligible to seek coverage under a general permit will be subject to that general permit 4 months after the general permit is effective (6 months after the general permit is published in the **Federal Register**) unless the source decides to apply for a site-specific permit at the time the source had to request coverage under that general permit. Therefore, since we are reducing the permitting requirements during the initial 36-month period after the effective date of the rule, we expect the actual impacts to be lower than those reported here.

compliance for each type of source in each sector with typical small business sales in each sector.

Our analysis estimates that small businesses investing in new minor source facilities, minor modifications to existing minor sources, minor modifications to existing major sources and new synthetic minor sources over the period 2011 through 2016 will incur costs that are less than 1 percent of average small company sales revenues for most sectors, but small companies choosing to invest in new auto body refinishing plants, concrete batching plants, sawmills, solid waste landfills, sand and gravel mines and sand and shot blasting operations have the potential to incur costs between 1 percent and 3 percent of sales under upper bound cost estimates. The EPA estimates that at most 20 new and modified sources would be owned by small businesses in these sectors (new auto body refinishing plants, concrete batching plants, sawmills, solid waste landfills, sand and gravel mines and sand and shot blasting operations) during the first 6 years following the effective date of the rule. Because this is a small number of facilities and because EPA believes that very few new sources will incur upper bound costs, this is considered an over-estimate of the potential small business impacts. Thus, EPA does not believe that the rule will impose significant economic impacts on a substantial number of small businesses owning new or modified minor sources.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA has tried to reduce the impact of this rule on small entities. We are not requiring existing minor sources to obtain a permit once the rule is effective, but we are requiring them to register within 18 months after the rule's effective date or 90 days after the source begins operation. In addition, we are delaying the implementation of the rule for new and modified minor sources to the earlier of 4 months after the effective date of a general permit (6 months after the final permit is published) or 36 months after the rule's effective date, that is, September 2, 2014, to provide adequate time for the regulated entities and us, the reviewing authority, to prepare for the implementation of this rule.

D. Unfunded Mandates Reform Act

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 EPA cost estimates lower bound total annualized costs of the rule to be $4.6 million, including $2.3 million for industry and $2.3 million for the Agency ($2008) while upper bound total annualized costs of this rule were estimated to be approximately $4.7 million per year, including $2.4 million for industry and $2.3 million for the Agency ($2008). After the first three years following the rule's effective date, total annualized costs for true minor sources would increase since all new and modified true minor sources will have to apply for a site-specific permit or request coverage under a general permit. However, EPA believes that costs for sources choosing to request coverage under a general permit would remain low, as would cost for the Agency. Agency costs do not include the costs of developing general permits, as these costs are unknown at this time. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule has no requirements applicable to small governments and as such does not impose obligations upon them.

E. Executive Order 13132: Federalism

This action 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. This rule has no requirements applicable to states. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comment on the proposed rule from state and local officials. To that end, we had two meetings with the STAPPA/ALAPCO[45] to present the draft preamble and rule. We also met with the National Federation of Independent Business and provided outreach material through EPA's Small Business Ombudsman's office to get input from the small businesses that might be affected by this rule.

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

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments or EPA consults with Tribal officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement.

The EPA has concluded that this action will have Tribal implications. However, it will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law. This action provides two preconstruction air permitting rules for stationary sources in Indian Country, but these rules will neither impose substantial direct compliance costs on Tribal governments nor preempt Tribal law because these rules will be implemented by EPA or a delegate Tribal agency that has requested to assist EPA with administration of the rules, until replaced by an EPA-approved Tribal implementation plan. Nonetheless, EPA conducted substantial outreach and consultation with Tribal officials and other Tribal representatives and has incorporated Tribal views, throughout the course of developing these rules. *See* section III.D of this final rule preamble for more details on our Tribal outreach and consultation efforts.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a

[45] This organization has since changed its name to the National Association of Clean Air Agencies (NACAA).

