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§ 47.115 Award amount and matching requirements.

(a) Individual awards shall not exceed \$250,000, and 25 percent of all funds obligated under this section in a fiscal year shall be for individual awards of not more than \$5,000.

(b) The Federal share shall not exceed 75 percent of the total project costs. The non-Federal share of project costs may be provided by in-kind contributions and other noncash support. In cases where the EPA determines that a proposed project merits support and cannot be undertaken without a higher rate of Federal support, the EPA may approve awards with a matching requirement other than that specified in this paragraph, including full Federal funding.

§ 47.120 Solicitation notice and proposal procedures.

Each fiscal year the Administrator shall publish a solicitation for environmental education grant proposals. The solicitation notice shall prescribe the information to be included in the proposal and other information sufficient to permit EPA to assess the project.

§ 47.125 Eligible and priority projects and activities.

(a) Activities eligible for funding shall include, but not be limited to, environmental education and training programs for:

(1) Design, demonstration, or dissemination of environmental curricula, including development of educational tools and materials;

(2) Design and demonstration of field methods, practices, and techniques, including assessment of environmental and ecological conditions and analysis of environmental pollution problems;

(3) Projects to understand and assess a specific environmental issue or a specific environmental problem;

(4) Provision of training or related education for teachers, faculty, or related personnel in a specific geographic area or region; and

(5) Design and demonstration of projects to foster international cooperation in addressing environmental issues and problems involving the United States and Canada or Mexico.

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(b) EPA shall give priority to those proposals which will develop:

(1) A new or significantly improved environmental education practice, method, or technique;

(2) An environmental education practice, method, or technique which may have wide application;

(3) An environmental education practice, method, or technique which addresses a skill or scientific field identified as a priority in the report which will be developed within two years of enactment pursuant to section 9(d) of the Act; and

(4) An environmental education practice, method, or technique which addresses an environmental issue which, in the judgment of EPA, is of a high priority.

§ 47.130 Performance of grant.

(a) Each project shall be performed by the recipient, or by a person satisfactory to the recipient and to the EPA. Workplans shall accompany all applications, shall identify who will be performing activities, and shall be approved by EPA prior to funding.

(b) Budget periods normally will not exceed one year. Project periods may be longer, and additional funding may be awarded for continuations.

(c) Procurement procedures for all recipients are described in 2 CFR part 200 subpart D—Post Federal Award Requirements, Procurement Standards (2 CFR 200.317 through 200.326). These procedures include provisions for small purchase procedures.

[57 FR 8390, Mar. 9, 1992, as amended at 79 FR 76063, Dec. 19, 2014]

§ 47.135 Disputes.

Disputes arising under these grants shall be governed by 2 CFR part 1500 subpart E.

[57 FR 8390, Mar. 9, 1992, as amended at 79 FR 76063, Dec. 19, 2014]

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

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- 49.11011 Identification of plan.
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- 49.11048 Permits to construct.
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APPENDIX TO SUBPART M OF PART 49—ALPHABETICAL LISTING OF TRIBES AND CORRESPONDING SECTIONS

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

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SOURCE: 63 FR 7271, Feb. 12, 1998, unless otherwise noted.

Subpart A—Tribal Authority

§ 49.1 Program overview.

(a) The regulations in this part identify those provisions of the Clean Air Act (Act) for which Indian tribes are or may be treated in the same manner as States. In general, these regulations authorize eligible tribes to have the same rights and responsibilities as States under the Clean Air Act and authorize EPA approval of tribal air quality programs meeting the applicable minimum requirements of the Act.

(b) Nothing in this part shall prevent an Indian tribe from establishing additional or more stringent air quality protection requirements not inconsistent with the Act.

§ 49.2 Definitions.

(a) *Clean Air Act* or *Act* means those statutory provisions in the United States Code at 42 U.S.C. 7401, *et seq.*

(b) *Federal Indian Reservation*, *Indian Reservation* or *Reservation* means 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.

(c) *Indian tribe* or *tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(d) *Indian Tribe Consortium* or *Tribal Consortium* means a group of two or more Indian tribes.

(e) *State* means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

§ 49.3 General Tribal Clean Air Act authority.

Tribes meeting the eligibility criteria of §49.6 shall be treated in the same manner as States with respect to all provisions of the Clean Air Act and

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implementing regulations, except for those provisions identified in §49.4 and the regulations that implement those provisions.

§ 49.4 Clean Air Act provisions for which it is not appropriate to treat tribes in the same manner as States.

Tribes will not be treated as States with respect to the following provisions of the Clean Air Act and any implementing regulations thereunder:

(a) Specific plan submittal and implementation deadlines for NAAQS-related requirements, including but not limited to such deadlines in sections 110(a)(1), 172(a)(2), 182, 187, 189, and 191 of the Act.

(b) The specific deadlines associated with the review and revision of implementation plans related to major fuel burning sources in section 124 of the Act.

(c) The mandatory imposition of sanctions under section 179 of the Act because of a failure to submit an implementation plan or required plan element by a specific deadline, or the submittal of an incomplete or disapproved plan or element.

(d) The provisions of section 110(c)(1) of the Act.

(e) Specific visibility implementation plan submittal deadlines established under section 169A of the Act.

(f) Specific implementation plan submittal deadlines related to interstate commissions under sections 169B(e)(2), 184(b)(1) and (c)(5) of the Act. For eligible tribes participating as members of such commissions, the Administrator shall establish those submittal deadlines that are determined to be practicable or, as with other non-participating tribes in an affected transport region, provide for Federal implementation of necessary measures.

(g) Any provisions of the Act requiring as a condition of program approval the demonstration of criminal enforcement authority or any provisions of the Act providing for the delegation of such criminal enforcement authority. Tribes seeking approval of a Clean Air Act program requiring such demonstration may receive program approval if they meet the requirements of §49.8.

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(h) The specific deadline for the submittal of operating permit programs in section 502(d)(1) of the Act.

(i) The mandatory imposition of sanctions under section 502(d)(2)(B) because of failure to submit an operating permit program or EPA disapproval of an operating permit program submittal in whole or part.

(j) The “2 years after the date required for submission of such a program under paragraph (1)” provision in section 502(d)(3) of the Act.

(k) Section 502(g) of the Act, which authorizes a limited interim approval of an operating permit program that substantially meets the requirements of Title V, but is not fully approvable.

(l) The provisions of section 503(c) of the Act that direct permitting authorities to establish a phased schedule assuring that at least one-third of the permit applications submitted within the first full year after the effective date of an operating permit program (or a partial or interim program) will be acted on by the permitting authority over a period not to exceed three years after the effective date.

(m) The provisions of section 507(a) of the Act that specify a deadline for the submittal of plans for establishing a small business stationary source technical and environmental compliance assistance program.

(n) The provisions of section 507(e) of the Act that direct the establishment of a Compliance Advisory Panel.

(o) The provisions of section 304 of the Act that, read together with section 302(e) of the Act, authorize any person who provides the minimum required advance notice to bring certain civil actions in the Federal district courts against States in their capacity as States.

(p) The provisions of section 502(b)(6) of the Act that require that review of a final permit action under the Title V permitting program be “judicial” and “in State court,” and the provisions of section 502(b)(7) of the Act that require that review of a failure on the part of the permitting authority to act on permit applications or renewals by the time periods specified in section 503 of the Act be “judicial” and “in State court.”

(q) The provision of section 105(a)(1) that limits the maximum Federal share for grants to pollution control agencies to three-fifths of the cost of implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.

§49.5 Tribal requests for additional Clean Air Act provisions for which it is not appropriate to treat tribes in the same manner as States.

Any tribe may request that the Administrator specify additional provisions of the Clean Air Act for which it would be inappropriate to treat tribes in general in the same manner as States. Such request should clearly identify the provisions at issue and should be accompanied with a statement explaining why it is inappropriate to treat tribes in the same manner as States with respect to such provisions.

§49.6 Tribal eligibility requirements.

Sections 301(d)(2) and 302(r), 42 U.S.C. 7601(d)(2) and 7602(r), authorize the Administrator to treat an Indian tribe in the same manner as a State for the Clean Air Act provisions identified in §49.3 if the Indian tribe meets the following criteria:

(a) The applicant is an Indian tribe recognized by the Secretary of the Interior;

(b) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

(c) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

(d) The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations.

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§ 49.7 Request by an Indian tribe for eligibility determination and Clean Air Act program approval.

(a) An Indian tribe may apply to the EPA Regional Administrator for a determination that it meets the eligibility requirements of § 49.6 for Clean Air Act program approval. The application shall concisely describe how the Indian tribe will meet each of the requirements of § 49.6 and should include the following information:

(1) A statement that the applicant is an Indian tribe recognized by the Secretary of the Interior.

(2) A descriptive statement demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area. This statement should:

(i) Describe the form of the tribal government;

(ii) Describe the types of government functions currently performed by the tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(iii) Identify the source of the tribal government's authority to carry out the governmental functions currently being performed.

(3) A descriptive statement of the Indian tribe's authority to regulate air quality. For applications covering areas within the exterior boundaries of the applicant's reservation the statement must identify with clarity and precision the exterior boundaries of the reservation including, for example, a map and a legal description of the area. For tribal applications covering areas outside the boundaries of a reservation the statement should include:

(i) A map or legal description of the area over which the application asserts authority; and

(ii) A statement by the applicant's legal counsel (or equivalent official) that describes the basis for the tribe's assertion of authority (including the nature or subject matter of the asserted regulatory authority) which may include a copy of documents such as tribal constitutions, by-laws, charters, executive orders, codes, ordi-

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nances, and/or resolutions that support the tribe's assertion of authority.

(4) A narrative statement describing the capability of the applicant to administer effectively any Clean Air Act program for which the tribe is seeking approval. The narrative statement must demonstrate the applicant's capability consistent with the applicable provisions of the Clean Air Act and implementing regulations and, if requested by the Regional Administrator, may include:

(i) A description of the Indian tribe's previous management experience which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101, *et seq.*), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a);

(ii) A list of existing environmental or public health programs administered by the tribal governing body and a copy of related tribal laws, policies, and regulations;

(iii) A description of the entity (or entities) that exercise the executive, legislative, and judicial functions of the tribal government;

(iv) A description of the existing, or proposed, agency of the Indian tribe that will assume primary responsibility for administering a Clean Air Act program (including a description of the relationship between the existing or proposed agency and its regulated entities);

(v) A description of the technical and administrative capabilities of the staff to administer and manage an effective air quality program or a plan which proposes how the tribe will acquire administrative and technical expertise. The plan should address how the tribe will obtain the funds to acquire the administrative and technical expertise.

(5) A tribe that is a member of a tribal consortium may rely on the expertise and resources of the consortium in demonstrating under paragraph (a)(4) of this section that the tribe is reasonably expected to be capable of carrying out the functions to be exercised consistent with § 49.6(d). A tribe relying on a consortium in this manner must provide reasonable assurances that the

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tribe has responsibility for carrying out necessary functions in the event the consortium fails to.

(6) Where applicable Clean Air Act or implementing regulatory requirements mandate criminal enforcement authority, an application submitted by an Indian tribe may be approved if it meets the requirements of § 49.8.

(7) Additional information required by the EPA Regional Administrator which, in the judgment of the EPA Regional Administrator, is necessary to support an application.

(8) Where the applicant has previously received authorization for a Clean Air Act program or for any other EPA-administered program, the applicant need only identify the prior authorization and provide the required information which has not been submitted in the previous application.

(b) A tribe may simultaneously submit a request for an eligibility determination and a request for approval of a Clean Air Act program.

(c) A request for Clean Air Act program approval must meet any applicable Clean Air Act statutory and regulatory requirements. A program approval request may be comprised of only partial elements of a Clean Air Act program, provided that any such elements are reasonably severable, that is, not integrally related to program elements that are not included in the plan submittal, and are consistent with applicable statutory and regulatory requirements.

§49.8 Provisions for tribal criminal enforcement authority.

To the extent that an Indian tribe is precluded from asserting criminal enforcement authority, the Federal Government will exercise primary criminal enforcement responsibility. The tribe, with the EPA Region, shall develop a procedure by which the tribe will provide potential investigative leads to EPA and/or other appropriate Federal agencies, as agreed to by the parties, in an appropriate and timely manner. This procedure shall encompass all circumstances in which the tribe is incapable of exercising applicable enforcement requirements as provided in § 49.7(a)(6). This agreement shall be in-

corporated into a Memorandum of Agreement with the EPA Region.

§49.9 EPA review of tribal Clean Air Act applications.

(a) The EPA Regional Administrator shall process a request of an Indian tribe submitted under § 49.7 in a timely manner. The EPA Regional Administrator shall promptly notify the Indian tribe of receipt of the application.

(b) Within 30 days of receipt of an Indian tribe's initial, complete application, the EPA Regional Administrator shall notify all appropriate governmental entities.

(1) For tribal applications addressing air resources within the exterior boundaries of the reservation, EPA's notification of other governmental entities shall specify the geographic boundaries of the reservation.

(2) For tribal applications addressing non-reservation areas, EPA's notification of other governmental entities shall include the substance and bases of the tribe's jurisdictional assertions.

(c) The governmental entities shall have 30 days to provide written comments to EPA's Regional Administrator regarding any dispute concerning the boundary of the reservation. Where a tribe has asserted jurisdiction over non-reservation areas, appropriate governmental entities may request a single 30-day extension to the general 30-day comment period.

(d) In all cases, comments must be timely, limited to the scope of the tribe's jurisdictional assertion, and clearly explain the substance, bases, and extent of any objections. If a tribe's assertion is subject to a conflicting claim, the EPA Regional Administrator may request additional information from the tribe and may consult with the Department of the Interior.

(e) The EPA Regional Administrator shall decide the jurisdictional scope of the tribe's program. If a conflicting claim cannot be promptly resolved, the EPA Regional Administrator may approve that portion of an application addressing all undisputed areas.

(f) A determination by the EPA Regional Administrator concerning the boundaries of a reservation or tribal jurisdiction over non-reservation areas

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shall apply to all future Clean Air Act applications from that tribe or tribal consortium and no further notice to governmental entities, as described in paragraph (b) of this section, shall be provided, unless the application presents different jurisdictional issues or significant new factual or legal information relevant to jurisdiction to the EPA Regional Administrator.

(g) If the EPA Regional Administrator determines that a tribe meets the requirements of §49.6 for purposes of a Clean Air Act provision, the Indian tribe is eligible to be treated in the same manner as a State with respect to that provision, to the extent that the provision is identified in §49.3. The eligibility will extend to all areas within the exterior boundaries of the tribe's reservation, as determined by the EPA Regional Administrator, and any other areas the EPA Regional Administrator has determined to be within the tribe's jurisdiction.

(h) Consistent with the exceptions listed in §49.4, a tribal application containing a Clean Air Act program submittal will be reviewed by EPA in accordance with applicable statutory and regulatory criteria in a manner similar to the way EPA would review a similar State submittal.

(i) The EPA Regional Administrator shall return an incomplete or disapproved application to the tribe with a summary of the deficiencies.

§ 49.10 EPA review of State Clean Air Act programs.

A State Clean Air Act program submittal shall not be disapproved because of failure to address air resources within the exterior boundaries of an Indian Reservation or other areas within the jurisdiction of an Indian tribe.

§ 49.11 Actions under section 301(d)(4) authority.

Notwithstanding any determination made on the basis of authorities granted the Administrator under any other provision of this section, the Administrator, pursuant to the discretionary authority explicitly granted to the Administrator under sections 301(a) and 301(d)(4):

(a) Shall promulgate without unreasonable delay such Federal implemen-

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tation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 304(a) and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, appendix V, or does not receive EPA approval of a submitted tribal implementation plan.

(b) May provide up to 95 percent of the cost of implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards. After two years from the date of each tribe's initial grant award, the maximum Federal share will be reduced to 90 percent, as long as the Regional Administrator determines that the tribe meets certain economic indicators that would provide an objective assessment of the tribe's ability to increase its share. The Regional Administrator may increase the maximum Federal share to 100 percent if the tribe can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the tribe are constrained to such an extent that fulfilling the match would impose undue hardship.

§§ 49.12–49.50 [Reserved]

Subpart B—General Provisions

§§ 49.51–49.100 [Reserved]

Subpart C—General Federal Implementation Plan Provisions

SOURCE: 70 FR 18095, Apr. 8, 2005, unless otherwise noted.

FEDERAL IMPLEMENTATION PLAN FOR MANAGING AIR EMISSIONS FROM TRUE MINOR SOURCES IN INDIAN COUNTRY IN THE OIL AND NATURAL GAS PRODUCTION AND NATURAL GAS PROCESSING SEGMENTS OF THE OIL AND NATURAL GAS SECTOR

§ 49.101 Introduction.

(a) *What is the purpose of §§ 49.101 through 49.105?* Sections 49.101 through 49.105 adopt legally and practicably enforceable requirements to control and reduce emissions of volatile organic

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compounds, nitrogen oxides, sulfur dioxide, particulate matter (PM, PM₁₀, PM_{2.5}), hydrogen sulfide, carbon monoxide and various sulfur compounds from new and modified true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector.

(b) *Am I subject to §§ 49.101 through 49.105?* You are subject to the requirements if you:

(1) Own or operate a new true minor oil and natural gas source or an existing true minor oil and natural gas source undergoing modification as determined pursuant to § 49.153(a) that meets the criteria specified in paragraphs (b)(1)(i) through (v) of this section. Then you shall comply with the requirements of §§ 49.104 and 49.105, unless you obtain a source-specific permit as specified in paragraph (b)(2) or (3) of this section.

(i) The source is an oil and natural gas source as defined in § 49.102;

(ii) The oil and natural gas source as defined in § 49.102 is located in Indian country as defined in § 49.152(d), within the geographic scope of the Federal Minor New Source Review Program in Indian Country, as specified in § 49.102;

(iii) The oil and natural gas source as defined in § 49.102 is a new true minor source or a minor modification of an existing true minor source, as determined under § 49.153;

(iv) The oil and natural gas source as defined in § 49.102 begins construction or modification on or after October 3, 2016; and

(v) The oil and natural gas source as defined in § 49.102 is not located in a designated nonattainment area.

(2) Owners/operators of sources that meet the criteria specified in paragraph (b)(1) of this section that choose to obtain a source-specific permit as specified in § 49.155 before beginning construction are not required to comply with the requirements of §§ 49.101 through 49.105.

(3) Owners/operators of sources that meet the criteria specified in paragraph (b)(1) of this section that the Reviewing Authority requires to obtain a source-specific permit to ensure protection of the National Ambient Air Quality Standards as specified in § 49.155 before beginning construction

are not required to comply with §§ 49.101 through 49.105.

(c) *When must I comply with §§ 49.101 through 49.105?* You must comply with §§ 49.101 through 49.105 on or after October 3, 2016.

(d) This Federal Implementation Plan (FIP) does not apply to minor modifications at major sources.

(e) Notwithstanding paragraph (b)(1)(v) of this section, oil and natural gas sources located in the Indian country portion of the Uinta Basin Ozone Nonattainment Area are subject to §§ 49.101 through 49.105 (except for paragraph (b)(1)(v)), provided paragraphs (b)(1)(i) through (iv) of this section are also satisfied.

[81 FR 35977, June 3, 2016, as amended at 84 FR 21252, May 14, 2019]

§ 49.102 Definitions.

As used in §§ 49.101 through 49.105, all terms not defined herein shall have the meaning given them in the Clean Air Act, in subparts A and OOOa of 40 CFR part 60, in the Prevention of Significant Deterioration regulations at 40 CFR 52.21, or in the Federal Minor New Source Review Program in Indian Country at § 49.152. The following terms shall have the specific meanings given them:

Oil and natural gas source means a stationary source engaged in the extraction and production of oil and natural gas and/or the processing of natural gas, including the wells and all related processes used in the extraction, production, recovery, lifting, stabilization, and separation or treatment of oil, water, and/or natural gas (including condensate). Oil and natural gas production and processing components may include, but are not limited to: Wells and related casing head; tubing head and “Christmas tree” piping; pumps; compressors; heater treaters; separators; storage vessels; pneumatic devices; stationary engines; natural gas sweetening; truck loading; dewpoint suppression skids; natural gas dehydrators; completion and workover processes; gathering pipelines and related components that collect and transport the oil, natural gas and other materials and wastes from the wells or well pads; and natural gas processing plants.

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Oil and natural gas well means a single well that extracts subsurface reservoir fluids containing a mixture of oil and/or natural gas, and water.

Owner/operator means any person who owns, leases, operates, controls, or supervises an oil and natural gas source.

Regional Administrator means the Regional Administrator of an EPA Region or an authorized representative of the Regional Administrator.

Uinta Basin Ozone Nonattainment Area means the nonattainment area for the Uinta Basin, or such parts or areas of the Uinta Basin, as it is or may hereafter be defined at 40 CFR part 81, Designations of Areas for Air Quality Purposes.

[81 FR 35977, June 3, 2016, as amended at 84 FR 21253, May 14, 2019]

§ 49.103 Delegation of authority of administration to Indian tribes.

(a) *What is the purpose of this section?* The purpose of this section is to establish the process by which a Regional Administrator may delegate to a federally-recognized tribe the authority to assist the EPA with administration of this FIP (§§ 49.101 through 49.105). This section provides for administrative delegation and does not affect the eligibility criteria under § 49.6 for treatment in the same manner as a state or a tribe's ability to obtain approval of a tribal implementation plan under § 49.7.

(b) *How does a tribe request delegation?* In order to be delegated authority to assist us with administration of this FIP, the authorized representative of a federally-recognized tribe must submit a request to a Regional Administrator that:

(1) Identifies the specific provisions for which delegation is requested;

(2) Identifies the Indian Reservation or other affected areas of Indian country for which delegation is requested;

(3) Includes a statement by the applicant's legal counsel (or equivalent official) that includes the following:

(i) A statement that the applicant is a tribe recognized by the Secretary of the Interior;

(ii) A descriptive statement that is consistent with the type of information described in § 49.7(a)(2) demonstrating that the applicant is currently car-

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rying out substantial governmental duties and powers over a defined area;

(iii) A description of the laws of the tribe that provide adequate authority to administer the Federal rules and provisions for which delegation is requested; and

(iv) A demonstration that the tribal agency that will be responsible for administration has the technical capability and adequate resources to administer the FIP provisions for which delegation is requested.

(c) *How is the delegation of administrative authority accomplished?* (1) A Delegation of Authority Agreement will set forth the terms and conditions of the administrative delegation, will specify the rule and provisions that the tribe shall be authorized to implement on behalf of the EPA, and shall be entered into by the Regional Administrator and the tribe. The Agreement will become effective upon the date that both the Regional Administrator and the authorized representative of the tribe have signed the Agreement. Once the delegation becomes effective, the tribe will be responsible, to the extent specified in the Agreement, for assisting us with administration of this FIP and shall act as the Regional Administrator as that term is used in these regulations. Any Delegation of Authority Agreement will clarify the circumstances in which the term "Regional Administrator" found throughout this FIP is to refer only to the EPA Regional Administrator and when it is intended instead to refer to the EPA Regional Administrator or a federally-recognized tribe.

(2) A Delegation of Authority Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with a tribe.

(d) *How will any Delegation of Authority Agreement be publicized?* The Regional Administrator shall publish a notice in the FEDERAL REGISTER informing the public of any Delegation of Authority Agreement with a tribe to assist us with administration of all or a portion of this FIP and will identify such delegation in the Code of Federal

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Regulations. The Regional Administrator shall also publish an announcement of the Delegation of Authority Agreement in local newspapers.

[81 FR 35977, June 3, 2016]

§ 49.104 Requirements regarding threatened or endangered species and historic properties.

(a) *What are sources required to do to address threatened or endangered species and historic properties?* An owner/operator subject to the requirements contained in §§ 49.101 through 49.105 to satisfy its obligation under § 49.151(c)(1)(iii)(B) to obtain a minor NSR permit shall meet either paragraph (a)(1) or (2) of this section, as appropriate.

(1) *Prior completion of assessment by another federal agency.* The owner/operator shall submit to the EPA Regional Office (and to the relevant tribe for the area where the source is located/locating) valid documentation demonstrating that prior Endangered Species Act (ESA) and/or National Historic Preservation Act (NHPA) compliance has been completed by another federal agency in connection with the specific oil and natural gas activity operated under this FIP (we would consider a document no longer valid if the issuing agency has reopened consultation for the prior approval). The appropriate documents shall clearly show that the other federal agency had met its obligations under both the ESA and NHPA. A simple reference to a Record of Decision or other final decision document will not be acceptable. For listed species, acceptable documentation can include a copy of a letter or biological opinion from the U.S. Fish and Wildlife Service addressing the effects of the project on listed species and critical habitat and demonstrating compliance by the federal action agency with ESA requirements. Where the federal action agency prepares a biological assessment of the action as part of its ESA compliance, that document shall also be provided to the EPA Regional Office. For historic properties, acceptable documentation can include: a letter from the appropriate historic preservation office, or a memorandum of agreement with that office, addressing the effects of the project on historic prop-

erties and demonstrating compliance by the federal action agency with NHPA requirements. All documentation shall be attached to the Part 1 Registration Form submitted in accordance with § 49.160(c)(1)(iv).

(2) *Screening procedures completed by the owner/operator.* The owner/operator shall submit to the EPA Regional Office (and to the relevant tribe for the area where the source is located/locating) documentation demonstrating that it has completed the required screening procedures specified for consideration of threatened or endangered species and historic properties and receive written confirmation from the EPA stating that the owner/operator has satisfactorily completed these procedures. The completed screening procedures documentation may be submitted together with the source's required § 49.160(c)(1)(iv) Part 1 Registration Form. (The procedures are contained in the following document: "Procedures to Address Threatened and Endangered Species and Historic Properties for the Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector," <https://www.epa.gov/tribal-air/tribal-minor-new-source-review>). Review of your submittal will be conducted by the EPA Regional Office in accordance with the procedure in paragraphs (a)(2)(i) and (ii) of this section:

(i) Within 30 days of receipt of your documentation, by written notification to you, the EPA Regional Office must provide one of the following determinations:

(A) The documentation satisfactorily demonstrates completion of the screening procedures; or

(B) The documentation is not adequate, and additional information is needed. If the initial submittal is deficient, the EPA Regional Office will note any such deficiencies and may offer further direction on completing the screening procedures. Once you have addressed the noted deficiencies, you must resubmit your revised screening procedure documentation for review. An additional 15-day review notification period will be used for the EPA

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Regional Office to determine whether the listed species and/or historic property screening procedures have been satisfied. If the EPA Regional Office makes such a determination, it will send you written notification stating that conclusion.

(ii) You must obtain written notification from the EPA Regional Office indicating that the source has adequately completed the screening procedures. The EPA Regional Office may send written notification by mail, email, or any other written means of notification. You may not begin construction under this FIP until the following two conditions are met:

- (A) At least 30 days has passed from the date the Part 1 Registration Form was submitted; and
- (B) The EPA Regional Office has provided this notification.

(b) [Reserved]

[81 FR 35977, June 3, 2016, as amended at 85 FR 15732, Mar. 19, 2020]

§ 49.105 Requirements.

(a) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 63, subpart DDDDD (National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source.

(b) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 63, subpart ZZZZ (NESHAP for Stationary Reciprocating Internal Combustion Engines), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source.

(c) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 60, subpart IIII (Standards of Per-

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formance for Stationary Compression Ignition Internal Combustion Engines), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for paragraphs (c)(1) through (7) of this section:

(1) Section 60.4200(a)(1)—Am I subject to this subpart? (applies to manufacturers);

(2) Section 60.4200(b)—Not applicable to a stationary spark ignition internal combustion engine being tested at an engine test cell/stand;

(3) Section 60.4201—What emission standards must I meet for non-emergency engines if I am a stationary compression ignition internal combustion engine manufacturer?;

(4) Section 60.4202—What emission standards must I meet for emergency engines if I am a stationary compression ignition internal combustion engine manufacturer?;

(5) Section 60.4203—How long must my engines meet the emission standards if I am a manufacturer of stationary compression ignition internal combustion engines?;

(6) Section 60.4210—What are my compliance requirements if I am a stationary compression ignition internal combustion engine manufacturer?; and

(7) Section 60.4215—What requirements must I meet for engines used in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands?

(d) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 60, subpart JJJJ (Standards of Performance for Stationary Spark Ignition Internal Combustion Engines), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for paragraphs (d)(1) through (5) of this section:

(1) Section 60.4230(b)—Not applicable to stationary spark ignition internal

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combustion engines being tested at an engine test cell/stand;

(2) Section 60.4230(c)—Exemption for obtaining a Title V permit if owner or operator of an area source subject to this part;

(3) Sections 60.4231 and 60.4232—Emission standards for manufacturers;

(4) Sections 60.4238 through 60.4242—Compliance Requirements for Manufacturers; and

(5) Section 60.4247—Mobile source provisions that apply to manufacturers of stationary spark ignition internal combustion engines or equipment containing such engines.

(e) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 60, subpart Kb (Standards of Performance for Volatile Organic Liquid Storage Vessels), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for paragraphs (e)(1) and (2) of this section:

(1) Section 60.112b(c)—Source-specific standard for Merck & Co., Inc.'s Stonewall Plant in Elkton, Virginia; and

(2) Section 60.117b(a) and (b)—Delegation of authority.

(f) For true minor sources (and minor modifications at true minor sources) that are subject to subpart OOOOA (Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for paragraphs (f)(1) through (5) of this section:

(1) Section 60.5365a(h)(4)—Existing sources constructed after August 23, 2011;

(2) Section 60.5370a(c)—Permit exemption;

(3) Section 60.5413a(a)(5)—Exemptions from performance testing—hazardous waste incinerator;

(4) Section 60.5420a(a)(2)(i)—Advance notification requirements for well completions; and

(5) Section 60.5420a(a)(2)(ii)—Advance notification requirements of well completions when subject to state regulation that requires advance notification.

(g) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 63, subpart HH (National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for paragraphs (g)(1) through (6) of this section:

(1) Section 63.760(a)(2)—Facilities that process, upgrade or store hydrocarbon liquids;

(2) Section 63.760(b)(1)(ii)—Each storage vessel with the potential for flash emissions;

(3) Section 63.760(g)—Recordkeeping for major sources that overlap with other regulations for equipment leaks;

(4) Section 63.764(c)(2)—Requirements for compliance with standards for storage vessels;

(5) Section 63.766—Storage vessel standards; and

(6) Section 63.769—Equipment leak standards.

(h) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 60, subpart KKKK (Standards of Performance for Stationary Combustion Turbines), for purposes of this FIP, the owner/operator must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source.

[81 FR 35977, June 3, 2016]

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§§ 49.106–49.120 [Reserved]

GENERAL RULES FOR APPLICATION TO INDIAN RESERVATIONS IN EPA REGION 10

§ 49.121 Introduction.

(a) *What is the purpose of the “General Rules for Application to Indian Reservations in EPA Region 10”?* These “General Rules for Application to Indian Reservations in EPA Region 10” establish emission limitations and other requirements for air pollution sources located within Indian reservations in Idaho, Oregon, and Washington that are appropriate in order to ensure a basic level of air pollution control and to protect public health and welfare.

(b) *How were these “General Rules for Application to Indian Reservations in EPA Region 10” developed?* These “General Rules for Application to Indian Reservations in EPA Region 10” were developed in consultation with the Indian Tribes located in Idaho, Oregon, and Washington and with input from the public and State and local governments in Region 10. These general rules take into consideration the current air quality situations within Indian reservations, the known sources of air pollution, the needs and concerns of the Indian Tribes in that portion of Region 10, and the air quality rules in adjacent jurisdictions.

(c) *When are these “General Rules for Application to Indian Reservations in EPA Region 10” applicable to sources on a particular Indian reservation?* These “General Rules for Application to Indian Reservations in EPA Region 10” apply to air pollution sources on a particular Indian reservation when EPA has specifically promulgated one or more rules for that reservation. Rules will be promulgated through notice and comment rulemaking and will be specifically identified in the implementation plan for that reservation in Subpart M—Implementation Plans for Tribes—Region 10, of this part. These “General Rules for Application to Indian Reservations in EPA Region 10” apply only to air pollution sources located within the exterior boundaries of an Indian reservation or other reservation lands specified in subpart M of this part.

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§ 49.122 Partial delegation of administrative authority to a Tribe.

(a) *What is the purpose of this section?* The purpose of this section is to establish the process by which the Regional Administrator may delegate to an Indian Tribe partial authority to administer one or more of the Federal requirements in effect in subpart M of this part for a particular Indian reservation. The Federal requirements administered by the delegated Tribe will be subject to enforcement by EPA under Federal law. This section provides for administrative delegation and does not affect the eligibility criteria under §49.6 for treatment in the same manner as a State.

(b) *How does a Tribe request partial delegation of administrative authority?* In order to be delegated authority to administer one or more of the Federal requirements that are in effect in subpart M of this part for a particular Indian reservation, the Tribe must submit a request to the Regional Administrator that:

- (1) Identifies the specific provisions for which delegation is requested;
- (2) Identifies the Indian reservation for which delegation is requested;
- (3) Includes a statement by the applicant’s legal counsel (or equivalent official) that includes the following information:

(i) A statement that the applicant is an Indian Tribe recognized by the Secretary of the Interior;

(ii) A descriptive statement demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area and that it meets the requirements of § 49.7(a)(2); and

(iii) A description of the laws of the Indian Tribe that provide adequate authority to carry out the aspects of the provisions for which delegation is requested; and

(4) Demonstrates that the Tribe has, or will have, the technical capability and adequate resources to carry out the aspects of the provisions for which delegation is requested.

(c) *How is the partial delegation of administrative authority accomplished?* (1) A Partial Delegation of Administrative Authority Agreement will set forth the terms and conditions of the delegation,

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will specify the provisions that the Tribe will be authorized to administer on behalf of EPA, and will be entered into by the Regional Administrator and the Tribe. The Agreement will become effective upon the date that both the Regional Administrator and the Tribe have signed the Agreement. Once the delegation becomes effective, the Tribe will have the authority under the Clean Air Act, to the extent specified in the Agreement, for administering one or more of the Federal requirements that are in effect in subpart M of this part for the particular Indian reservation and will act on behalf of the Regional Administrator.

(2) A Partial Delegation of Administrative Authority Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with the Tribe. Any substantive modifications or amendments will be subject to the procedures in paragraph (d) of this section.

(d) *How will any partial delegation of administrative authority be publicized?* (1) Prior to making any final decision to delegate partial administrative authority to a Tribe under this section, EPA will consult with appropriate governmental entities outside of the specified reservation and city and county governments located within the boundaries of the specified reservation.

(2) The Regional Administrator will publish a notice in the FEDERAL REGISTER informing the public of any Partial Delegation of Administrative Authority Agreement for a particular Indian reservation and will note such delegation in the implementation plan for the Indian reservation. The Regional Administrator will also publish an announcement of the partial delegation agreement in local newspapers.

§ 49.123 General provisions.

(a) *Definitions.* The following definitions apply for the purposes of the "General Rules for Application to Indian Reservations in EPA Region 10." Terms not defined herein have the meaning given to them in the Act.

Act means the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

Actual emissions means the actual rate of emissions, in tons per year, of

an air pollutant emitted from an air pollution source. For an existing air pollution source, the actual emissions are the actual rate of emissions for the preceding calendar year and must be calculated using the actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. For a new air pollution source that did not operate during the preceding calendar year, the actual emissions are the estimated actual rate of emissions for the current calendar year.

Administrator means the Administrator of the United States Environmental Protection Agency (EPA) or an authorized representative of the Administrator.

Agricultural activities means the usual and customary activities of cultivating the soil, producing crops, and raising livestock for use and consumption. Agricultural activities do not include manufacturing, bulk storage, handling for resale, or the formulation of any agricultural chemical.

Agricultural burning means burning of vegetative debris from an agricultural activity that is necessary for disease or pest control, or for crop propagation and/or crop rotation.

Air pollutant means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product material) substance or matter that is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.

Air pollution source (or source) means any building, structure, facility, installation, activity, or equipment, or combination of these, that emits, or may emit, an air pollutant.

Allowable emissions means the emission rate of an air pollution source calculated using the maximum rated capacity of the source (unless the source is subject to Federally-enforceable limits that restrict the operating rate,

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hours of operation, or both) and the most stringent of the following:

- (1) The applicable standards in 40 CFR parts 60, 61, 62, and 63;
- (2) The applicable implementation plan emission limitations, including those with a future compliance date; or
- (3) The emissions rates specified in Federally-enforceable permit conditions.

Ambient air means that portion of the atmosphere, external to buildings, to which the general public has access.

British thermal unit (Btu) means the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

Coal means all fuels classified as anthracite, bituminous, sub-bituminous, or lignite by ASTM International in ASTM D388-99 (Reapproved 2004)e¹, Standard Classification of Coals by Rank (incorporated by reference, see § 49.123(e)).

Combustion source means any air pollution source that combusts a solid fuel, liquid fuel, or gaseous fuel, or an incinerator.

Continuous emissions monitoring system (CEMS) means the total equipment used to sample, condition (if applicable), analyze, and provide a permanent record of emissions.

Continuous opacity monitoring system (COMS) means the total equipment used to sample, analyze, and provide a permanent record of opacity.

Distillate fuel oil means any oil meeting the specifications of ASTM Grade 1 or Grade 2 fuel oils in ASTM Method D396-04, Standard Specification for Fuel Oils (incorporated by reference, see § 49.123(e)).

Emission means a direct or indirect release into the atmosphere of any air pollutant, or air pollutants released into the atmosphere.

