

in this section are defined in § 49.123 General provisions: Agricultural burning or agricultural burn, air pollutant, ambient air, emission, open burning, particulate matter, PM10, PM2.5, Regional Administrator, stack, and uncombined water.

**§ 49.134 Rule for forestry and silvicultural burning permits.**

(a) *What is the purpose of this section?* This section establishes a permitting program for forestry and silvicultural burning within the Indian reservation to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of particulate matter.

(b) *Who is affected by this section?* This section applies to any person who conducts forestry or silvicultural burning.

(c) *What are the requirements for forestry and silvicultural burning?* (1) A person must apply for a permit to conduct a forestry or silvicultural burn, obtain approval of the permit on the day of the burn, have the permit available on-site during the burn, and conduct the burn in accordance with the terms and conditions of the permit.

(2) The date after which a person must apply for and obtain approval of a permit under this section is identified in the implementation plan in subpart M of this part for the specific reservation where this section applies.

(3) A person must comply with § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule, as applicable.

(4) Nothing in this section exempts or excuses any person from complying with any applicable laws and ordinances of local fire departments or other governmental jurisdictions.

(d) *Are there additional requirements that must be met?* (1) A person subject to this section must submit an application to the Regional Administrator for each proposed forestry or silvicultural burn. An application must contain, at a minimum, the following information:

(i) Street address of the property upon which the proposed forestry or silvicultural burning will occur or, if there is no street address of the property, the legal description of the property.

(ii) Name, mailing address, and telephone number of the person who will be responsible for conducting the proposed forestry or silvicultural burning.

(iii) A plot plan showing the location of the proposed forestry or silvicultural burning in relation to the property lines and indicating the distances and directions of the nearest residential, public, and commercial properties, roads, and other areas that could be affected by the burning.

(iv) The type and quantity of forestry or silvicultural residues proposed to be burned, including the estimated weight of material to be burned and the area over which burning will be conducted.

(v) A description of the burning method(s) to be used (pile burn, broadcast burn, windrow burn, understory burn, etc.) and the amount of material to be burned with each method.

(vi) A description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water and firebreaks.

(vii) The requested date(s) that the proposed forestry or silvicultural burning would be conducted.

(viii) Any other information specifically requested by the Regional Administrator.

(2) If the proposed forestry or silvicultural burning is consistent with this section and § 49.131 General rule for open burning, or the EPA-approved Tribal open burning rule, the Regional Administrator may approve the forestry or silvicultural burning permit and authorize burning on the day burning is to be conducted after taking into consideration relevant factors including, but not limited to:

(i) The size, duration, and location of the proposed burn, the current and projected air quality conditions, the forecasted meteorological conditions, and other scheduled burning activities in the surrounding area; and

(ii) Other factors indicating whether or not the proposed forestry or silvicultural burning can be conducted without causing an adverse impact on air quality.

(3) The Regional Administrator, to the extent practical, will consult with and coordinate approvals to burn with the open burning programs of surrounding jurisdictions.

(e) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Air pollutant, ambient air, emission, forestry or silvicultural burning, open burning, particulate matter, PM10, PM2.5, Regional Administrator, stack, and uncombined water.

**§ 49.135 Rule for emissions detrimental to public health or welfare.**

(a) *What is the purpose of this section?* This section is intended to prevent the emission of air pollutants from any air pollution source operating within the Indian reservation from being detrimental to public health or welfare.

(b) *Who is affected by this section?* This section applies to any person who owns or operates an air pollution source.

(c) *What are the requirements for air pollution sources?* (1) A person must not cause or allow the emission of any air pollutants from an air pollution source, in sufficient quantities and of such characteristic and duration, that the Regional Administrator determines:

(i) Causes or contributes to a violation of any national ambient air quality standard; or

(ii) Is presenting an imminent and substantial endangerment to public health or welfare, or the environment.

(2) If the Regional Administrator makes either of the determinations in paragraph (c)(1) of this section, then the Regional Administrator may require the owner or operator of the source to install air pollution controls and/or to take reasonable precautions to reduce or prevent the emissions. If the Regional Administrator determines that the installation of air pollution controls and/or reasonable precautions are necessary, then the Regional Administrator will require the owner or operator to obtain a permit to construct or permit to operate for the source. The specific requirements will be established in the required permit to construct or permit to operate.

(3) Nothing in this section affects the ability of the Regional Administrator to issue an order pursuant to section 303 of the Act to require an owner or operator to immediately reduce or cease the emission of air pollutants.

(4) Nothing in this section shall be construed to impair any cause of action or legal remedy of any person, or the public, for injury or damages arising from the emission of any air pollutant in such place, manner, or amount as to constitute a common law nuisance.

(d) *What does someone subject to this section need to do?* A person subject to this section must comply with the terms and conditions of any permit to construct, permit to operate, or order issued by the Regional Administrator.

(e) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Air pollutant, air pollution source, ambient air, emission, owner or operator, permit to construct, permit to operate, Regional Administrator, source, and stationary source.

**§ 49.136 [Reserved]**

**§ 49.137 Rule for air pollution episodes.**

(a) *What is the purpose of this section?* This section establishes procedures for addressing the excessive buildup of certain air pollutants during periods of stagnant air. This section is intended to prevent the occurrence of an air pollution emergency within the Indian reservation due to the effects of these air pollutants on human health.

(b) *Who is affected by this section?* This section applies to the Regional Administrator and any person who owns or operates an air pollution source within the Indian reservation.

(c) *What are the requirements of this section?*—(1) *Air pollution action level triggers.* Conditions justifying the declaration of an air pollution alert, air pollution warning, or air pollution emergency exist whenever the Regional Administrator determines that the accumulation of air pollutants in any place is approaching, or has reached, levels that could lead to a threat to human health. The following criteria will be used for making these determinations:

(i) *Air stagnation advisory.* An air stagnation advisory may be issued by the Regional Administrator whenever meteorological conditions over a large