significant adverse effect on the supply, distribution or use of energy. The number of projected new sources in the energy sector due to this rule is a small share (about 1 percent) of the total number of energy sector facilities nationwide. Therefore, EPA does not believe that this action will have a significant effect on energy production. In addition, EPA's cost analysis, presented in the Economic Impact Analysis (EIA), estimates the total annualized cost of the rule will be substantially less than the $100 million cost and/or benefits trigger identified in EO 12866 and thus this action is not considered an "economically significant regulatory action." With the final rule not being a economically significant regulatory action, it is not considered a significant energy action.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards 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 voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations (which are persons living in Indian country) without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Indeed, EPA believes that the two preconstruction air quality regulations in this FIP would provide regulatory certainty and fill a regulatory gap in Indian country and result in emissions reductions from sources complying with these regulations. Consequently, the regulations are expected to result in health benefits to persons living in Indian country, many of whom live in low-income and minority communities.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective 60 days from the date of publication, *i.e.*, on August 30, 2011.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by August 30, 2011 Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

IX. Statutory Authority

The statutory authority for this action is provided by sections 101, 110, 112, 114, 116 and 301 of the Act as amended (42. U.S.C. 7401, 7410, 7412, 7414, 7416 and 7601).

List of Subjects

40 CFR Part 49

Administrative practices and procedures, Air pollution control, Environmental protection, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 51

Administrative practices and procedures, Air pollution control, Environmental protection, Intergovernmental relations.

Dated: June 10, 2011.

Lisa P. Jackson,

Administrator.

For the reasons cited in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 49—[AMENDED]

■ 1. The authority citation for part 49 continues to read as follows:

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

Subpart C—[AMENDED]

■ 2. Add an undesignated center heading and §§ 49.151 through 49.161 to subpart C to read as follows:

Federal Minor New Source Review Program in Indian Country

* * * * *

Sec.

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§ 49.151 Program overview.

(a) *What constitutes the Federal minor new source review (NSR) program in Indian country?* As set forth in this Federal Implementation Plan (FIP), the Federal minor NSR program in Indian country (or "program") consists of §§ 49.151 through 49.165.

(b) *What is the purpose of this program?* This program has the following purposes:

(1) It establishes a preconstruction permitting program for new and modified minor sources (minor sources) and minor modifications at major sources located in Indian country to meet the requirements of section 110(a)(2)(C) of the Act.

(2) It establishes a registration system that will allow the reviewing authority to develop and maintain a record of minor source emissions in Indian country.

(3) It provides a mechanism for an otherwise major source to voluntarily accept restrictions on its potential to emit to become a synthetic minor source. This mechanism may also be used by an otherwise major source of HAPs to voluntarily accept restrictions on its potential to emit to become a synthetic minor HAP source. Such restrictions must be enforceable as a practical matter.

(4) It provides an additional mechanism for case-by-case maximum achievable control technology (MACT) determinations for those major sources of HAPs subject to such determinations under section 112(g)(2) of the Act.

(5) It sets forth the criteria and procedures that the reviewing authority (as defined in § 49.152(d)) will use to administer the program.

(c) *When and where does this program apply?*

(1) The provisions of this program apply in Indian country where there is no EPA-approved minor NSR program, according to the following implementation schedule:

(i) *Existing major sources.*

(A) If you wish to commence construction of a minor modification at an existing major source on or after August 30, 2011, you must obtain a permit pursuant to §§ 49.154 and 49.155 (or a general permit pursuant to § 49.156, if applicable) prior to commencing construction.

(B) If you wish to obtain a synthetic minor source permit pursuant § 49.158 to establish a synthetic minor source and/or a synthetic minor HAP source at your existing major source, you may submit a synthetic minor source permit application on or after August 30, 2011. However, if your permit application for a synthetic minor source and/or synthetic minor HAP source pursuant to the FIPs for reservations in Idaho, Oregon and Washington has been determined complete prior to August 30, 2011, you do not need to apply for a synthetic minor source permit under this program.