Emission factor means an estimate of the amount of an air pollutant that is released into the atmosphere, as the result of an activity, in terms of mass of emissions per unit of activity (for example, the pounds of sulfur dioxide emitted per gallon of fuel burned).

Emission unit means any part of an air pollution source that emits, or may emit, air pollutants into the atmosphere.

Federally enforceable means all limitations and conditions that are enforceable by the Administrator.

Forestry or silvicultural activities means those activities associated with regeneration, growing, and harvesting of trees and timber including, but not limited to, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, fertilization, logging operations, and forest management techniques employed to enhance the growth of stands of trees or timber.

Forestry or silvicultural burning means burning of vegetative debris from a forestry or silvicultural activity that is necessary for disease or pest control, reduction of fire hazard, reforestation, or ecosystem management.

Fuel means any solid, liquid, or gaseous material that is combusted in order to produce heat or energy.

Fuel oil means a liquid fuel derived from crude oil or petroleum, including distillate oil, residual oil, and used oil.

Fugitive dust means a particulate matter emission made airborne by forces of wind, mechanical disturbance of surfaces, or both. Unpaved roads, construction sites, and tilled land are examples of sources of fugitive dust.

Fugitive particulate matter means particulate matter emissions that do not pass through a stack, chimney, vent, or other functionally equivalent opening. Fugitive particulate matter includes fugitive dust.

Garbage means food wastes.

Gaseous fuel means any fuel that exists in a gaseous state at standard conditions including, but not limited to, natural gas, propane, fuel gas, process gas, and landfill gas.

Grate cleaning means removing ash from fireboxes.

Hardboard means a flat panel made from wood that has been reduced to basic wood fibers and bonded by adhesive properties under pressure.

Heat input means the total gross calorific value [where gross calorific value is measured by ASTM Method D240-02, D1826-94 (Reapproved 2003), D5865-04, D5865-10, or E711-87 (Reapproved 2004) (incorporated by reference, see § 49.123(e))] of all fuels burned.

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Implementation plan means a Tribal implementation plan approved by EPA pursuant to this part or 40 CFR part 51, or a Federal implementation plan promulgated by EPA in this part or in 40 CFR part 52 that applies in Indian country, or a combination of Tribal and Federal implementation plans.

Incinerator means any device, including a flare, designed to reduce the volume of solid, liquid, or gaseous waste by combustion. This includes air curtain incinerators, but does not include open burning.

Indian country means:

(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.

Marine vessel means a waterborne craft, ship, or barge.

Mobile sources means locomotives, aircraft, motor vehicles, nonroad vehicles, nonroad engines, and marine vessels.

Motor vehicle means any self-propelled vehicle designed for transporting people or property on a street or highway.

New air pollution source means an air pollution source that begins actual construction after the effective date of the "General Rules for Application to Indian Reservations in EPA Region 10".

Noncombustibles means materials that are not flammable, capable of catching fire, or burning.

Nonroad engine means:

(1) Except as discussed below, any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or that serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes, and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) The engine is regulated by a Federal new source performance standard promulgated under section 111 of the Act; or

(iii) The engine that is otherwise portable or transportable remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. For purposes of this paragraph, a seasonal source is a stationary source that remains in a single location on a permanent basis (*i.e.*, at least 2 years) and that operates at that single location approximately 3 months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

Nonroad vehicle means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

Oil-fired boiler means a furnace or boiler used for combusting fuel oil for the primary purpose of producing steam or hot water by heat transfer.

Opacity means the degree to which emissions reduce the transmission of

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light and obscure the view of an object in the background. For continuous opacity monitoring systems, opacity means the fraction of incident light that is attenuated by an optical medium.

Open burning means the burning of a material that results in the products of combustion being emitted directly into the atmosphere without passing through a stack. Open burning includes burning in burn barrels.

Owner or operator means any person who owns, leases, operates, controls, or supervises an air pollution source.

Part 71 source means any source subject to the permitting requirements of 40 CFR part 71, as provided in §§71.3(a) and 71.3(b).

Particleboard means a matformed flat panel consisting of wood particles bonded together with synthetic resin or other suitable binder.

Particulate matter means any airborne finely divided solid or liquid material, other than uncombined water. Particulate matter includes, but is not limited to, PM10 and PM2.5.

Permit to construct or construction permit means a permit issued by the Regional Administrator pursuant to 40 CFR part 49 or 40 CFR part 52, or a permit issued by a Tribe pursuant to a program approved by the Administrator under 40 CFR part 51, subpart I, authorizing the construction or modification of a stationary source.

Permit to operate or operating permit means a permit issued by the Regional Administrator pursuant to §49.139 or 40 CFR part 71, or by a Tribe pursuant to a program approved by the Administrator under 40 CFR part 51 or 40 CFR part 70, authorizing the operation of a stationary source.

Plywood means a flat panel built generally of an odd number of thin sheets of veneers of wood in which the grain direction of each ply or layer is at right angles to the one adjacent to it.

PM10 means particulate matter with an aerodynamic diameter less than or equal to 10 micrometers.

PM2.5 means particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers.

Potential to emit means the maximum capacity of an air pollution source to emit an air pollutant under its phys-

ical and operational design. Any physical or operational limitation on the capacity of the air pollution source to emit an air 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 Federally enforceable.

Press/Cooling vent means any opening through which particulate and gaseous emissions from plywood, particleboard, or hardboard manufacturing are exhausted, either by natural draft or powered fan, from the building housing the process. Such openings are generally located immediately above the board press, board unloader, or board cooling area.

Process source means an air pollution source using a procedure or combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

Rated capacity means the maximum sustainable capacity of the equipment.

Reference method means any method of sampling and analyzing for an air pollutant as specified in the applicable section.

Refuse means all solid, liquid, or gaseous waste material, including but not limited to, garbage, trash, household refuse, municipal solid waste, construction or demolition debris, or waste resulting from the operation of any business, trade, or industry.

Regional Administrator means the Regional Administrator of EPA Region 10 or an authorized representative of the Regional Administrator.

Residual fuel oil means any oil meeting the specifications of ASTM Grade 4, Grade 5, or Grade 6 fuel oils in ASTM Method D396-04, Standard Specification for Fuel Oils (incorporated by reference, see §49.123(e)).

Smudge pot means a portable heater/burner that produces thick heavy smoke and that fruit growers place around an orchard in the evening to prevent the crop from freezing at night.

Solid fuel means wood, refuse, refuse-derived fuel, tires, tire-derived fuel, and other solid combustible material

(other than coal), including any combination thereof.

Solid fuel-fired boiler means a furnace or boiler used for combusting solid fuel for the primary purpose of producing steam or hot water by heat transfer.

Soot blowing means using steam or compressed air to remove carbon from a furnace or from a boiler's heat transfer surfaces.

Source means the same as *air pollution source*.

Stack means any point in a source that conducts air pollutants to the atmosphere, including, but not limited to, a chimney, flue, conduit, pipe, vent, or duct, but not including a flare.

Standard conditions means a temperature of 293 degrees Kelvin (68 degrees Fahrenheit, 20 degrees Celsius) and a pressure of 101.3 kilopascals (29.92 inches of mercury).

Start-up means the setting into operation of a piece of equipment.

Stationary source means any building, structure, facility, or installation that emits, or may emit, any air pollutant.

Tempering oven means any facility used to bake hardboard following an oil treatment process.

Uncombined water means droplets of water that have not combined with hygroscopic particles or do not contain dissolved solids.

Used oil means petroleum products that have been recovered from another application.

Veneer means a single flat panel of wood not exceeding $\frac{1}{4}$ inch in thickness formed by slicing or peeling from a log.

Veneer dryer means equipment in which veneer is dried.

Visible emissions means air pollutants in sufficient amount to be observable to the human eye.

Wood means wood, wood residue, bark, or any derivative or residue thereof, in any form, including but not limited to sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

Wood-fired boiler means a furnace or boiler used for combusting wood for the primary purpose of producing steam or hot water by heat transfer.

Wood-fired veneer dryer means a veneer dryer that is directly heated by the products of combustion of wood in

addition to, or exclusive of, steam or natural gas or propane combustion.

Woodwaste burner means a wigwam burner, teepee burner, silo burner, olive-vine burner, truncated cone burner, or other such woodwaste-burning device used by the wood products industry for the disposal of wood wastes.

(b) *Requirement for testing.* The Regional Administrator may require, in a permit to construct or a permit to operate, that a person demonstrate compliance with the "General Rules for Application to Indian Reservations in EPA Region 10" by performing a source test and submitting the test results to the Regional Administrator. A person may also be required by the Regional Administrator, in a permit to construct or permit to operate, to install and operate a continuous opacity monitoring system (COMS) or a continuous emissions monitoring system (CEMS) to demonstrate compliance. Nothing in the "General Rules for Application to Indian Reservations in EPA Region 10" limits the authority of the Regional Administrator to require, in an information request pursuant to section 114 of the Act, a person to demonstrate compliance by performing source testing, even where the source does not have a permit to construct or a permit to operate.

(c) *Requirement for monitoring, recordkeeping, and reporting.* Nothing in the "General Rules for Application to Indian Reservations in EPA Region 10" precludes the Regional Administrator from requiring monitoring, recordkeeping, and reporting, including monitoring, recordkeeping, and reporting in addition to that already required by an applicable requirement, in a permit to construct or permit to operate in order to ensure compliance.

(d) *Credible evidence.* For the purposes of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any requirement, nothing in the "General Rules for Application to Indian Reservations in EPA Region 10" precludes the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance with

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applicable requirements if the appropriate performance or compliance test had been performed.

(e) *Incorporation by reference.* The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the *FEDERAL REGISTER*. The materials are available for purchase at the corresponding addresses noted below, or are available for inspection at EPA's Air and Radiation Docket and Information Center, located at 1301 Constitution Avenue, NW, Room B102, Mail Code 6102T, Washington, D.C. 20004, at EPA Region 10, Office of Air, Waste, and Toxics, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(1) The materials listed below are available for purchase from at least one of the following addresses: ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(i) ASTM D388-99(Reapproved 2004)^{€1}, Standard Classification of Coals by Rank, Incorporation by reference (IBR) approved for § 49.123(a).

(ii) ASTM D396-04, Standard Specification for Fuel Oils, IBR approved for § 49.123(a).

(iii) ASTM D240-02, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved for § 49.123(a).

(iv) ASTM D1826-94(Reapproved 2003), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, IBR approved for § 49.123(a).

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(v) ASTM D5865-04, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for § 49.123(a).

(vi) ASTM E711-87(Reapproved 2004) Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter, IBR approved for § 49.123(a).

(vii) ASTM D2880-03, Standard Specification for Gas Turbine Fuel Oils, IBR approved for § 49.130(e)(1).

(viii) ASTM D4294-03, Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectroscopy, IBR approved for § 49.130(e)(1).

(ix) ASTM D6021-96(Reapproved 2001)^{€1}, Standard Test Method for Measurement of Total Hydrogen Sulfide in Residual Fuels by Multiple Headspace Extraction and Sulfur Specific Detection, IBR approved for § 49.130(e)(1).

(x) ASTM D3177-02, Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke, IBR approved for § 49.130(e)(2).

(xi) ASTM D4239-04a, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods, IBR approved for § 49.130(e)(2).

(xii) ASTM D2492-02, Standard Test Method for Forms of Sulfur in Coal, IBR approved for § 49.130(e)(2).

(xiii) ASTM E775-87(Reapproved 2004), Standard Test Methods for Total Sulfur in the Analysis Sample of Refuse-Derived Fuel, IBR approved for § 49.130(e)(3).

(xiv) ASTM D1072-90(Reapproved 1999), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 49.130(e)(4).

(xv) ASTM D3246-96, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 49.130(e)(4).

(xvi) ASTM D4084-94(Reapproved 1999) Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for § 49.130(e)(4).

(xvii) ASTM D5504-01, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and

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Chemiluminescence, IBR approved for § 49.130(e)(4).

(xviii) ASTM D4468-85(Reapproved 2000), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, IBR approved for § 49.130(e)(4).

(xix) ASTM D2622-03, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry, IBR approved for § 49.130(e)(4).

(xx) ASTM D6228-98(Reapproved 2003), Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for § 49.130(e)(4).

(xxi) ASTM D5865-10 (Approved January 1, 2010), Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for § 49.123(a).

[70 FR 18095, Apr. 8, 2005, as amended at 77 FR 2460, Jan. 18, 2012]

§ 49.124 Rule for limiting visible emissions.

(a) *What is the purpose of this section?* This section limits the visible emissions of air pollutants from certain air pollution sources operating within the Indian reservation to control emissions of particulate matter to the atmosphere and ground-level concentrations of particulate matter, to detect the violation of other requirements in the "General Rules for Application to Indian Reservations in EPA Region 10", and to indicate whether a source is continuously maintained and properly operated.

(b) *Who is affected by this section?* This section applies to any person who owns or operates an air pollution source that emits, or could emit, particulate matter or other visible air pollutants to the atmosphere, unless exempted in paragraph (c) of this section.

(c) *What is exempted from this section?* This section does not apply to open burning, agricultural activities, forestry and silvicultural activities, non-commercial smoke houses, sweat houses or lodges, smudge pots, furnaces and boilers used exclusively to heat residential buildings with four or fewer dwelling units, fugitive dust from public roads owned or maintained by any Federal, Tribal, State, or local govern-

ment, and emissions from fuel combustion in mobile sources.

(d) *What are the opacity limits for air pollution sources?* (1) The visible emissions from an air pollution source must not exceed 20% opacity, averaged over any consecutive six-minute period, unless paragraph (d)(2) or (d)(3) of this section applies to the air pollution source.

(2) The visible emissions from an air pollution source may exceed the 20% opacity limit if the owner or operator of the air pollution source demonstrates to the Regional Administrator's satisfaction that the presence of uncombined water, such as steam, is the only reason for the failure of an air pollution source to meet the 20% opacity limit.

(3) The visible emissions from an oil-fired boiler or solid fuel-fired boiler that continuously measures opacity with a continuous opacity monitoring system (COMS) may exceed the 20% opacity limit during start-up, soot blowing, and grate cleaning for a single period of up to 15 consecutive minutes in any eight consecutive hours, but must not exceed 60% opacity at any time.

(e) *What is the reference method for determining compliance?* (1) The reference method for determining compliance with the opacity limits is EPA Method 9. A complete description of this method is found in appendix A of 40 CFR part 60.

(2) An alternative reference method for determining compliance is a COMS that complies with Performance Specification 1 found in appendix B of 40 CFR part 60.

(f) *Definitions of terms used in this section.* The following terms that are used in this section, are defined in § 49.123 General provisions: Act, agricultural activities, air pollutant, air pollution source, ambient air, coal, continuous opacity monitoring system (COMS), distillate fuel oil, emission, forestry or silvicultural activities, fuel, fuel oil, fugitive dust, gaseous fuel, grate cleaning, marine vessel, mobile sources, motor vehicle, nonroad engine, nonroad vehicle, oil-fired boiler, opacity, open burning, particulate matter, PM10, PM2.5, reference method, refuse, Regional Administrator, residual fuel

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oil, smudge pot, solid fuel, solid fuel-fired boiler, soot blowing, stack, standard conditions, start-up, stationary source, uncombined water, used oil, visible emissions, and wood.

§ 49.125 Rule for limiting the emissions of particulate matter.

(a) *What is the purpose of this section?* This section limits the amount of particulate matter that may be emitted from certain air pollution sources operating within the Indian reservation to control ground-level concentrations of particulate matter.

(b) *Who is affected by this section?* This section applies to any person who owns or operates an air pollution source that emits, or could emit, particulate matter to the atmosphere, unless exempted in paragraph (c) of this section.

(c) *What is exempted from this section?* This section does not apply to woodwaste burners, furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour, non-commercial smoke houses, sweat houses or lodges, open burning, and mobile sources.

(d) *What are the particulate matter limits for air pollution sources?* (1) Particulate matter emissions from a combustion source stack (except for wood-fired boilers) must not exceed an average of 0.23 grams per dry standard cubic meter (0.1 grains per dry standard cubic foot), corrected to seven percent oxygen, during any three-hour period.

(2) Particulate matter emissions from a wood-fired boiler stack must not exceed an average of 0.46 grams per dry standard cubic meter (0.2 grains per dry standard cubic foot), corrected to seven percent oxygen, during any three-hour period.

(3) Particulate matter emissions from a process source stack, or any other stack not subject to paragraph (d)(1) or (d)(2) of this section, must not exceed an average of 0.23 grams per dry standard cubic meter (0.1 grains per dry standard cubic foot) during any three-hour period.

(e) *What is the reference method for determining compliance?* The reference method for determining compliance with the particulate matter limits is

EPA Method 5. A complete description of this method is found in appendix A of 40 CFR part 60.

(f) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Act, air pollutant, air pollution source, ambient air, British thermal unit (Btu), coal, combustion source, distillate fuel oil, emission, fuel, fuel oil, gaseous fuel, heat input, incinerator, marine vessel, mobile sources, motor vehicle, nonroad engine, nonroad vehicle, open burning, particulate matter, PM10, PM2.5, process source, reference method, refuse, residual fuel oil, solid fuel, stack, standard conditions, stationary source, uncombined water, used oil, wood, wood-fired boiler, and woodwaste burner.

§ 49.126 Rule for limiting fugitive particulate matter emissions.

(a) *What is the purpose of this section?* This section limits the amount of fugitive particulate matter that may be emitted from certain air pollution sources operating within the Indian reservation to control ground-level concentrations of particulate matter.

(b) *Who is affected by this section?* This section applies to any person who owns or operates a source of fugitive particulate matter emissions.

(c) *What is exempted from this section?* This section does not apply to open burning, agricultural activities, forestry and silvicultural activities, sweat houses or lodges, non-commercial smoke houses, public roads owned or maintained by any Federal, Tribal, State, or local government, or activities associated with single-family residences or residential buildings with four or fewer dwelling units.

(d) *What are the requirements for sources of fugitive particulate matter emissions?* (1) The owner or operator of any source of fugitive particulate matter emissions, including any source or activity engaged in materials handling or storage, construction, demolition, or any other operation that is or may be a source of fugitive particulate matter emissions, must take all reasonable

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precautions to prevent fugitive particulate matter emissions and must maintain and operate the source to minimize fugitive particulate matter emissions.

(2) Reasonable precautions include, but are not limited to the following:

(i) Use, where possible, of water or chemicals for control of dust in the demolition of buildings or structures, construction operations, grading of roads, or clearing of land.

(ii) Application of asphalt, oil (but not used oil), water, or other suitable chemicals on unpaved roads, materials stockpiles, and other surfaces that can create airborne dust.

(iii) Full or partial enclosure of materials stockpiles in cases where application of oil, water, or chemicals is not sufficient or appropriate to prevent particulate matter from becoming airborne.

(iv) Implementation of good housekeeping practices to avoid or minimize the accumulation of dusty materials that have the potential to become airborne, and the prompt cleanup of spilled or accumulated materials.

(v) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials.

(vi) Adequate containment during sandblasting or other similar operations.

(vii) Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne.

(viii) The prompt removal from paved streets of earth or other material that does or may become airborne.

(e) *Are there additional requirements that must be met?* (1) A person subject to this section must:

(i) Annually survey the air pollution source(s) during typical operating conditions and meteorological conditions conducive to producing fugitive dust to determine the sources of fugitive particulate matter emissions. For new sources or new operations, a survey must be conducted within 30 days after commencing operation. Document the results of the survey, including the date and time of the survey and identification of any sources of fugitive particulate matter emissions found.

(ii) If sources of fugitive particulate matter emissions are present, determine the reasonable precautions that will be taken to prevent fugitive particulate matter emissions.

(iii) Prepare, and update as necessary following each survey, a written plan that specifies the reasonable precautions that will be taken and the procedures to be followed to prevent fugitive particulate matter emissions, including appropriate monitoring and recordkeeping. For construction or demolition activities, a written plan must be prepared prior to commencing construction or demolition.

(iv) Implement the written plan, and maintain and operate the source to minimize fugitive particulate matter emissions.

(v) Maintain records for five years that document the surveys and the reasonable precautions that were taken to prevent fugitive particulate matter emissions.

(2) The Regional Administrator may require specific actions to prevent fugitive particulate matter emissions, or impose conditions to maintain and operate the air pollution source to minimize fugitive particulate matter emissions, in a permit to construct or a permit to operate for the source.

(3) Efforts to comply with this section cannot be used as a reason for not complying with other applicable laws and ordinances.

(f) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Agricultural activities, air pollutant, air pollution source, ambient air, emission, forestry or silvicultural activities, fugitive dust, fugitive particulate matter, owner or operator, particulate matter, permit to construct, permit to operate, PM10, PM2.5, Regional Administrator, source, stack, and uncombined water.

§ 49.127 Rule for woodwaste burners.

(a) *What is the purpose of this section?* This section phases out the operation of woodwaste burners (commonly known as wigwam or teepee burners), and in the interim, limits the visible emissions from woodwaste burners within the Indian reservation to control emissions of particulate matter to

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the atmosphere and ground-level concentrations of particulate matter.

(b) *Who is affected by this section?* This section applies to any person who owns or operates a woodwaste burner.

(c) *What are the requirements for woodwaste burners?* (1) Except as provided by paragraph (c)(3) of this section, the owner or operator of a woodwaste burner must shut down and dismantle the woodwaste burner by no later than two years after the effective date of this section. The requirement for dismantling applies to all woodwaste burners regardless of whether or not the woodwaste burners are currently operational. Until the woodwaste burner is shut down, visible emissions from the woodwaste burner must not exceed 20% opacity, averaged over any consecutive six-minute period.

(2) Until the woodwaste burner is shut down, only wood waste generated on-site may be burned or disposed of in the woodwaste burner.

(3) If there is no reasonably available alternative method of disposal for the wood waste other than by burning it on-site in a woodwaste burner, the owner or operator of the woodwaste burner that is in compliance with the opacity limit in paragraph (c)(1) of this section, may apply to the Regional Administrator for an extension of the two-year deadline. If the Regional Administrator finds that there is no reasonably available alternative method of disposal, then a two-year extension of the deadline may be granted. There is no limit to the number of extensions that may be granted by the Regional Administrator.

(d) *What is the reference method for determining compliance with the opacity limit?* (1) The reference method for determining compliance with the opacity limit is EPA Method 9. A complete description of this method is found in 40 CFR part 60, appendix A.

(2) [Reserved]

(e) *Are there additional requirements that must be met?* A person subject to this section must submit a plan to shut down and dismantle the woodwaste burner to the Regional Administrator within 180 days after the effective date of this section. Unless an extension has been granted by the Regional Adminis-

trator, the woodwaste burner must be shut down and dismantled within two years after the effective date of this section. The owner or operator of the woodwaste burner must notify the Regional Administrator that the woodwaste burner has been shut down and dismantled within 30 days after completion.

(f) *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, opacity, owner or operator, particulate matter, PM10, PM2.5, reference method, Regional Administrator, stationary source, uncombined water, visible emissions, wood, and woodwaste burner.

§49.128 Rule for limiting particulate matter emissions from wood products industry sources.

(a) *What is the purpose of this section?* This section limits the amount of particulate matter that may be emitted from certain wood products industry sources operating within the Indian reservation to control ground-level concentrations of particulate matter.

(b) *Who is affected by this section?* This section applies to any person who owns or operates any of the following wood products industry sources:

- (1) Veneer manufacturing operations;
- (2) Plywood manufacturing operations;
- (3) Particleboard manufacturing operations; and
- (4) Hardboard manufacturing operations.

(c) *What are the PM10 emission limits for wood products industry sources?* These PM10 limits are in addition to, and not in lieu of, the particulate matter limits for combustion sources and process sources.

(1) *Veneer dryers at veneer manufacturing operations and plywood manufacturing operations.* (i) PM10 emissions from direct natural gas fired or direct propane fired veneer dryers must not exceed 0.3 pounds per 1000 square feet of veneer dried ($\frac{3}{8}$ inch basis), one-hour average.

(ii) PM10 emissions from steam heated veneer dryers must not exceed 0.3 pounds per 1000 square feet of veneer dried ($\frac{3}{8}$ inch basis), one-hour average.

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(iii) PM10 emissions from wood fired veneer dryers must not exceed a total of 0.3 pounds per 1000 square feet of veneer dried ($\frac{3}{8}$ inch basis) and 0.2 pounds per 1000 pounds of steam generated in boilers, prorated for the amount of combustion gases routed to the veneer dryer, one-hour average.

(2) *Wood particle dryers at particleboard manufacturing operation.* PM10 emissions from wood particle dryers must not exceed a total of 0.4 pounds per 1000 square feet of board produced by the plant ($\frac{3}{4}$ inch basis), one-hour average.

(3) *Press/cooling vents at hardboard manufacturing operations.* PM10 emissions from hardboard press/cooling vents must not exceed 0.3 pounds per 1000 square feet of hardboard produced ($\frac{1}{8}$ inch basis), one-hour average.

(4) *Tempering ovens at hardboard manufacturing operations.* A person must not operate any hardboard tempering oven unless all gases and vapors are collected and treated in a fume incinerator capable of raising the temperature of the gases and vapors to at least 1500 degrees Fahrenheit for 0.3 seconds or longer.

(d) *What is the reference method for determining compliance?* The reference method for determining compliance with the PM10 limits is EPA Method 202 in conjunction with Method 201A. A complete description of these methods is found in appendix M of 40 CFR part 51.

(e) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Act, combustion source, emissions, hardboard, particleboard, particulate matter, plywood, PM10, PM2.5, press/cooling vent, process source, tempering oven, veneer, veneer dryer, wood, and wood-fired veneer dryer.

§ 49.129 Rule for limiting emissions of sulfur dioxide.

(a) *What is the purpose of this section?* This section limits the amount of sulfur dioxide (SO₂) that may be emitted from certain air pollution sources operating within the Indian reservation to control ground-level concentrations of SO₂.

(b) *Who is affected by this section?* This section applies to any person who owns or operates an air pollution source that emits, or could emit, SO₂ to the atmosphere.

(c) *What is exempted from this section?* This section does not apply to furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour, and mobile sources.

(d) *What are the sulfur dioxide limits for sources?* (1) Sulfur dioxide emissions from a combustion source stack must not exceed an average of 500 parts per million by volume, on a dry basis and corrected to seven percent oxygen, during any three-hour period.

(2) Sulfur dioxide emissions from a process source stack, or any other stack not subject to (d)(1) of this section, must not exceed an average of 500 parts per million by volume, on a dry basis, during any three-hour period.

(e) *What are the reference methods for determining compliance?* (1) The reference methods for determining compliance with the SO₂ limits are EPA Methods 6, 6A, 6B, and 6C as specified in the applicability section of each method. A complete description of these methods is found in appendix A of 40 CFR part 60.

(2) An alternative reference method is a continuous emissions monitoring system (CEMS) that complies with Performance Specification 2 found in appendix B of 40 CFR part 60.

(f) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Act, air pollutant, air pollution source, ambient air, British thermal unit (Btu), coal, combustion source, continuous emissions monitoring system (CEMS), distillate fuel oil, emission, fuel, fuel oil, gaseous fuel, heat input, incinerator, marine vessel, mobile sources, motor vehicle, nonroad engine, nonroad vehicle, open burning, process source, reference method, refuse, residual fuel oil, solid fuel, stack, standard conditions, stationary source, used oil, wood, and woodwaste burner.

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§ 49.130 Rule for limiting sulfur in fuels.

(a) *What is the purpose of this section?* This section limits the amount of sulfur contained in fuels that are burned at stationary sources within the Indian reservation to control emissions of sulfur dioxide (SO₂) to the atmosphere and ground-level concentrations of SO₂.

(b) *Who is affected by this section?* This section applies to any person who sells, distributes, uses, or makes available for use, any fuel oil, coal, solid fuel, liquid fuel, or gaseous fuel within the Indian reservation.

(c) *What is exempted from this section?* This section does not apply to gasoline and diesel fuel, such as automotive and marine diesel, regulated under 40 CFR part 80.

(d) *What are the sulfur limits for fuels?* A person must not sell, distribute, use, or make available for use any fuel oil, coal, solid fuel, liquid fuel, or gaseous fuel that contains more than the following amounts of sulfur:

(1) For distillate fuel oil, 0.3 percent by weight for ASTM Grade 1 fuel oil;

(2) For distillate fuel oil, 0.5 percent by weight for ASTM Grade 2 fuel oil;

(3) For residual fuel oil, 1.75 percent sulfur by weight for ASTM Grades 4, 5, or 6 fuel oil;

(4) For used oil, 2.0 percent sulfur by weight;

(5) For any liquid fuel not listed in paragraphs (d)(1) through (d)(4) of this section, 2.0 percent sulfur by weight;

(6) For coal, 1.0 percent sulfur by weight;

(7) For solid fuels, 2.0 percent sulfur by weight;

(8) For gaseous fuels, 1.1 grams of sulfur per dry standard cubic meter of gaseous fuel (400 parts per million at standard conditions).

(e) *What are the reference methods for determining compliance?* The reference methods for determining the amount of sulfur in a fuel are as follows:

(1) Sulfur content in fuel oil or liquid fuels: ASTM methods D2880-03, D4294-03, and D6021-96 (Reapproved 2001)¹ (incorporated by reference, see § 49.123(e));

(2) Sulfur content in coal: ASTM methods D3177-02, D4239-04a, and D2492-02 (incorporated by reference, see § 49.123(e));

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(3) Sulfur content in solid fuels: ASTM method E775-87¹ (Reapproved 2004) (incorporated by reference, see § 49.123(e));

(4) Sulfur content in gaseous fuels: ASTM methods D1072-90 (Reapproved 1999), D3246-96, D4084-94¹ (Reapproved 1999), D5504-01, D4468-85¹ (Reapproved 2000), D2622-03, and D6228-98¹ (Reapproved 2003) (incorporated by reference, see § 49.123(e)).

(f) *Are there additional requirements that must be met?* (1) A person subject to this section must:

(i) For fuel oils and liquid fuels, obtain, record, and keep records of the percent sulfur by weight from the vendor for each purchase of fuel. If the vendor is unable to provide this information, then obtain a representative grab sample for each purchase and test the sample using the reference method.

(ii) For gaseous fuels, either obtain, record, and keep records of the sulfur content from the vendor, or continuously monitor the sulfur content of the fuel gas line using a method that meets the requirements of Performance Specification 5, 7, 9, or 15 (as applicable for the sulfur compounds in the gaseous fuel) of appendix B and appendix F of 40 CFR part 60. If only purchased natural gas is used, then keep records showing that the gaseous fuel meets the definition of natural gas in 40 CFR 72.2.

(iii) For coal and solid fuels, either obtain, record, and keep records of the percent sulfur by weight from the vendor for each purchase of coal or solid fuel, or obtain a representative grab sample for each day of operation and test the sample using the reference method. If only wood is used, then keep records showing that only wood was used. The owner or operator of a coal- or solid fuel-fired source may apply to the Regional Administrator for a waiver of this provision or for approval of an alternative fuel sampling program.

(2) Records of fuel purchases and fuel sulfur content must be kept for a period of five years from date of purchase and must be made available to the Regional Administrator upon request.

(3) The owner or occupant of a single-family residence, and the owner or manager of a residential building with four or fewer dwelling units, is not subject to the requirement to obtain and

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record the percent sulfur content from the vendor if the fuel used in an oil, coal, or gas furnace is purchased from a licensed fuel distributor.

(g) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Act, air pollutant, ambient air, coal, distillate fuel oil, emission, fuel, fuel oil, gaseous fuel, marine vessel, mobile sources, motor vehicle, nonroad engine, nonroad vehicle, owner or operator, reference method, refuse, Regional Administrator, residual fuel oil, solid fuel, source, standard conditions, stationary source, used oil, and wood.

§ 49.131 General rule for open burning.

(a) *What is the purpose of this section?* This section limits the types of materials that can be openly burned within the Indian reservation to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of particulate matter. It is EPA's goal to eliminate open burning disposal practices where alternative methods are feasible and practicable, to encourage the development of alternative disposal methods, to emphasize resource recovery, and to encourage utilization of the highest and best practicable burning methods to minimize emissions where other disposal practices are not feasible.

(b) *Who is affected by this section?* This section applies to any person who conducts open burning and to the owner of the property upon which open burning is conducted.

(c) *What is exempted from this section?* The following open fires are exempted from this section:

(1) Outdoor fires set for cultural or traditional purposes;

(2) Fires set for cultural or traditional purposes within structures such as sweat houses or lodges;

(3) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section, fires set for recreational purposes provided that no prohibited materials are burned;

(4) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section and with prior permission from the Regional Administrator, open out-

door fires used by qualified personnel to train firefighters in the methods of fire suppression and fire fighting techniques, provided that training fires are not allowed to smolder after the training session has terminated. Prior to igniting any structure, the fire protection service must ensure that the structure does not contain any asbestos or asbestos-containing materials; batteries; stored chemicals such as pesticides, herbicides, fertilizers, paints, glues, sealers, tars, solvents, household cleaners, or photographic reagents; stored linoleum, plastics, rubber, tires, or insulated wire; or hazardous wastes. Before requesting permission from the Regional Administrator, the fire protection service must notify any appropriate Tribal air pollution authority and obtain any permissions or approvals required by the Tribe, and by any other governments with applicable laws and ordinances;

(5) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section and with prior permission from the Regional Administrator, one open outdoor fire each year to dispose of fireworks and associated packaging materials. Before requesting permission from the Regional Administrator, the owner or operator must notify any appropriate Tribal air pollution authority and obtain any permissions or approvals required by the Tribe, and by any other governments with applicable laws and ordinances;

(6) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section, open burning for the disposal of diseased animals or other material by order of a public health official.

(d) *What are the requirements for open burning?* (1) A person must not openly burn, or allow the open burning of, the following materials:

(i) Garbage;

(ii) Dead animals or parts of dead animals;

(iii) Junked motor vehicles or any materials resulting from a salvage operation;

(iv) Tires or rubber materials or products;

(v) Plastics, plastic products, or styrofoam;

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- (vi) Asphalt or composition roofing, or any other asphaltic material or product;
- (vii) Tar, tarpaper, petroleum products, or paints;
- (viii) Paper, paper products, or cardboard other than what is necessary to start a fire or that is generated at single-family residences or residential buildings with four or fewer dwelling units and is burned at the residential site;
- (ix) Lumber or timbers treated with preservatives;
- (x) Construction debris or demolition waste;
- (xi) Pesticides, herbicides, fertilizers, or other chemicals;
- (xii) Insulated wire;
- (xiii) Batteries;
- (xiv) Light bulbs;
- (xv) Materials containing mercury (e.g., thermometers);
- (xvi) Asbestos or asbestos-containing materials;
- (xvii) Pathogenic wastes;
- (xviii) Hazardous wastes; or
- (xix) Any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned.

(2) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the Regional Administrator declares a burn ban due to deteriorating air quality. A burn ban may be declared whenever the Regional Administrator determines that air quality levels have exceeded, or are expected to exceed, 75% of any national ambient air quality standard for particulate matter, and these levels are projected to continue or reoccur over at least the next 24 hours.

(3) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the Regional Administrator issues an air stagnation advisory or declares an air pollution alert, air pollution warning, or air pollution emergency pursuant to §49.137 Rule for air pollution episodes.

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

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(e) *Are there additional requirements that must be met?* (1) A person subject to this section must conduct open burning as follows:

(i) All materials to be openly burned must be kept as dry as possible through the use of a cover or dry storage;

(ii) Before igniting a burn, non-combustibles must be separated from the materials to be openly burned to the greatest extent practicable;

(iii) Natural or artificially induced draft must be present, including the use of blowers or air curtain incinerators where practicable;

(iv) To the greatest extent practicable, materials to be openly burned must be separated from the grass or peat layer; and

(v) A fire must not be allowed to smolder.

(2) Except for exempted fires set for cultural or traditional purposes, a person must not initiate any open burning when:

(i) The Regional Administrator has declared a burn ban;

(ii) An air stagnation advisory has been issued or an air pollution alert, warning, or emergency has been declared by the Regional Administrator.

(3) Except for exempted fires set for cultural or traditional purposes, any person conducting open burning when such an advisory is issued or declaration is made must either immediately extinguish the fire, or immediately withhold additional material such that the fire burns down.

(f) *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, open burning, particulate matter, PM10, PM2.5, Regional Administrator, stack, and uncombined water.

§49.132 Rule for general open burning permits.

(a) *What is the purpose of this section?* This section establishes a permitting program for open 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.

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

(c) *What is exempted from this section?* The following open fires are exempted from this section:

(1) Outdoor fires set for cultural or traditional purposes;

(2) Fires set for cultural or traditional purposes within structures such as sweat houses or lodges;

(3) Fires set for recreational purposes, provided that no prohibited materials are burned;

(4) Forestry and silvicultural burning; and

(5) Agricultural burning.

(d) *What are the requirements for open burning?* (1) A person must apply for and obtain a permit for the open burn, have the permit available on-site during the open burn, and conduct the open burning in accordance with the terms and conditions of the permit.

(2) The date after which a person must apply for and obtain 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 the § 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.

(e) *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 open burn. An application must be submitted in writing at least one working day, and no earlier than five working days, prior to the requested date that the burn would be conducted, and must contain, at a minimum, the following information:

(i) Street address of the property upon that the proposed open 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 open burning.

(iii) A plot plan showing the location of the proposed open burning in relation to the property lines and indicating the distances and directions of the nearest residential and commercial properties.

(iv) The type and quantity of materials proposed to be burned, including the estimated volume of material to be burned and the area over which burning will be conducted.