(ii) *Synthetic minor sources.*

(A) If you wish to commence construction of a new synthetic minor source and/or a new synthetic minor HAP source or a modification at an existing synthetic minor source and/or synthetic minor HAP source on or after August 30, 2011, you must obtain a permit pursuant to § 49.158 prior to commencing construction.

(B) If your existing synthetic minor source and/or synthetic minor HAP source was established pursuant to the FIPs applicable to the Indian reservations in Idaho, Oregon and Washington or was established under an EPA-approved rule or permit program limiting potential to emit, you do not need to take any action under this program unless you propose a modification for this existing synthetic minor source and/or synthetic minor HAP source, on or after the effective date of this rule, that is, on or after August 30, 2011. For these modifications, you need to obtain a permit pursuant to § 49.158 prior to commencing construction.

(C) If your existing synthetic minor source and/or synthetic minor HAP source was established under a permit with enforceable emissions limitations issued pursuant to part 71 of this chapter, the reviewing authority has the discretion to require you to submit a permit application for a synthetic minor source permit under this program by September 4, 2012 and pursuant to § 49.158, to require you to submit a permit application for a synthetic minor source permit under this program (pursuant to § 49.158) at the same time that you apply to renew your part 71 permit or to allow you to continue to maintain synthetic minor status through your part 71 permit. If the reviewing authority requires you to obtain a synthetic minor source permit and/or synthetic minor HAP source permit under this program (pursuant to § 49.158) it also has the discretion to require any additional requirements, including control technology requirements, based on the specific circumstances of the source.

(D) If your existing synthetic minor source and/or synthetic minor HAP source was established through a mechanism other than those described in paragraphs (c)(1)(ii)(B) and (C) of this section, you must submit an application pursuant to § 49.158 for a synthetic minor source permit under this program by September 4, 2012. The reviewing authority has the discretion to require any additional requirements, including control technology requirements, based on the specific circumstances of the source.

(iii) *True minor sources.*

(A) If you own or operate an existing true minor source in Indian country (as defined in 40 CFR 49.152(d)), you must register your source with your reviewing authority in your area within 18 months after the effective date of this program, that is, by March 1, 2013. If your true minor source commences construction in the time period after the effective date of this rule and September 2, 2014, you must also register your source with the reviewing authority in your area within 90 days after the source begins operation. You are exempt from this registration requirement if your source is subject to § 49.138—"Rule for the registration of air pollution sources and the reporting of emissions."

(B) If you wish to commence construction of a new true minor source or a modification at an existing true minor source that is subject to this program, you must obtain a permit pursuant to §§ 49.154 and 49.155 (or a general permit pursuant to § 49.156, if applicable) by the earlier of 6 months after the general permit for a source category is published in the **Federal Register** or on or after 36 months from the effective date of this rule, that is, September 2, 2014. The proposed new source or modification will also be subject to the registration requirements of § 49.160, except for sources that are subject to § 49.138.

(2) The provisions of this program or portions of this program cease to apply in an area covered by an EPA-approved Tribal implementation plan on the date that our approval of that implementation plan becomes effective, provided that the implementation plan includes provisions that comply with the requirements of section 110(a)(2)(C) of the Act for the construction and modification of minor sources and minor modifications at major sources. Permits previously issued under this program will remain in effect and be enforceable as a practical matter until and unless the Tribe issues new permits to these sources based on the provisions of the EPA-approved Tribal implementation plan.

(d) *What general provisions apply under this program?* The following general provisions apply to you as an owner/operator of a minor source:

(1) If you commence construction of a new source or modification that is subject to this program after the applicable date specified in paragraph (c) of this section without applying for and receiving a permit pursuant to this program, you will be subject to appropriate enforcement action.

(2) If you do not construct or operate your source or modification in accordance with the terms of your

minor NSR permit, you will be subject to appropriate enforcement action.

(3) If you are subject to the registration requirements of this program, you must comply with those requirements.

(4) Issuance of a permit does not relieve you of the responsibility to comply fully with applicable provisions of any EPA-approved implementation plan or FIP and any other requirements under applicable law.