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

(vi) The requested date when the proposed open burning would be conducted and the duration of the burn if it is more than one day.

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

(2) If the proposed open 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 issue a burn permit. The permit will authorize burning only for the requested date(s) and will include any conditions that the Regional Administrator determines are necessary to ensure compliance with this section, § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule, and to protect the public health and welfare.

(3) When reviewing an application, the Regional Administrator will take into consideration relevant factors including, but not limited to, the size, duration, and location of the proposed open burn, the current and projected air quality conditions, the forecasted meteorological conditions, and other scheduled burning activities in the surrounding area. Where the Regional Administrator determines that the proposed open burning can be conducted without causing an adverse impact on air quality, a permit may be issued.

(4) The Regional Administrator, to the extent practical, will coordinate the issuance of open burning permits with the open burning permit programs of surrounding jurisdictions.

(f) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123

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General provisions: Agricultural burning, air pollutant, ambient air, emission, forestry or silvicultural burning, open burning, particulate matter, PM10, PM2.5, Regional Administrator, stack, and uncombined water.

§ 49.133 Rule for agricultural burning permits.

(a) *What is the purpose of this section?* This section establishes a permitting program for agricultural 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 agricultural burning.

(c) *What are the requirements for agricultural burning?* (1) A person must apply for a permit to conduct an agricultural burn, obtain approval of the permit on the day of the burn, have the permit available onsite 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 agricultural burn. An application must contain, at a minimum, the following information:

(i) Street address of the property upon which the proposed agricultural 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 applicant and the person who will be responsible for con-

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ducting the proposed agricultural burning.

(iii) A plot plan showing the location of each proposed agricultural burning area 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 impacted by the burning.

(iv) The type and quantity of agricultural wastes 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 or stack burn, open field or broadcast burn, windrow burn, mobile field sanitizer, 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 plowed firebreaks.

(vii) The requested date(s) when the proposed agricultural burning would be conducted.

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

(2) If the proposed agricultural 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 agricultural 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 agricultural 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

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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.

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(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

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area are conducive to the buildup of air pollutants.

(ii) *Air pollution alert.* An air pollution alert may be declared by the Regional Administrator when any one of the following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM10): 350 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO): 17 milligrams per cubic meter (15 ppm), 8-hour average;

(C) Sulfur dioxide (SO₂): 800 micrograms per cubic meter (0.3 ppm), 24-hour average;

(D) Ozone (O₃): 400 micrograms per cubic meter (0.2 ppm), 1-hour average;

(E) Nitrogen dioxide (NO₂): 1,130 micrograms per cubic meter (0.6 ppm), 1-hour average; and 282 micrograms per cubic meter (0.15 ppm), 24-hour average.

(iii) *Air pollution warning.* An air pollution warning may be declared by the Regional Administrator when any one of the following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM10): 420 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO): 34 milligrams per cubic meter (30 ppm), 8-hour average;

(C) Sulfur dioxide (SO₂): 1,600 micrograms per cubic meter (0.6 ppm), 24-hour average;

(D) Ozone (O₃): 800 micrograms per cubic meter (0.4 ppm), 1-hour average;

(E) Nitrogen dioxide (NO₂): 2,260 micrograms per cubic meter (1.2 ppm), 1-hour average; and 565 micrograms per cubic meter (0.3 ppm), 24-hour average.

(iv) *Air pollution emergency.* An air pollution emergency may be declared by the Regional Administrator when any one of the following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the

level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM10): 500 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO): 46 milligrams per cubic meter (40 ppm), 8-hour average;

(C) Sulfur dioxide (SO₂): 2,100 micrograms per cubic meter (0.8 ppm), 24-hour average;

(D) Ozone (O₃): 1,000 micrograms per cubic meter (0.5 ppm), 1-hour average;

(E) Nitrogen dioxide (NO₂): 3,000 micrograms per cubic meter (1.6 ppm), 1-hour average; and 750 micrograms per cubic meter (0.4 ppm), 24-hour average.

(v) *Termination.* Once declared, an air pollution alert, warning, or emergency will remain in effect until the Regional Administrator makes a new determination and declares a new level.

(2) *Announcements by the Regional Administrator.* The Regional Administrator will request that announcement of an air stagnation advisory, air pollution alert, air pollution warning, or air pollution emergency be broadcast on local television and radio stations in the affected area and posted on their websites. Announcements will also be posted on the EPA Region 10 website and, where possible, on the websites of Tribes within the affected area. These announcements will indicate that air pollution levels exist that could potentially be harmful to human health and indicate actions that people can take to reduce exposure. The announcements will also request voluntary actions to reduce emissions from sources of air pollutants as well as indicate that a ban on open burning is in effect.

(3) *Voluntary curtailment of emissions by sources.* Whenever the Regional Administrator declares an air stagnation advisory, air pollution alert, air pollution warning, or air pollution emergency, sources of air pollutants will be requested to take voluntary actions to reduce emissions. People should refrain from using their wood-stoves and fireplaces unless they are their sole source of heat. People should reduce their use of motor vehicles to the extent possible. Industrial sources should curtail operations or switch to a cleaner fuel if possible.

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(4) *Mandatory curtailment of emissions by order of the Regional Administrator.* (i) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the Regional Administrator issues an air stagnation advisory or declares an air pollution alert, air pollution warning, or air pollution emergency. Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited when a burn ban is declared pursuant to §49.131 General rule for open burning or the EPA-approved Tribal open burning rule.

(ii) Except for exempted fires set for cultural or traditional purposes, any person conducting open burning when such an advisory is issued or declaration is made must either immediately extinguish the fire, or immediately withhold additional material such that the fire burns down.

(iii) During an air pollution warning or air pollution emergency, the Regional Administrator may issue an order to any air pollution source requiring such source to curtail or eliminate the emissions.

(d) *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, fuel, motor vehicle, open burning, Regional Administrator, and source.

§49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(a) *What is the purpose of this section?* This section allows the Regional Administrator to develop and maintain a current and accurate record of air pollution sources and their emissions within the Indian reservation.

(b) *Who is affected by this section?* This section applies to any person who owns or operates a part 71 source or an air pollution source that is subject to a standard established under section 111 or section 112 of the Federal Clean Air Act. This section also applies to any person who owns or operates any other air pollution source except those exempted in paragraph (c) of this section.

(c) *What is exempted from this section?* As provided in paragraph (b) of this

section, this section does not apply to the following air pollution sources:

(1) Air pollution sources that do not have the potential to emit more than two tons per year of any air pollutant;

(2) Mobile sources;

(3) Single family residences, and residential buildings with four or fewer dwelling units;

(4) Air conditioning units used for human comfort that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process;

(5) Ventilating units used for human comfort that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process;

(6) Furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour;

(7) Cooking of food, except for wholesale businesses that both cook and sell cooked food;

(8) Consumer use of office equipment and products;

(9) Janitorial services and consumer use of janitorial products;

(10) Maintenance and repair activities, except for air pollution sources engaged in the business of maintaining and repairing equipment;

(11) Agricultural activities and forestry and silvicultural activities, including agricultural burning and forestry and silvicultural burning; and

(12) Open burning.

(d) *What are the requirements of this section?* Any person who owns or operates an air pollution source subject to this section, except for part 71 sources, must register the source with the Regional Administrator and submit reports as specified in paragraph (e) of this section. Any person who owns or operates a part 71 source must submit reports as specified in paragraph (f) of this section. All registration information and reports must be submitted on forms provided by the Regional Administrator.

(e) *Are there additional requirements that must be met?* Any person who owns or operates an air pollution source subject to this section, except for part 71 sources, must register an air pollution source and submit reports as follows:

(1) *Initial registration.* The owner or operator of an air pollution source that exists on the effective date of this section must register the air pollution source with the Regional Administrator by no later than February 15, 2007. The owner or operator of a new air pollution source must register with the Regional Administrator within 90 days after beginning operation. Submitting an initial registration does not relieve the owner or operator from the requirement to obtain a permit to construct if the new air pollution source would be a new source or modification subject to any Federal or Tribal permit to construct rule.

(2) *Annual registration.* After initial registration, the owner or operator of an air pollution source must re-register with the Regional Administrator by February 15 of each year. The annual registration must include all of the information required in the initial registration and must be updated to reflect any changes since the previous registration. For information that has not changed since the previous registration, the owner or operator may reaffirm in writing that the information previously furnished to the Regional Administrator is still correct.

(3) *Information to include in initial registration and annual registration.* Each initial registration and annual registration must include the following information if it applies:

(i) Name of the air pollution source and the nature of the business.

(ii) Street address, telephone number, and facsimile number of the air pollution source.

(iii) Name, mailing address, and telephone number of the owner or operator.

(iv) Name, mailing address, telephone number, and facsimile number of the local individual responsible for compliance with this section.

(v) Name and mailing address of the individual authorized to receive requests for data and information.

(vi) A description of the production processes, air pollution control equipment, and a related flow chart.

(vii) Identification of emission units and air pollutant-generating activities.

(viii) A plot plan showing the location of all emission units and air pol-

lutant-generating activities. The plot plan must also show the property lines of the air pollution source, the height above grade of each emission release point, and the distance and direction to the nearest residential or commercial property.

(ix) Type and quantity of fuels, including the sulfur content of fuels, used on a daily, annual, and maximum hourly basis.

(x) Type and quantity of raw materials used or final product produced on a daily, annual, and maximum hourly basis.

(xi) Typical operating schedule, including number of hours per day, number of days per week, and number of weeks per year.

(xii) Estimates of the total actual emissions from the air pollution source for the following air pollutants: particulate matter, PM10, PM2.5, sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), volatile organic compounds (VOC), lead (Pb) and lead compounds, ammonia (NH₃), fluorides (gaseous and particulate), sulfuric acid mist (H₂SO₄), hydrogen sulfide (H₂S), total reduced sulfur (TRS), and reduced sulfur compounds, including all calculations for the estimates.

(xiii) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions.

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

(4) *Procedure for estimating emissions.* The initial registration and annual registration must include an estimate of actual emissions taking into account equipment, operating conditions, and air pollution control measures. For an existing air pollution source that operated during the calendar year preceding the initial registration or annual registration submittal, the actual emissions are the actual rate of emissions for the preceding calendar year and must be calculated using the actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. For a new air pollution source that is submitting its initial registration, the actual emissions are the estimated actual rate of emissions for the

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current calendar year. The emission estimates must be based upon actual test data or, in the absence of such data, upon procedures acceptable to the Regional Administrator. Any emission estimates submitted to the Regional Administrator must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

- (i) Source-specific emission tests;
- (ii) Mass balance calculations;
- (iii) Published, verifiable emission factors that are applicable to the source;
- (iv) Other engineering calculations; or
- (v) Other procedures to estimate emissions specifically approved by the Regional Administrator.

(5) *Report of relocation.* After initial registration, the owner or operator of an air pollution source must report any relocation of the source to the Regional Administrator in writing no later than 30 days prior to the relocation of the source. The report must update the information required in paragraphs (e)(3)(i) through (e)(3)(v) and (e)(3)(viii) of this section, and any other information required by paragraph (e)(3) of this section if it will change as a result of the relocation. Submitting a report of relocation does not relieve the owner or operator from the requirement to obtain a permit to construct if the relocation of the air pollution source would be a new source or modification subject to any Federal or Tribal permit to construct rule.

(6) *Report of change of ownership.* After initial registration, the owner or operator of an air pollution source must report any change of ownership to the Regional Administrator in writing within 90 days after the change in ownership is effective. The report must update the information required in paragraphs (e)(3)(i) through (e)(3)(v) of this section, and any other information required by paragraph (e)(3) of this section if it would change as a result of the change of ownership.

(7) *Report of closure.* Except for regular seasonal closures, after initial registration, the owner or operator of an air pollution source must submit a report of closure to the Regional Admin-

istrator in writing within 90 days after the cessation of all operations at the air pollution source.

(8) *Certification of truth, accuracy, and completeness.* All registrations and reports must include a certification signed by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(f) *Requirements for part 71 sources.* The owner or operator of a part 71 source must submit an annual registration report that includes the information required by paragraphs (e)(3) and (e)(4) of this section. This annual registration report must be submitted with the annual emission report and fee calculation worksheet required by part 71 (or by the source's part 71 permit if a different date is specified in the permit). The owner or operator may submit a single combined report provided that the combined report clearly identifies which emissions are the basis for the annual registration report, the part 71 annual emission report, and the part 71 fee calculation worksheet. The first annual registration report for a part 71 source shall be submitted for calendar year 2006, or for the calendar year that the source became subject to part 71, whichever is later.

(g) *Definitions of terms used in this section.* The following terms that are used in this section are defined in §49.123 General provisions: Act, actual emissions, agricultural activities, air pollutant, air pollution source, ambient air, British thermal unit (Btu), emission, emission factor, emission unit, forestry or silvicultural activities, forestry or silvicultural burning, fuel, major source, marine vessel, mobile source, motor vehicle, new air pollution source, nonroad engine, nonroad vehicle, open burning, owner or operator, part 71 source, particulate matter, permit to construct, PM10, PM2.5, potential to emit, rated capacity, Regional Administrator, source, stack, stationary source, and uncombined water.

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§ 49.139 Rule for non-Title V operating permits.

(a) *What is the purpose of this section?* This section establishes a permitting program to provide for the establishment of Federally-enforceable requirements for air pollution sources within the Indian reservation.

(b) *Who is affected by this section?* (1) This section applies to:

(i) The owner or operator of any air pollution source who wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit;

(ii) Any air pollution source for which the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure compliance with the implementation plan; or

(iii) Any air pollution source for which the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment.

(2) To the extent allowed by 40 CFR part 71, or a Tribal operating permit program approved pursuant to 40 CFR part 70, a Title V operating permit may be used in lieu of an operating permit under this section to establish the limitations or requirements in paragraph (b)(1) of this section.

(c) *What are the procedures for obtaining an owner-requested operating permit?* (1) The owner or operator of an air pollution source who wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit must submit an application to the Regional Administrator requesting such limitation. The application must be submitted on forms provided by the Regional Administrator and contain the information specified in paragraph (d) of this section.

(2) Within 60 days after receipt of an application, the Regional Administrator will determine if it contains the information specified in paragraph (d) of this section and if so, will deem it complete for the purpose of preparing a draft permit to operate. If the Regional Administrator determines that the application is incomplete, it will be re-

turned to the owner or operator along with a description of the necessary information that must be submitted for the application to be deemed complete.

(3) The Regional Administrator will prepare a draft permit to operate and a draft technical support document that describes the proposed limitation and its effect on the actual emissions and/or potential to emit of the air pollution source.

(4) The Regional Administrator will provide a copy of the draft permit to operate and draft technical support document to the owner or operator of the air pollution source and will provide an opportunity for the owner or operator to meet with EPA and discuss the proposed limitations.

(5) The Regional Administrator will provide an opportunity for public comment on the draft permit to operate as follows:

(i) A copy of the draft permit to operate, the draft technical support document, the permit application, and all other supporting materials will be made available for public inspection in at least one location in the area affected by the air pollution source.

(ii) A notice will be made by prominent advertisement in a newspaper of general circulation in the area affected by the air pollution source of the availability of the draft permit to operate and supporting materials and of the opportunity to comment. Where possible, notices will also be made in the Tribal newspaper.

(iii) Copies of the notice will be provided to the owner or operator of the air pollution source, the Tribal governing body, and the Tribal, State, and local air pollution authorities having jurisdiction in areas outside of the Indian reservation potentially impacted by the air pollution source.

(iv) A 30-day period for submittal of public comments will be provided starting upon the date of publication of the notice. If requested, the Regional Administrator may hold a public hearing and/or extend the public comment period for up to an additional 30 days.

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(6) After the close of the public comment period, the Regional Administrator will review all comments received and prepare a final permit to operate and final technical support document. The final technical support document will include a response to all comments received during the public comment period.

(7) The final permit to operate and final technical support document will be sent to the owner or operator of the air pollution source and will be made available at all of the locations where the draft permit was made available. In addition, the final permit to operate and final technical support document will be sent to all persons who provided comments on the draft permit to operate.

(8) The final permit to operate will be a final agency action for purposes of administrative appeal and judicial review.

(d) *What must the owner or operator of an air pollution source include in an application for a Federally-enforceable limitation?* (1) The owner or operator of an air pollution source that wishes to obtain a Federally-enforceable limitation must submit to the Regional Administrator an application, on forms provided by the Regional Administrator, for a permit to operate that includes the following information:

(i) Name of the air pollution source and the nature of the business.

(ii) Street address, telephone number, and facsimile number of the air pollution source.

(iii) Name, mailing address, and telephone number of the owner or operator.

(iv) Name, mailing address, telephone number, and facsimile number of the local individual responsible for compliance with this section.

(v) Name and mailing address of the individual authorized to receive requests for data and information.

(vi) For each air pollutant and for all emission units and air pollutant-generating activities to be covered by a limitation:

(A) The proposed limitation and a description of its effect on actual emissions or the potential to emit. Proposed limitations may include, but are not limited to, emission limitations,

production limits, operational restrictions, fuel or raw material specifications, and/or requirements for installation and operation of emission controls. Proposed limitations must have a reasonably short averaging period, taking into consideration the operation of the air pollution source and the methods to be used for demonstrating compliance.

(B) Proposed testing, monitoring, recordkeeping, and reporting requirements to be used to demonstrate and assure compliance with the proposed limitation.

(C) A description of the production processes and a related flow chart.

(D) Identification of emission units and air pollutant-generating activities.

(E) Type and quantity of fuels and/or raw materials used.

(F) Description and estimated efficiency of air pollution control equipment under present or anticipated operating conditions.

(G) Estimates of the current actual emissions and current potential to emit, including all calculations for the estimates.

(H) Estimates of the allowable emissions and/or potential to emit that would result from compliance with the proposed limitation, including all calculations for the estimates.

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

(2) Estimates of actual emissions must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the Regional Administrator. Any emission estimates submitted to the Regional Administrator must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(i) Source-specific emission tests;

(ii) Mass balance calculations;

(iii) Published, verifiable emission factors that are applicable to the source;

(iv) Other engineering calculations; or

(v) Other procedures to estimate emissions specifically approved by the Regional Administrator.

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(3) All applications for a permit to operate must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(e) *What are the procedures that the Regional Administrator will follow to require an operating permit?* (1) Whenever the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure compliance with the implementation plan or to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment, the owner or operator of the air pollution source will be so notified in writing.

(2) The Regional Administrator may require that the owner or operator provide any information that the Regional Administrator determines is necessary to establish such requirements in a permit to operate under this section.

(3) The Regional Administrator will prepare a draft permit to operate and a draft technical support document that describes the reasons and need for the proposed requirements.

(4) The Regional Administrator will provide a copy of the draft permit to operate and draft technical support document to the owner or operator of the air pollution source and will provide an opportunity for the owner or operator to meet with EPA and discuss the proposed requirements.

(5) The Regional Administrator will provide an opportunity for public comment on the draft permit to operate as follows:

(i) A copy of the draft permit to operate, the draft technical support document, and all other supporting materials will be made available for public inspection in at least one location in the area affected by the air pollution source.

(ii) A notice will be made by prominent advertisement in a newspaper of general circulation in the area affected by the air pollution source of the availability of the draft permit to operate and supporting materials and of the op-

portunity to comment. Where possible, notices will also be made in the Tribal newspaper.

(iii) Copies of the notice will be provided to the owner or operator of the air pollution source, the Tribal governing body, and the Tribal, State, and local air pollution authorities having jurisdiction in areas outside of the Indian reservation potentially impacted by the air pollution source.

(iv) A 30-day period for submittal of public comments will be provided starting upon the date of publication of the notice. If requested, the Regional Administrator may hold a public hearing and/or extend the public comment period for up to an additional 30 days.

(6) After the close of the public comment period, the Regional Administrator will review all comments received and prepare a final permit to operate and final technical support document, unless the Regional Administrator determines that additional requirements are not necessary to ensure compliance with the implementation plan or to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment. The final technical support document will include a response to all comments received during the public comment period.

(7) The final permit to operate and final technical support document will be sent to the owner or operator of the air pollution source and will be made available at all of the locations where the draft permit was made available. In addition, the final permit to operate and final technical support document will be sent to all persons who provided comments on the draft permit to operate.

(8) The final permit to operate will be a final agency action for purposes of administrative appeal and judicial review.

(f) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Act, actual emissions, air pollutant, air pollution source, allowable emissions, ambient air, emission, emission factor, Federally enforceable, implementation plan,

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owner or operator, potential to emit, and Regional Administrator.

FEDERAL IMPLEMENTATION PLAN FOR OIL AND NATURAL GAS PRODUCTION FACILITIES, FORT BERTHOLD INDIAN RESERVATION (MANDAN, HIDATSA AND ARIKARA NATIONS) IN EPA REGION 8

§§ 49.140–49.150 [Reserved]

FEDERAL MINOR NEW SOURCE REVIEW PROGRAM IN INDIAN COUNTRY

SOURCE: 76 FR 38788, July 1, 2011, unless otherwise noted.

§ 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 satisfies the requirements of section 110(a)(2)(C) of the Act by establishing a pre-construction permitting program for all new and modified minor sources (minor sources) and minor modifications at major sources located in Indian country and by establishing a Federal Implementation Plan (§§ 49.101 through 49.105) for true minor sources in the oil and natural gas production and natural gas processing segments that are located in Indian country.

(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)

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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 all Indian reservation lands where no EPA-approved program is in place and all other areas of Indian country where no EPA-approved program is in place and over which an Indian tribe, or the EPA, has demonstrated that a tribe has jurisdiction, according to the implementation schedule in paragraphs (c)(1)(i) through (iii) of this section:

(i) *Existing major sources.* (A) If you wish to begin 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 beginning 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 begin 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 beginning 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 August 30, 2011. For these modifications, you need to obtain a permit pursuant to § 49.158 prior to beginning 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 § 49.152(d)), you must register your source with the Reviewing Authority in your area by March 1, 2013. If your true minor source is not engaged in an oil and natural gas activity and you commence construction after August

30, 2011, and before September 2, 2014, you must also register your source with the Reviewing Authority in your area within 90 days after the source begins operation. If your true minor source is engaged in an oil and natural gas activity and you commence construction after August 30, 2011, and before October 3, 2016, you must register your source with the Reviewing Authority in your area within 90 days after the source begins operation. You are exempt from these registration requirements if your true minor source is subject to § 49.138.

(B) If your true minor source is not engaged in an oil and natural gas activity and you wish to begin construction of a new true minor source or a minor modification at an existing true minor source on or after September 2, 2014, you must first obtain a permit pursuant to §§ 49.154 and 49.155 (or a general permit/permit by rule pursuant to § 49.156, if applicable). If your true minor source is an oil and natural gas source, as defined in § 49.102, and you wish to begin construction of a new true minor source or a minor modification at an existing true minor source on or after October 3, 2016, you must either comply with the Federal Implementation Plan for sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector that are located in Indian country (§§ 49.101 through 49.105) from the day you begin construction or opt out of those requirements pursuant to § 49.101(b)(2) and instead obtain a minor source permit pursuant to §§ 49.154 and 49.155 before beginning construction. Alternatively, you may be required by the EPA, pursuant to § 49.101(b)(3), to obtain a minor source permit pursuant to §§ 49.154 and 49.155 before beginning construction. All proposed new sources or modifications of existing sources are also 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

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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 begin 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 or complying with the Federal Implementation Plan at §§49.101 through 49.105 for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector, 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 or the Federal Implementation Plan for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector at §§49.101 through 49.105, 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 or compliance with the Federal Implementation Plan for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector at §§49.101 through 49.105 does not relieve you of the responsibility to comply fully with applicable provisions of any EPA-approved implementation plan or Federal Implementation Plan or any other requirements under applicable law.

(5) Nothing in this program prevents a Tribe from administering a minor

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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

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information necessary to make an informed decision has been provided.

[76 FR 38788, July 1, 2011, as amended at 79 FR 31043, May 30, 2014; 79 FR 34239, June 16, 2014; 80 FR 25090, May 1, 2015; 81 FR 9113, Feb. 24, 2016; 81 FR 35980, June 3, 2016]

§ 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.

Begin construction means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change. The following preparatory activities are excluded: Engineering and

design planning, geotechnical investigation (surface and subsurface explorations), clearing, grading, surveying, ordering of equipment and materials, storing of equipment or setting up temporary trailers to house construction management or staff and contractor personnel.

Commence construction means, as applied to a new minor stationary source or minor modification at an existing stationary source subject to this subpart, that the owner or operator has all necessary preconstruction approvals or permits and either has:

(i) Begun on-site activities including, but not limited to, installing building supports and foundations, laying underground piping or erecting/installing permanent storage structures. The following preparatory activities are excluded: Engineering and design planning, geotechnical investigation (surface and subsurface explorations), clearing, grading, surveying, ordering of equipment and materials, storing of equipment or setting up temporary trailers to house construction management or staff and contractor personnel; or

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

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.

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(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 as applied to this program:

(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 extin-

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guished, including rights-of-way running through the same.

(4) The geographic scope of applicability of this rule is as specified in §49.151(c)(1).

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.

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.

¹Under 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.

(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.

Startup of production is as defined at § 60.5430a.

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 reg-

ulated 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.

[76 FR 38788, July 1, 2011, as amended at 79 FR 31044, May 30, 2014; 81 FR 35980, June 3, 2016]

§ 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 for 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

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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, then you are subject to the pre-construction requirements of this program for that pollutant, except that sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector shall instead comply with the requirements of the Federal Implementation Plan at §§49.101 through 49.105, unless you opt-out of the Federal Implementation Plan pursuant to §49.101(b)(2) in which case you are subject to the pre-construction requirements of this program for that pollutant or are required by the EPA to obtain a minor source permit pursuant to §49.101(b)(3). If it is not, then proceed to Step 3 (paragraph (a)(1)(ii)(C) of this section).

(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, then you are subject to the pre-construction requirements of this program for that pollutant, except oil and natural gas production and natural gas processing sources shall instead comply with the requirements of the Federal Implementation Plan at §§49.101 through 49.105, unless you opt-out of

the Federal Implementation Plan pursuant to §49.101(b)(2) in which case you are subject to the pre-construction requirements of this program for that pollutant or are required by the EPA to obtain a minor source permit pursuant to §49.101(b)(3). If it is not, then proceed 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 begin 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 beginning 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 August 30, 2011. For these modifications, you need to obtain a permit pursuant to § 49.158 prior to beginning 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?* At a source that is otherwise subject to this program, this program does not apply to the following emissions units and activities that are listed in paragraphs (c)(1) through (12) of this section:

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(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) Cooking of food, except for wholesale businesses that both cook and sell cooked food.

(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.

(8) Single family residences and residential buildings with four or fewer dwelling units.

(9) Emergency generators, designed solely for the purpose of providing electrical power during power outages:

(i) In nonattainment areas classified as serious or lower, the total maximum manufacturer's site-rated horsepower of all units shall be below 500;

(ii) In attainment areas, the total maximum manufacturer's site-rated horsepower of all units shall be below 1,000.

(10) Stationary internal combustion engines with a manufacturer's site-rated horsepower of less than 50.

(11) Furnaces or boilers used for space heating that use only gaseous fuel, with a total maximum heat input (i.e., from all units combined) of:

(i) In nonattainment areas classified as Serious or lower, 5 million British thermal units per hour (MMBtu/hr) or less;

(ii) In nonattainment areas classified as Severe or Extreme, 2 million British thermal units per hour (MMBtu/hr) or less;

(iii) In attainment areas, 10 MMBtu/hr or less.

(12) Air conditioning units used for human comfort that do not exhaust air pollutants in the atmosphere from any manufacturing or other industrial processes.

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
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 ₂ S)	NA	2
Total reduced sulfur (including H ₂ S)	NA	2
Reduced sulfur compounds (including H ₂ S)	NA	2
Municipal waste combustor emissions	NA	2
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	NA	10

^aIf 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.

^bIn 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.

[76 FR 38788, July 1, 2011, as amended at 79 FR 31044, May 30, 2014; 81 FR 35980, June 3, 2016]

§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

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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.

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(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 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 (60 days for 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 (60 days for minor modifications at major sources), your application will be deemed complete.

(3) If, while processing an application that has been determined to be complete, the reviewing authority determines that additional information is necessary to evaluate or take final action on the application, it may request additional information from you and require your responses within a reasonable time period.

(4) Any permit application will be granted or denied no later than 135 days (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.

(c) *How will the reviewing authority determine the emission limitations that will be required in my permit?* After determining that your application is complete, the reviewing authority will conduct a case-by-case control technology review to determine the appropriate level of control, if any, necessary to assure that NAAQS are achieved, as well as the corresponding emission limitations for the affected emissions units at your source.

(1) In carrying out this case-by-case control technology review, the reviewing authority will consider the following factors:

- (i) Local air quality conditions.
- (ii) Typical control technology or other emissions reduction measures

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used by similar sources in surrounding areas.

(iii) Anticipated economic growth in the area.

(iv) Cost-effective emission reduction alternatives.

(2) The reviewing authority must require a numerical limit on the quantity, rate or concentration of emissions for each regulated NSR pollutant emitted by each affected emissions unit at your source for which such a limit is technically and economically feasible.

(3) 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 practices; operational standards; requirements relating to the operation or maintenance of the source or any combination thereof.

(4) The emission limitations required by the reviewing authority must assure that each affected emissions unit will comply with all requirements of parts 60, 61 and 63 of this chapter as well as any FIPs or TIPs that apply to the unit.

(5) The emission limitations required by the reviewing authority must not be affected in a manner by so much of a stack's height as exceeds good engineering practice or by any other dispersion technique, except as provided in §51.118(b) of this chapter. If the reviewing authority proposes to issue a permit to a source based on a good engineering practice stack height that exceeds the height allowed by §51.100(ii)(1) or (2) of this chapter, it must notify the public of the availability of the demonstration study and must provide opportunity for a public hearing according to the requirements of §49.157 for the draft permit.

(d) *When may the reviewing authority require an air quality impacts analysis (AQIA)?* Paragraphs (d)(1) through (3) of this section govern AQIA requirements under this program.

(1) If the reviewing authority 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, it may require you to conduct and submit an AQIA.

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(2) If required, you must conduct the AQIA using the dispersion models and procedures of part 51, Appendix W of this chapter.

(3) If the AQIA reveals that construction of your source or modification would cause or contribute to a NAAQS or PSD increment violation, the reviewing authority must require you to reduce or mitigate such impacts before it can issue you a permit.

§ 49.155 Permit requirements.

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

(a) *What information must my permit include?* Your permit must include the requirements in paragraphs (a)(1) through (7) of this section.

(1) *General requirements.* The permit must include the following elements:

(i) The effective date of the permit and the date by which you must commence construction in order for your permit to remain valid (*i.e.*, 18 months after the permit effective date).

(ii) The emissions units subject to the permit and their associated emission limitations.

(iii) Monitoring, recordkeeping, reporting and testing requirements to assure compliance with the emission limitations.

(2) *Emission limitations.* The permit must include the emission limitations determined by the reviewing authority under § 49.154(c) for each affected emissions unit. In addition, the permit must include an annual allowable emissions limit for each affected emissions unit and for each regulated NSR pollutant emitted by the unit if the unit is issued an enforceable emission limitation lower than the potential to emit of that unit.

(3) *Monitoring requirements.* The permit must include monitoring requirements sufficient to assure compliance with the emission limitations and annual allowable emissions limits that apply to the affected emissions units at your source. The reviewing authority may require, as appropriate, any of the requirements in paragraphs (a)(3)(i) and (ii) of this section.

(i) Any emissions monitoring, including analysis procedures, test methods, periodic testing, instrumental monitoring and non-instrumental monitoring. Such monitoring requirements shall assure use of test methods, units, averaging periods and other statistical conventions consistent with the required emission limitations.

(ii) As necessary, requirements concerning the use, maintenance and installation of monitoring equipment or methods.

(4) *Recordkeeping requirements.* The permit must include recordkeeping requirements sufficient to assure compliance with the emission limitations and monitoring requirements and it must require the elements in paragraphs (a)(4)(i) and (ii) of this section.

(i) Records of required monitoring information that include the information in paragraphs (a)(4)(i)(A) through (F) of this section, as appropriate.

(A) The location, date and time of sampling or measurements.

(B) The date(s) analyses were performed.

(C) The company or entity that performed the analyses.

(D) The analytical techniques or methods used.

(E) The results of such analyses.

(F) The operating conditions existing at the time of sampling or measurement.

(ii) Retention for 5 years of records of all required monitoring data and support information for the monitoring sample, measurement, report or application. Support information may include all calibration and maintenance records, all original strip-chart recordings or digital records for continuous monitoring instrumentation and copies of all reports required by the permit.

(5) *Reporting requirements.* The permit must include the reporting requirements in paragraphs (a)(5)(i) and (ii) of this section.

(i) Annual submittal of reports of monitoring required under paragraph (a)(3) of this section, including the type and frequency of monitoring and a summary of results obtained by monitoring.

(ii) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions

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as defined in the permit, the probable cause of such deviations and any corrective actions or preventive measures taken. Within the permit, the reviewing authority must define "prompt" in relation to the degree and type of deviation likely to occur and the applicable emission limitations.

(6) *Severability clause.* The permit must include 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.

(7) *Additional provisions.* The permit must also contain provisions stating the requirements in paragraphs (a)(7)(i) through (vii) of this section.

(i) You, as the permittee, must comply with all conditions of your permit, including emission limitations that apply to the affected emissions units at your source. Noncompliance with any permit term or condition is a violation of the permit and may constitute a violation of the Act and is grounds for enforcement action and for a permit termination or revocation.

(ii) Your permitted source must not cause or contribute to a NAAQS violation or in an attainment area, must not cause or contribute to a PSD increment violation.

(iii) It is not a defense for you, as the permittee, in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iv) The permit may be revised, reopened, revoked and reissued or terminated for cause. The filing of a request by you, as the permittee, for a permit revision, revocation and re-issuance or termination or of a notification of planned changes or anticipated non-compliance does not stay any permit condition.

(v) The permit does not convey any property rights of any sort or any exclusive privilege.

(vi) You, as the permittee, shall furnish to the reviewing authority, within a reasonable time, any information that the reviewing authority may request in writing to determine whether cause exists for revising, revoking and reissuing or terminating the permit or to determine compliance with the per-

mit. For any such information claimed to be confidential, you must also submit a claim of confidentiality in accordance with part 2, subpart B of this chapter.

(vii) Upon presentation of proper credentials, you, as the permittee, must allow a representative of the reviewing authority to:

(A) 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;

(B) Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;

(C) 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;

(D) Sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or other applicable requirements and

(E) Record any inspection by use of written, electronic, magnetic and photographic media.

(b) *Can my permit become invalid?* Your permit becomes invalid if you do not commence construction within 18 months after the effective date of your permit, if you discontinue construction for a period of 18 months or more or if you do not complete construction within a reasonable time. The reviewing authority may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; you must commence construction of each such phase within 18 months of the projected and approved commencement date.

§49.156 General permits and permits by rule.

This section applies to general permits/permits by rule for the purposes of complying with the preconstruction permitting requirements for sources of

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regulated NSR pollutants under this program.

(a) *What is a general permit?* A general permit is a preconstruction permit issued by a reviewing authority that may be applied to a number of similar emissions 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 case-by-case 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.

(b) *How will the reviewing authority issue general permits?* The reviewing authority will issue general permits as follows:

(1) A general permit may be issued 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.

(2) A general permit must be issued according to the applicable requirements in § 49.154(c), § 49.154(d) and § 49.155, the public participation requirements in § 49.157 and the requirements for final permit issuance and administrative and judicial review in § 49.159.

(3) Issuance of a general permit is considered final agency 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 (see paragraph (e) of this section) is the applicability of the general permit to that particular source.

(c) *For what categories will general permits be issued?* (1) The reviewing authority will determine which categories of individual emissions units, groups of similar emissions units or sources are appropriate for general permits in its area.

(2) General permits will be issued at the discretion of the reviewing authority.

(d) *What should the general permit contain?* The general permit must contain the permit elements listed in § 49.155(a). In addition, the general permit must contain the information listed in paragraphs (d)(1) and (2) of this section. The reviewing authority may specify additional general permit terms and conditions.

(1) Identification of the specific category of emissions units or sources to which the general permit applies, including any criteria that your emissions units or source must meet to be eligible for coverage under the general permit.

(2) Information required to request coverage under a general permit including, but not limited to, the following:

(i) The name and mailing address of the reviewing authority to whom you must submit your application.

(ii) The procedure to obtain any standard application forms that the reviewing authority may have developed.

(iii) The information that you must provide to the reviewing authority in your application to demonstrate that you are eligible for coverage under the general permit.

(iv) Other application requirements deemed necessary by the reviewing authority.

(e) *What are the procedures for obtaining coverage for a source under a general permit?* (1) If your source qualifies for a general permit, you may submit a Request for Coverage under that general permit to the reviewing authority upon the effective date of the general permit, generally 60 days after publication of the general permit in the FEDERAL REGISTER.

(2) At the time you submit your request for coverage under a general permit, you must submit a copy of such request to the Tribe in the area where the source is located.

(3) 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.

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(4) 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 your coverage request and you must submit such information within 15 days. If you do not submit the requested information within 15 days from 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.

(5) If the reviewing authority determines that your request for coverage under a general permit has all the relevant information and is complete, it 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 in paragraph (4) of this section, your request will be deemed complete.

(6) The reviewing authority will send you a letter notifying you of the approval or denial of your request for coverage under a general permit. 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.