(5) Nothing in this program prevents a Tribe from administering a minor NSR permit program with different requirements in an approved Tribal Implementation Plan (TIP) as long as the TIP does not interfere with any applicable requirement of the Act.

(e) *What is the process for issuing permits under this program?* For the reviewing authority to issue a final permit decision under this program (other than a general permit under § 49.156 or a synthetic minor source permit under § 49.158), all the actions listed in paragraphs (e)(1) through (8) of this section need to be completed. The processes for issuing general permits and synthetic minor source permits are set out in § 49.156 and § 49.158, respectively.

(1) You must submit a permit application that meets the requirements of § 49.154(a).

(2) The reviewing authority determines completeness of the permit application as provided in § 49.154(b) within 45 days of receiving the application (60 days for minor modifications at major sources).

(3) The reviewing authority determines the appropriate emission limitations and permit conditions for your affected emissions units under § 49.154(c).

(4) The reviewing authority may require you to submit an Air Quality Impact Analysis (AQIA) if it has reason to be concerned that the construction of your minor source or modification would cause or contribute to a NAAQS or PSD increment violation.

(5) If an AQIA is submitted, the reviewing authority determines that the new or modified source will not cause or contribute to a NAAQS or PSD increment violation.

(6) The reviewing authority develops a draft permit that meets the permit content requirements of § 49.155(a).

(7) The reviewing authority provides for public participation, including a 30-day period for public comment, according to the requirements of § 49.157.

(8) The reviewing authority either issues a final permit that meets the requirements of § 49.155(a) or denies the permit and provides reasons for the denial, within 135 days (or within 1 year for minor modifications at major sources) after the date the application is deemed complete and all additional information necessary to make an informed decision has been provided.

§ 49.152 Definitions.

(a) For sources of regulated NSR pollutants in nonattainment areas, the definitions in § 49.167 apply to the extent that they are used in this program (except for terms defined in paragraph (d) of this section).

(b) For sources of regulated NSR pollutants in attainment or unclassifiable areas, the definitions in § 52.21 of this chapter apply to the extent that they are used in this program (except for terms defined in paragraph (d) of this section).

(c) For sources of HAP, the definitions in § 63.2 of this chapter apply to the extent that they are used in this program (except for terms defined in paragraph (d) of this section).

(d) The following definitions also apply to this program:

Affected emissions units means the following emissions units, as applicable:

(1) For a proposed new minor source, all the emissions units.

(2) For a proposed modification, the new, modified and replacement emissions units involved in the modification.

Allowable emissions means "allowable emissions" as defined in § 52.21(b)(16) of this chapter, except that the allowable emissions for any emissions unit are calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

Emission limitation means a requirement established by the reviewing authority that limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emissions reduction and any design standard, equipment standard, work practice, operational standard or pollution prevention technique.

Enforceable as a practical matter means that an emission limitation or other standard is both legally and practicably enforceable as follows:

(1) An emission limitation or other standard is legally enforceable if the reviewing authority has the right to enforce it.

(2) Practical enforceability for an emission limitation or for other standards (design standards, equipment standards, work practices, operational standards, pollution prevention techniques) in a permit for a source is achieved if the permit's provisions specify:

(i) A limitation or standard and the emissions units or activities at the source subject to the limitation or standard;

(ii) The time period for the limitation or standard (*e.g.*, hourly, daily, monthly and/or annual limits such as rolling annual limits); and

(iii) The method to determine compliance, including appropriate monitoring, recordkeeping, reporting and testing.

(3) For rules and general permits that apply to categories of sources, practical enforceability additionally requires that the provisions:

(i) Identify the types or categories of sources that are covered by the rule or general permit;

(ii) Where coverage is optional, provide for notice to the reviewing authority of the source's election to be covered by the rule or general permit; and

(iii) Specify the enforcement consequences relevant to the rule or general permit.

Environmental Appeals Board means the Board within the EPA described in § 1.25(e) of this chapter.

Indian country, as defined in 18 U.S.C. 1151, means the following:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation; [1]

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof and whether within or without the limits of a state; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian governing body means the governing body of any Tribe, band or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

Minor modification at a major source means a modification at a major source that does not qualify as a major modification under § 49.167 or § 52.21 of this chapter, as applicable.

[1] Under this definition, EPA treats as reservations trust lands validly set aside for the use of a tribe even if the trust lands have not been formally designated as a reservation.

Minor NSR threshold means any of the applicability cutoffs for this program listed in Table 1 of § 49.153.

Minor source means, for purposes of this rule, a source, not including the exempt emissions units and activities listed in § 49.153(c), that has the potential to emit regulated NSR pollutants in amounts that are less than the major source thresholds in § 49.167 or § 52.21 of this chapter, as applicable, but equal to or greater than the minor NSR thresholds in § 49.153. The potential to emit includes fugitive emissions, to the extent that they are quantifiable, only if the source belongs to one of the source categories listed in part 51, Appendix S, paragraph II.A.4(iii) or § 52.21(b)(1)(iii) of this chapter, as applicable.

Modification means any physical or operational change at a source that would cause an increase in the allowable emissions of a minor source or an increase in the actual emissions (based on the applicable test under the major NSR program) of a major source for any regulated NSR pollutant or that would cause the emission of any regulated NSR pollutant not previously emitted. Allowable emissions of a minor source include fugitive emissions, to the extent that they are quantifiable, only if the source belongs to one of the source categories listed in part 51, Appendix S, paragraph II.A.4(iii) or § 52.21(b)(1)(iii) of this chapter, as applicable. The following exemptions apply:

(1) A physical or operational change does not include routine maintenance, repair or replacement.

(2) An increase in the hours of operation or in the production rate is not considered an operational change unless such change is prohibited under any permit condition that is enforceable as a practical matter.

(3) A change in ownership at a stationary source.

(4) The emissions units and activities listed in § 49.153(c).

Potential to emit means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable as a practical matter. Secondary emissions, as defined at § 52.21(b)(18) of this chapter, do not count in determining the potential to emit of a source.

Reviewing authority means the Administrator or may mean an Indian Tribe in cases where a Tribal agency is assisting EPA with administration of the program through a delegation.

Synthetic minor HAP source means a source that otherwise has the potential to emit HAPs in amounts that are at or above those for major sources of HAP in § 63.2 of this chapter, but that has taken a restriction so that its potential to emit is less than such amounts for major sources. Such restrictions must be enforceable as a practical matter.

Synthetic minor source means a source that otherwise has the potential to emit regulated NSR pollutants in amounts that are at or above those for major sources in § 49.167, § 52.21 or § 71.2 of this chapter, as applicable, but that has taken a restriction so that its potential to emit is less than such amounts for major sources. Such restrictions must be enforceable as a practical matter.

True minor source means a source, not including the exempt emissions units and activities listed in § 49.153(c), that emits or has the potential to emit regulated NSR pollutants in amounts that are less than the major source thresholds in § 49.167 or § 52.21 of this chapter, as applicable, but equal to or greater than the minor NSR thresholds in § 49.153, without the need to take an enforceable restriction to reduce its potential to emit to such levels. That is, a *true minor source* is a minor source that is not a synthetic minor source. The potential to emit includes fugitive emissions, to the extent that they are quantifiable, only if the source belongs to one of the source categories listed in part 51, Appendix S, paragraph II.A.4(iii) or § 52.21(b)(1)(iii) of this chapter, as applicable.

§ 49.153 Applicability.

(a) *Does this program apply to me?* The requirements of this program apply to you as set out in paragraphs (a)(1) through (4) of this section.

(1) *New and modified sources.* The applicability of the preconstruction review requirements of this program is determined individually for each regulated NSR pollutant that would be emitted by your new or modified source. For each such pollutant, determine applicability as set out in the relevant paragraph (a)(1)(i) or (ii) of this section.

(i) *New source.* Use the following steps to determine applicability for each regulated NSR pollutant.