(7) If the reviewing authority has sent a letter to you approving your request for coverage under a general permit, you must comply with all conditions and terms of the general permit. You will be subject to enforcement action for failure to obtain a preconstruction permit if you construct the emissions unit(s) or source with general permit approval and your source is later determined not to qualify for the conditions and terms of the general permit.

(8) Your permit becomes invalid if you do not commence construction within 18 months after the effective date of your request for coverage under a general permit, if you discontinue construction for a period of 18 months or more or if you do not complete construction within a reasonable time. The reviewing authority may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; you must commence construction of each such phase within 18 months of the projected and approved commencement date.

(9) Any source eligible to request coverage under a general permit may request to be excluded from the general permit by applying for a permit under § 49.154.

(f) *Permits by rule overview*—(1) *What is a permit by rule?* A permit by rule is a preconstruction permit issued by a reviewing authority that may be applied to a number of similar emissions units or sources within a designated category. The purpose of a permit by rule is to simplify the permit issuance process for similar facilities so that a reviewing authority's limited resources need not be expended for case-by-case permit development for such facilities. A permit by rule may be written to address a single emissions unit, a group of the same type of emissions units or an entire minor source. A source wishing to operate pursuant to a permit by rule must submit a Notification of Coverage Form to the reviewing authority prior to commencing construction or modification. Once a source submits the Notification of Coverage and the EPA posts it online, the source may

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commence construction or modification without further action by the reviewing authority.

(2) *When and where does a permit by rule apply?* The provisions of a permit by rule established under the authority of this section apply on reservations and other areas of Indian country for which a tribe, or EPA acting in a tribe's stead, has demonstrated that a tribe has jurisdiction and where there is no EPA-approved tribal minor NSR program and according to the following implementation schedule: Sources that qualify for a permit by rule and have completed and submitted to the reviewing authority and the tribe in the affected area that is covered under the permit by rule the required Notification of Coverage may commence construction of a new source or modification of an existing source after the reviewing authority has posted the Notification of Coverage Form online. If your source qualifies for a permit by rule, you may submit a Notification of Coverage Form under that permit by rule upon the effective date of the permit by rule, generally 60 days after publication of the permit by rule in the **FEDERAL REGISTER**.

(3) *How will the reviewing authority issue permits by rule?* The reviewing authority will issue permits by rule as follows:

(i) A permit by rule may be issued 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.

(ii) A permit by rule must be issued according to the applicable requirements in §§ 49.154(c) and (d) and 49.155.

(4) *For what source categories will source category permits by rule be issued?*

(i) The reviewing authority will determine at its discretion which categories of true minor sources are appropriate for coverage under a permit by rule.

(ii) Permits by rule will be issued at the discretion of the reviewing authority. Issuance of a permit by rule is considered final agency action with respect to all aspects of the permit by

rule except its applicability to an individual source. Permits by rule for additional source categories may be added in the future following the procedure set forth in paragraph (e)(3)(ii) of this section.

(iii) Permits by rule are currently available for the following source categories:

(A) Auto body repair and miscellaneous surface coating operations (§ 49.162).

(B) Petroleum dry cleaning facilities (§ 49.163).

(C) Gasoline dispensing facilities (§ 49.164).

(5) *What should the permit by rule contain?* A source category permit by rule must include the permit elements listed in § 49.155(a).

(6) *What procedures must you follow to obtain coverage for your source under a permit by rule?*

(i) You must determine whether your source is a true minor source by following the procedures outlined in § 49.153.

(ii) If you determine your source is a true minor source, then to be eligible to be covered by the permit you must be willing to accept the terms and conditions of the permit by rule, including emissions limits that are either directly expressed as limits or specified as an operational throughput limit or threshold.

(iii) Prior to submitting a completed Notification of Coverage to the reviewing authority notifying the reviewing authority that you are covered under a permit by rule, you must first submit documentation to the EPA (and to the tribe where the source is located/located) demonstrating that you have completed the screening processes specified for consideration of threatened and endangered species and historic properties and receive a determination from the EPA stating that you have satisfactorily completed these processes. (The processes are contained in the following document: "Procedures to Address Threatened and Endangered Species and Historic Properties for New or Modified True Minor Sources in Indian Country Seeking Air Quality Permits by Rule," <http://www.epa.gov/air/tribal/tribalnsr.html>.) Within 30 days of receipt of your documentation, by

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letter to you, the reviewing authority must provide a determination that: The documentation satisfactorily demonstrates completion of the threatened and endangered species and historic property processes; or the documentation is not adequate and additional information is needed. If the initial submittal is deficient, the reviewing authority will note any such deficiencies and may offer further direction on completing the screening process(es). Once you have addressed the noted deficiencies you must resubmit your threatened and endangered species and historic property screening procedure documentation for review. An additional 15-day review notification period will be used for the reviewing authority to determine whether the ESA/NHPA screening procedures have been satisfied. If they have, the reviewing authority will send you a letter so stating. You must obtain a letter from the reviewing authority indicating that the source has adequately completed the processes regarding threatened and endangered species and historic properties is necessary before you can qualify for coverage under the permit by rule.

(iv) If your source qualifies for a permit by rule and you choose to be covered under it, following notification from the EPA that you have satisfactorily completed the threatened and endangered species and historic property processes correctly, you may submit a Notification of Coverage to the reviewing authority beginning upon the effective date of the permit by rule, generally 60 days after publication of the permit by rule in the *FEDERAL REGISTER*. Submission of the completed Notification of Coverage to the reviewing authority satisfies the registration requirement of § 49.160(c)(1)(iii). The necessary forms for submitting a Notification of Coverage are available online at <http://www.epa.gov/air/tribal/tribalnsr.html>. You must also submit a copy of the Notification of Coverage to the tribe in the area where your source is locating or modifying.

(v) Upon receiving your Notification of Coverage, the notification will be posted on the reviewing authority's Web site, which is the relevant EPA Regional Office's Web site unless a

tribe has been delegated authority to implement the Federal Minor NSR Program in Indian Country rule. The posting of the Notification of Coverage Form is considered final agency action with respect to the permit by rule's applicability to an individual source. Appeals can only be made regarding the applicability of the permit by rule to an individual source or modification. Appeals must be made to the relevant U.S. Court of Appeals within 60 days of the EPA's final action.

(vi) Your source must comply with all terms and conditions of the relevant permit by rule. You will be subject to enforcement action for failure to obtain a preconstruction permit if the emissions unit(s) or source are constructed under coverage of a permit by rule and your source is later determined not to qualify for that permit by rule.

(vii) Coverage under a permit by rule becomes invalid if construction is not commenced within 18 months after the date of the posting of the Notification of Coverage under a source category permit by rule, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The reviewing authority may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; construction of each such phase must commence within 18 months of the projected and approved commencement date.

(viii) Any source eligible to request coverage under a permit by rule may instead choose to apply for a source specific permit under § 49.154 if they prefer not to be subject to the permit by rule's terms and conditions.

[76 FR 38788, July 1, 2011, as amended at 80 FR 25090, May 1, 2015]

§49.157 Public participation requirements.

This section applies to the issuance of minor source permits and synthetic minor source permits, the initial issuance of general permits and coverage of a particular source under a general permit.

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(a) *What permit information will be publicly available?* With the exception of any confidential information as defined in part 2, subpart B of this chapter, the reviewing authority must make available for public inspection the documents listed in paragraphs (a)(1) through (6) of this section. 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.

(1) All information submitted as part of your application for a permit.

(2) Any additional information requested by the reviewing authority.

(3) The reviewing authority's analysis of the application and any additional information you submitted, including (for preconstruction permits and the initial issuance of general permits) the control technology review.

(4) For minor source permits and the initial issuance of general permits, the reviewing authority's analysis of the effect of the construction of the minor source or modification on ambient air quality.

(5) For coverage of a particular source under a general permit, the reviewing authority's analysis of whether your particular emissions unit or source is within the category of emissions units or sources to which the general permit applies, including whether your emissions unit or source meets any criteria to be eligible for coverage under the general permit.

(6) A copy of the draft permit or the decision to deny the permit with the justification for denial.

(b) *How will the public be notified and participate?* (1) Before issuing a permit under this program, the reviewing authority must prepare a draft permit and must provide adequate public notice to ensure that the affected community and the general public have reasonable access to the application and draft permit information, as set out in paragraphs (b)(1)(i) and (ii) of this section. The public notice must provide an opportunity for public comment and notice of a public hearing, if any, on the draft permit.

(i) The reviewing authority must mail a copy of the notice to you, 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.

(ii) 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 (e.g., subsistence hunting and fishing or other seasonal cultural practices), the reviewing authority must use appropriate means of notification, such as those listed in paragraphs (b)(1)(ii)(A) through (E) of this section.

(A) The reviewing authority may mail or e-mail 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.

(B) The reviewing authority may post the notice on its Web site.

(C) The reviewing authority may publish 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.

(D) The reviewing authority may provide copies of the notice for posting at one or more locations in the area affected by the source, such as post offices, trading posts, libraries, Tribal environmental offices, community centers or other gathering places in the community.

(E) The reviewing authority may employ other means of notification as appropriate.

(2) The notice required pursuant to paragraph (b)(1) of this section must include the following information at a minimum:

(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) The name and address of the reviewing authority processing the permit action;

(iii) For minor source permits, the initial issuance of general permits and coverage of a particular source under a

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general permit, the regulated NSR pollutants to be emitted, the affected emissions units and the emission limitations for each affected emissions unit;

(iv) For minor source permits, the initial issuance of general permits and coverage of a particular source under a general permit, the emissions change involved in the permit action;

(v) For synthetic minor source permits, a description of the proposed limitation and its effect on the potential to emit of the source;

(vi) Instructions for requesting a public hearing;

(vii) The name, address and telephone number of a contact person in the reviewing authority's office from whom additional information may be obtained;

(viii) Locations and times of availability of the information (listed in paragraph (a) of this section) for public inspection and

(ix) A statement that any person may submit written comments, a written request for a public hearing or both, on the draft permit action. The reviewing authority must provide a period of at least 30 days from the date of the public notice for comments and for requests for a public hearing.

(c) *How will the public comment and will there be a public hearing?* (1) Any person may submit written comments on the draft permit and may request a public hearing. These comments must raise any reasonably ascertainable issue with supporting arguments by the close of the public comment period (including any public hearing). The reviewing authority must consider all comments in making the final decision. The reviewing authority must keep a record of the commenters and of the issues raised during the public participation process and such records must be available to the public.

(2) The reviewing authority must extend the public comment period under paragraph (b) of this section to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(3) A request for a public hearing must be in writing and must state the

nature of the issues proposed to be raised at the hearing.

(4) The reviewing authority must hold a hearing whenever there is, on the basis of requests, a significant degree of public interest in a draft permit. The reviewing authority may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision. The reviewing authority must provide notice of any public hearing at least 30 days prior to the date of the hearing. Public notice of the hearing may be concurrent with that of the draft permit and the two notices may be combined. Reasonable limits may be set upon the time allowed for oral statements at the hearing.

(5) The reviewing authority must make a tape recording or written transcript of any hearing available to the public.

§49.158 Synthetic minor source permits.

You may obtain a synthetic minor source permit under this program to establish a synthetic minor source for purposes of the applicable PSD, non-attainment major NSR or Clean Air Act title V program and/or a synthetic minor HAP source for purposes of part 63 of the Act or the applicable Clean Air Act title V program. Any source that becomes a synthetic minor source 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, remains subject to the applicable title V program. Note that if you propose to construct or modify a synthetic minor source, you are also subject to the preconstruction permitting requirements in §§49.154 and 49.155, except for the permit application content and permit application completeness provisions included in §49.154(a)(2) and §49.154(b).

(a) *What information must my synthetic minor source permit application contain?*

(1) Your application must include the following information:

(i) Identifying information, including your name and address (and plant name and address if different) and the

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name and telephone number of the plant manager/contact.

(ii) For each regulated NSR pollutant and/or HAP and for all emissions units to be covered by an emissions limitation, the following information:

(A) The proposed emission limitation and a description of its effect on actual emissions or the potential to emit. Proposed emission limitations must have a reasonably short averaging period, taking into consideration the operation of the source and the methods to be used for demonstrating compliance.

(B) Proposed testing, monitoring, recordkeeping and reporting requirements to be used to demonstrate and assure compliance with the proposed limitation.

(C) A description of the production processes.

(D) Identification of the emissions units.

(E) Type and quantity of fuels and/or raw materials used.

(F) Description and estimated efficiency of air pollution control equipment under present or anticipated operating conditions.

(G) Estimates of the current actual emissions and current potential to emit, including all calculations for the estimates.

(H) Estimates of the allowable emissions and/or potential to emit that would result from compliance with the proposed limitation, including all calculations for the estimates.

(iii) Any other information specifically requested by the reviewing authority.

(2) Estimates of actual emissions must be based upon actual test data or in the absence of such data, upon procedures acceptable to the reviewing authority. Any emission estimates submitted to the reviewing authority must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(i) Source-specific emission tests;

(ii) Mass balance calculations;

(iii) Published, verifiable emission factors that are applicable to the source;

(iv) Other engineering calculations or

(v) Other procedures to estimate emissions specifically approved by the reviewing authority.

(b) *What are the procedures for obtaining a synthetic minor source permit?*

(1) If you wish to obtain a synthetic minor source permit under this program, you must submit a permit application to the reviewing authority. The application must contain the information specified in paragraph (a) of this section.

(2) Within 60 days after receipt of an application, the reviewing authority will determine if it contains the information specified in paragraph (a) of this section.

(3) 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. 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 will be deemed complete.

(4) The reviewing authority will prepare a draft synthetic minor source permit that describes the proposed limitation and its effect on the potential to emit of the source.

(5) The reviewing authority must provide an opportunity for public participation and public comment on the draft synthetic minor source permit as set out in § 49.157.

(6) After the close of the public comment period, the reviewing authority will review all comments received and prepare a final synthetic minor source permit.

(7) The final synthetic minor source 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.

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(8) The final synthetic minor source permit will be issued and will be subject to administrative and judicial review as set out in §49.159.

(c) *What are my responsibilities under this program for my source that already has synthetic minor source or synthetic minor HAP source status prior to the effective date of this rule (that is, prior to August 30, 2011)?*

(1) 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 August 30, 2011. For these modifications, you need to obtain a permit pursuant to §49.158 before you begin construction.

(2) 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 do any of the following:

(i) Allow you to maintain the synthetic minor status for your source through your permit under part 71 of this chapter, including subsequent renewals of that permit.

(ii) Require you to submit an application for a synthetic minor source permit under this program by September 4, 2012, subject to the provisions in paragraphs (a) and (c)(4)(i) through (iii) of this section. The reviewing authority also has the discretion to require any additional requirements, including control technology requirements, based on the specific circumstances of the source.

(iii) Require you to submit an application for a synthetic minor source permit under this program at the same time that you apply to renew your permit under part 71 of this chapter, subject to the provisions in paragraphs (a) and (c)(4)(i) through (iii) of this section. The reviewing authority also has the discretion to require any additional requirements, including control tech-

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nology requirements, based on the specific circumstances of the source.

(3) 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) and (c)(2) of this section, you must submit an application for a synthetic minor source permit under this program by September 4, 2012, subject to the provisions in paragraphs (a) and (c)(4)(i) through (iii) of this section

(4) If you are required to obtain a synthetic minor source permit under this program for your existing synthetic minor source and/or synthetic minor HAP source, the following provisions apply:

(i) After submitting your synthetic minor source permit application, you must respond in a timely manner to any requests from the reviewing authority for additional information.

(ii) Provided that you submit your application as required in paragraph (c)(2)(ii), (c)(2)(iii) or (c)(3) (as applicable) and any requested additional information as required in paragraph (c)(4)(i) of this section, 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. Issuance of your synthetic minor source permit under this program will be in accordance with the applicable requirements in §§49.154 and 49.155 and all other provisions under this section.

(iii) Should you fail to submit your application as required in paragraph (c)(2)(ii), (c)(2)(iii) or (c)(3) (as applicable) or any requested additional information as required in paragraph (c)(4)(i) of this section, 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. In the case of sources subject to section (c)(2)(iii) of this section, the renewed part 71 permit will not contain enforceable emissions limitations and instead will include applicable major source requirements.

[76 FR 38788, July 1, 2011, as amended at 79 FR 31044, May 30, 2014]

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§ 49.159 Final permit issuance and administrative and judicial review.

(a) *How will final action occur and when will my permit become effective?* After decision on a permit, the reviewing authority must notify you of the decision, in writing and if the permit is denied, of the reasons for such denial and the procedures for appeal. 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 according to 49.157(b)(1), for synthetic minor sources and minor modifications at major sources and according to one or more of the provisions in § 49.157(b)(1)(ii)(A)–(E) for site-specific permits. A final permit becomes effective 30 days after service of notice of the final permit decision, unless:

(1) A later effective date is specified in the permit or

(2) Review of the final permit is requested under paragraph (d) of this section (in which case the specific terms and conditions of the permit that are the subject of the request for review must be stayed) or

(3) The reviewing authority may make the permit effective immediately upon issuance if no comments requested a change in the draft permit or a denial of the permit.

(b) *For how long will the reviewing authority retain my permit-related records?* 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 not less than 5 years.

(c) *What is the administrative record for each final permit?*

(1) The reviewing authority must base final permit decisions on an administrative record consisting of:

(i) The application and any supporting data furnished by you, the permit applicant;

(ii) The draft permit or notice of intent to deny the application;

(iii) Other documents in the supporting files for the draft permit that were relied upon in the decision-making;

(iv) All comments received during the public comment period, including any extension or reopening;

(v) The tape or transcript of any hearing(s) held;

(vi) Any written material submitted at such a hearing;

(vii) Any new materials placed in the record as a result of the reviewing authority's evaluation of public comments;

(viii) The final permit and

(ix) Other documents in the supporting files for the final permit that were relied upon in the decision-making.

(2) The additional documents required under paragraph (c)(1) of this section should be added to the record as soon as possible after their receipt or preparation by the reviewing authority. The record must be complete on the date the final permit is issued.

(3) Material readily available or published materials that are generally available and that are included in the administrative record under the standards of paragraph (c)(1) of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in that file.

(d) *Can permit decisions be appealed?*

Permit decisions may be appealed according to the following provisions:

(1) The Administrator delegates authority to the Environmental Appeals Board (the Board) to issue final decisions in permit appeals filed under this program. An appeal directed to the Administrator, rather than to the Board, will not be considered. This delegation does not preclude the Board from referring an appeal or a motion under this program to the Administrator when the Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Board, all parties shall be so notified and the provisions of this program referring to the Board shall be interpreted as referring to the Administrator.

(2) Within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hearing may petition the Board to review any condition of the permit decision.

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Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent that the changes from the draft to the final permit or other new grounds were not reasonably ascertainable during the public comment period on the draft permit. The 30-day period within which a person may request review under this section begins with the service of notice of the final permit decision, unless a later date is specified in that notice.

(3) The petition must include a statement of the reasons supporting the review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations, unless the petitioner demonstrates that such objections were not reasonably ascertainable within such period and, when appropriate, a showing that the condition in question is based on:

- (i) A finding of fact or conclusion of law that is clearly erroneous or
- (ii) An exercise of discretion or an important policy consideration that the Board should, in its discretion, review.

(4) The Board may also decide on its own initiative to review any condition of any permit issued under this program.

(5) Within a reasonable time following the filing of the petition for review, the Board will issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. If the Board grants review in response to requests under paragraph (d)(2)-(3) or (4) of this section, public notice must be given as provided in §49.157(b). Public notice must set forth a briefing schedule for the appeal and must state that any interested person may file an amicus brief. If the Board denies review, you, the permit applicant and the person(s) requesting review must be notified through means that are adequate to assure reasonable access to the decision, which may include mailing a notice to each party.

(6) The reviewing authority, at any time prior to the rendering of a deci-

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sion under paragraph (d)(5) of this section to grant or deny review of a permit decision, may, upon notification to the Board and any interested parties, withdraw the permit and prepare a new draft permit addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this subpart and in accordance with §49.157.

(7) A petition to the Board under paragraph (d)(2) of this section is, under section 307(b) of the Act, a prerequisite to seeking judicial review of the final agency action.

(8) For purposes of judicial review, final agency action occurs when a final permit is issued or denied by the reviewing authority and agency review procedures are exhausted. A final permit decision will be issued by the reviewing authority:

(i) When the Board issues notice to the parties that review has been denied;

(ii) When the Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(9) Motions to reconsider a final order must be filed within 10 days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision must be directed to and decided by, the Board. Motions for reconsideration directed to the Administrator, rather than to the Board, will not be considered, except in cases the Board has referred to the Administrator pursuant to §49.159(d)(1) and in which the Administrator has issued the final order. A motion for reconsideration will not stay the effective date of the final order unless specifically so ordered by the Board.

(10) For purposes of this section, time periods are computed as follows:

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(i) Any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event.

(ii) Any time period scheduled to begin before the occurrence of an act or event must be computed so that the period ends on the day before the act or event, except as otherwise provided.

(iii) If the final day of any time period falls on a weekend or legal holiday, the time period must be extended to the next working day.

(iv) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days must be added to the prescribed time.

(e) *Can my permit be reopened?* The reviewing authority may reopen an existing, currently-in-effect permit for cause on its own initiative, such as if it 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, calculation and other errors, all other permit reopenings shall be carried out after the opportunity of public notice and comment and in accordance with one or more of the public participation requirements under § 49.157(b)(1)(ii).

(f) *What is an administrative permit revision?* The following provisions govern administrative permit revisions.

(1) An administrative permit revision is a permit revision that makes any of the following changes:

(i) Corrects typographical errors.

(ii) Identifies a change in the name, address or phone number of any person identified in the permit or provides a similar minor administrative change at the source.

(iii) Requires more frequent monitoring or reporting by the permittee.

(iv) Allows for a change in ownership or operational control of a source where the reviewing authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittee has

been submitted to the reviewing authority.

(v) Establishes 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.

(vi) Incorporates any other type of change that the reviewing authority has determined to be similar to those in paragraphs (f)(1)(i) through (v) of this section.

(2) An administrative permit revision is not subject to the permit application, issuance, public participation or administrative and judicial review requirements of this program.

§ 49.160 Registration program for minor sources in Indian country.

(a) *Does this section apply to my source?* This section applies to you if you are the owner/operator of a true minor source.

(b) *What is exempted from this section?* The exemptions in paragraphs (b)(1) and (b)(2) of this section apply to the registration program of this section.

(1) You are exempt from this registration program if any of the following paragraphs applies to your source:

(i) Your source is subject to the registration requirements under § 49.138—“Rule for the registration of air pollution sources and the reporting of emissions.”

(ii) Your source has a part 71 permit.

(iii) Your source is a synthetic minor source or a synthetic minor HAP source or a minor modification at a major source as defined in § 49.152(d).

(2) For purposes of determining the potential to emit, allowable or actual emissions of your source, you are not required to include emissions from the exempted emissions units and activities listed in § 49.153(c).

(c) *What are the requirements for registering your minor source?* The requirements for registrations are as follows:

(1) *Due date.* The due date of your source registration varies according to the following paragraphs:

(i) If you own or operate an existing true minor source (as defined in 40 CFR 49.152(d)), you must register your

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source with the reviewing authority by March 1, 2013.

(ii) If your true minor source is not engaged in an oil and natural gas activity, and you commence construction after August 30, 2011, and before September 2, 2014, then you must register your source with the Reviewing Authority within 90 days after the source begins operation. If your new true minor source or minor modification of an existing true minor source is engaged in an oil and natural gas activity, and you commence construction after August 30, 2011, and before October 3, 2016, then you must register your source with the Reviewing Authority within 90 days after the source begins operation.

(iii) If your true minor source is not engaged in an oil and natural gas activity, and you commence construction or modification of your source on or after September 2, 2014, and your source is subject to this rule, then 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 the registration requirements described in paragraph (c)(2) of this section. If your true minor source is engaged in an oil and natural gas activity, and you commence construction or modification of your source on or after October 3, 2016, then you must report your source's actual emissions (if available) as part of your permit application (source-specific permits), unless you are subject to the Federal Implementation Plan under §§49.101 through 49.105 (where the requirements under paragraph (c)(1)(iv) of this section shall be met). Your permit application for oil and natural gas production and natural gas processing sources seeking a source-specific permit will be used to fulfill the registration requirements described in paragraph (c)(2) of this section.

(iv) Minor sources complying with §§49.101 through 49.105 for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector, as defined in §49.102, must submit, at least 30 days prior to beginning construction, the Part 1 Registration Form containing the information in paragraph (c)(2) of this section. The Part 2 Registration Form, includ-

ing emissions information, must be submitted within 60 days after the startup of production as defined in §49.152(d). The source must determine the potential for emissions within 30 days after startup of production.

The combination of the Part 1 and Part 2 Registration Forms submittals satisfies the requirements in paragraph (c)(2) of this section. These forms are submitted to the EPA instead of the application form required in paragraph (c)(1)(iii) of this section. The forms are available at: <https://www.epa.gov/tribal-air/tribal-minor-new-source-review> or from the EPA Regional Offices.

(2) *Content.* You must submit all registration information on forms provided by the reviewing authority. Each registration must include the following information, as applicable:

(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 emissions units (with the exception of the exempt emissions units and activities listed in §49.153(c)).

(iv) For each emissions unit that is listed, both the allowable and estimated actual annual emissions 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 §51, Appendix S, paragraph II.A.4(iii) or §52.21(b)(1)(iii) of this chapter), with supporting documentation.

(v) The following information: Fuels, fuel use, raw materials, production rates and operating schedules.

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

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

(viii) Any other information specifically requested by the reviewing authority.

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(3) *Procedure for estimating emissions.* Your registration should include potential to emit or estimates of the allowable and actual emissions, in tpy, of each regulated NSR pollutant for each emissions unit at the source.

(i) Estimates of allowable emissions must be consistent with the definition of that term in §49.152(d). Allowable emissions must be calculated based on 8,760 operating hours per year (*i.e.*, operating 24 hours per day, 365 days per year) unless the reviewing authority approves a different number of annual operating hours as the basis for the calculation.

(ii) Estimates of actual emissions must take into account equipment, operating conditions and air pollution control measures. For a source that operated during the entire calendar year preceding the initial registration submittal, the reported actual emissions typically should be the annual emissions for the preceding calendar year, calculated using the actual operating hours, production rates, in-place control equipment and types of materials processed, stored or combusted during the preceding calendar year. However, if you believe that the actual emissions in the preceding calendar year are not representative of the emissions that your source will actually emit in coming years, you may submit an estimate of projected actual emissions along with the actual emissions from the preceding calendar year and the rationale for the projected actual emissions. For a source that has not operated for an entire year, the actual emissions are the estimated annual emissions for the current calendar year.

(iii) The allowable and actual emission estimates must be based upon actual test data or, in the absence of such data, upon procedures acceptable to the reviewing authority. Any emission estimates submitted to the reviewing authority must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

- (i) Source-specific emission tests;
- (ii) Mass balance calculations;
- (iii) Published, verifiable emission factors that are applicable to the source;

(iv) Other engineering calculations or
(v) Other procedures to estimate emissions specifically approved by the Regional Administrator.

(4) *Duty to obtain a permit or to comply with the Federal Implementation Plan for sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector.* Submitting a registration form does not relieve you of the requirement to obtain any required permit, including a pre-construction permit, or to comply with the Federal Implementation Plan for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector if your source or any physical or operational change at your source would be subject to any minor or major NSR rule.

(d) *What are the requirements for additional reports?* After you have registered your source, you must submit the following additional reports, when applicable:

(1) *Report of relocation.* After your source has been registered, you must report any relocation of your source to the reviewing authority in writing no later than 30 days prior to the relocation of the source. Unless otherwise specified in an existing permit, a report of relocation shall be provided as specified in paragraph (d)(1)(i) or (ii) of this section, as applicable. In either case, the permit application for the new location satisfies the report of relocation requirement.

(i) Where the relocation results in a change in the reviewing authority for your source, you must submit a report of relocation to the current reviewing authority and a permit application to the new reviewing authority.

(ii) Where the reviewing authority remains the same, a report of relocation is fulfilled through the permit application for the new location.

(2) *Report of change of ownership.* After your source has been registered, the new owner/operator must report any change of ownership of a source to the reviewing authority in writing within 90 days after the change in ownership is effective.

(3) *Report of closure.* Except for regular seasonal closures, after your source has been registered, you must

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submit a report of closure to the reviewing authority in writing within 90 days after the cessation of all operations at your source.

[76 FR 38788, July 1, 2011, as amended at 79 FR 31045, May 30, 2014; 79 FR 34239, June 16, 2014; 81 FR 9113, Feb. 24, 2016; 81 FR 35981, June 3, 2016; 85 FR 15733, Mar. 19, 2020]

§ 49.161 Administration and delegation of the minor NSR program in Indian country.

(a) Who administers a minor NSR program in Indian country?

(1) If the Administrator has approved a TIP that includes a minor NSR program for sources in Indian country that meets the requirements of section 110(a)(2)(C) of the Act and §§ 51.160 through 51.164 of this chapter, the Tribe is the reviewing authority and it will administer the approved minor NSR program under Tribal law.

(2) If the Administrator has not approved an implementation plan, the Administrator may delegate the authority to assist EPA with administration of portions of this Federal minor NSR program implemented under Federal authority to a Tribal agency upon request, in accordance with the provisions of paragraph (b) of this section. If the Tribal agency has been granted such delegation, it will have the authority to assist EPA according to paragraph (b) of this section and it will be the reviewing authority for purposes of the provisions for which it has been granted delegation.

(3) If the Administrator has not approved an implementation plan or granted delegation to a Tribal agency, the Administrator is the reviewing authority and will directly administer all aspects of this Federal minor NSR program in Indian country under Federal authority.

(b) *Delegation of administration of the Federal minor NSR program to Tribes.* This paragraph (b) establishes the process by which the Administrator may delegate authority to a Tribal agency, with or without signature authority, to assist EPA with administration of portions of this Federal minor NSR program, in accordance with the provisions in paragraphs (b)(1) through (8) of this section. Any Federal requirements under this program that are adminis-

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tered by the delegate Tribal agency will be subject to enforcement by EPA under Federal law. This section provides for administrative delegation of the Federal minor NSR program and does not affect the eligibility criteria under §49.6 for treatment in the same manner as a state.

(1) *Information to be included in the Administrative Delegation Request.* In order to be delegated authority to assist EPA with administration of this FIP permit program for sources, the Tribal agency must submit a request to the Administrator that:

(i) Identifies the specific provisions for which delegation is requested;

(ii) Identifies the Indian Reservation or other areas of Indian country for which delegation is requested;

(iii) Includes a statement by the applicant's legal counsel (or equivalent official) that includes the following information:

(A) A statement that the applicant is a Tribe recognized by the Secretary of the Interior;

(B) A descriptive statement that is consistent with the type of information described in §49.7(a)(2) demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area and

(C) A description of the laws of the Tribe that provide adequate authority to administer the Federal rules and provisions for which delegation is requested and

(iv) A demonstration that the Tribal agency has the technical capability and adequate resources to administer the FIP provisions for which the delegation is requested.

(2) *Delegation of Partial Administrative Authority Agreement.* A Delegation of Partial Administrative Authority Agreement (Agreement) will set forth the terms and conditions of the delegation, will specify the provisions that the delegate Tribal agency will be authorized to implement on behalf of EPA and will be entered into by the Administrator and the delegate Tribal agency. The Agreement will become effective upon the date that both the Administrator and the delegate Tribal agency have signed the Agreement or as otherwise stated in the Agreement. Once the delegation becomes effective,

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the delegate Tribal agency will be responsible, to the extent specified in the Agreement, for assisting EPA with administration of the provisions of the Federal minor NSR program that are subject to the Agreement.

(3) *Publication of notice of the Agreement.* The Administrator will publish a notice in the *FEDERAL REGISTER* informing the public of any Agreement for a particular area of Indian country. The Administrator also will publish the notice in a newspaper of general circulation in the area affected by the delegation. In addition, the Administrator will mail a copy of the notice to persons on a mailing list developed by the Administrator consisting of those persons who have requested to be placed on such a mailing list.

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

(5) *Transmission of information to the Administrator.* When administration of a portion of the Federal minor NSR program in Indian country that includes receipt of permit application materials and preparation of draft permits has been delegated in accordance with the provisions of this section, the delegate Tribal agency must provide to the Administrator a copy of each permit application (including any application for permit revision) and each draft permit. You, the permit applicant, may be required by the delegate Tribal agency to provide a copy of the permit application directly to the Administrator. With the Administrator's consent, the delegate Tribal agency may submit to the Administrator a permit application summary form and any relevant portion of the permit application, in place of the complete permit application. To the extent practicable, the preceding information should be provided in electronic format by the delegate Tribal agency or by you, the permit applicant, as applicable and as requested by the Administrator. The delegate Tribal agency must also submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the delegate Tribal agency is imple-

menting and administering the delegated program in compliance with the requirements of the Act and of this program.

(6) *Waiver of information transmission requirements.* The Administrator may waive the requirements of paragraph (b)(5) of this section for any category of sources (including any class, type or size within such category) by transmitting the waiver in writing to the delegate Tribal agency.

(7) *Retention of records.* Where a delegate Tribal agency prepares draft or final permits or receives applications for permit revisions on behalf of EPA, the records for each draft and final permit or application for permit revision must be kept by the delegate Tribal agency for a period not less than 3 years.

(8) *Delegation of signature authority.* To receive delegation of signature authority, the legal statement submitted by the Tribal agency pursuant to paragraph (b)(1) of this section must certify that no applicable provision of Tribal law requires that a minor NSR permit be issued after a certain time if the delegate Tribal agency has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit).

(c) *Are there any non-delegable elements of the Federal minor NSR program in Indian country?* The following authorities cannot be delegated outside of EPA:

(1) The Administrator's authority to object to the issuance of a minor NSR permit.

(2) The Administrator's authority to enforce permits issued pursuant to this program.

(d) *How will EPA transition its authority to an approved minor NSR program?*

(1) The Administrator will suspend the issuance of minor NSR permits under this program promptly upon publication of notice of approval of a Tribal implementation plan with a minor NSR permit program for that area.

(2) The Administrator may retain jurisdiction over the permits for which the administrative or judicial review process is not complete and will address this issue in the notice of program approval.

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(3) After approval of a program for issuing minor NSR permits and the suspension of issuance of minor NSR permits by the Administrator, the Administrator will continue to administer minor NSR permits until permits are issued under the approved Tribal implementation plan program.

(4) 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.

§ 49.162 Air quality permit by rule for new or modified true minor source auto body repair and miscellaneous surface coating operations in Indian country.

(a) Abbreviations and acronyms:

CAA or the Act Federal Clean Air Act
cc cubic centimeters
CFR Code of Federal Regulations
CO Carbon Monoxide
EPA United States Environmental Protection Agency
g/L grams per liter
lb/gal pounds per gallon
MSDS Material Safety Data Sheet
NAAQS National Ambient Air Quality Standards
NO_x Oxides of Nitrogen
NSR New Source Review
PSD Prevention of Significant Deterioration
VOC Volatile Organic Compounds

(b) Definitions for the purposes of this permit by rule—(1) *Adhesion promoter* means a coating, which is labeled and formulated to be applied to uncoated plastic surfaces to facilitate bonding of subsequent coatings, and on which, a subsequent coating is applied.

(2) *Airless and air-assisted airless spray* mean any paint spray technology that relies solely on the fluid pressure of the paint to create an atomized paint spray pattern and does not apply any atomizing compressed air to the paint before it leaves the paint nozzle. Air-assisted airless spray uses compressed air to shape and distribute the fan of atomized paint, but still uses fluid pressure to create the atomized paint.

(3) *Cause* means with respect to the reviewing authority's ability to terminate a permitted source's coverage under a permit by rule that:

(i) The permittee is not in compliance with the provisions of this permit by rule;

(ii) The reviewing authority determines that the emissions resulting from the construction or modification of the permitted source significantly contribute to NAAQS violations, which are not adequately addressed by the requirements in this permit by rule;

(iii) The reviewing authority has reason to believe that the permittee obtained coverage under the permit by rule by fraud or misrepresentation; or

(iv) The permittee failed to disclose a material fact required by the Notification of Coverage or the requirements applicable to the permitted source of which the applicant had or should have had knowledge at the time the permittee submitted the Notification of Coverage.

(4) *Clear coating* means any coating that contains no pigments and is labeled and formulated for application over a color coating or clear coating.

(5) *Cold cleaning solvent makeup* means the gallons of gross cold cleaning solvent usage minus the gallons of solvent disposed of as waste solvent.

(6) *Construction* means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of an affected emissions unit that would result in a change of emissions.

(7) *Color coating* means any pigmented coating, excluding adhesion promoters, primers, and multi-color coatings, that requires a subsequent clear coating and which is applied over a primer or adhesion promoter. Color coatings include metallic/iridescent color coatings.

(8) *Electrostatic application* means any method of coating application where an electrostatic attraction is created between the part to be coated and the atomized paint particles.

(9) *Freeboard area* means the air space in a batch-loaded cold cleaner that extends from the liquid surface to the top of the tank.

(10) *Freeboard height* means the distance from the top of the solvent to the top of the tank for batch-loaded cold cleaners.

(11) *Freeboard ratio* means the ratio of the solvent cleaning machine freeboard

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height to the smaller interior dimension (length, width, or diameter) of the solvent cleaning machine.

(12) *Halogenated Hazardous Air Pollutant (HAP) solvent* means methylene chloride (CAS No. 75-09-2), perchloroethylene (CAS No. 127-18-4), trichloroethylene (CAS No. 79-01-6), 1,1,1-trichloroethane (CAS No. 71-55-6), carbon tetrachloride (CAS No. 56-23-5), and/or chloroform (CAS No. 67-66-3).