(A) *Step 1.* Determine whether your proposed source's potential to emit the pollutant that you are evaluating is subject to review under the applicable major NSR program (that is, under § 52.21 of this chapter, under the Federal major NSR program for nonattainment areas in Indian country at §§ 49.166 through 49.175 or under a program approved by the Administrator pursuant to § 51.165 or § 51.166 of this chapter). If not, go to Step 2 (paragraph (a)(1)(i)(B) of this section).

(B) *Step 2.* Determine whether your proposed source's potential to emit the pollutant that you are evaluating, (including fugitive emissions, to the extent they are quantifiable, only if the source belongs to one of the source categories listed pursuant to section 302(j) of the Act), is equal to or greater than the corresponding minor NSR threshold in Table 1 of this section. If it is, you are subject to the preconstruction requirements of this program for that pollutant.

(ii) *Modification at an existing source.* Use the following steps to determine applicability for each regulated NSR pollutant.

(A) *Step 1.* For the pollutant being evaluated, determine whether your proposed modification is subject to review under the applicable major NSR program. If the modification at your existing major source does not qualify as a major modification under that program based on the actual-to-projected-actual test, it is considered a minor modification and is subject to the minor NSR program requirements, if the net emissions increase from the actual-to-projected-actual test is equal to or exceeds the minor NSR threshold listed in Table 1 of this section. For a modification at your existing minor source go to Step 2 (paragraph (a)(1)(ii)(B) of this section).

(B) *Step 2.* Determine whether the increase in allowable emissions from the proposed modification (calculated using the procedures of paragraph (b) of this section) would be equal to or greater than the minor NSR threshold in Table 1 of this section for the pollutant that you are evaluating. If it is, you are subject to the preconstruction requirements of this program for that pollutant. If not, go to Step 3 (paragraph (a)(1)(ii)(C) of this section).

(C) *Step 3.* If any of the emissions units affected by your proposed modification result in an increase in an annual allowable emissions limit for the pollutant that you are evaluating, the proposed modification is subject to paragraph (a)(2) of this section. If not, your proposed modification is not subject to this program.

(2) *Increase in an emissions unit's annual allowable emissions limit.* If you propose a physical or operational change at your minor or major source

that would increase an emissions unit's allowable emissions of a regulated NSR pollutant above its existing annual allowable emissions limit, you must obtain a permit revision to reflect the increase in the limit prior to making the change. For a physical or operational change that is not otherwise subject to review under major NSR or under this program, such increase in the annual allowable emissions limit may be accomplished through an administrative permit revision as provided in § 49.159(f).

(3) *Synthetic minor source permits.*

(i) If you own or operate an existing major source and you wish to obtain a synthetic minor source permit pursuant to § 49.158 to establish a synthetic minor source and/or a synthetic minor HAP source, you may submit a synthetic minor source permit application on or after August 30, 2011. However, if your permit application for a synthetic minor source and/or synthetic minor HAP source pursuant to the FIPs for reservations in Idaho, Oregon and Washington has been determined complete prior to August 30, 2011, you do not need to apply for a synthetic minor source permit under this program.

(ii) If you wish to commence construction of a new synthetic minor source and/or a new synthetic minor HAP source or a modification at an existing synthetic minor source and/or synthetic minor HAP source, on or after August 30, 2011, you must obtain a permit pursuant to § 49.158 prior to commencing construction.

(iii) If you own or operate a synthetic minor source or synthetic minor HAP source that was established prior to the effective date of this rule (that is, prior to August 30, 2011) pursuant to the FIPs applicable to the Indian reservations in Idaho, Oregon and Washington or under an EPA-approved rule or permit program limiting potential to emit, you do not need to take any action under this program unless you propose a modification for this existing synthetic minor source and/or synthetic minor HAP source, on or after the effective date of this rule, that is, on or after August 30, 2011. For these modifications, you need to obtain a permit pursuant to § 49.158 prior to commencing construction.