(13) *High-volume, low-pressure (HVLP) spray equipment* means spray equipment that is permanently labeled as such and used to apply any coating by means of a spray gun which is designed and operated between 0.1 and 10 pounds per square inch gauge (psig) air atomizing pressure measured dynamically at the center of the air cap and at the air horns.

(14) *Liquid leak* means a VOC-containing liquid leak from the degreaser at a rate of three drops per minute or more or any visible liquid mist.

(15) *Multi-color coating* means any coating that exhibits more than one color in the dried film after a single application, is packaged in a single container, and hides surface defects on areas of heavy use, and which is applied over a primer or adhesion promoter.

(16) *Notification of Coverage* means the permit notification that contains all the information required in the standard notification form for this permit by rule.

(17) *One-component coating* means a coating that is ready for application as it comes out of its container to form an acceptable dry film. A thinner necessary to reduce the viscosity is not considered a component.

(18) *Permittee* means the owner or operator of a permitted source.

(19) *Permitted source* means each auto body repair and miscellaneous surface coating operation for which a source submits a complete Notification of Coverage.

(20) *Pretreatment coating* means any coating that contains a minimum of one-half (0.5) percent acid by weight and not more than 16 percent solids by weight necessary to provide surface etching and is labeled and formulated for application directly to bare metal

surfaces to provide corrosion resistance and adhesion.

(21) *Primer* means any coating, which is labeled and formulated for application to a substrate to provide:

- (i) A bond between the substrate and subsequent coats;
- (ii) Corrosion resistance;
- (iii) A smooth substrate surface; or
- (iv) Resistance to penetration of subsequent coats, and on which a subsequent coating is applied.

Primers may be pigmented.

(22) *Responsible official* means one of the following:

(i) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is directly responsible for the overall operation of the permitted source.

(ii) For a partnership or sole proprietorship: A general partner or the proprietor, respectively.

(iii) For a public agency: Either a principal executive officer or ranking elected official, such as a chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(23) *Single-stage coating* means any pigmented automotive coating, (excluding automotive adhesion promoters, primers and multi-color coatings), specifically labeled and formulated for application without a subsequent clear coating and that are applied over an adhesion promoter, a primer, or a color coating. Single-stage coatings include single-stage metallic/iridescent coatings.

(24) *Spray-applied coating operations* means coatings that are applied using a hand-held device that creates an atomized mist of coating and deposits the coating on a substrate. For the purposes of this permit by rule, spray-applied coatings do not include the following materials or activities:

(i) Coatings applied from a hand-held device with a paint cup capacity that is equal to or less than 3.0 fluid ounces (89 cc).

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(ii) Surface coating application using powder coating, hand-held, non-refillable aerosol containers, or non-atomizing application technology, including, but not limited to, paint brushes, rollers, hand wiping, flow coating, dip coating, electro deposition coating, web coating, coil coating, touch-up markers, or marking pens.

(iii) Thermal spray operations (also known as metalizing, flame spray, plasma arc spray, and electric arc spray, among other names) in which solid metallic or non-metallic material is heated to a molten or semi-molten state and propelled to the work piece or substrate by compressed air or other gas, where a bond is produced upon impact.

(25) *Temporary protective coating* means any coating which is labeled and formulated for the purpose of temporarily protecting areas from overspray or mechanical damage.

(26) *Tire retread adhesive* means any adhesive to be applied to the back of pre-cured tread rubber and to the casing and cushion rubber, or to be used to seal buffed tire casings to prevent oxidation while the tire is being prepared for a new tread.

(27) *Truck bed liner coating* means any coating, excluding color, multi-color, and single stage coatings, labeled and formulated for application to a truck bed to protect it from surface abrasion.

(28) *Two-component coating* means a coating requiring the addition of a separate reactive resin, commonly known as a catalyst, before application to form an acceptable dry film.

(29) *Underbody coating* means any coating labeled and formulated for application to wheel wells, the inside of door panels or fenders, the underside of a trunk or hood, or the underside of the motor vehicle.

(30) *Uniform finish coating* means any coating labeled and formulated for application to the area around a spot repair for the purpose of blending a repaired area's color or clear coat to match the appearance of an adjacent area's existing coating.

(31) *Volatile organic compounds or VOC* means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photo-

tochemical reactions. This does not include the compounds listed in 40 CFR 51.100(s)(1).

(c) *Information about this permit by rule.* (1) *Applicability.* Pursuant to the provisions of the Clean Air Act (CAA), subchapter I, part D and 40 CFR part 49, subpart C, this permit authorizes the construction or modification and the operation of the auto body repair and miscellaneous surface coating operation for which a reviewing authority receives a completed Notification of Coverage (permitted source).

(2) *Eligibility.* To be eligible for coverage under this permit by rule, the permitted source must qualify as a true minor source as defined in 40 CFR 49.152 and satisfied the requirements in 40 CFR 49.156(f)(6)(iii).

(3) *Notification of Coverage.* Requirements for submitting a Notification of Coverage are contained in paragraph (d)(1) of this section. The information contained in each permitted source's Notification of Coverage is hereby enforceable under this permit by rule.

(4) *Termination.* Paragraph (d)(6) of this section addresses a reviewing authority's ability to revise, revoke and reissue, or terminate coverage under this permit by rule. It also addresses the reviewing authority's ability to terminate an individual permitted source's coverage under this permit by rule.

(5) *Definitions.* The terms used herein shall have the meaning as defined in 40 CFR 49.152, unless otherwise defined in paragraph (b) of this section. If a term is not defined, it shall be interpreted in accordance with normal business use.

(d) *Permit by rule terms and conditions.* The following applies to each permittee and permitted source with respect to only the affected emissions units and any associated air pollution control technologies in that permitted source's Notification of Coverage.

(1) *General provisions—(i) Obtaining coverage under this permit by rule.* To obtain coverage under this permit by rule, an applicant must submit a completed Notification of Coverage to the appropriate reviewing authority for the area in which the permitted source is or will be located (the Notification of Coverage Form can be found at: <http://www.epa.gov/air/tribal/tribalnsr.html>).

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Table 2 contains a list of reviewing authorities and their area of coverage. You must also submit a copy of the Notification of Coverage to the Indian governing body for any area in which the permitted source will operate in Indian country.

(ii) *Construction and operation.* The permittee shall construct or modify and shall operate the affected emissions units and any associated air pollution control technologies in compliance with this permit by rule and all other applicable federal air quality regulations; and in a manner consistent with representations made by the permittee in the Notification of Coverage.

(iii) *Location.* This permit by rule only authorizes the permittee to construct or modify and to operate the permitted source in the location listed in the Notification of Coverage for that permitted source.

(iv) *Liability.* This permit by rule does not release the permittee from any liability for compliance with other applicable federal and tribal environmental laws and regulations, including the CAA.

(v) *Severability.* The provisions of this permit by rule are severable. If any portion of this permit by rule is held invalid, the remaining terms and conditions of this permit by rule shall remain valid and in force.

(vi) *Compliance.* The permittee must comply with all provisions of this permit by rule, including emission limitations that apply to the affected emissions units at the permitted source. Noncompliance with any permit by rule provision is a violation of the permit by rule and may constitute a violation of the CAA; is grounds for an enforcement action; and is grounds for the reviewing authority to revoke and terminate the permitted source's coverage under this permit by rule.

(vii) *National Ambient Air Quality Standards (NAAQS)/Prevention of Significant Deterioration (PSD) Protection.* The permitted source must not cause or contribute to a NAAQS violation or, in an attainment area, must not cause or contribute to a PSD increment violation.

(viii) *Unavailable defense.* It is not a defense for the permittee in an enforcement action that it would have been

necessary to halt or reduce the permitted activity in order to maintain compliance with the provisions of this permit by rule.

(ix) *Property rights.* This permit by rule does not convey any property rights of any sort or any exclusive privilege.

(x) *Information requests.* You, as the permittee, shall furnish to the reviewing authority, within 30 days unless another timeframe is specified by the EPA, any information that the reviewing authority may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating coverage under the permit by rule or to determine compliance with the permit by rule. For any such information claimed to be confidential, the permittee must submit a claim of confidentiality in accordance with 40 CFR part 2, subpart B.

(xi) *Inspection and entry.* Upon presentation of proper credentials, the permittee must allow a representative of the reviewing authority to:

(A) Enter upon the premises where a permitted source is located or emissions-related activity is conducted or where records are required to be kept under the conditions of the permit by rule;

(B) Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit by rule;

(C) Inspect, during normal business hours or while the permitted source is in operation, any facilities, equipment (including monitoring and air pollution control equipment), practices or operations regulated or required under the permit by rule;

(D) Sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit by rule or other applicable requirements; and

(E) Record any inspection by use of written, electronic, magnetic and photographic media.

(xii) *Posting of coverage.* The most current Notification of Coverage for the permitted source must be posted prominently at the facility, and each affected emissions unit and any associated air pollution control technology must be labeled with the identification

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number listed in the Notification of Coverage for that permitted source.

(xiii) *Duty to obtain source-specific permit.* If the reviewing authority intends to terminate a permitted source's coverage under this permit by rule for cause as provided in §49.162(d)(6), then the permittee shall apply for and obtain a source-specific permit as required by the reviewing authority.

(xiv) *Credible evidence.* For the purpose of establishing whether the permittee violated or is in violation of any requirement of this permit by rule, nothing shall preclude the use, including the exclusive use, of any credible evidence or information relevant to whether a permitted source would have been in compliance with applicable requirements if the permittee had performed the appropriate performance or compliance test or procedure.

(2) *Emission limitations and standards.* (i) The permittee shall install, maintain, and operate each affected emissions unit, including any associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions of NSR regulated pollutants and considering the manufacturer's recommended operating procedures at all times, including periods of startup, shutdown, maintenance and malfunction. The reviewing authority will determine whether the permittee is using acceptable operating and maintenance procedures based on information available to the reviewing authority which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the permitted source.

(ii) The permittee shall not use volatile organic compound (VOC) containing materials (e.g., coatings, thinners, and clean-up solvents) in excess of the following amounts (solvent used in a cold cleaning solvent degreaser does not count toward compliance with this limit):

(A) 5,000 gallons per year based on a 12-month rolling total for facilities located in ozone attainment, unclassifiable or attainment/unclassifiable areas; and

(B) 900 gallons per year based on a 12-month rolling total for facilities located in ozone nonattainment areas.

(iii) Total annual cold cleaning solvent makeup shall not exceed 500 gallons in any 12-month period.

(iv) The total combined heat input capacity of all combustion units (such as space heaters or ovens) shall not exceed 10 MMBtu/hr. The combustion units shall only burn natural gas, propane, or butane.

(v) Each combustion unit rated at 2.0 MMBtu/hr or greater located in a serious, severe, or extreme ozone nonattainment area shall meet the following requirements:

(A) NO_x emissions shall not exceed 30 ppm_{dv} at 3 percent oxygen or 0.011 lb/MMBtu based on a 15-minute average.

(B) CO emissions shall not exceed 400 ppm_{dv} at 3 percent oxygen or 0.30 lb/MMBtu based on a 15-minute average.

(vi) The capacity of any volatile liquid storage tank shall not exceed 19,812 gallons.

(vii) Except as specified in paragraph (d)(2)(xv) of this section, the VOC content of coatings, as applied, shall not exceed 8.34 pounds of VOC per gallon (999.4 grams of VOC per liter).

(viii) All painters must have certification that they have completed training in the proper spray application of surface coatings and the proper setup and maintenance of spray equipment. The minimum requirements for training and certification are described in paragraph (f) of this section. The spray application of surface coatings by persons who are not certified as having completed the training described in paragraph (f) of this section is prohibited. This condition does not apply to the students of an accredited surface coating training program who are under the direct supervision of an instructor who meets the requirements of this condition.

(ix) All spray-applied coating operations must be applied in a spray booth, preparation station, or mobile enclosure that meets the following standards:

(A) All spray booths, preparation stations, and mobile enclosures must be equipped with an exhaust filter certified by the manufacturer to achieve at least 98 percent capture of paint

overspray. The procedure used to demonstrate filter efficiency must be consistent with the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Method 52.1, "Gravimetric and Dust-Spot Procedures for Testing Air-Cleaning Devices Used in General Ventilation for Removing Particulate Matter, June 4, 1992." The test coating for measuring filter efficiency shall be a high solids bake enamel delivered at a rate of at least 135 grams per minute from a conventional (non-HVLP) air-atomized spray gun operating at 40 pounds per square inch (psi) air pressure; the air flow rate across the filter shall be 150 feet per minute. Owners and operators may use published filter efficiency data provided by filter vendors to demonstrate compliance with this requirement and are not required to perform this measurement. The requirements of this paragraph do not apply to water wash spray booths that are operated and maintained according to the manufacturer's specifications.

(B) Spray booths and preparation stations used to refinish complete motor vehicles or mobile equipment must be fully enclosed with a full roof and four complete walls or complete side curtains, and must be ventilated at negative pressure so that air is drawn into any openings in the booth walls or preparation station curtains. However, if a spray booth is fully enclosed and has seals on all doors and other openings and has an automatic pressure balancing system, it may be operated at up to, but not more than, 0.05 inches water gauge positive pressure.

(C) Spray booths and preparation stations that are used to coat miscellaneous parts and products or vehicle subassemblies must have a full roof, at least three complete walls or complete side curtains, and must be ventilated so that air is drawn into the booth. The walls and roof of a booth may have openings, if needed, to allow for conveyors and parts to pass through the booth during the coating process.

(D) Mobile ventilated enclosures within the site that are used to perform spot repairs must enclose and, if necessary, seal against the surface around the area being coated such that paint overspray is retained within the

enclosure and directed to a filter to capture paint overspray.

(E) The exhaust filters of spray booths shall be equipped with pressure gauges that indicate, in inches of water, the static pressure differential across the exhaust filters.

(F) Each spray booth located in a serious, severe, or extreme ozone nonattainment area that uses greater than 4 gallons per day of VOC-containing material shall install add-on controls (with greater than or equal to 90 percent collection efficiency and greater than or equal to 95 percent destruction efficiency) or use material with less than 5 percent VOC by weight or low VOC materials that result in an equivalent emission reduction.

(x) Except for serious, severe, and extreme ozone nonattainment areas, all spray-applied coating operations must be applied with a high volume, low pressure (HVLP) spray gun, electrostatic application, airless spray gun, or air-assisted airless spray gun. An equivalent spray technology may be used if it has been demonstrated by the spray gun manufacturer to achieve a transfer efficiency comparable to that of an HVLP spray gun and for which the spray gun manufacturer has obtained written approval from the U.S. Environmental Protection Agency (EPA). The requirements of this condition do not apply to spray guns with a cup capacity less than 3.0 fluid ounces (89 cc).

(xi) In serious, severe, and extreme ozone nonattainment areas, all spray-applied coating operations must be applied with an HVLP spray gun, low volume low pressure (LVLP) spray gun, or air brush spray operation. An equivalent spray technology may be used if it has been demonstrated by the spray gun manufacturer to achieve a transfer efficiency comparable to that of an HVLP spray gun and for which the spray gun manufacturer has obtained written approval from the EPA.

(xii) All paint spray gun cleaning must be done so that an atomized mist or spray of gun cleaning solvent and paint residue is not created outside of a container that collects used gun cleaning solvent. Spray gun cleaning may be done with, for example, hand cleaning of parts of the disassembled

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gun in a container of solvent, by flushing solvent through the gun without atomizing the solvent and paint residue, or by using a fully enclosed spray gun washer. A combination of non-atomizing methods may also be used.

(xiii) All VOC-containing material (e.g., coatings, thinners, and clean-up solvents) shall be stored in closed containers.

(xiv) All waste materials containing VOC (e.g., soiled rags) shall be stored in sealed containers until properly disposed.

(xv) Each permitted source located in a serious, severe, or extreme ozone nonattainment area, shall not apply a coating that has VOC content in excess of the limits listed in the Table 1 below. Compliance with the VOC limits shall be based on VOC content, including any VOC material added to the original coating supplied by the manufacturer, less water.

TABLE 1—VOC CONTENT LIMITS

Type of coating	VOC content limits (grams/liter)	VOC content limits (lb/gallon)
Adhesion Promoter	540	4.5
Clear Coating	250	2.1
Color Coating	420	3.5
Multi-Color Coating	680	5.7
Pretreatment	660	5.5
Primer	250	2.1
Single-Stage Coating	340	2.8
Temporary Protective Coating	60	0.5
Truck Bed Liner Coating ...	310	2.6
Underbody Coating	430	3.6
Uniform Finishing Coating	540	4.5
One or Two-Component Coatings for Plastics	120	1.0
Tire Retread Adhesive	100	0.8
Any other coating type or adhesive	250	2.1

(xvi) For each batch-loaded cold cleaner degreaser, the permittee shall comply with the requirements of paragraph (e) of this section.

(xvii) Each permitted source located in a serious, extreme, or severe ozone nonattainment area, shall use cleaning materials in the batch-loaded cold cleaner degreaser that have a VOC content of less than 25 grams per liter.

(3) *Monitoring and testing requirements*—(i) *Initial performance tests*. (A) Within 60 days after achieving the maximum production rate at which the permitted source will operate the affected emissions unit(s), but not later

than 180 days after the first day of operation under the permit by rule, the permittee shall perform an initial performance test to verify compliance with the emission limitations in paragraphs (d)(2)(v) and (d)(2)(ix)(F) of this section (including capture efficiency requirements), if applicable. Performance tests shall be performed:

(1) According to a test plan submitted at least 30 days in advance of the test date to the reviewing authority;

(2) While the permitted source is operating under typical operating conditions;

(3) Using test methods from 40 CFR part 60, appendix A. In lieu of the test methods from 40 CFR part 60, appendix A, measurements for NO_x and CO may be taken using portable analyzers according to ASTM D6522-00, as incorporated by reference in 40 CFR 63.14(b)(27);

(4) Using Method 5 with a sample volume of at least 31.8 dscf to determine particulate matter concentration; and

(5) Simultaneously for CO and NO_x whenever either one needs to be tested.

(B) Compliance with each limit shall be demonstrated by averaging the results of at least three test runs of at least 1 hour duration each, unless the permittee can demonstrate to the satisfaction of the reviewing authority that the result of one of the test runs should be discarded. The test results the permittee submits must contain at least two test runs.

(ii) The permitted source shall demonstrate compliance with the paint overspray capture efficiency requirements of paragraph (d)(2)(ix)(A) of this section using published filter efficiency data provided by filter vendors, as described in paragraph (d)(2)(ix)(A) of this section.

(iii) The permitted source shall install, operate, and maintain an exhaust filter pressure gauge on each spray booth and monitor (in inches of water) the static pressure differential across the exhaust filter at least once per calendar month while the equipment is operating. As necessary, the exhaust filter shall be replaced according to the manufacturer's specifications.

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(iv) The exterior of each spray booth, preparation station, or mobile enclosure shall be inspected at least once per calendar month for evidence of overspray. If evidence of overspray is apparent, the permittee shall take corrective action to eliminate overspray from the exterior of each spray booth, preparation station, or mobile enclosure.

(v) Prior to each use, each cold solvent cleaning degreaser shall be inspected for liquid leaks, visible tears, or cracks.

(4) *Recordkeeping requirements.* (i) The permittee shall maintain all records required to be kept by this permit by rule onsite for at least 5 years from the date of origin of the record, unless otherwise stated.

(ii) The Notification of Coverage and all documentation supporting the notification shall be maintained by the permittee for the duration of time the affected emissions unit(s) is covered under this permit by rule.

(iii) The permittee shall keep records of the VOC-containing materials (including coatings, thinners, and cleanup solvents) as follows:

(A) The name and Material Safety Data Sheet (MSDS) for each VOC-containing material used onsite; and

(B) The gallons of each VOC-containing material used each month and the resulting 12-month rolling total of VOC-containing material used. The 12-month rolling total is defined as the sum of the VOC material used during the current month and the VOC material used for the previous 11 months.

(C) For each permitted source located in a serious, severe, or extreme ozone nonattainment area *not* complying with the control requirements in paragraph (d)(2)(ix)(F) of this section (add-on controls or low VOC-containing material), the combined daily gallons of VOC-containing material used in all spray booths.

(iv) The permittee shall keep records of the VOC content (g/L or lb/gal) for each coating material used onsite.

(v) For each spray booth, preparation station, and mobile enclosure, the permittee shall maintain records of:

(A) The filter efficiency of the exhaust material;

(B) The monthly exhaust filter pressure gauge readings specified in § 49.162(d)(3)(iii);

(C) The date when each exhaust filter is replaced;

(D) Any corrective actions taken to reduce overspray; and

(E) The results of any corrective actions taken.

(vi) The permittee shall maintain documentation from the spray gun manufacturer that each spray gun meets the requirements of paragraphs (d)(2)(x) and (xi) of this section, as applicable. For a spray gun that uses equivalent technology, documentation that the spray gun has been determined by the EPA to achieve a transfer efficiency equivalent to that of an HVLP spray gun is required.

(vii) For each cold cleaning solvent degreaser, the permittee shall:

(A) Maintain records of owner's manuals, or if not available, written maintenance and operating procedures; and

(B) Maintain a log of any actions taken to repair leaks, tears or cracks and the results of the corrective action taken.

(viii) The permittee shall maintain records of the MSDS for each solvent used in a solvent degreaser.

(ix) The permittee shall maintain records of the gallons of cold cleaning solvent makeup used each calendar month and a total of the number of gallons of cold cleaning solvent makeup used in each 12-month period.

(x) The results of each performance test conducted pursuant to paragraph (d)(3)(i) of this section shall be recorded. At a minimum, the permittee shall maintain records of:

(A) The date of each test;

(B) Each test plan;

(C) Any documentation required to approve an alternate test method;

(D) The results of each test;

(E) The name of the company or entity conducting the analysis; and

(F) Test conditions.

(5) *Notification and reporting requirements—(i) Notification of construction or modification, and operations.* The permittee shall submit a written or electronic notice to the reviewing authority within 30 days from when the permittee begins actual construction, and

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within 30 days from when the permittee begins initial operations or resumes operations after a modification.

(ii) *Notification of change in ownership or operator.* If the permitted source changes ownership or operator, then the new owner must submit a written or electronic notice to the reviewing authority within 90 days before or after the change in ownership is effective. In the notice, the new permittee must provide the reviewing authority a written agreement containing a specific date for transfer of ownership, and an effective date on which the new owner assumes partial and/or full coverage and liability under this permit by rule. The submittal must identify the previous owner, and update the name, street address, mailing address, contact information, and any other information about the permitted source if it would change as a result of the change of ownership. The current owner shall ensure that the permitted source remains in compliance with the permit by rule until any such transfer of ownership if effective.

(iii) *Notification of closure.* The permittee must submit a report of any permanent or indefinite closure to the reviewing authority in writing within 90 days after the cessation of all operations at the permitted source. The notification must identify the owner, the current location, and the last operating location of the permitted source. It is not necessary to submit a report of closure for regular, seasonal closures.

(iv) *Annual reports.* The permittee shall submit an annual report on or before March 15 of each calendar year to the reviewing authority. The annual report shall cover the period from January 1 to December 31 of the previous calendar year and shall include:

(A) An evaluation of the permitted source's compliance status with the requirements in paragraph (d)(2) of this section;

(B) Summaries of the required monitoring and recordkeeping above in paragraphs (d)(3) and (4) of this section; and

(C) Summaries of deviation reports submitted pursuant to paragraph (d)(5)(v) of this section.

(v) *Deviation reports.* The permittee shall promptly report to the reviewing authority any deviations as defined at 40 CFR 71.6(a)(3)(iii)(C) from permit by rule requirements including deviations attributable to upset conditions. (For the purposes of this permit by rule, *promptly* shall be defined to mean: At the time the annual report in §49.162(d)(5)(iv) is submitted.) Deviation reports shall include:

(A) The identity of the affected emissions unit(s) where the deviation occurred;

(B) The nature of the deviation;

(C) The length of time of the deviation;

(D) The probable cause of the deviation; and

(E) Any corrective actions or preventive measures taken as a result of the deviation to minimize emissions from the deviation and to prevent future deviations.

(vi) *Performance test reports.* The permittee shall submit a test report to the reviewing authority within 45 days after the completion of any required performance test. At a minimum, the test report shall include:

(A) A description of the affected emissions unit and sampling location(s);

(B) The time and date of each test;

(C) A summary of test results, reported in units consistent with the applicable standard;

(D) A description of the test methods and quality assurance procedures used;

(E) A summary of any deviations from the proposed test plan and justification for why the deviation(s) was necessary;

(F) The amount of fuel burned, raw material consumed, and product produced during each test run;

(G) Operating parameters of the affected emissions units and control equipment during each test run;

(H) Sample calculations of equations used to determine test results in the appropriate units; and

(I) The name of the company or entity performing the analysis.

(vii) *Reporting and notification address.* The permittee shall send all required reports to the reviewing authority at the mailing address specified in paragraph (g) of this section.

(viii) *Signature verifying truth, accuracy and completeness.* All reports required by this permit by rule shall be signed by a responsible official as to the truth, accuracy and completeness of the information. The report must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete. If the permittee discovers that any reports or notification submitted to the reviewing authority contain false, inaccurate, or incomplete information, the permittee shall notify the reviewing authority immediately and correct or amend the report as soon as practicable.

(6) *Changes to this permit by rule—(i) Revising, reopening, revoking and reissuing, or terminating for cause.* The permit by rule may be revised, reopened, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and re-issuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit by rule condition. This provision also applies to the documents incorporated by reference.

(ii) *Terminating coverage under this permit by rule.* The reviewing authority may terminate coverage under the permit by rule, and thereby terminate that permittee's authorization to construct or modify, and that permitted source's authorization to operate under this permit by rule for cause as defined in paragraph (b) of this section. The reviewing authority may provide the permittee with notice of the intent to terminate, and delay the effective date of the termination to allow the permittee to obtain a source-specific permit as required by the reviewing authority.

(iii) *Permit becomes invalid.* Authority to construct and operate under this permit by rule becomes invalid if the permittee does not commence construction within 18 months after the notification of coverage is received by the reviewing authority, if the permittee discontinues construction for a period of 18 months or more, or if the permittee does not complete construction within a reasonable time. The reviewing authority may extend the 18-month period upon a satisfactory show-

ing that an extension is justified, according to 40 CFR 49.156(e)(8).

(e) *Standards for batch-loaded cold cleaner degreasers.* (1) Each degreaser shall be operated in accordance with the manufacturer's specifications and shall be used with tightly fitting covers that are free of cracks, holes, or other defects. In addition, the cover shall be closed at all times when the degreaser contains solvent, except during parts entry and removal or performing maintenance or monitoring that requires the removal of the cover.

(2) The solvent container shall be free of all liquid leaks. Auxiliary degreaser equipment, such as pumps, water separators, steam traps, or distillation units, shall not have any liquid leaks, visible tears, or cracks. In addition, any liquid leak, visible tear, or crack detected pursuant to the provisions of this condition shall be repaired within 48 hours, or the degreaser shall be drained of all solvent and shut down until replaced or repaired.

(3) All waste solvents shall be stored in properly identified and sealed containers. All associated pressure relief devices shall not allow liquid solvents to drain out.

(4) Solvent flow cleaning shall be done within the freeboard area, and shall be done by a liquid stream rather than a fine, atomized, or shower-type spray. Solvent flow shall be directed downward to avoid turbulence at the air-solvent interface and to prevent liquid solvent from splashing outside of the degreaser.

(5) Degreasing of porous or absorbent materials, such as cloth, leather, wood, or rope is prohibited.

(6) Workspace and ventilation fans shall not be positioned in such a way as to direct airflow near the degreaser openings.

(7) Spills during solvent transfer shall be wiped up immediately and the used wipe rags shall be stored in closed containers that are handled in accordance with paragraph (e)(3) of this section.

(8) Solvent levels shall not exceed the fill line.

(9) The parts to be cleaned shall be racked in a manner that will minimize the drag-out losses.

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(10) The freeboard ratio shall be 0.75 or greater. Parts shall be drained immediately after the cleaning until at least 15 seconds have elapsed; or dripping of solvent ceases; or the parts become visibly dry. Parts with blind holes or cavities shall be tipped or rotated before being removed from a degreaser, such that the solvents in the blind holes or cavities are drained in accordance with the above requirements.

(11) Draining or filling of solvent containers shall be performed beneath the liquid solvent surface.

(12) Solvent agitation, where necessary, shall be carried out only by pump recirculation, ultrasonics, a mixer, or by air agitation. Air agitation shall be accomplished under the following conditions:

(i) The air agitation unit shall be equipped with a gauge and a device that limits air pressure into the degreaser to less than two pounds per square inch gauge;

(ii) The cover must remain closed while the air agitation system is in operation; and

(iii) Pump circulation shall be performed without causing splashing.

(13) Airless/Air-tight Cleaning System Requirements—In lieu of meeting the requirements of paragraphs (e)(1) through (12) of this section, the permittee may use an airless/air-tight batch cleaning system provided that all of the following applicable requirements are met:

(i) The equipment is operated in accordance with the manufacturer's specifications and operated with a door or other pressure sealing apparatus that is in place during all cleaning and drying cycles.

(ii) All waste solvents are stored in properly identified and sealed containers.

(iii) All associated pressure relief devices shall not allow liquid solvents to drain out.

(iv) Spills during solvent transfer shall be wiped up immediately, and the used wipe rags shall be stored in closed containers that are handled in accordance with paragraph (e)(3) of this section.

(v) The equipment is maintained in a vapor-tight, leak-free condition and any leak is a violation.

(f) *Training and certification requirements for spray-applied surface coating personnel.* The owner or operator of the permitted source must ensure and certify that all new and existing personnel, including contract personnel, who spray apply surface coatings are trained in the proper application of surface coatings as required by this permit by rule. The training program must include, at a minimum, the items listed in this paragraph (f). All personnel must be trained no later than 180 days after hiring.

(1) A list of all current personnel by name and job description who are required to be trained.

(2) Hands-on and classroom instruction that addresses, at a minimum, initial and refresher training in the following topics:

(i) Spray gun equipment selection, set up, and operation, including measuring coating viscosity, selecting the proper fluid tip or nozzle, and achieving the proper spray pattern, air pressure and volume, and fluid delivery rate.

(ii) Spray technique for different types of coatings to improve transfer efficiency and minimize coating usage and overspray, including maintaining the correct spray gun distance and angle to the part, using proper banding and overlap, and reducing lead and lag spraying at the beginning and end of each stroke.

(iii) Routine spray booth and filter maintenance, including filter selection and installation.

(iv) Compliance with the requirements of this Permit by Rule.

(3) A description of the methods to be used at the completion of initial or refresher training to demonstrate, document, and provide certification of successful completion of the required training. Owners and operators who can show by documentation or certification that a painter's work experience and/or training has resulted in training equivalent to the training required in paragraph (f)(2) of this section are not required to provide the initial training required by that same paragraph to the painter.

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(4) Painter training that was completed within 5 years prior to the date training is required, and that meets the requirements specified in paragraph (f)(2) of this section satisfies this requirement and is valid for a period not to exceed 5 years after the date the training was completed.

(5) Training and certification will be valid for a period not to exceed 5 years after the date the training is completed, and all personnel must receive refresher training that meets the requirements of this § 49.162(f) and be recertified every 5 years.

(g) *List of reviewing authorities and areas of coverage.*

TABLE 2—LIST OF REVIEWING AUTHORITIES AND AREAS OF COVERAGE

EPA region	Address for notification of coverage	Address for all other notification and reports	Area covered	Phone number
Region I	EPA New England, 5 Post Office Square, Suite 100, Mail Code OEP05-2, Boston, MA 02109-3912.	EPA New England, 5 Post Office Square, Suite 100, Mail Code OES04-2, Boston, MA 02109-3912.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.	888-372-7341 617-918-1111
Region II	Chief, Air Programs Branch, Clean Air and Sustainability Division, EPA Region 2, 290 Broadway, 25th Floor, New York, NY 10007-1866.	Chief, Air Compliance Branch, Division of Enforcement and Compliance Assistance, EPA Region 2, 290 Broadway, 21st Floor, New York, NY 10007-1866.	New Jersey, New York, Puerto Rico, and Virgin Islands.	877-251-4575
Region III	Office of Permits and Air Toxics, 3AP10, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103.	Office of Air Enforcement and Compliance Assurance, 3AP20, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.	800-438-2474 215-814-5000
Region IV	Chief, Air Permits Section, EPA Region 4 APTMD, 61 Forsyth Street, Atlanta, GA 30303.	Chief, Air & EPCRA Enforcement Branch, EPA Region 4 APTMD, 61 Forsyth Street, SW, Atlanta, GA 30303.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.	800-241-1754 404-562-9000
Region V	Air Permits Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Blvd, Chicago, Illinois 60604.	Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, EPA Region 5, 77 West Jackson Blvd, Chicago, IL 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.	800-621-8431 312-353-2000
Region VI	Air and Radiation Division, EPA Region 6, 1201 Elm Street, Suite 500, Mail Code 6AR, Dallas, Texas 75270-2102.	Compliance and Enforcement Correspondence: Enforcement and Compliance Assurance Division, 1201 Elm Street, Suite 500, Mail Code 6ECD, Dallas, Texas 75270-2102.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.	800-887-6063 or 214-665-2760
Region VII	Chief, Air Permitting & Compliance Branch, EPA Region 7, 11201 Renner Blvd, Lenexa, KS 66219.	Chief, Air Permitting & Compliance Branch, EPA Region 7, 11201 Renner Blvd, Lenexa, KS 66219.	Iowa, Kansas, Missouri, and Nebraska.	800-223-0425 913-551-7003
Region VIII	U.S. Environmental Protection Agency, Region 8, Office of Partnerships and Regulatory Assistance, Tribal Air Permitting Program, 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202.	U.S. Environmental Protection Agency, Region 8, Office of Enforcement, Compliance & Environmental Justice, Air Toxics and Technical Enforcement Program, 8ENF-AT, 1595 Wynkoop Street, Denver, CO 80202.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.	800-227-8917 303-312-6312
Region IX	Chief, Permits Office (Air-3), Air Division, EPA Region 9, 75 Hawthorne St, San Francisco, CA 94105.	Enforcement Division Director, Attn: Air & TRI Section (ENF-2-1), EPA Region 9, 75 Hawthorne St, San Francisco, CA 94105.	American Samoa, Arizona, California, Guam, Hawaii, Navajo Nation Nevada, and Northern Mariana Islands.	866-EPA-9378 415-947-8000
Region X	Tribal Air Permits Coordinator, U.S. EPA, Region 10, AWT-150, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.	Tribal Air Permits Coordinator, U.S. EPA, Region 10, AWT-150, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.	Alaska, Idaho, Oregon, and Washington.	800-424-4372 206-553-1200

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[80 FR 25091, May 1, 2015, as amended at 84 FR 44227, Aug. 23, 2019]

§ 49.163 Air quality permit by rule for new or modified true minor source petroleum dry cleaning facilities in Indian country.

(a) Abbreviations and acronyms:

CAA or the Act—Federal Clean Air Act
CFR—Code of Federal Regulations
EPA—United States Environmental Protection Agency
NAAQS—National Ambient Air Quality Standards
NSR—New Source Review
PSD—Prevention of Significant Deterioration

(b) Definitions for the purposes of this permit by rule—(1) *Cause* means with respect to the reviewing authority's ability to terminate a permitted source's coverage under a permit that:

(i) The permittee is not in compliance with the provisions of this permit by rule;

(ii) The reviewing authority determines that the emissions resulting from the construction or modification of the permitted source significantly contribute to National Ambient Air Quality Standard violations, which are not adequately addressed by the requirements in this permit by rule;

(iii) The reviewing authority has reason to believe that the permittee obtained coverage under the permit by rule by fraud or misrepresentation; or

(iv) The permittee failed to disclose a material fact required by the Notification of Coverage or the requirements applicable to the permitted source of which the applicant had or should have had knowledge at the time the permittee submitted the Notification of Coverage.

(2) *Construction* means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of an affected emissions unit that would result in a change of emissions.

(3) *Notification of Coverage* means the permit notification that contains all of the information required in the standard notification form for this permit by rule.

(4) *Permittee* means the owner or operator of a permitted source.

(5) *Permitted source* means each petroleum drying cleaning facility for which

a source submits a complete Notification of Coverage.

(6) *Responsible official* means one of the following:

(i) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is directly responsible for the overall operation of the permitted source.

(ii) For a partnership or sole proprietorship: A general partner or the proprietor, respectively.

(iii) For a public agency: Either a principal executive officer or ranking elected official, such as a chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(7) *Solvent recovery dryer* means a class of dry cleaning dryers that employs a condenser to condense and recover solvent vapors evaporated in a closed-loop stream of heated air, together with the piping and ductwork used in the installation of this device.

(c) *Information about this permit by rule*—(1) *Applicability*. Pursuant to the provisions of the Clean Air Act (CAA), subchapter I, part D and 40 CFR part 49, subpart C, this permit by rule authorizes the construction or modification and the operation of each stationary petroleum dry cleaning facility for which a reviewing authority receives a completed Notification of Coverage (permitted source).

(2) *Eligibility*. To be eligible for coverage under this permit by rule, the permitted source must qualify as a true minor source as defined in 40 CFR 49.152 and satisfied the requirements in 40 CFR 49.156(f)(6)(iii).

(3) *Notification of Coverage*. Requirements for submitting a Notification of Coverage are contained in paragraph (d)(1) of this section. The information contained in each permitted source's Notification of Coverage is hereby enforceable under this permit by rule.

(4) *Termination*. Paragraph (d)(6) of this section addresses a reviewing authority's ability to revise, revoke and reissue, or terminate coverage

under this permit by rule. It also addresses the reviewing authority's ability to terminate an individual permitted source's coverage under this permit by rule.

(5) *Definitions.* The terms used herein shall have the meaning as defined in 40 CFR 49.152, unless otherwise defined in paragraph (b) of this section. If a term is not defined, it shall be interpreted in accordance with normal business use.

(d) *Permit by rule terms and conditions.* The following applies to each permittee and permitted source with respect to only the affected emissions units and any associated air pollution control technologies in that permitted source's Notification of Coverage.

(1) *General provisions—(i) Obtaining coverage under this permit by rule.* To obtain coverage under this permit by rule, an applicant must submit a completed Notification of Coverage to the appropriate reviewing authority for the area in which the permitted source is or will be located (the Notification of Coverage Form can be found at: <http://www.epa.gov/air/tribal/tribalnsr.html>).

Table 1 of paragraph (f) of this section contains a list of reviewing authorities and their area of coverage. You must also submit a copy of the Notification of Coverage to the Indian governing body for any area in which the permitted source will operate.

(ii) *Construction and operation.* The permittee shall construct or modify and shall operate the affected emissions units and any associated air pollution control technologies in compliance with this permit by rule and all other applicable federal air quality regulations; and in a manner consistent with representations made by the permittee in the Notification of Coverage.

(iii) *Locations.* This permit by rule only authorizes the permittee to construct or modify and to operate the permitted source at the location listed in the Notification of Coverage for that permitted source.

(iv) *Liability.* This permit by rule does not release the permittee from any liability for compliance with other applicable federal and tribal environmental laws and regulations, including the CAA.

(v) *Severability.* The provisions of this permit by rule are severable. If any

portion of this permit by rule is held invalid, the remaining terms and conditions of this permit by rule shall remain valid and in force.

(vi) *Compliance.* The permittee must comply with all provisions of this permit, including emission limitations that apply to the affected emissions units at the permitted source. Non-compliance with any permit by rule provision is a violation of the permit by rule and may constitute a violation of the CAA; is grounds for an enforcement action; and is grounds for the reviewing authority to revoke and terminate the permitted source's coverage under this permit by rule.

(vii) *National Ambient Air Quality Standards (NAAQS)/Prevention of Significant Deterioration (PSD) Protection.* The permitted source must not cause or contribute to a NAAQS violation or, in an attainment area, must not cause or contribute to a PSD increment violation.

(viii) *Unavailable defense.* It is not a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the provisions of this permit by rule.

(ix) *Property rights.* The permit by rule does not convey any property rights of any sort or any exclusive privilege.

(x) *Information requests.* You, as the permittee, shall furnish to the reviewing authority, within 30 days unless another timeframe is specified by the EPA, any information that the reviewing authority may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating coverage under the permit by rule or to determine compliance with the permit by rule. For any such information claimed to be confidential, the permittee must submit a claim of confidentiality in accordance with 40 CFR part 2, subpart B.

(xi) *Inspection and entry.* Upon presentation of proper credentials, the permittee must allow a representative of the reviewing authority to:

(A) Enter upon the premises where a permitted source is located or emissions-related activity is conducted or where records are required to be kept

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under the conditions of the permit by rule;

(B) Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit by rule;

(C) Inspect, during normal business hours or while the permitted source is in operation, any facilities, equipment (including monitoring and air pollution control equipment), practices or operations regulated or required under the permit by rule;

(D) Sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit by rule or other applicable requirements; and

(E) Record any inspection by use of written, electronic, magnetic and photographic media.

(xii) *Posting of coverage.* The most current Notification of Coverage for the permitted source must be posted prominently at the facility, and each affected emissions unit and any associated air pollution control technology must be labeled with the identification number listed in the Notification of Coverage for that permitted source.

(xiii) *Duty to obtain a source-specific permit.* If the reviewing authority intends to terminate a permitted source's coverage under this permit by rule for cause as provided in § 49.163(d)(6), then the permittee shall apply for and obtain a source-specific permit as required by the reviewing authority.

(xiv) *Credible evidence.* For the purpose of establishing whether the permittee violated or is in violation of any requirement of this permit by rule, nothing shall preclude the use, including the exclusive use, of any credible evidence or information relevant to whether a permitted source would have been in compliance with applicable requirements if the permittee had performed the appropriate performance or compliance test or procedure.

(2) *Emission limitations and standards.*

(i) The permittee shall install, maintain, and operate each affected emissions unit, including any associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions of NSR regulated pollutants and

considering the manufacturer's recommended operating procedures at all times, including periods of startup, shutdown, maintenance and malfunction. The reviewing authority will determine whether the permittee is using acceptable operating and maintenance procedures based on information available to the reviewing authority which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the permitted source.

(ii) The permittee shall not consume more than the amount of petroleum solvent specified below:

(A) 5,600 gallons per year based on a rolling 12-month total for a facility located in an ozone attainment, unclassifiable or attainment/unclassifiable area; or

(B) 1,300 gallons per year based on a rolling 12-month total for a facility located in an ozone nonattainment area.

(iii) If your facility has a total manufacturer's rated dryer capacity equal to or greater than 38 kilograms (84 pounds), then you shall meet the following requirements:

(A) Each petroleum solvent dry cleaning dryer shall be a solvent recovery dryer. The solvent recovery dryer(s) shall be properly installed, operated and maintained according to the manufacturer's specifications.

(B) Each petroleum solvent dry cleaning dryer located in a serious, severe or extreme ozone nonattainment area shall be a closed loop, dry-to-dry machine with a refrigerated condenser (manufactured on or after October 20, 2000) or with an evaporatively cooled condenser (manufactured on or after July 9, 2004).

(iv) The maximum heat input capacity of each fuel combustion unit shall not exceed 10 MMBtu/hour and only natural gas, propane or butane may be used as fuels.

(v) The total heat input capacity of the fuel combustion units shall be equal to or less than 30 MMBtu/hour.

(vi) The capacity of any volatile organic liquid storage tank shall not exceed 19,812 gallons.

(vii) All solvents shall be stored in closed containers.

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(viii) Button and lint traps shall be cleaned each working day.

(ix) All washer lint traps, button traps, access doors, and other parts of the equipment where solvent may be exposed to the atmosphere shall be kept closed at all times except when required for proper operation or maintenance.

(x) The still residue, used filtering material, lint, used solvent and all other wastes containing solvent shall be stored in sealed containers until properly disposed.

(xi) If your facility is located in a serious, severe or extreme ozone non-attainment area, then the permittee shall also comply with the additional equipment specifications and operating requirements specified in § 49.163(e).

(3) *Monitoring and testing requirements.* Each petroleum solvent dry cleaning dryer shall be inspected every 15 calendar days for evidence of leaks and all vapor or liquid leaks shall be repaired within the subsequent 15 calendar day period.

(4) *Recordkeeping requirements.* (i) The permittee shall maintain all records required to be kept by this permit by rule for at least 5 years from the date of origin, unless otherwise stated, either onsite or at a convenient location, such that they can be delivered to the reviewing authority within 24 hours of a request.

(ii) The Notification of Coverage and all documentation supporting the notification shall be maintained by the permittee for the duration of time the affected emissions unit(s) is covered under this permit by rule.

(iii) The permittee shall maintain a log of:

(A) The results of the daily leak inspections, any corrective actions taken to repair leaks, and the results of any corrective actions taken;

(B) Each type of petroleum solvent used at the facility;

(C) The date, type, and amount of solvent (in gallons) added to the solvent tank of each dry cleaning machine; and

(D) The monthly total gallons of petroleum solvent used and the resulting 12-month rolling total of solvent used. The 12-month rolling total is defined as the sum of the gallons of petroleum

solvent used during the current month and the gallons of petroleum solvent used for the previous eleven (11) months.

(5) *Notification and reporting requirements*—(i) *Notification of construction or modification, and operations.* The permittee shall submit a written or electronic notice to the reviewing authority within 30 days from when the permittee begins actual construction, and within 30 days from when the permittee begins initial operations or resumes operations after modification.

(ii) *Notification of change in ownership or operator.* If the permitted source changes ownership or operator, then the new owner must submit a written or electronic notice to the reviewing authority within 90 days before or after the change in ownership is effective. In the notice, the new permittee must provide the reviewing authority a written agreement containing a specific date for transfer of ownership, and an effective date on which the new owner assumes partial and/or full coverage and liability under this permit by rule. The submittal must identify the previous owner, and update the name, street address, mailing address, contact information, and any other information about the permitted source if it would change as a result of the change of ownership. The current owner shall ensure that the permitted source remains in compliance with the permit by rule until such transfer of ownership is effective.

(iii) *Notification of closure.* The permittee must submit a report of any permanent or indefinite closure to the reviewing authority in writing within 90 days after the cessation of all operations at the permitted source. It is not necessary to submit a report of closure for regular, seasonal closures.

(iv) *Annual reports.* The permittee shall submit an annual report on or before March 15 of each calendar year to the reviewing authority. The annual report shall cover the period from January 1 to December 31 of the previous calendar year and shall include:

(A) An evaluation of the permitted source's compliance status with the requirements in paragraph (d)(2) of this section;

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(B) Summaries of the required monitoring and recordkeeping in paragraphs (d)(3) and (4) of this section; and

(C) Summaries of deviation reports submitted pursuant to paragraph (d)(5)(v) of this section.

(v) *Deviation reports.* The permittee shall promptly report to the reviewing authority any deviations as defined at 40 CFR 71.6(a)(3)(iii)(C) from permit by rule requirements including deviations attributable to upset conditions. (For the purposes of this permit by rule, *promptly* shall be defined to mean: At the time the annual report in paragraph (d)(5)(iv) of this section is submitted.) Deviation reports shall include:

(A) The identity of affected emissions unit where the deviation occurred.

(B) The nature of the deviation;

(C) The length of time of the deviation;

(D) The probable cause of the deviation; and

(E) Any corrective actions or preventive measures taken as a result of the deviation to minimize emissions from the deviation and to prevent future deviations.

(vi) *Reporting and notification address.* The permittee shall send all required reports to the reviewing authority at the mailing address specified in paragraph (f) of this section.

(vii) *Signature verifying truth, accuracy and completeness.* All reports required by this permit by rule shall be signed by a responsible official as to the truth, accuracy and completeness of the information. The report must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete. If the permittee discovers that any reports or notification submitted to the reviewing authority contain false, inaccurate, or incomplete information, the permittee shall notify the reviewing authority immediately and correct or amend the report as soon as practicable.

(6) *Changes to this permit by rule—(i) Revising, reopening, revoking and reissuing, or terminating for cause.* The permit by rule may be revised, reopened, revoked and reissued, or terminated for cause. The filing of a request by the

permittee for a permit revision, revocation and re-issuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit by rule condition. This provision also applies to the documents incorporated by reference.

(ii) *Terminating coverage under this permit by rule.* The reviewing authority may terminate coverage under the permit by rule, and thereby terminate that permittee's authorization to construct or modify, and that permitted source's authorization to operate under this permit by rule for cause as defined in paragraph (b) of this section. The reviewing authority may provide the permittee with notice of the intent to terminate, and delay the effective date of the termination to allow the permittee to obtain a source-specific permit.

(iii) *Permit becomes invalid.* Authority to construct and operate under this permit by rule becomes invalid if the permittee does not commence construction within 18 months after the effective date of the Request for Coverage under the permit by rule, if the permittee discontinues construction for a period of 18 months or more, or if the permittee does not complete construction within a reasonable time. The reviewing authority may extend the 18-month period upon a satisfactory showing that an extension is justified according to 40 CFR 49.156(e)(8).

(e) *Petroleum dry cleaning facilities in certain nonattainment areas.* For facilities located in serious, severe, or extreme ozone nonattainment areas, the permittee shall operate and maintain the solvent dry cleaning system in accordance with the requirements specified below and in accordance with the manufacturer's recommendations:

(1) *General specifications.* (i) All parts of the dry cleaning system where solvent may be exposed to the atmosphere or workroom shall be kept closed at all times except when access is required for proper operation and maintenance.

(ii) Wastewater evaporators shall be operated to ensure that no liquid solvent or visible emulsion is allowed to vaporize to the atmosphere.

(2) *Additional specification for closed-loop machines.* (i) A *closed-loop machine* means dry cleaning equipment in which washing, extraction, and drying

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is performed within the same single affected emissions unit and which re-circulates and recovers the solvent-laden vapor.

(ii) A closed-loop machine shall not exhaust to the atmosphere or workroom during operation except when the vacuum pump exhausts to maintain a continuous vacuum.

(iii) For any closed-loop machine that is not equipped with a locking mechanism, the operator shall not open the door of a closed-loop machine prior to completion of the drying cycle.

(iv) For any closed-loop machine that is equipped with a locking mechanism, the operator shall not inactivate the locking mechanism and open the door of a closed-loop machine prior to completion of the drying cycle.

(3) *Leak check and repair requirements.* (i) No less frequently than monthly, the owner or operator shall inspect the dry cleaning system for liquid and vapor leaks, including, but not limited to, the following:

- (A) Hose connections, unions, couplings, valves, and flanges;
- (B) Machine door gasket and seating of the machine cylinder;
- (C) Filter head gasket and seating;
- (D) Pumps;
- (E) Base tanks and storage containers;
- (F) Water separators;
- (G) Filter sludge recovery;
- (H) Seals and gaskets of distillation unit(s);
- (I) Diverter valves;
- (J) Saturated lint from lint trap basket;
- (K) Button trap lid;
- (L) Cartridge or other types of filters;

(M) Seals, gaskets and the diverter valve of the refrigerated condenser;

(N) Exhaust stream ducts;

(O) Lint trap ducts; and

(P) Gaskets and ducts of the carbon adsorber.

(ii) To inspect for a vapor leak, the operator shall use at least one of the following techniques:

(A) Soap bubble technique in accordance with the procedures in EPA Method 21, section 4.3.3—Alternative Screening Procedure;

(B) A non-halogenated hydrocarbon detector;

(C) A portable hydrocarbon analyzer; or

(D) An alternative method approved by the reviewing authority.

(iii) To inspect for a liquid leak, the operator shall visually inspect the equipment for liquid leaking in a visible mist or at the rate of more than one drop every 3 minutes.

(iv) Any liquid leak or vapor leak that has been detected by the operator shall be repaired within 3 working days of detection. If repair parts are not available at the facility, the parts shall be ordered within 2 working days of detecting such a leak and the operator shall provide written notification to the reviewing authority that explains the reason(s) for delaying the leak repair. Such repair parts shall be installed within 5 working days after receipt. A facility with a leak that has not been repaired by the end of the 7th working day after detection shall not operate the dry cleaning equipment, until the leak is repaired.

(f) *List of reviewing authorities and areas of coverage.*

TABLE 1—LIST OF REVIEWING AUTHORITIES AND AREAS OF COVERAGE

EPA region	Address for notification of coverage	Address for all other notifications and reports	Area covered	Phone number
Region I	EPA New England, 5 Post Office Square, Suite 100, Mail Code OEP05-2, Boston, MA 02109-3912.	EPA New England, 5 Post Office Square, Suite 100, Mail Code OES04-2, Boston, MA 02109-3912.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.	888-372-7341 617-918-1111
Region II	Chief, Air Programs Branch, Clean Air and Sustainability Division, EPA Region 2, 290 Broadway, 25th Floor, New York, NY 10007-1866.	Chief, Air Compliance Branch, Division of Enforcement and Compliance Assistance, EPA Region 2, 290 Broadway, 21st Floor, New York, NY 10007-1866.	New Jersey, New York, Puerto Rico, and Virgin Islands.	877-251-4575

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TABLE 1—LIST OF REVIEWING AUTHORITIES AND AREAS OF COVERAGE—Continued

EPA region	Address for notification of coverage	Address for all other notifications and reports	Area covered	Phone number
Region III	Office of Permits and Air Toxics, 3AP10, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103.	Office of Air Enforcement and Compliance Assurance, 3AP20, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.	800-438-2474 215-814-5000
Region IV	Chief, Air Permits Section, EPA Region 4 APTMD, 61 Forsyth Street, Atlanta, GA 30303.	Chief, Air & EPCRA Enforcement Branch, EPA Region 4 APTMD, 61 Forsyth Street SW., Atlanta, GA 30303.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.	800-241-1754 404-562-9000
Region V	Air Permits Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Blvd, Chicago, IL 60604.	Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, EPA Region 5, 77 West Jackson Blvd, Chicago, IL 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.	800-621-8431 312-353-2000
Region VI	Air and Radiation Division, EPA Region 6, 1201 Elm Street, Suite 500, Mail Code 6AR Dallas, Texas 75270-2102.	Compliance and Enforcement Correspondence: Enforcement and Compliance Assurance Division, 1201 Elm Street, Suite 500, Mail Code 6ECD, Dallas, Texas 75270-2102.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.	800-887-6063 or 214-665-2760
Region VII	Chief, Air Permitting & Compliance Branch, EPA Region 7, 11201 Renner Blvd, Lenexa, KS 66219.	Chief, Air Permitting & Compliance Branch, EPA Region 7, 11201 Renner Blvd, Lenexa, KS 66219.	Iowa, Kansas, Missouri, and Nebraska.	800-223-0425 913-551-7003
Region VIII	U.S. Environmental Protection Agency, Region 8, Office of Partnerships and Regulatory Assistance, Tribal Air Permitting Program, 8P-AR, 1595 Wynkoop Street, Denver, CO 80202.	U.S. Environmental Protection Agency, Region 8, Office of Enforcement, Compliance & Environmental Justice, Air Toxics and Technical Enforcement Program, 8ENF-AT, 1595 Wynkoop Street, Denver, CO 80202.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.	800-227-8917 303-312-6312
Region IX	Chief, Permits Office (Air-3), Air Division, EPA Region 9, 75 Hawthorne St, San Francisco, CA 94105.	Enforcement Division Director, Attn: Air & TRI Section (ENF-2-1), EPA Region 9, 75 Hawthorne St, San Francisco, CA 94105.	American Samoa, Arizona, California, Guam, Hawaii, Navajo Nation Nevada, and Northern Mariana Islands.	866-EPA-9378 415-947-8000
Region X	Tribal Air Permits Coordinator, U.S. EPA, Region 10, AWT-150, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.	Tribal Air Permits Coordinator, U.S. EPA, Region 10, AWT-150, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.	Alaska, Idaho, Oregon, and Washington.	800-424-4372 206-553-1200

[80 FR 25098, May 1, 2015, as amended at 84 FR 44227, Aug. 23, 2019]

§ 49.164 Air quality permit by rule for new or modified true minor source gasoline dispensing facilities in Indian country.

(a) *Abbreviations and acronyms:*

AST Aboveground Storage Tank
CAA or the Act Federal Clean Air Act
CFR Code of Federal Regulations
EPA United States Environmental Protection Agency
GDF Gasoline Dispensing Facility
NAAQS National Ambient Air Quality Standards
NSR New Source Review
ppm parts per million

PSD Prevention of Significant Deterioration
PV Pressure/Vacuum

VOC Volatile Organic Compounds

(b) *Definitions for the purposes of this permit by rule.* (1) *Cause* means with respect to the reviewing authority's ability to terminate a permitted source's coverage under a permit that:

(i) The permittee is not in compliance with the provisions of this permit by rule;

(ii) The reviewing authority determines that the emissions resulting from the construction or modification of the permitted source significantly contribute to NAAQS violations, which

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are not adequately addressed by the requirements in this permit by rule;

(iii) The reviewing authority has reasonable cause to believe that the permittee obtained coverage under the permit by rule by fraud or misrepresentation; or

(iv) The permittee failed to disclose a material fact required by the Notification of Coverage or the requirements applicable to the permitted source of which the applicant had or should have had knowledge at the time the permittee submitted the Notification of Coverage.

(2) *Construction* means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of an affected emissions unit that would result in a change of emissions.

(3) *Dual-point vapor balance system* means a type of vapor balance system in which the storage tank is equipped with an entry port for a gasoline fill pipe and a separate exit port for a vapor connection.

(4) *Emergency engine* means any stationary reciprocating internal combustion engine that meets all of the criteria in paragraphs (b)(4)(i) through (iii) of this section. All emergency engines must comply with the requirements specified in 40 CFR 63.6640(f) in order to be considered emergency engines. If the engine does not comply with the requirements specified, then it is not considered to be an emergency engine.

(i) The engine is operated to provide electrical power or mechanical work during an emergency situation. Examples include engines used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or an engine used to pump water in the case of fire or flood, etc.

(ii) The engine is operated under limited circumstances for situations not included in paragraph (b)(4)(i) of this section, as specified in 40 CFR 63.6640(f).

(iii) The engine operates as part of a financial arrangement with another entity in situations not included in para-

graph (b)(4)(i) of this definition only as allowed in 40 CFR 63.6640(f).

(5) *Notification of Coverage* means the permit notification that contains all the information required in the standard notification form for this permit by rule.

(6) *Permittee* means the owner or operator of a permitted source.

(7) *Permitted source* means each gasoline dispensing facility for which a permitted source submits a complete Notification of Coverage.

(8) *Responsible official* means one of the following:

(i) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is directly responsible for the overall operation of the permitted source;

(ii) For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

(iii) For a public agency: Either a principal executive officer or ranking elected official, such as a chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(9) *Submerged filling* means the filling of a gasoline storage tank through a submerged fill pipe whose discharge is no more than 6 inches from the bottom of the tank. Bottom filling of gasoline storage tanks is covered under this submerged filling definition.

(10) *Ullage* means the volume of a container not occupied by liquid. For example, the ullage of a tank designed primarily for containing liquid is the volume of the tank minus the volume of the liquid it contains.

(11) *Vapor balance system* means a combination of pipes and hoses that create a closed system between the vapor spaces of an unloading gasoline cargo tank and a receiving storage tank such that vapors displaced from the storage tank are transferred to the gasoline cargo tank being unloaded.

(12) *Vapor tight* means equipment that allows no loss of vapors. Compliance with vapor-tight requirements

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can be determined by checking to ensure that the concentration at a potential leak source is not equal to or greater than 100 percent of the lower explosive limit when measured with a combustible gas detector, calibrated with propane, at a distance of 1 inch from the potential leak source.

(c) *Information about this permit by rule*—(1) *Applicability*. Pursuant to the provisions of the CAA, subchapter I, part D and 40 CFR part 49, subpart C, this permit authorizes the construction or modification and the operation of each stationary gasoline dispensing facility (GDF) for which a reviewing authority receives a completed Notification of Coverage (permitted source).

(2) *Eligibility*. To be eligible for coverage under this permit by rule, the permitted source must qualify as a true minor source as defined in 40 CFR 49.152 and satisfied the requirements in 40 CFR 49.156(f)(6)(iii). In addition, coverage under this Permit by Rule is not available in areas located within the geographic boundaries of California.

(3) *Notification of Coverage*. Requirements for submitting a Notification of Coverage are contained in paragraph (d)(1) of this permit by rule. The information contained in each permitted source's Notification of Coverage is hereby enforceable under this permit by rule.

(4) *Termination*. Paragraph (d)(6) of this permit by rule addresses a reviewing authority's ability to revise, revoke and reissue, or terminate coverage under this permit by rule. It also addresses the reviewing authority's ability to terminate an individual permitted source's coverage under this permit by rule.

(5) *Definitions*. The terms used herein shall have the meaning as defined in 40 CFR 49.152, unless otherwise defined in paragraph (b) of this permit by rule. If a term is not defined, it shall be interpreted in accordance with normal business use.

(d) *Permit by rule terms and conditions*. The following applies to each permittee and permitted source with respect to only the affected emissions units and any associated air pollution control technologies in that permitted source's Notification of Coverage.

(1) *General provisions*—(i) *Obtaining coverage under this permit by rule*. To obtain coverage under this permit by rule, an applicant must submit a completed Notification of Coverage to the appropriate reviewing authority for the area in which the permitted source is or will be located (the Notification of Coverage Form can be found at: <http://www.epa.gov/air/tribal/tribalnsr.html>). Table 1 of paragraph (f) contains a list of reviewing authorities and their area of coverage. You must also submit a copy of the Notification of Coverage to the Indian governing body for any area in which the permitted source will operate. Coverage under this permit by rule is not available in areas within the geographical boundaries of California.

(ii) *Construction and operation*. The permittee shall construct or modify and shall operate the affected emissions units and any associated air pollution control technologies in compliance with this permit by rule and all other applicable federal air quality regulations; and in a manner consistent with representations made by the permittee in the Notification of Coverage.

(iii) *Locations*. This permit by rule only authorizes the permittee to construct or modify and to operate the permitted source in the location(s) listed in the Notification of Coverage for that permitted source.

(iv) *Liability*. This permit by rule does not release the permittee from any liability for compliance with other applicable federal and tribal environmental laws and regulations, including the CAA.

(v) *Severability*. The provisions of this permit by rule are severable. If any portion of this permit by rule is held invalid, the remaining terms and conditions of this permit by rule shall remain valid and in force.

(vi) *Compliance*. The permittee must comply with all provisions of this permit by rule, including emission limitations that apply to the affected emissions units at the permitted source. Noncompliance with any permit provision is a violation of this permit by rule and may constitute a violation of CAA; is grounds for an enforcement action; and is grounds for the reviewing authority to revoke and terminate the

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permitted source's coverage under this permit by rule.

(vii) *National Ambient Air Quality Standards (NAAQS)/Prevention of Significant Deterioration (PSD) Protection.* The permitted source must not cause or contribute to a NAAQS violation or, in an attainment area, must not cause or contribute to a PSD increment violation.

(viii) *Unavailable defense.* It is not a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the provisions of this permit by rule.

(ix) *Property rights.* This permit by rule does not convey any property rights of any sort or any exclusive privilege.

(x) *Information requests.* You, as the permittee, shall furnish to the reviewing authority, within 30 days unless another timeframe is specified by the EPA, any information that the reviewing authority may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating coverage under the permit by rule or to determine compliance with the permit by rule. For any such information claimed to be confidential, the permittee must submit a claim of confidentiality in accordance with 40 CFR part 2 subpart B.

(xi) *Inspection and entry.* Upon presentation of proper credentials, the permittee must allow a representative of the reviewing authority to:

(A) Enter upon the premises where a permitted source is located or emissions-related activity is conducted or where records are required to be kept under the conditions of the permit by rule;

(B) Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit by rule;

(C) Inspect, during normal business hours or while the permitted source is in operation, any facilities, equipment (including monitoring and air pollution control equipment), practices or operations regulated or required under the permit by rule;

(D) Sample or monitor, at reasonable times, substances or parameters for the

purpose of assuring compliance with the permit by rule or other applicable requirements; and

(E) Record any inspection by use of written, electronic, magnetic and photographic media.

(xii) *Posting of coverage.* The most current Notification of Coverage for the permitted source, must be posted prominently at the facility, and each affected emissions unit and any associated air pollution control technology must be labeled with the identification number listed in the Notification of Coverage for that permitted source.

(xiii) *Duty to obtain source-specific permit.* If the reviewing authority intends to terminate a permitted source's coverage under this permit by rule for cause as provided in § 49.164(d)(6), then the permittee shall apply for and obtain a source-specific as required by the reviewing authority.

(xiv) *Credible evidence.* For the purpose of establishing whether the permittee violated or is in violation of any requirement of this permit by rule, nothing shall preclude the use, including the exclusive use, of any credible evidence or information relevant to whether a permitted source would have been in compliance with applicable requirements if the permittee had performed the appropriate performance or compliance test or procedure.

(2) *Emission limitations and standards.*

(i) The permittee shall install, maintain, and operate each affected emissions unit, including any associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions of NSR regulated pollutants and considering the manufacturer's recommended operating procedures at all times, including periods of startup, shutdown, maintenance and malfunction. The reviewing authority will determine whether the permittee is using acceptable operating and maintenance procedures based on information available to the reviewing authority which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the permitted source.

(ii) GDFs located in an ozone attainment, unclassifiable or attainment/

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unclassifiable area or a marginal or moderate ozone nonattainment area shall limit throughput of gasoline to less than 25,000,000 gallons per year based on a 12-month rolling total.

(iii) GDFs located in a serious, severe or extreme ozone nonattainment area shall limit throughput of gasoline to less than 8,000,000 gallons per year based on a 12-month rolling total.

(iv) You must ensure gasoline is handled in a manner that will minimize vapor releases to the atmosphere. The measures to be taken include:

(A) Minimizing gasoline spills;

(B) Cleaning up spills as expeditiously as practicable. The spill bucket shall be free from standing liquid and debris;

(C) Covering all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use (all portable gasoline containers that meet the requirements of 40 CFR part 59, subpart F meet this requirement);

(D) Minimizing gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators; and

(E) To the extent practicable, any other actions necessary to minimize vapor releases to the atmosphere.

(v) Except as specified in paragraph (d)(2)(v)(B) of this section, you must only load gasoline into storage tanks at your facility by utilizing submerged filling, and as specified in this condition. The applicable distances shall be measured from the point in the opening of the submerged fill pipe that is the greatest distance from the bottom of the storage tank.

(A) Submerged fill pipes must be no more than 6 inches from the bottom of the tank.

(B) Submerged fill pipes not meeting the specifications in paragraph (d)(2)(v)(A) of this section are allowed if the owner or operator can demonstrate that the liquid level in the tank is always above the entire opening of the fill pipe. Documentation providing such demonstration must be made available onsite for inspection by the reviewing authority.

(vi) Except as provided in paragraph (d)(2)(viii) of this section, each new or

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modified gasoline storage tank constructed must be equipped with a Stage I dual-point vapor balance system.

(vii) Except as provided in paragraph (d)(2)(viii) of this section, each Stage I dual-point vapor balance system on your gasoline storage tank must meet the design criteria and management practices in paragraph (e) of this section, as applicable.

(viii) The affected emissions units listed below are not required to comply with the control requirements in paragraphs (d)(2)(vi) and (vii) of this section, but must comply with the requirements in paragraph (d)(2)(v) of this section.

(A) Gasoline storage tanks with a capacity of less than 250 gallons.

(B) Gasoline storage tanks with a capacity of less than 2,000 gallons.

(C) Gasoline storage tanks equipped with floating roofs, or the equivalent.

(ix) Cargo tanks unloading at GDFs must not unload gasoline into a storage tank at a GDF unless the following management practices are met:

(A) All hoses in the vapor balance system are properly connected;

(B) The adapters or couplers that attach to the vapor line on the storage tank have closures that seal upon disconnect;

(C) All vapor return hoses, couplers, and adapters used in gasoline delivery are vapor-tight;

(D) All tank truck vapor return equipment is compatible in size and forms a vapor-tight connection with the vapor balance equipment on the GDF storage tank;

(E) All hatches on the tank truck are closed and securely fastened; and

(F) The filling of storage tanks at GDF shall be limited to unloading from vapor-tight gasoline cargo tanks.

(x) Each emergency engine shall:

(A) Be equipped with a non-resettable hour meter;

(B) If using fuel oil, use diesel or biodiesel containing no more than 15 ppm (0.0015 percent) sulfur;

(C) Meet the following certification requirement for compression ignition emergency engines: for model year 2006 and later engines, the engine shall be certified to the standards in 40 CFR part 89.

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(D) Meet the following certification requirements for spark ignition emergency engines manufactured on or after January 1, 2009:

(1) Engines greater than 50 hp and less than 130 hp shall be certified to the Phase I standards in 40 CFR 90.103; and

(2) Engines greater than or equal to 130 hp shall be certified to the standards in 40 CFR 1048.

(E) If not required to be certified to the standards in paragraph (d)(2)(x)(C) or (D) of this section:

(1) Follow the manufacturer's emission-related operation and maintenance instructions or develop your own maintenance plan which must provide to the extent practicable for the maintenance and operation of the engine in a manner consistent with good air pollution control practice for minimizing emissions;

(2) Change oil and filter and inspect every hose and belt every 500 hours of operation or annually, whichever comes first; and

(3) Inspect air cleaner or spark plugs, as applicable, every 1,000 hours of operation, or annually, whichever comes first.

(3) *Monitoring and testing requirements.*

(i) For each vapor balance system, the permittee shall perform an initial performance test as prescribed in paragraph (e) of this section and every 3 years thereafter. The performance test shall be conducted within 60 days after achieving the maximum production rate at which the permitted source will operate the affected vapor balance system, but not later than 180 days after the first day of operation after the reviewing authority receives the completed Notification of Coverage.

(ii) The permittee shall monitor monthly gasoline throughput in gallons.

(iii) The permittee shall perform weekly inspections of the vapor control recovery system(s), all pumps, compressors, pipes, hoses, mechanical seals, or other equipment storing, handling, conveying, or controlling VOCs. For sources located in extreme ozone nonattainment areas, these equipment inspections shall be performed daily. The inspections shall be used to determine whether all equipment is in good working order according to any avail-

able manufacturer's recommendations and good engineering practices.

(4) *Recordkeeping requirements.* (i) The permittee shall maintain all records required to be kept onsite by this permit by rule for at least 5 years from the date of origin, unless otherwise stated.

(ii) The Notification of Coverage and all documentation supporting that application shall be maintained by the permittee for the duration of time the affected emissions unit(s) is covered under this permit by rule.

(iii) The permittee shall maintain records of each inspection required by paragraph (d)(3)(iii) of this section. The records shall include a log of:

(A) Identification of the devices inspected;

(B) The date of the inspection;

(C) The results of each inspection;

(D) Any corrective actions taken as a result of the inspection; and

(E) The results of any corrective actions taken.

(iv) For each emergency engine, the permittee shall maintain a log of all maintenance activities conducted and a log of the hours of operation including the date, time, duration, and reason for use.

(v) The permittee shall maintain records on a monthly basis of the fuel throughput and the 12-month rolling total. The 12-month rolling total is defined as the sum of the fuel throughput during the current month and the fuel throughput for the previous 11 months.

(vi) The results of each performance test conducted pursuant to § 49.164(d)(3)(i) shall be recorded. At a minimum, the permittee shall maintain records of:

(A) The date of each test;

(B) Each test plan;

(C) Any documentation required to approve an alternate test method;

(D) Test conditions;

(E) The results of each test; and

(F) The name of the company or entity conducting the analysis.

(5) *Notification and reporting requirements—(i) Notification of construction or modification, and operations.* The permittee shall submit a written or electronic notice to the reviewing authority within 30 days from when the permittee begins actual construction, and

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within 30 days from when the permittee begins initial operations or resumes operation after a modification.

(ii) *Notification of change in ownership or operator.* If the permitted source changes ownership or operator, then the new owner must submit a written or electronic notice to the reviewing authority within 90 days before or after the change in ownership is effective. In the notice, the new permittee must provide the reviewing authority a written agreement containing a specific date for transfer of ownership, and an effective date on which the new owner assumes partial and/or full coverage and liability under this permit by rule. The submittal must identify the previous owner, and update the name, street address, mailing address, contact information, and any other information about the permitted source if it would change as a result of the change of ownership. The current owner shall ensure that the permitted source remains in compliance with the permit by rule until any such transfer of ownership is effective.

(iii) *Notification of closure.* The permittee must submit a report of any permanent or indefinite closure to the reviewing authority in writing within 90 days after the cessation of all operations at the permitted source. The notification must identify the owner, the current location, and the last operating location of the permitted source. It is not necessary to submit a report of closure for regular, seasonal closures.

(iv) *Annual reports.* The permittee shall submit an annual report on or before March 15 of each calendar year to the reviewing authority. The annual report shall cover the period from January 1 to December 31 of the previous calendar year and shall include:

(A) An evaluation of the permitted source's compliance status with the emission limitations and standards in paragraph (d)(2) of this section;

(B) Summaries of the required monitoring and recordkeeping in paragraphs (d)(3) and (4) of this section; and

(C) Summaries of deviation reports submitted pursuant to paragraph (d)(5)(v) of this section.

(v) *Deviation reports.* The permittee shall promptly report to the reviewing

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authority any deviations as defined at 40 CFR 71.6(a)(3)(iii)(C) from the permit by rule requirements including deviations attributable to upset conditions. (For the purposes of this permit by rule, promptly shall be defined to mean: at the time the annual report in paragraph (d)(5)(iv) of this section is submitted.) Deviation reports shall include:

- (A) The identity of affected emissions unit where the deviation occurred;
- (B) The nature of the deviation;
- (C) The length of time of the deviation;
- (D) The probable cause of the deviation; and
- (E) Any corrective actions or preventive measures taken as a result of the deviation to minimize emissions from the deviation and to prevent future deviations.

(vi) *Performance test reports.* The permittee shall submit a test report to the reviewing authority within 45 days after the completion of any required performance test. At a minimum, the test report shall include:

- (A) A description of the affected emissions unit and sampling location(s);
- (B) The time and date of each test;
- (C) A summary of test results, reported in units consistent with the applicable standard;
- (D) A description of the test methods and quality assurance procedures used;
- (E) A summary of any deviations from the proposed test plan and justification for why the deviation(s) was necessary;
- (F) Operating parameters of the affected emissions unit and control equipment during each test run;
- (G) Sample calculations of equations used to determine test results in the appropriate units; and
- (H) The name of the company or entity performing the analysis.

(vii) *Reporting and notification address.* The permittee shall send all required reports to the reviewing authority at the mailing address specified in paragraph (f) of this section.

(viii) *Signature verifying truth, accuracy and completeness.* All reports required by this permit by rule shall be signed by a responsible official as to the truth, accuracy and completeness

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of the information. The report must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete. If the permittee discovers that any reports or notification submitted to the reviewing authority contain false, inaccurate, or incomplete information, the permittee shall notify the reviewing authority immediately and correct or amend the report as soon as practicable.