(iv) If you own or operate a synthetic minor source or synthetic minor HAP source that was established prior to the effective date of this rule (that is, prior to August 30, 2011) through a permit with enforceable emissions limitations issued pursuant to the operating permit program in part 71 of this chapter, the reviewing authority has the discretion to require you to apply for a synthetic minor source permit under § 49.158 of this program by September 4, 2012 or at the time of part 71 permit renewal or allow you to maintain synthetic minor status through your part 71 permit.

(v) For all other synthetic minor sources or synthetic minor HAP sources that obtained synthetic minor status or synthetic minor source permits through a mechanism other than those described in paragraphs (a)(3)(iii) and (iv) of this section, you must submit an application for a synthetic minor source permit under this program by September 4, 2012 under § 49.158.

(4) *Case-by-case maximum achievable control technology (MACT) determinations.* If you propose to construct or reconstruct a major source of HAPs such that you are subject to a case-by-case MACT determination under section 112(g)(2) of the Act, you may elect to have this determination approved under the provisions of this program (other options for such determinations include a title V permit action or a Notice of MACT Approval under § 63.43 of this chapter). If you elect this option, you still must comply with the requirements of § 63.43 of this chapter that apply to all case-by-case MACT determinations.

(b) *How do I determine the increase in allowable emissions from a physical or operational change at my source?* Determine the resulting increase in allowable emissions in tons per year (tpy) of each regulated NSR pollutant after considering all increases from the change. A physical or operational change may involve one or more emissions units. The total increase in allowable emissions resulting from your proposed change, including fugitive emissions, to the extent they are quantifiable, only if your source belongs to one of the source categories listed pursuant to section 302(j) of the Act, would be the sum of the following:

(1) For each new emissions unit that is to be added, the emissions increase would be the potential to emit of the emissions unit.

(2) For each emissions unit with an allowable emissions limit that is to be changed or replaced, the emissions increase would be the allowable emissions of the emissions unit after the change or replacement minus the allowable emissions prior to the change or replacement. However, this may not be a negative value. If the allowable emissions of an emissions unit would be reduced as a result of the change or replacement, use zero in the calculation.

(3) For each unpermitted emissions unit (a unit without any enforceable permit conditions) that is to be changed or replaced, the emissions increase is the allowable emissions of the emissions unit after the change or replacement minus the potential to emit prior to the change or replacement. However, this may not be a negative value. If an emissions unit's post-change allowable emissions would be less than its pre-change potential to emit, use zero in the calculation.

(c) *What emissions units and activities are exempt from this program?*

This program does not apply to the following emissions units and activities at a source that are listed in paragraphs (c)(1) through (7) of this section.

(1) Mobile sources.

(2) Ventilating units for comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial processes

(3) Noncommercial food preparation.

(4) Consumer use of office equipment and products.

(5) Janitorial services and consumer use of janitorial products.

(6) Internal combustion engines used for landscaping purposes.

(7) Bench scale laboratory activities, except for laboratory fume hoods or vents.

TABLE 1 TO § 49.153—MINOR NSR THRESHOLDS [a]

Regulated NSR pollutant	Minor NSR thresholds for nonattainment areas (tpy)	Minor NSR thresholds for attainment areas (tpy)
Carbon monoxide (CO)	5	10
Nitrogen oxides (NO_X)	5 [b]	10
Sulfur dioxide (SO_2)	5	10
Volatile Organic Compounds (VOC)	2 [b]	5

TABLE 1 TO § 49.153—MINOR NSR THRESHOLDS [a]—Continued

Regulated NSR pollutant	Minor NSR thresholds for nonattainment areas (tpy)	Minor NSR thresholds for attainment areas (tpy)
PM	5	10
PM_{10}	1	5
$PM_{2.5}$	0.6	3
Lead	0.1	0.1
Fluorides	NA	1
Sulfuric acid mist	NA	2
Hydrogen sulfide (H_2S)	NA	2
Total reduced sulfur (including H_2S)	NA	2
Reduced sulfur compounds (including H_2S)	NA	2
Municipal waste combustor emissions	NA	2
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	NA	10

[a] If part of a Tribe's area of Indian country is designated as attainment and another part as nonattainment, the applicable threshold for a proposed source or modification is determined based on the designation where the source would be located. If the source straddles the two areas, the more stringent thresholds apply.