(6) *Changes to this permit by rule*—(i) *Revising, reopening, revoking and reissuing, or terminating for cause*. The permit by rule may be revised, reopened, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and re-issuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit by rule condition. This provision also applies to the documents incorporated by reference.

(ii) *Terminating coverage under this permit by rule*. The reviewing authority may terminate coverage under this permit by rule, and thereby terminate that permittee's authorization to construct or modify, and that permitted source's authorization to operate under this permit by rule for cause as defined in paragraph (b) of this section. The reviewing authority may provide the permittee with notice of the intent to terminate, and delay the effective date of the termination to allow the permittee to obtain a source specific permit as required by the reviewing authority.

(iii) *Permit becomes invalid*. Authority to construct and operate under this permit by rule becomes invalid if the permittee does not commence construction within 18 months after the Notification of Coverage is received by the reviewing authority, if the permittee discontinues construction for a period of 18 months or more, or if the permittee does not complete construction within a reasonable time. The reviewing authority may extend the 18-month period upon a satisfactory showing that an extension is justified according to 40 CFR 49.156(e)(8).

(e) *Vapor balance system design criteria, management practices, and performance testing*. (1) Design criteria and

management practices for each vapor balance system:

(i) All vapor connections and lines on the storage tank(s) shall be equipped with closures that seal upon disconnect.

(ii) The vapor line from the gasoline storage tank to the gasoline cargo tank shall be vapor-tight.

(iii) The vapor balance system shall be designed such that the pressure in the tank truck does not exceed 18 inches water pressure or 5.9 inches water vacuum during product transfer.

(iv) The vapor recovery and product adaptors, and the method of connection with the delivery elbow, shall be designed so as to prevent the over-tightening or loosening of fittings during normal delivery operations.

(v) If a gauge well separate from the fill tube is used, it shall be provided with a submerged drop tube that extends no more than 6 inches from the bottom of the storage tank.

(vi) Liquid fill connections for all systems shall be equipped with vapor-tight caps.

(vii) Pressure/vacuum (PV) vent valves shall be installed on the storage tank vent pipes. The pressure specifications for PV vent valves shall be: a positive pressure setting of 2.5 to 6.0 inches of water and a negative pressure setting of 6.0 to 10.0 inches of water. The total leak rate of all PV vent valves at an affected facility, including connections, shall not exceed 0.17 cubic foot per hour at a pressure of 2.0 inches of water and 0.63 cubic foot per hour at a vacuum of 4 inches of water.

(viii) The vapor balance system shall be capable of meeting the static pressure performance requirement of the following equation: $P_f = 2e^{-500.887/v}$, where: P_f = minimum allowable final pressure, inches of water, v = total ullage affected by the test, gallons, e = dimensionless constant equal to approximately 2.718, 2 = the initial pressure, inches water.

(ix) For aboveground storage tanks (ASTs) with a capacity greater than 250 gallons and located at a GDF in a serious, severe, or extreme ozone non-attainment area the permittee shall also:

(A) Limit standing loss emissions to less than or equal to 0.57 lbs VOC per

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1,000 gallons ullage per day (lbs/1,000 gallons/day), for newly installed tanks.

(B) Limit standing loss emissions to less than or equal to 2.26 lbs VOC per 1,000 gallons ullage per day (lbs/1,000 gallons/day), for modified or reconstructed tanks.

(2) Vapor balance system performance testing:

(i) The permittee shall conduct performance testing to demonstrate compliance with the leak rate and cracking pressure requirements, specified in paragraph (e)(1)(vii) of this section, for pressure-vacuum vent valves installed on your gasoline storage tanks as follows:

(A) According to a test plan submitted at least 30 days in advance of the test date to the reviewing authority; and

(B) Using California Air Resources Board Vapor Recovery Test Procedure TP-201.1E,—Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, adopted October 8, 2003 (see 40 CFR 63.14).

(ii) The permittee shall conduct performance testing to demonstrate compliance with the static pressure performance requirement, specified in

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paragraph (e)(1)(viii) of this section, for each vapor balance system by conducting a static pressure test on each gasoline storage tank as follows:

(A) According to a test plan submitted at least 30 days in advance of the test date to the reviewing authority:

(B) Using California Air Resources Board Vapor Recovery Test Procedure TP-201.3,—Determination of 2-Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, adopted April 12, 1996, and amended March 17, 1999 (see 40 CFR 63.14) or Bay Area Air Quality Management District Source Test Procedure ST-30—Static Pressure Integrity Test—Underground Storage Tanks, adopted November 30, 1983, and amended December 21, 1994 (see 40 CFR 63.14); and

(iii) For ASTs subject to § 49.164(e)(1)(ix), the ASTs shall be California Air Resources Board certified AST for Standing Loss Control per Vapor Recovery Test Procedures TP-206.1 or TP-206.2.

(f) *List of reviewing authorities, and areas of coverage.*

TABLE 1—LIST OF REVIEWING AUTHORITIES, AND AREAS OF COVERAGE

EPA region	Address for notification of coverage	Address for all other notification and reports	Area covered	Phone number
Region I	EPA New England, 5 Post Office Square, Suite 100, Mail Code OEP05-2, Boston, MA 02109-3912.	EPA New England, 5 Post Office Square, Suite 100, Mail Code OES04-2, Boston, MA 02109-3912.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.	888-372-7341 617-918-1111
Region II	Chief, Air Programs Branch, Clean Air and Sustainability Division, EPA Region 2, 290 Broadway, 25th Floor, New York, NY 10007-1866.	Chief, Air Compliance Branch, Division of Enforcement and Compliance Assistance, EPA Region 2, 290 Broadway, 21st Floor, New York, NY 10007-1866.	New Jersey, New York, Puerto Rico, and Virgin Islands.	877-251-4575
Region III	Office of Permits and Air Toxics, 3AP10, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103.	Office of Air Enforcement and Compliance Assurance, 3AP20, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.	800-438-2474 215-814-5000
Region IV	Chief, Air Permits Section, EPA Region 4 APTMD, 61 Forsyth Street, Atlanta, GA 30303.	Chief, Air & EPCRA Enforcement Branch, EPA Region 4 APTMD, 61 Forsyth Street, SW, Atlanta, GA 30303.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.	800-241-1754 404-562-9000

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TABLE 1—LIST OF REVIEWING AUTHORITIES, AND AREAS OF COVERAGE—Continued

EPA region	Address for notification of coverage	Address for all other notification and reports	Area covered	Phone number
Region V	Air Permits Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Blvd, Chicago, IL 60604.	Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, EPA Region 5, 77 West Jackson Blvd, Chicago, IL 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.	800-621-8431 312-353-2000
Region VI	Air and Radiation Division, EPA Region 6, 1201 Elm Street, Suite 500, Mail Code 6AR Dallas, Texas 75270-2102.	Compliance and Enforcement Correspondence: Enforcement and Compliance Assurance Division, 1201 Elm Street, Suite 500, Mail Code 6ECD, Dallas, Texas 75270-2102.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.	800-887-6063 or 214-665-2760
Region VII	Chief, Air Permitting & Compliance Branch, EPA Region 7, 11201 Renner Blvd, Lenexa, KS 66219.	Chief, Air Permitting & Compliance Branch, EPA Region 7, 11201 Renner Blvd, Lenexa, KS 66219.	Iowa, Kansas, Missouri, and Nebraska.	800-223-0425 913-551-7003
Region VIII	U.S. Environmental Protection Agency, Region 8, Office of Partnerships and Regulatory Assistance, Tribal Air Permitting Program, 8P-AR, 1595 Wynkoop Street, Denver, CO 80202.	U.S. Environmental Protection Agency, Region 8, Office of Enforcement, Compliance & Environmental Justice, Air Toxics and Technical Enforcement Program, 8ENF-AT, 1595 Wynkoop Street, Denver, CO 80202.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.	800-227-8917 303-312-6312
Region IX	Chief, Permits Office (Air-3), Air Division, EPA Region 9, 75 Hawthorne St, San Francisco, CA 94105.	Enforcement Division Director, Attn: Air & TRI Section (ENF-2-1), EPA Region 9, 75 Hawthorne St, San Francisco, CA 94105.	American Samoa, Arizona, California, Guam, Hawaii, Navajo Nation Nevada, and Northern Mariana Islands.	866-EPA-9378 415-947-8000
Region X	Tribal Air Permits Coordinator, U.S. EPA, Region 10, AWT-150, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.	Tribal Air Permits Coordinator, U.S. EPA, Region 10, AWT-150, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.	Alaska, Idaho, Oregon, and Washington.	800-424-4372 206-553-1200

[80 FR 25102, May 1, 2015, as amended at 84 FR 44227, Aug. 23, 2019]

§ 49.165 [Reserved]

FEDERAL MAJOR NEW SOURCE REVIEW PROGRAM FOR NONATTAINMENT AREAS IN INDIAN COUNTRY

SOURCE: 76 FR 38802, July 1, 2011, unless otherwise noted.

§ 49.166 Program overview.

(a) *What constitutes the Federal major new source review (NSR) program for nonattainment areas in Indian country?* As set forth in this Federal Implementation Plan (FIP), the Federal major

NSR program for nonattainment areas in Indian country (or “program”) consists of §§ 49.166 through 49.175.

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

(1) It establishes a preconstruction permitting program for new major sources and major modifications at existing major sources located in nonattainment areas in Indian country to meet the requirements of part D of title I of the Act.

(2) It requires that major sources subject to this program comply with the provisions and requirements of part

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51, Appendix S of this chapter (Appendix S). Additionally, it sets forth the criteria and procedures in Appendix S that the reviewing authority (as defined in §49.167) will use to approve permits under this program. Note that for the purposes of this program, the term SIP as used in Appendix S means any EPA-approved implementation plan, including a Tribal Implementation Plan (TIP). While some of the important provisions of Appendix S are paraphrased in various paragraphs of this program to highlight them, the provisions of Appendix S govern.

(3) It also sets forth procedures for appealing a permit issued under this program as provided in §49.172.

(c) *When and where does this program apply?* (1) The provisions of this program apply to new major sources and major modifications at existing major sources located in nonattainment areas in all Indian reservation lands where no EPA-approved program is in place and all other areas of Indian country where no EPA-approved program is in place and over which an Indian tribe, or the EPA, has demonstrated that a tribe has jurisdiction, and where there is no EPA-approved nonattainment major NSR program beginning on August 30, 2011. The provisions of this program apply only to new sources and modifications that are major for the regulated NSR pollutant(s) for which the area is designated nonattainment.

(2) The provisions of this program cease to apply in an area covered by an EPA-approved implementation plan on the date that our approval of that implementation plan becomes effective, provided that the plan includes provisions that comply with the requirements of part D of title I of the Act and §51.165 of this chapter for the construction of new major sources and major modifications at existing major sources in nonattainment areas. 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 gen-

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eral provisions apply to you as an owner/operator of a source:

(1) If you propose to construct a new major source or a major modification at an existing major source in a nonattainment area in Indian country, you must obtain a major NSR permit under this program before beginning actual construction. If you commence construction after the effective date of this program 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 major NSR permit issued under this program, you will be subject to appropriate enforcement action.

(3) Issuance of a permit under this program 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.

(4) Nothing in this program prevents a Tribe from administering a nonattainment major NSR permit program with different requirements in an approved TIP as long as the TIP meets the requirements of part D of title I of the Act.

[76 FR 38802, July 1, 2011, as amended at 81 FR 35981, June 3, 2016]

§49.167 Definitions.

For the purposes of this program, the definitions in part 51, Appendix S, paragraph II.A of this chapter apply, unless otherwise stated. The following definitions also apply to this program:

Allowable emissions means “allowable emissions” as defined in part 51, Appendix S, paragraph II.A.11 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.

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

(1) An emission limitation or other standard is legally enforceable if the

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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 as applied to this program:

(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.

(4) The geographic scope of applicability of this rule is as specified in § 49.166(c)(1).

Reviewing authority means the Administrator or an Indian Tribe in cases where a Tribal agency is assisting EPA with administration of the program through a delegation under § 49.173.

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 such 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 Appendix S, but that has taken a restriction such that its potential to emit is less than such amounts for major sources. Such restrictions must be enforceable as a practical matter.

[76 FR 38802, July 1, 2011, as amended at 81 FR 35981, June 3, 2016]

§ 49.168 Does this program apply to me?

(a) In a nonattainment area for a pollutant in Indian country, the requirements of this program apply to you under either of the following circumstances:

(1) If you propose to construct a new major source (as defined in part 51, Appendix S, paragraph II.A.4 of this chapter) of the nonattainment pollutant.

(2) If you propose to construct a major modification at your existing major source (as defined in part 51, Appendix S, paragraph II.A.5 of this chapter), where your source is a major source of the nonattainment pollutant and the proposed modification is a

¹Under 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.

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major modification for the nonattainment pollutant.

(b) If you own or operate a major source with a state-issued nonattainment major NSR permit, you must apply to convert such permit to a Federal permit under this program by September 4, 2012.

(c) If you propose to establish a synthetic minor source or synthetic minor HAP source or to construct a minor modification at your major source, you will have to comply with the requirements of the Federal minor NSR program in Indian country at §§49.151 through 49.165 or other EPA-approved minor NSR program, as applicable.

§ 49.169 Permit approval criteria.

(a) *What are the general criteria for permit approval?* The general review criteria for permits are provided in part 51, Appendix S, paragraph II.B of this chapter. In summary, that paragraph basically requires the reviewing authority to ensure that the proposed new major source or major modification would meet all applicable emission requirements in the EPA-approved implementation plan or FIP, any applicable new source performance standard in part 60 of this chapter and any applicable national emission standards for hazardous air pollutants in part 61 or part 63 of this chapter, before a permit can be issued.

(b) *What are the program-specific criteria for permit approval?* The approval criteria or conditions for obtaining a major NSR permit for major sources and major modifications locating in nonattainment areas are given in part 51, Appendix S, paragraph IV.A of this chapter. In summary, these are the following:

(1) The lowest achievable emission rate (LAER) requirement for any NSR pollutant subject to this program.

(2) Certification that all existing major sources owned or operated by you in the same state as the state including the Tribal land where the proposed source or modification is locating are in compliance or under a compliance schedule.

(3) Emissions reductions (offsets) requirement for any source or modification subject to this program.

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(4) A demonstration that the emission offsets will provide a net air quality benefit in the affected area.

(5) 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.

§ 49.170 Emission offset requirement exemption.

An Indian governing body may seek an exemption from the emission offset requirement (see § 49.169(b)(3)) for major sources and major modifications subject to this program that are located within the Tribe's Indian country pursuant to section 173(a)(1)(B) of the Act, under which major sources and major modifications subject to this program may be exempted from the offset requirement if they are located in a zone targeted for economic development by the Administrator, in consultation with the Department of Housing and Urban Development (HUD). Under this Economic Development Zone (EDZ) approach, the Administrator would waive the offset requirement for such sources and modifications, provided that:

(a) The new major source or major modification is located in a geographical area which meets the criteria for an EDZ and the Administrator has approved a request from a Tribe and declared the area an EDZ and

(b) The state/Tribe demonstrates 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.

§ 49.171 Public participation requirements.

(a) *What permit information will be publicly available?* With the exception of any confidential information as defined in part 2, subpart B of this chapter, the reviewing authority must make available for public inspection the documents listed in paragraphs (a)(1)

through (4) of this section. 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.

(1) All information submitted as part of your application for a permit.

(2) Any additional information requested by the reviewing authority.

(3) The reviewing authority's analysis of the application and any additional information submitted by you, including the LAER analysis and, where applicable, the analysis of your emissions reductions (offsets), your demonstration of a net air quality benefit in the affected area and your analysis of alternative sites, sizes, production processes and environmental control techniques.

(4) A copy of the draft permit or the decision to deny the permit with the justification for denial.

(b) *How will the public be notified and participate?*

(1) Before issuing a permit under this program, the reviewing authority must prepare a draft permit and must provide adequate public notice to ensure that the affected community and the general public have reasonable access to the application and draft permit information, as set out in paragraphs (b)(1)(i) and (ii) of this section. The public notice must provide an opportunity for public comment and notice of a public hearing, if any, on the draft permit.

(i) The reviewing authority must mail a copy of the notice to you, 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.

(ii) 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 (e.g., subsistence hunting and fishing or other seasonal cultural practices), the reviewing authority must use appropriate means of notification, such as those listed in para-

graphs (b)(1)(ii)(A) through (E) of this section.

(A) The reviewing authority may mail or e-mail 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.

(B) The reviewing authority may post the notice on its Web site.

(C) The reviewing authority may publish 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.

(D) The reviewing authority may provide copies of the notice for posting at one or more locations in the area affected by the source, such as Post Offices, trading posts, libraries, Tribal environmental offices, community centers or other gathering places in the community.

(E) The reviewing authority may employ other means of notification as appropriate.

(2) The notice required pursuant to paragraph (b)(1) of this section must include the following information at a minimum:

(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) The name and address of the reviewing authority processing the permit action;

(iii) The regulated NSR pollutants to be emitted, the affected emissions units and the emission limitations for each affected emissions unit;

(iv) The emissions change involved in the permit action;

(v) Instructions for requesting a public hearing;

(vi) The name, address and telephone number of a contact person in the reviewing authority's office from whom additional information may be obtained;

(vii) Locations and times of availability of the information (listed in paragraph (a) of this section) for public inspection and

(viii) A statement that any person may submit written comments, a written request for a public hearing or

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both, on the draft permit action. The reviewing authority must provide a period of at least 30 days from the date of the public notice for comments and for requests for a public hearing.

(c) *How will the public comment and will there be a public hearing?*

(1) Any person may submit written comments on the draft permit and may request a public hearing. These comments must raise any reasonably ascertainable issue with supporting arguments by the close of the public comment period (including any public hearing). The reviewing authority must consider all comments in making the final decision. The reviewing authority must keep a record of the commenters and of the issues raised during the public participation process and such records must be available to the public.

(2) The reviewing authority must extend the public comment period under paragraph (b) of this section to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(3) A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised at the hearing.

(4) The reviewing authority must hold a hearing whenever there is, on the basis of requests, a significant degree of public interest in a draft permit. The reviewing authority may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision. The reviewing authority must provide notice of any public hearing at least 30 days prior to the date of the hearing. Public notice of the hearing may be concurrent with that of the draft permit and the two notices may be combined. Reasonable limits may be set upon the time allowed for oral statements at the hearing.

(5) The reviewing authority must make a tape recording or written transcript of any hearing available to the public.

§49.172 Final permit issuance and administrative and judicial review.

(a) *How will final action occur and when will my permit become effective?* After making a decision on a permit, the reviewing authority must notify you of the decision, in writing and if the permit is denied, provide the reasons for such denial and the procedures for appeal. 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. A final permit becomes effective 30 days after service of notice of the final permit decision, unless:

(1) A later effective date is specified in the permit or

(2) Review of the final permit is requested under paragraph (d) of this section (in which case the specific terms and conditions of the permit that are the subject of the request for review must be stayed) or

(3) The draft permit was subjected to a public comment period and no comments requested a change in the draft permit or a denial of the permit, in which case the reviewing authority may make the permit effective immediately upon issuance.

(b) *For how long will the reviewing authority retain my permit-related records?* 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 not less than 5 years.

(c) *What is the administrative record for each final permit?*

(1) The reviewing authority must base final permit decisions on an administrative record consisting of:

(i) All comments received during any public comment period, including any extension or reopening;

(ii) The tape or transcript of any hearing(s) held;

(iii) Any written material submitted at such a hearing;

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(iv) Any new materials placed in the record as a result of the reviewing authority's evaluation of public comments;

(v) Other documents in the supporting files for the permit that were relied upon in the decision-making;

(vi) The final permit;

(vii) The application and any supporting data furnished by you, the permit applicant;

(viii) The draft permit or notice of intent to deny the application or to terminate the permit and

(ix) Other documents in the supporting files for the draft permit that were relied upon in the decision-making.

(2) The additional documents required under paragraph (c)(1) of this section should be added to the record as soon as possible after their receipt or publication by the reviewing authority. The record must be complete on the date the final permit is issued.

(3) Material readily available or published materials that are generally available and that are included in the administrative record under the standards of paragraph (c)(1) of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in that file.

(d) *Can permit decisions be appealed?* Permit decisions may be appealed according to the following provisions:

(1) The Administrator delegates authority to the Environmental Appeals Board (the Board) to issue final decisions in permit appeals filed under this program. An appeal directed to the Administrator, rather than to the Board, will not be considered. This delegation does not preclude the Board from referring an appeal or a motion under this program to the Administrator when the Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Board, all parties shall be so notified and the provisions of this program referring to the Board shall be interpreted as referring to the Administrator.

(2) Within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hear-

ing may petition the Board to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent that the changes from the draft to the final permit or other new grounds were not reasonably ascertainable during the public comment period on the draft permit. The 30-day period within which a person may request review under this section begins with the service of notice of the final permit decision, unless a later date is specified in that notice.

(3) The petition must include a statement of the reasons supporting the review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations, unless the petitioner demonstrates that it was impracticable to raise such objections were not reasonably ascertainable within such period or unless the grounds for such objection arose after such period and, when appropriate, a showing that the condition in question is based on:

(i) A finding of fact or conclusion of law that is clearly erroneous or

(ii) An exercise of discretion or an important policy consideration that the Board should, in its discretion, review.

(4) The Board may also decide on its own initiative to review any condition of any permit issued under this program.

(5) Within a reasonable time following the filing of the petition for review, the Board will issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. If the Board grants review in response to requests under paragraph (d)(2)-(3) or (4) of this section, public notice must be given as provided in § 49.171(b). Public notice must set forth a briefing schedule for the appeal and must state that any interested person may file an amicus brief. If the Board denies review, you, the permit applicant and the person(s) requesting review must be notified through means that are adequate

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to assure reasonable access to the decision, which may include mailing a notice to each party.

(6) The reviewing authority, at any time prior to the rendering of the decision under paragraph (d)(5) of this section to grant or deny review of a permit decision, may, upon notification to the Board and any interested parties, withdraw the permit and prepare a new draft permit addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part.

(7) A petition to the Board under paragraph (d)(2) of this section is, under section 307(b) of the Act, a prerequisite to seeking judicial review of the final agency action.

(8) For purposes of judicial review, final agency action occurs when a final permit is issued or denied by the reviewing authority and agency review procedures are exhausted. A final permit decision will be issued by the reviewing authority:

(i) When the Board issues notice to the parties that review has been denied;

(ii) When the Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(9) The reviewing authority shall promptly publish in the FEDERAL REGISTER notice of any final agency action on a permit.

(10) Motions to reconsider a final order must be filed within 10 days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision must be directed to and decided by, the Board. Motions for reconsideration directed to the Administrator, rather than to the Board, will not be considered, except in cases the Board has referred to the Administrator pursuant to §49.172(d)(1) and in

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which the Administrator has issued the final order. A motion for reconsideration will not stay the effective date of the final order unless specifically so ordered by the Board.

(11) For purposes of this section, time periods are computed as follows:

(i) Any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event.

(ii) Any time period scheduled to begin before the occurrence of an act or event must be computed so that the period ends on the day before the act or event, except as otherwise provided.

(iii) If the final day of any time period falls on a weekend or legal holiday, the time period must be extended to the next working day.

(iv) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days must be added to the prescribed time.

(e) *Can my permit be reopened?* The reviewing authority may reopen an existing, currently-in-effect permit for cause on its own initiative, such as if it 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, calculation and other errors, all other permit reopenings shall be carried out after the opportunity of public notice and comment and in accordance with one or more of the public participation requirements under §49.171(b)(1)(ii).

(f) *Can my permit be rescinded?* (1) Any permit issued under this section or a prior version of this section shall remain in effect until it is rescinded under this paragraph (f).

(2) An owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in paragraph (f)(3) of this section may request that the reviewing authority rescind the permit or a particular portion of the permit.

(3) The reviewing authority may grant an application for rescission if

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the application shows that §§ 49.166 through 49.173 would not apply to the source or modification.

(4) If the reviewing authority rescinds a permit under this paragraph (f), the public shall be given adequate notice of the rescission determination in accordance with one or more of the following methods:

(i) The reviewing authority may mail or email 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.

(ii) The reviewing authority may post the notice on its Web site.

(iii) The reviewing authority may publish 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.

(iv) The reviewing authority may provide copies of the notice for posting at one or more locations in the area affected by the source, such as Post Offices, trading posts, libraries, Tribal environmental offices, community centers or other gathering places in the community.

(v) The reviewing authority may employ other means of notification as appropriate.

[76 FR 38802, July 1, 2011, as amended at 81 FR 78048, Nov. 7, 2016]

§ 49.173 Administration and delegation of the nonattainment major NSR program in Indian country.

(a) Who administers a nonattainment major NSR program in Indian country?

(1) If the Administrator has approved a TIP that includes a major NSR program for sources in nonattainment areas of Indian country that meets the requirements of part D of title I of the Act and § 51.165 of this chapter, the Tribe is the reviewing authority and will administer the approved major NSR program under Tribal law.

(2) If the Administrator has not approved an implementation plan, the Administrator may delegate the authority to assist EPA with administration of portions of this Federal nonattainment major NSR program implemented under Federal authority to a Tribal agency upon request, in accord-

ance with the provisions of paragraph (b) of this section. If the Tribal agency has been granted such delegation, it will have the authority to assist EPA according to paragraph (b) of this section and it will be the reviewing authority for purposes of the provisions for which it has been granted delegation.

(3) If the Administrator has not approved an implementation plan or granted delegation to a Tribal agency, the Administrator is the reviewing authority and will directly administer all aspects of this Federal nonattainment major NSR program in Indian country under Federal authority.

(b) *Delegation of administration of the Federal nonattainment major NSR program to Tribes.* This paragraph (b) establishes the process by which the Administrator may delegate authority to a Tribal agency, with or without signature authority, to assist EPA with administration of portions of this Federal nonattainment major NSR program, in accordance with the provisions in paragraphs (b)(1) through (8) of this section. Any Federal requirements under this program that are administered by the delegate Tribal agency will be subject to enforcement by EPA under Federal law. This section provides for administrative delegation of the Federal nonattainment major NSR program and does not affect the eligibility criteria under § 49.6 for treatment in the same manner as a state.

(1) *Information to be included in the Administrative Delegation Request.* In order to be delegated authority to assist EPA with administration of this FIP permit program for sources, the Tribal agency must submit a request to the Administrator that:

(i) Identifies the specific provisions for which delegation is requested;

(ii) Identifies the Indian Reservation or other areas of Indian country for which delegation is requested;

(iii) Includes a statement by the applicant's legal counsel (or equivalent official) that includes the following information:

(A) A statement that the applicant is a Tribe recognized by the Secretary of the Interior;

(B) A descriptive statement that is consistent with the type of information

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described in §49.7(a)(2) demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area and

(C) A description of the laws of the Tribe that provide adequate authority to administer the Federal rules and provisions for which delegation is requested and

(iv) A demonstration that the Tribal agency has the technical capability and adequate resources to administer the FIP provisions for which the delegation is requested.

(2) *Delegation of Partial Administrative Authority Agreement.* A Delegation of Partial Administrative Authority Agreement (Agreement) will set forth the terms and conditions of the delegation, will specify the provisions that the delegate Tribal agency will be authorized to implement on behalf of EPA and will be entered into by the Administrator and the delegate Tribal agency. The Agreement will become effective upon the date that both the Administrator and the delegate Tribal agency have signed the Agreement or as otherwise stated in the Agreement. Once the delegation becomes effective, the delegate Tribal agency will be responsible, to the extent specified in the Agreement, for assisting EPA with administration of the provisions of the Federal nonattainment major NSR program that are subject to the Agreement.

(3) *Publication of notice of the Agreement.* The Administrator will publish a notice in the FEDERAL REGISTER informing the public of any Agreement for a particular area of Indian country. The Administrator also will publish the notice in a newspaper of general circulation in the area affected by the delegation. In addition, the Administrator will mail a copy of the notice to persons on a mailing list developed by the Administrator consisting of those persons who have requested to be placed on such a mailing list.

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

(5) *Transmission of information to the Administrator.* When administration of

a portion of the Federal nonattainment major NSR program in Indian country that includes receipt of permit application materials and preparation of draft permits has been delegated in accordance with the provisions of this section, the delegate Tribal agency must provide to the Administrator a copy of each permit application (including any application for permit revision) and each draft permit. You, the permit applicant, may be required by the delegate Tribal agency to provide a copy of the permit application directly to the Administrator. With the Administrator's consent, the delegate Tribal agency may submit to the Administrator a permit application summary form and any relevant portion of the permit application, in place of the complete permit application. To the extent practicable, the preceding information should be provided in electronic format by the delegate Tribal agency or by you, the permit applicant, as applicable and as requested by the Administrator. The delegate Tribal agency must also submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the delegate Tribal agency is implementing and administering the delegated program in compliance with the requirements of the Act and of this program.

(6) *Waiver of information transmission requirements.* The Administrator may waive the requirements of paragraph (b)(5) of this section for any category of sources (including any class, type or size within such category) by transmitting the waiver in writing to the delegate Tribal agency.

(7) *Retention of records.* Where a delegate Tribal agency prepares draft or final permits or receives applications for permit revisions on behalf of EPA, the records for each draft and final permit or application for permit revision must be kept by the delegate Tribal agency for a period not less than 5 years.

(8) *Delegation of signature authority.* To receive delegation of signature authority, the legal statement submitted by the Tribal agency pursuant to paragraph (b)(1) of this section must certify that no applicable provision of Tribal law requires that a major NSR permit

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be issued after a certain time if the delegate Tribal agency has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit).

(c) *Are there any non-delegable elements of the Federal nonattainment major NSR program in Indian country?* The following authorities cannot be delegated outside of EPA:

(1) The Administrator's authority to object to the issuance of a major NSR permit.

(2) The Administrator's authority to enforce permits issued pursuant to this program.

(d) *How will EPA transition its authority to an approved nonattainment major NSR program?*

(1) The Administrator will suspend the issuance of nonattainment major NSR permits under this program promptly upon publication of notice of approval of a TIP with a major NSR permit program for nonattainment areas.

(2) The Administrator may retain jurisdiction over the permits for which the administrative or judicial review process is not complete and will address this issue in the notice of program approval.

(3) After approval of a program for issuing nonattainment major NSR permits and the suspension of issuance of nonattainment major NSR permits by the Administrator, the Administrator will continue to administer nonattainment major NSR permits until permits are issued under the approved Tribal implementation plan program.

(4) 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.

necticut. This plan consists of an area wide NO_x emission limitation regulation submitted by the Mohegan Tribe on May 4, 2005, applicable to the reservation of The Mohegan Tribe of Indians of Connecticut.

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) of this section was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the FEDERAL REGISTER. Entries in paragraph (c) of this section with EPA approval dates after August 13, 2009, will be incorporated by reference in the next update to the TIP compilation.

(2) EPA Region 1 certifies that the rules/regulations provided by EPA in the TIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated tribal rules/regulations which have been approved as part of the Tribal Implementation Plan as of August 13, 2009.

(3) Copies of the materials incorporated by reference may be inspected at the New England Regional Office of EPA at 5 Post Office Square—Suite 100, Boston, MA 02109-3912; the U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, MC 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and the National Archives and Records Administration. If you wish to obtain material from the EPA Regional Office, please call 617-918-1653; for materials from the docket in EPA Headquarters Library, please call the Office of Air and Radiation docket at 202-566-1742. For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(c) *EPA-approved regulations.*

Subpart D—Implementation Plans for Tribes—Region I

IMPLEMENTATION PLAN FOR THE MOHEGAN TRIBE OF INDIANS, CONNECTICUT

§ 49.201 Identification of plan.

(a) *Purpose and scope.* This section contains the implementation plan for the Mohegan Tribe of Indians, Con-

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Tribal citation	Title/subject	Tribal effective date	EPA approval date	Explanations
Mohegan Tribal Resolution. 2009–28	Approval of Amended Tribal Air Program Area Wide NO _x Emission Limitation Regulation.	02/18/2009	09/29/09, 74 FR 49327	Mohegan Tribal Resolution 2009–28 includes the “Area Wide NO _x Emission Limitation Regulation.”
Mohegan Tribal Gaming Authority Resolution MTGA 2009–07. Memorandum of Agreement.	Confirmation and Approval of Amended Tribal Air Program “Area Wide NO _x Emission Limitation Regulation.”. Memorandum of Agreement dated December 26, 2006, between the Mohegan Tribe of Indians of Connecticut and the U.S. Environmental Protection Agency Region I.	2/18/2009 12/26/06	09/29/09, 74 FR 49327. 11/14/07, 72 FR 63988.	

[72 FR 63989, Nov. 14, 2007, as amended at 74 FR 49329, Sept. 28, 2009; 76 FR 49671, Aug. 11, 2011]

§§ 49.202–49.470 [Reserved]**Subpart E—Implementation Plans for Tribes—Region II****IMPLEMENTATION PLAN FOR THE SAINT REGIS MOHAWK TRIBE****§ 49.471 Identification of plan.**

(a) *Purpose and scope.* This section contains the approved implementation plan for the St. Regis Mohawk Tribe dated February 2004. The plan consists of programs and procedures that cover public participation, plan revisions, ambient air quality standards, emissions inventory, permitting, synthetic minor facilities, source surveillance, open burning, enforcement, review of state permits, regional haze planning, and reporting.

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) of this section was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any

change in the material will be published in the **FEDERAL REGISTER**.

(2) EPA Region II certifies that the rules/regulations provided by EPA in the TIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated tribal rules/regulations which have been approved as part of the Tribal Implementation Plan as of December 10, 2007.

(3) Copies of the materials incorporated by reference may be inspected at the Region II Office of EPA at 290 Broadway, 25th Floor, New York, NY 10007–1866; the U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, MC 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and the National Archives and Records Administration. For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(c) *EPA—approved regulations.*

EPA-APPROVED ST. REGIS MOHAWK TRIBE REGULATIONS

Tribal citation	Title/subject	Tribal effective date	EPA approval date	Explanations
St. Regis Mohawk Tribe, Tribal Implementation Plan, version 3, Section 5.	Definitions	February 2004	December 10, 2007, 72 FR 69618.	

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Tribal citation	Title/subject	Tribal effective date	EPA approval date	Explanations
St. Regis Mohawk Tribe, Tribal Implementation Plan, version 3, Section 9.	Air Quality Standards ...	February 2004	December 10, 2007, 72 FR 69618.	Subsections 9.6 and 9.7 are not part of the Federally approved TIP.
St. Regis Mohawk Tribe, Tribal Implementation Plan, version 3, Section 11.	General Permit Requirements.	February 2004	December 10, 2007, 72 FR 69618.	
St. Regis Mohawk Tribe, Tribal Implementation Plan, version 3, Section 12.	Permits for Minor Facilities.	February 2004	December 10, 2007, 72 FR 69618.	
St. Regis Mohawk Tribe, Tribal Implementation Plan, version 3, Section 13.	Synthetic Minor Facilities.	February 2004	December 10, 2007, 72 FR 69618.	
St. Regis Mohawk Tribe, Tribal Implementation Plan, version 3, Section 14.	Source Surveillance	February 2004	December 10, 2007, 72 FR 69618.	
TCR-2002-59	Tribal Burn Regulation	February 2004	December 10, 2007, 72 FR 69618.	
Memorandum of Agreement.	Memorandum of Agreement dated November 20, 2003, between the St. Regis Mohawk Tribe and the U.S. Environmental Protection Agency Region II.	11/20/2003	December 10, 2007, 72 FR 69618.	

[72 FR 69620, Dec. 10, 2007]

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§§ 49.472–49.680 [Reserved]

Subpart F—Implementation Plans for Tribes—Region III

§§ 49.681–49.710 [Reserved]

Subpart G—Implementation Plans for Tribes—Region IV

§§ 49.711–49.920 [Reserved]

Subpart H—Implementation Plans for Tribes—Region V

§§ 49.921–49.1970 [Reserved]

Subpart I—Implementation Plans for Tribes—Region VI

§§ 49.1971–49.3920 [Reserved]

Subpart J—Implementation Plans for Tribes—Region VII

§§ 49.3921–49.4160 [Reserved]

Subpart K—Implementation Plans for Tribes—Region VIII

FEDERAL IMPLEMENTATION PLAN FOR OIL AND NATURAL GAS WELL PRODUCTION FACILITIES; FORT BERTHOLD INDIAN RESERVATION (MANDAN, HIDATSA AND ARIKARA NATION), NORTH DAKOTA

SOURCE: 78 FR 17858, Mar. 22, 2013, unless otherwise noted.

§ 49.4161 Introduction.

(a) *What is the purpose of §§ 49.4161 through 49.4168?* Sections 49.4161 through 49.4168 establish legally and practicable enforceable requirements to control and reduce VOC emissions from well completion operations, well recompletion operations, production operations, and storage operations at existing, new and modified oil and natural gas production facilities.

(b) *Am I subject to §§ 49.4161 through 49.4168?* Sections 49.4161 through 49.4168 apply to each owner or operator constructing, modifying or operating an oil and natural gas production facility producing from the Bakken Pool with one or more oil and natural gas wells,

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for any one of which completion or recompletion operations are/were performed on or after August 12, 2007, that is located on the Fort Berthold Indian Reservation, which is defined by the Act of March 3, 1891 (26 Statute 1032) and which includes all lands added to the Reservation by Executive Order of June 17, 1892 (the “Fort Berthold Indian Reservation”). For the purposes of this subpart, the date that the first well completion operation at a new oil and natural gas production facility was initiated is the date that initial construction has commenced. For the purposes of this subpart, the date that a new well completion operation or the date that an existing well recompletion operation at an existing oil and natural gas production facility is initiated is the date that a modification has commenced.