[b] In extreme ozone nonattainment areas, section 182(e)(2) of the Act requires any change at a major source that results in any increase in emissions to be subject to major NSR permitting. In other words, any changes to existing major sources in extreme ozone nonattainment areas are subject to a "0" tpy threshold, but that threshold does not apply to minor sources.

§ 49.154 Permit application requirements.

This section applies to you if you are subject to this program under § 49.153(a) for the construction of a new minor source, synthetic minor source or a modification at an existing source.

(a) *What information must my permit application contain?* Paragraphs (a)(1) through (3) of this section govern the content of your application.

(1) *General provisions for permit applications.* The following provisions apply to permit applications under this program:

(i) The reviewing authority may develop permit application forms for your use.

(ii) The permit application need not contain information on the exempt emissions units and activities listed in § 49.153(c).

(iii) The permit application for a modification need only include information on the affected emissions units as defined in § 49.152(d).

(2) *Required permit application content.* Except as specified in paragraphs (a)(1)(ii) and (iii) of this section, you must include the information listed in paragraphs (a)(2)(i) through (ix) of this section in your application for a permit under this program. The reviewing authority may require additional information as needed to process the permit application.

(i) Identifying information, including your name and address (and plant name and address if different) and the name and telephone number of the plant manager/contact.

(ii) A description of your source's processes and products.

(iii) A list of all affected emissions units (with the exception of the exempt emissions units and activities listed in § 49.153(c)).

(iv) For each new emissions unit that is listed, the potential to emit of each regulated NSR pollutant in tpy (including fugitive emissions, to the extent that they are quantifiable, if the emissions unit or source is in one of the source categories listed in part 51, Appendix S, paragraph II.A.4(iii) or § 52.21(b)(1)(iii) of this chapter, as applicable), with supporting documentation. In your calculation of the potential to emit for an emissions unit, you must account for any proposed emission limitations.

(v) For each modified emissions unit and replacement unit that is listed, the allowable emissions of each regulated NSR pollutant in tpy both before and after the modification (including fugitive emissions, to the extent that they are quantifiable, if the emissions unit or source belongs to one of the source categories listed in part 51, Appendix S, paragraph II.A.4(iii) or § 52.21(b)(1)(iii) of this chapter, as applicable), with supporting documentation. For emissions units that do not have an allowable emissions limit prior to the modification, report the potential to emit. In your calculation of annual allowable emissions for an emissions unit after the modification, you must account for any proposed emission limitations.

(vi) The following information to the extent it is needed to determine or regulate emissions: Fuels, fuel use, raw materials, production rates and operating schedules.

(vii) Identification and description of any existing air pollution control equipment and compliance monitoring devices or activities.

(viii) Any existing limitations on source operation affecting emissions or any work practice standards, where applicable, for all NSR regulated pollutants at the source.

(ix) For each emission point associated with an affected emissions unit, provide stack or vent dimensions and flow information.

(3) *Optional permit application content.* At your option, you may propose emission limitations for each affected emissions unit, which may include pollution prevention techniques, air pollution control devices, design standards, equipment standards, work practices, operational standards or a combination thereof. You may include an explanation of why you believe the proposed emission limitations to be appropriate.

(b) *How is my permit application determined to be complete?* Paragraphs (b)(1) through (3) of this section govern the completeness review of your permit application.

(1) An application for a permit under this program will be reviewed by the reviewing authority within 45 days of its receipt (60 days for minor modifications at major sources) to determine whether the application contains all the information necessary for processing the application.

(2) If the reviewing authority determines that the application is not complete, it will request additional information from you as necessary to process the application. If the reviewing authority determines that the application is complete, it will notify you in writing. The reviewing