(c) *When must I comply with §§ 49.4161 through 49.4168?* Compliance with §§ 49.4161 through 49.4168 is required no later than June 20, 2013 or upon initiation of well completion operations or well recompletion operations, whichever is later.

§ 49.4162 Delegation of authority of administration to the tribes.

(a) *What is the purpose of this section?* The purpose of this section is to establish the process by which the Regional Administrator may delegate to the Mandan, Hidatsa and Arikara Nation the authority to assist the EPA with administration of this Federal Implementation Plan (FIP). This section provides for administrative delegation and does not affect the eligibility criteria under 40 CFR 49.6 for treatment in the same manner as a state.

(b) *How does the Tribe request delegation?* In order to be delegated authority to assist us with administration of this FIP, the authorized representative of the Mandan, Hidatsa and Arikara Nation must submit a request to the Regional Administrator that:

- (1) Identifies the specific provisions for which delegation is requested;
- (2) Includes a statement by the Mandan, Hidatsa and Arikara Nation’s legal counsel (or equivalent official) that includes the following information:

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(i) A statement that the Mandan, Hidatsa and Arikara Nation are an Indian Tribe recognized by the Secretary of the Interior;

(ii) A descriptive statement demonstrating that the Mandan, Hidatsa and Arikara Nation are currently carrying out substantial governmental duties and powers over a defined area and that meets the requirements of § 49.7(a)(2); and

(iii) A description of the laws of the Mandan, Hidatsa and Arikara Nation that provide adequate authority to carry out the aspects of the rule for which delegation is requested.

(3) Demonstrates that the Mandan, Hidatsa and Arikara Nation have, or will have, adequate resources to carry out the aspects of the rule for which delegation is requested.

(c) *How is the delegation of administration accomplished?* (1) A Delegation of Authority Agreement will set forth the terms and conditions of the delegation, will specify the rule and provisions that the Mandan, Hidatsa and Arikara Nation shall be authorized to implement on behalf of the EPA, and shall be entered into by the Regional Administrator and the Mandan, Hidatsa and Arikara Nation. The Agreement will become effective upon the date that both the Regional Administrator and the authorized representative of the Mandan, Hidatsa and Arikara Nation have signed the Agreement. Once the delegation becomes effective, the Mandan, Hidatsa and Arikara Nation will be responsible, to the extent specified in the Agreement, for assisting us with administration of this FIP and shall act as the Regional Administrator as that term is used in these regulations. Any Delegation of Authority Agreement will clarify the circumstances in which the term “Regional Administrator” found throughout this FIP is to remain the EPA Regional Administrator and when it is intended to refer to the “Mandan, Hidatsa and Arikara Nation,” instead.

(2) A Delegation of Authority Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with the Mandan, Hidatsa and Arikara Nation.

(d) *How will any delegation of authority agreement be publicized?* The Regional Administrator shall publish a notice in the FEDERAL REGISTER informing the public of any delegation of authority agreement with the Mandan, Hidatsa and Arikara Nation to assist us with administration of all or a portion of this FIP and will identify such delegation in the FIP. The Regional Administrator shall also publish an announcement of the delegation of authority agreement in local newspapers.

§ 49.4163 General provisions.

(a) *Definitions.* As used in §§ 49.4161 through 49.4168, all terms not defined herein shall have the meaning given them in the Act, in subpart A and subpart OOOO of 40 CFR part 60, in the Prevention of Significant Deterioration regulations at 40 CFR 52.21, or in the Federal Minor New Source Review Program in Indian Country at 40 CFR 49.151. The following terms shall have the specific meanings given them.

(1) *Bakken Pool* means Oil produced from the Bakken, Three Forks, and Sanish Formations.

(2) *Breathing losses* means natural gas emissions from fixed roof tanks resulting from evaporative losses during storage.

(3) *Casinghead natural gas* means the associated natural gas that naturally dissolves out of reservoir fluids during well completion operations and recompletion operations due to the pressure relief that occurs as the reservoir fluids travel up the well casinghead.

(4) *Closed vent system* means a system that is not open to the atmosphere and that is composed of hard-piping, duct-work, connections, and, if necessary, flow-inducing devices that transport natural gas from a piece or pieces of equipment to a control device or back to a process.

(5) *Enclosed combustor* means a thermal oxidation system with an enclosed combustion chamber that maintains a limited constant temperature by controlling fuel and combustion air.

(6) *Existing facility* means an oil and natural gas production facility that begins actual construction prior to the effective date of the “Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort

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Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation), North Dakota".

(7) *Flashing losses* means natural gas emissions resulting from the presence of dissolved natural gas in the produced oil and the produced water, both of which are under high pressure, that occurs as the produced oil and produced water is transferred to storage tanks or other vessels that are at atmospheric pressure.

(8) *Modified facility* means a facility which has undergone the addition, completion, or recompletion of one or more oil and natural gas wells, and/or the addition of any associated equipment necessary for production and storage operations at an existing facility.

(9) *New facility* means an oil and natural gas production facility that begins actual construction after the effective date of the "Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation), North Dakota".

(10) *Oil* means hydrocarbon liquids.

(11) *Oil and natural gas production facility* means all of the air pollution emitting units and activities located on or integrally connected to one or more oil and natural gas wells that are necessary for production operations and storage operations.

(12) *Oil and natural gas well* means a single well that extracts subsurface reservoir fluids containing a mixture of oil, natural gas, and water.

(13) *Owner or operator* means any person who owns, leases, operates, controls, or supervises an oil and natural gas production facility.

(14) *Permit to construct or construction permit* means a permit issued by the Regional Administrator pursuant to 40 CFR 49.151, 52.10 or 52.21, or a permit issued by a tribe pursuant to a program approved by the Administrator under 40 CFR part 51, subpart I, authorizing the construction or modification of a stationary source.

(15) *Permit to operate or operating permit* means a permit issued by the Regional Administrator pursuant to 40 CFR part 71, or by a tribe pursuant to a program approved by the Administrator under 40 CFR part 51 or 40 CFR

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part 70, authorizing the operation of a stationary source.

(16) *Pit flare* means an ignition device, installed horizontally or vertically and used in oil and natural gas production operations to combust produced natural gas and natural gas emissions.

(17) *Produced natural gas* means natural gas that is separated from extracted reservoir fluids during production operations.

(18) *Produced oil* means oil that is separated from extracted reservoir fluids during production operations.

(19) *Produced oil storage tank* means a unit that is constructed primarily of non-earthen materials (such as steel, fiberglass, or plastic) which provides structural support and is designed to contain an accumulation of produced oil.

(20) *Produced water* means water that is separated from extracted reservoir fluids during production operations.

(21) *Produced water storage tank* means a unit that is constructed primarily of non-earthen materials (such as steel, fiberglass, or plastic) which provides structural support and is designed to contain an accumulation of produced water.

(22) *Production operations* means the extraction and separation of reservoir fluids from an oil and natural gas well, using separators and heater-treater systems. A separator is a pressurized vessel designed to separate reservoir fluids into their constituent components of oil, natural gas and water. A heater-treater is a unit that heats the reservoir fluid to break oil/water emulsions and to reduce the oil viscosity. The water is then typically removed by using gravity to allow the water to separate from the oil.

(23) *Regional Administrator* means the Regional Administrator of EPA Region 8 or an authorized representative of the Regional Administrator.

(24) *Standing losses* means natural gas emissions from fixed roof tanks as a result of evaporative losses during storage.

(25) *Storage operations* means the transfer of produced oil and produced water to storage tanks, the filling of the storage tanks, the storage of the produced oil and produced water in the

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storage tanks, and the draining of the produced oil and produced water from the storage tanks.

(26) *Supervisory Control and Data Acquisition (SCADA) system* generally refers to industrial control computer systems that monitor and control industrial infrastructure or facility-based processes.

(27) *Utility flare* means thermal oxidation system using an open (without enclosure) flame. An enclosed combustor as defined in §§ 49.4161 through 49.4168 is not considered a flare.

(28) *Visible Smoke emissions* means a pollutant generated by thermal oxidation in a flare or enclosed combustor and occurring immediately downstream of the flame. Visible smoke occurring within, but not downstream of, the flame, is not considered to constitute visible smoke emissions.

(29) *Well completion* means the process that allows for the flowback of oil and natural gas from newly drilled wells to expel drilling and reservoir fluids and tests the reservoir flow characteristics, which may vent produced hydrocarbons to the atmosphere via an open pit or tank.

(30) *Well completion operation* means any oil and natural gas well completion using hydraulic fracturing occurring at an oil and natural gas production facility.

(31) *Well recompletion operation* means any oil and natural gas well completion using hydraulic refracturing occurring at an oil and natural gas production facility.

(32) *Working losses* means natural gas emissions from fixed roof tanks resulting from evaporative losses during filling and emptying operations.

(b) *Requirement for testing.* The Regional Administrator may require that an owner or operator of an oil and natural gas production facility demonstrate compliance with the requirements of the “Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation), North Dakota” by performing a source test and submitting the test results to the Regional Administrator. Nothing in the “Federal Implementation Plan for Oil and Natural Gas Well Production Facili-

ties; Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation), North Dakota” limits the authority of the Regional Administrator to require, in an information request pursuant to section 114 of the Act, an owner or operator of an oil and natural gas production facility subject to the “Federal Implementation Plan for Oil and Natural Gas Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation)” to demonstrate compliance by performing testing, even where the facility does not have a permit to construct or a permit to operate.

(c) *Requirement for monitoring, recordkeeping, and reporting.* Nothing in “Federal Implementation Plan for Oil and Natural Gas Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation)” precludes the Regional Administrator from requiring monitoring, recordkeeping and reporting, including monitoring, recordkeeping and reporting in addition to that already required by an applicable requirement in these rules, in a permit to construct or permit to operate in order to ensure compliance.

(d) *Credible evidence.* For the purposes of submitting reports or establishing whether or not an owner or operator of an oil and natural gas production facility has violated or is in violation of any requirement, nothing in the “Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation), North Dakota” shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a facility would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

§ 49.4164 Construction and operational control measures.

(a) Each owner or operator must operate and maintain all liquid and gas collection, storage, processing and handling operations, regardless of size, so as to minimize leakage of natural gas emissions to the atmosphere.

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(b) During all oil and natural gas well completion operations or recompletion operations at an oil and natural gas production facility and prior to the first date of production of each oil and natural gas well, each owner or operator must, at a minimum, route all casinghead natural gas to a utility flare or a pit flare capable of reducing the mass content of VOC in the natural gas emissions vented to it by at least 90.0 percent or greater and operated as specified in §§ 49.4165 and 49.4166.

(c) Beginning with the first date of production from any one oil and natural gas well at an oil and natural gas production facility, each owner or operator must, at a minimum, route all natural gas emissions from production operations and storage operations to a control device capable of reducing the mass content of VOC in the natural gas emissions vented to it by at least 90.0 percent or greater and operated as specified in §§ 49.4165 and 49.4166.

(d) Within ninety (90) days of the first date of production from any oil and natural gas well at an oil and natural gas production facility, each owner or operator must:

(1) Route the produced natural gas from the production operations through a closed-vent system to:

(i) An operating system designed to recover and inject all the produced natural gas into a natural gas gathering pipeline system for sale or other beneficial purpose; or

(ii) A utility flare or equivalent combustion device capable of reducing the mass content of VOC in the produced natural gas vented to the device by at least 98.0 percent or greater and operated as specified in §§ 49.4165 and 49.4166.

(2) Route all standing, working, breathing, and flashing losses from the produced oil storage tanks and any produced water storage tank interconnected with the produced oil storage tanks through a closed-vent system to:

(i) An operating system designed to recover and inject the natural gas emissions into a natural gas gathering pipeline system for sale or other beneficial purpose; or

(ii) An enclosed combustor or utility flare capable of reducing the mass con-

tent of VOC in the natural gas emissions vented to the device by at least 98.0 percent or greater and operated as specified in §§ 49.4165(c) and 49.4166.

(iii) If the uncontrolled potential to emit VOCs from the aggregate of all produced oil storage tanks and produced water storage tanks interconnected with produced oil storage tanks at an oil and natural gas production facility is less than, and reasonably expected to remain below, 20 tons in any consecutive 12-month period, then, upon prior written approval by the EPA the owner or operator may use a pit flare, an enclosed combustor or a utility flare that is capable of reducing the mass content of VOC in the natural gas emissions from the storage tanks vented to the device by only 90.0 percent.

(e) In the event that pipeline injection of all or part of the natural gas collected in an operating system designed to recover and inject natural gas becomes temporarily infeasible and there is no operational enclosed combustor or utility flare at the facility, the owner or operator must route the natural gas that cannot be injected through a closed-vent system to a pit flare operated as specified in §§ 49.4165 and 49.4166.

(f) Produced oil storage tanks and any produced water storage tanks interconnected with produced oil storage tanks subject to the requirements specified in 40 CFR part 60, subpart OOOO are considered to meet the requirements of § 49.4164(d)(2). No further requirements apply for such storage tanks under § 49.4164(d)(2).

§49.4165 Control equipment requirements.

(a) *Covers.* Each owner or operator must equip all openings on each produced oil storage tank and produced water storage tank interconnected with produced oil storage tanks with a cover to ensure that all natural gas emissions are efficiently being routed through a closed-vent system to a vapor recovery system, an enclosed combustor, a utility flare, or a pit flare.

(1) Each cover and all openings on the cover (e.g., access hatches, sampling ports, pressure relief valves

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(PRV, and gauge wells) shall form a continuous impermeable barrier over the entire surface area of the produced oil and produced water in the storage tank.

(2) Each cover opening shall be secured in a closed, sealed position (e.g., covered by a gasketed lid or cap) whenever material is in the unit on which the cover is installed except during those times when it is necessary to use an opening as follows:

(i) To add material to, or remove material from the unit (this includes openings necessary to equalize or balance the internal pressure of the unit following changes in the level of the material in the unit);

(ii) To inspect or sample the material in the unit; or

(iii) To inspect, maintain, repair, or replace equipment located inside the unit.

(3) Each thief hatch cover shall be weighted and properly seated.

(4) Each PRV shall be set to release at a pressure that will ensure that natural gas emissions are routed through the closed-vent system to the vapor recovery system, the enclosed combustor, or the utility flare under normal operating conditions.

(b) *Closed-vent systems.* Each owner or operator must meet the following requirements for closed-vent systems:

(1) Each closed-vent system must route all produced natural gas and natural gas emissions from production and storage operations to the natural gas sales pipeline or the control devices required by paragraph (a) of this section.

(2) All vent lines, connections, fittings, valves, relief valves, or any other appurtenance employed to contain and collect natural gas, vapor, and fumes and transport them to a natural gas sales pipeline and any VOC control equipment must be maintained and operated properly at all times.

(3) Each closed-vent system must be designed to operate with no detectable natural gas emissions.

(4) If any closed-vent system contains one or more bypass devices, except as provided for in paragraph (b)(4)(iii) of this section, that could be used to divert all or a portion of the natural gas emissions, from entering a natural gas sales pipeline and/or any control de-

vices, the owner or operator must meet the one of following requirements for each bypass device:

(i) At the inlet to the bypass device that could divert the natural gas emissions away from a natural gas sales pipeline or a control device and into the atmosphere, properly install, calibrate, maintain, and operate a natural gas flow indicator that is capable of taking continuous readings and sounding an alarm when the bypass device is open such that natural gas emissions are being, or could be, diverted away from a natural gas sales pipeline or a control device and into the atmosphere;

(ii) Secure the bypass device valve installed at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration;

(iii) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements applicable to bypass devices.

(c) *Enclosed combustors and utility flares.* Each owner or operator must meet the following requirements for enclosed combustors and utility flares:

(1) For each enclosed combustor or utility flare, the owner or operator must follow the manufacturer's written operating instructions, procedures and maintenance schedule to ensure good air pollution control practices for minimizing emissions;

(2) For each enclosed combustor or utility flare, the owner or operator must ensure there is sufficient capacity to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to it by at least 98.0 percent for the minimum and maximum natural gas volumetric flow rate and BTU content routed to the device;

(3) Each enclosed combustor or utility flare must be operated to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to it by at least 98.0 percent;

(4) The owner or operator must ensure that each utility flare is designed and operated in accordance with the requirements of 40 CFR 60.18(b) for such flares, except for § 60.18(c)(2) and (f)(2)

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for those utility flares operated with an electronically controlled automatic igniter.

(5) The owner or operator must ensure that each enclosed combustor is:

(i) A model demonstrated by a manufacturer to the meet the VOC destruction efficiency requirements of §§49.4161 through 49.4168 using the procedure specified in 40 CFR part 60, subpart OOOO at §60.5413(d) by the due date of the first annual report as specified in §49.4168(b); or

(ii) Demonstrated to meet the VOC destruction efficiency requirements of §§49.4161 through 49.4168 using EPA approved performance test methods specified in 40 CFR part 60, subpart OOOO at §60.5413(b) by the due date of the first annual report as specified in §49.4168(b).

(6) The owner or operator must ensure that each enclosed combustor and utility flare is:

(i) Operated properly at all times that produced natural gas and/or natural gas emissions are routed to it;

(ii) Operated with a liquid knock-out system to collect any condensable vapors (to prevent liquids from going through the control device);

(iii) Equipped with a flash-back flame arrestor;

(iv) Equipped with one of the following:

(A) A continuous burning pilot flame.

(B) An electronically controlled automatic igniter;

(v) Equipped with a monitoring system for continuous recording of the parameters that indicate proper operation of each enclosed combustor, utility flare, continuous burning pilot flame, and electronically controlled automatic igniter, such as a chart recorder, data logger or similar devices;

(vi) Maintained in a leak-free condition; and

(vii) Operated with no visible smoke emissions.

(d) *Pit Flares.* Each owner or operator must meet the following requirements for pit flares:

(1) The owner or operator must develop written operating instructions, operating procedures and maintenance schedules to ensure good air pollution control practices for minimizing emissions

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sions from the pit flare based on the site-specific design.

(2) The owner or operator must only use a pit flare for the following operations:

(i) To control produced natural gas and natural gas emissions during well completion operations or recompletion operations;

(ii) To control produced natural gas and natural gas emissions in the event that natural gas recovered for pipeline injection must be diverted to a backup control device because injection is temporarily infeasible and there is no operational enclosed combustor or utility flare at the oil and natural gas production facility. Use of the pit flare for this situation is limited to a maximum of 500 hours in any twelve (12) consecutive months; or

(iii) Control of standing, working, breathing, and flashing losses from the produced oil storage tanks and any produced water storage tank interconnected with the produced oil storage tanks if the uncontrolled potential VOC emissions from the aggregate of all produced oil storage tanks and produced water storage tanks interconnected with produced oil storage tanks is less than, and reasonably expected to remain below, 20 tons in any consecutive 12-month period.

(3) The owner or operator must only use the pit flare under the following conditions and limitations:

(i) The pit flare is operated to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to it by at least 90.0 percent;

(ii) The pit flare is operated in accordance with the site-specific written operating instructions, operating procedures, and maintenance schedules to ensure good air pollution control practices for minimizing emissions;

(iii) The pit flare is operated with no visible smoke emissions;

(iv) The pit flare is equipped with an electronically controlled automatic igniter;

(v) The pit flare is visually inspected for the presence of a flame anytime produced natural gas or natural gas emissions are being routed to it. Should the flame fail, the flame must be relit as soon as safely possible and

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the electronically controlled automatic igniter must be repaired or replaced before the pit flare is utilized again; and

(vi) The owner or operator does not deposit or cause to be deposited into a flare pit any oil field fluids or oil and natural gas wastes other than those designed to go to the pit flare.

(e) *Other Control Devices.* Upon prior written approval by the EPA, the owner or operator may use control devices other than those listed above that are determined by EPA to be capable of reducing the mass content of VOC in the natural gas routed to it by at least 98.0 percent, provided that:

(1) In operating such control devices, the owner or operator must follow the manufacturer's written operating instructions, procedures and maintenance schedule to ensure good air pollution control practices for minimizing emissions; and

(2) The owner or operator must ensure there is sufficient capacity to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to such other control devices by at least 98.0 percent for the minimum and maximum natural gas volumetric flow rate and BTU content routed to each device.

(3) The owner or operator must operate such a control device to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to it by at least 98.0 percent.

§ 49.4166 Monitoring requirements.

(a) Each owner and operator must measure the barrels of oil produced at the oil and natural gas production facility each time the oil is unloaded from the produced oil storage tanks using the methodologies of tank gauging or positive displacement metering system, as appropriate, as established by the U.S. Department of the Interior's Bureau of Land Management at 43 CFR part 3160, in the "Onshore Oil and Gas Operations; Federal and Indian Oil & Gas Leases; Onshore Oil and Gas Order No. 4; Measurement of Oil".

(b) Each owner or operator must monitor the hours that each pit flare is operated to control produced natural gas and natural gas emissions in the event that natural gas recovered for

pipeline injection must be diverted to a backup control device because injection is temporarily infeasible and there is no enclosed combustor or utility flare at the oil and natural gas production facility.

(c) Each owner or operator must monitor the volume of produced natural gas sent to each enclosed combustor, utility flare, and pit flare at all times. Methods to measure the volume include, but are not limited to, direct measurement and gas-to-oil ratio (GOR) laboratory analyses.

(d) Each owner or operator must monitor the volume of standing, working, breathing, and flashing losses from the produced oil and produced water storage tanks sent to each vapor recovery system, enclosed combustor, utility flare, and pit flare at all times. Methods to measure the volume include, but are not limited to, direct measurement or GOR laboratory analyses.

(e) Each owner or operator must perform quarterly visual inspections of tank thief hatches, covers, seals, PRVs, and closed vent systems to ensure proper condition and functioning and repair any damaged equipment. The quarterly inspections must be performed while the produced oil and produced water storage tanks are being filled.

(f) Each owner or operator must perform quarterly visual inspections of the peak pressure and vacuum values in each closed vent system and control system for the produced oil and produced water storage tanks to ensure that the pressure and vacuum relief set-points are not being exceeded in a way that has resulted, or may result, in venting and possible damage to equipment. The quarterly inspections must be performed while the produced oil and produced water storage tanks are being filled.

(g) Each owner or operator must monitor the operation of each enclosed combustor, utility flare, and pit flare to confirm proper operation as follows:

(1) Continuously monitor all variable operational parameters specified in the written operating instructions and procedures, including continuous burning pilot flame, electronically controlled automatic igniters, and monitoring

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system failures, using a malfunction alarm and remote notification system, where such systems are available, or continuously monitor under an equivalent alternative protocol upon prior written approval by the EPA;

(2) Perform a physical inspection of all equipment associated with each enclosed combustor, utility flare, and pit flare each time an operator is on site, at a minimum quarterly, to ensure system integrity;

(3) Monitor for visible smoke during operation of any enclosed combustor, utility flare or pit flare each time an operator is on site, at a minimum quarterly. Upon observation of visible smoke, use EPA Reference Method 22 of 40 CFR part 60, Appendix A, to determine whether visible smoke emissions are present. The observation period shall be 2 hours. Visible smoke emissions are present if smoke is observed for more than 5 minutes in any 2 consecutive hours; and

(4) Respond to any observation of any continuous burning pilot flame failure, electronically controlled automatic igniter failure, or improper monitoring equipment operation and ensure the equipment is returned to proper operation as soon as practicable and safely possible after an observation or an alarm sounds.

(h) Where sufficient to meet the monitoring and recordkeeping requirements in §§ 49.4166 and 49.4167, the owner or operator may use a Supervisory Control and Data Acquisition (SCADA) system to monitor and record the required data in §§ 49.4161 through 49.4168.

(i) Other Monitoring Options. The owner or operator may use equivalent methods of monitoring other than those listed above upon prior written approval by the EPA.

§49.4167 Recordkeeping requirements.

(a) Each owner or operator must maintain the following records:

(1) The measured barrels of oil produced at the oil and natural gas production facility each time the oil is unloaded from the produced oil storage tanks;

(2) The volume of produced natural gas sent to each enclosed combustor, utility flare, and pit flare at all times;

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(3) The volume of natural gas emissions from the produced oil storage tanks and produced water storage tanks sent to each enclosed combustor, utility flare, and pit flare at all times;

(4) A summary of each oil and natural gas well completion operation and recompletion operation at an oil and natural gas production facility. Each summary shall include:

(i) The latitude and longitude location of the oil and natural gas well in decimal format;

(ii) The date, time, and duration in hours of flowback from the oil and natural gas well;

(iii) The date, time, and duration in hours of any venting of casinghead natural gas from the oil and natural gas well; and

(iv) Specific reasons for each instance of venting in lieu of capture or combustion.

(5) For each enclosed combustor, utility flare, and pit flare at an oil and natural gas production facility:

(i) Written, site-specific designs, operating instructions, operating procedures and maintenance schedules;

(ii) Records of all required monitoring of operations;

(iii) Records of any deviations from the operating parameters specified by the written site-specific designs, operating instructions, and operating procedures. The records must include the enclosed combustor, utility flare, or pit flare's total operating time during which a deviation occurred, the date, time and length of time that deviations occurred, and the corrective actions taken and any preventative measures adopted to operate the device within that operating parameter;

(iv) Records of any instances in which the pilot flame is not present, electronically controlled automatic igniter is not functioning, or the monitoring equipment is not functioning in the enclosed combustor, the utility flare, or the pit flare, the date and times of the occurrence, the corrective actions taken, and any preventative measures adopted to prevent recurrence of the occurrence;

(v) Records of any instances in which a recording device installed to record

data from the enclosed combustor, utility flare, or pit flare is not operational; and

(vi) Records of any time periods in which visible smoke emissions are observed emanating from the enclosed combustor, utility flare, or pit flare.

(6) For each pit flare at an oil and natural gas production facility, a demonstration of compliance with the use restrictions set forth in § 49.4165(d)(2)(ii) is made by keeping records in a log book, or similar recording system, during each period of time that the pit flare is operating. The records must contain the following information:

(i) Date and time the pit flare was started up and subsequently shut down;

(ii) Total hours operated when pipeline injection was temporarily infeasible for the current calendar month plus the previous consecutive eleven (11) calendar months; and

(iii) Brief descriptions of the justification for each period of operation.

(7) Records of any instances in which any closed-vent system or control device was bypassed or down, the reason for each incident, its duration, the volume of natural gas emissions released, and the corrective actions taken and any preventative measures adopted to avoid such bypasses or downtimes; and

(8) Documentation of all produced oil storage tank and produced water storage tank inspections required in § 49.4166(e) and (f). All inspection records must include, at a minimum, the following information:

(i) The date of the inspection;

(ii) The findings of the inspection;

(iii) Any adjustments or repairs made as a result of the inspections, and the date of the adjustment or repair; and

(iv) The inspector's name and signature.

(b) Each owner or operator must keep all records required by this section on-site at the facility or at the location that has day-to-day operational control over the facility and must make the records available to the EPA upon request.

(c) Each owner or operator must retain all records required by this section for a period of at least five (5) years from the date the record was created.

§ 49.4168 Notification and reporting requirements.

(a) Each owner or operator must submit any documents required under this section to: U.S. Environmental Protection Agency, Region 8 Office of Enforcement, Compliance & Environmental Justice, Air Toxics and Technical Enforcement Program, 8ENF-AT, 1595 Wynkoop Street, Denver, Colorado 80202. Documents may be submitted electronically to r8airreportenforcement@epa.gov.

(b) Each owner and operator must submit an annual report containing the information specified in paragraphs (b)(1) through (4) of this section. Each annual report is due August 15th every year and must cover all information for the previous calendar year. The initial report must cover the cumulative information for that year. If you own or operate more than one oil and natural gas production facility, you may submit one report for multiple oil and natural gas production facilities provided the report contains all of the information required as specified in paragraphs (b)(1) through (4) of this section. Annual reports may coincide with title V reports as long as all the required elements of the annual report are included. The EPA may approve a common schedule on which reports required by §§ 49.4161 through 49.4168 may be submitted as long as the schedule does not extend the reporting period.

(1) The company name and the address of the oil and natural gas production facility or facilities.

(2) An identification of each oil and natural gas production facility being included in the annual report.

(3) The beginning and ending dates of the reporting period.

(4) For each oil and natural gas production facility, the information in paragraphs (b)(4)(i) through (iv) of this section.

(i) A summary of all required records identifying each oil and natural gas well completion or recompletion operation for each oil and natural gas production facility conducted during the reporting period;

(ii) An identification of the first date of production for each oil and natural gas well at each oil and natural gas production facility that commenced

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production during the reporting period; and

(iii) A summary of cases where construction or operation was not performed in compliance with the requirements specified in § 49.4164, § 49.4165, or § 49.4166 for each oil and natural gas well at each oil and natural gas production facility, and the corrective measures taken.

(iv) A certification by a responsible official of truth, accuracy and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

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Subpart L—Implementation Plans for Tribes—Region IX

IMPLEMENTATION PLAN FOR THE GILA RIVER INDIAN COMMUNITY

SOURCE: 76 FR 17030, Mar. 28, 2011, unless otherwise noted.

§ 49.5511 Identification of plan.

(a) *Purpose and scope.* This section contains the approved implementation plan for the Gila River Indian Community dated August 2008. The plan consists of programs and procedures that cover general and emergency authorities, ambient air quality standards, permitting requirements for minor sources of air pollution, enforcement authorities, procedures for administrative appeals and judicial review in Tribal court, requirements for area

sources of fugitive dust and fugitive particulate matter, general prohibitory rules, and source category-specific emission limitations and standards.

(b) *Incorporation by reference.*

(1) Material listed in paragraph (c) of this section was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **FEDERAL REGISTER**.

(2) EPA Region IX certifies that the rules/regulations provided by EPA in the TIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated tribal rules/regulations which have been approved as part of the Tribal Implementation Plan as of January 19, 2011.

(3) Copies of the materials incorporated by reference may be inspected at the Region IX Office of EPA at 75 Hawthorne Street, San Francisco, CA 94105-3901 or call 415-947-4192; the U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, MC 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or call 202-566-1742; and the National Archives and Records Administration. For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(c) *EPA-approved regulations.*

EPA-APPROVED GILA RIVER INDIAN COMMUNITY TRIBAL REGULATIONS

Tribal citation	Title/subject	Tribal effective date	EPA approval date	Explanations
Gila River Indian Community, Tribal Implementation Plan, Part I, General Provisions, Sections 1–3.	Definitions, General Authority, Procedures for Preparation, Adoption, and Submittal of the Air Quality Management Program.	August 20, 2008 ..	3/28/11 [76 FR 17028].	
Gila River Indian Community, Tribal Implementation Plan, Part I, General Provisions, Section 4.	Adoption of National Ambient Air Quality Standards as Community Standards.	August 20, 2008 ..	3/28/11 [76 FR 17028]	Note: several revisions to the NAAQS have occurred since the adoption of the TIP.

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EPA-APPROVED GILA RIVER INDIAN COMMUNITY TRIBAL REGULATIONS—Continued

Tribal citation	Title/subject	Tribal effective date	EPA approval date	Explanations
Gila River Indian Community, Tribal Implementation Plan, Part II, Permit Requirements.	Definitions, Applicability of Permit Requirements, Non-Title V Permit Requirements, Permit Revisions at a Non-Title V Source, Continuous Emissions Monitoring, Stack Height Limitation, Confidentiality of Information, Permit Fees.	August 20, 2008 ..	3/29/11 [76 FR 17028]	Title V regulations are not approved into the TIP.
Gila River Indian Community, Tribal Implementation Plan, Part III, Enforcement Ordinances.	Civil Enforcement, Criminal Enforcement, Citizen Suits.	August 20, 2008 ..	3/28/11 [76 FR 17028].	
Gila River Indian Community, Tribal Implementation Plan, Part IV, Administrative Appeals.	General Provisions, Definitions, Administrative Appeals Procedures, Final Administrative Decision: Review, Judicial Review of Final Administrative Decisions.	August 20, 2008 ..	3/28/11 [76 FR 17028].	
Gila River Indian Community, Tribal Implementation Plan, Part V, Area Source Emission Limits, Sections 1–2.	Open Burning, General Requirements for Fugitive Dust-Producing Activities.	August 20, 2008 ..	3/28/11 [76 FR 17028].	
Gila River Indian Community, Tribal Implementation Plan, Part VI, Generally Applicable Individual Source Requirements for Existing and New Sources, Sections 1–3.	Visible Emissions: VOC Usage, Storage, and Handling; Degreasing and Solvent Metal Cleaning.	August 20, 2008 ..	3/28/11 [76 FR 17028].	
Gila River Indian Community, Tribal Implementation Plan, Part VII, Source/Category Specific Emission Limits for Existing and New Sources, Sections 1–3.	Secondary Aluminum Production, Aerospace Manufacturing and Rework Operations, Non-metallic Mineral Mining and Processing.	August 20, 2008 ..	3/28/11 [76 FR 17028]	

(d) Nonregulatory.

Name of nonregulatory TIP provision	Tribal submittal date	EPA approval date	Explanations
Gila River Indian Community, Tribal Implementation Plan, Introductory Materials.	June 22, 2009	3/28/11 [76 FR 17028].	
Technical Amendments to Part II of the 2006 Air Quality Management Program Plan, Title 17 Chapter 9 of the Gila River Indian Community Law and Order Code.	June 22, 2009	3/28/11 [76 FR 17028]	Minor NSR program support documents.

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Name of nonregulatory TIP provision	Tribal submittal date	EPA approval date	Explanations
Minor New Source Review Demonstration.	June 22, 2009	3/28/11 [76 FR 17028]	Minor NSR program support documents.
Letter from Margaret Cook, Executive Director, GRIC DEQ, to Deborah Jordan, Air Division Director, EPA Region 9, Re: Gila River Indian Community Tribal Implementation Plan.	July 17, 2010	3/28/11 [76 FR 17028]	Letter discussing intent of citizen suit provisions in Part III.

[76 FR 17030, Mar. 28, 2011]

IMPLEMENTATION PLAN FOR THE NAVAJO NATION

§ 49.5512 Federal Implementation Plan Provisions for Four Corners Power Plant, Navajo Nation.

(a) *Applicability.* The provisions of this section shall apply to each owner or operator of the coal burning equipment designated as Units 1, 2, 3, 4, and 5 at the Four Corners Power Plant (the Plant) on the Navajo Nation Indian Reservation located in the Four Corners Interstate Air Quality Control Region (see 40 CFR 81.121).

(b) *Compliance Dates.* Compliance with the requirements of this section is required upon the effective date of this rule unless otherwise indicated by compliance dates contained in specific provisions.

(c) *Definitions.* For the purposes of this section:

(1) *Affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

(2) *Air pollution control equipment* includes baghouses, particulate or gaseous scrubbers, and any other apparatus utilized to control emissions of regulated air contaminants which would be emitted to the atmosphere.

(3) *Business Day.* Business day means a normal working day, excluding weekends and Federal Holidays.

(4) *Daily average* means the arithmetic average of the hourly values measured in a 24-hour period.

(5) *Excess emissions* means the emissions of air contaminants in excess of an applicable emissions limitation or requirement.

(6) *Heat input* means heat derived from combustion of fuel in a Unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources. Heat input shall be in accordance with 40 CFR part 75.

(7) *Malfunction* means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions. This rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during certain malfunction episodes. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

(8) *Owner or Operator* means any person who owns, leases, operates, controls, or supervises the Plant or any of the coal burning equipment designated as Units 1, 2, 3, 4, or 5 at the Plant.

(9) *Oxides of nitrogen (NO_x)* means the sum of nitric oxide (NO) and nitrogen dioxide (NO₂) in the flue gas, expressed as nitrogen dioxide.

(10) *Plant-wide basis* means total stack emissions of any particular pollutant from all coal burning equipment at the Plant.

(11) *Regional Administrator* means the Regional Administrator of the Environmental Protection Agency (EPA) Region 9 or his/her authorized representative.

(12) *Shutdown* means the cessation of operation of any air pollution control equipment, process equipment, or process for any purpose. Specifically, for

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Units 1, 2, or 3, shutdown begins when the unit drops below 40 MW net load with the intent to remove the unit from service. For Units 4 or 5, shutdown begins when the unit drops below 300 MW net load with the intent to remove the unit from service.

(13) *Startup* means the setting into operation of any air pollution control equipment, process equipment, or process for any purpose. Specifically, for Units 1, 2, or 3, startup ends when the unit reaches 40 MW net load. For Units 4 or 5, startup ends when the unit reaches 400 MW net load.

(14) *24-hour period* means the period of time between 12:01 a.m. and 12 midnight.

(d) *Emissions Standards and Control Measures*—(1) *Sulfur Dioxide*. No owner or operator shall discharge or cause the discharge of sulfur dioxide (SO₂) into the atmosphere in excess of:

(i) 12.0 percent of the potential combustion concentration assuming all of the sulfur in the coal is converted to SO₂. This percent emitted is determined by a daily calculation of the plantwide heatinput weighted annual average.

(ii) 17,900 pounds of total SO₂ emissions per hour averaged over any consecutive three (3) hour period, determined on a plant-wide basis.

(2) *Particulate Matter*. No owner or operator shall discharge or cause the discharge of particulate matter from any coal burning equipment into the atmosphere in excess of 0.050 pounds per million British thermal unit (lb/MMBtu) of heat input (higher heating value), as averaged from three sampling runs, each at 60 minutes in duration, each collecting a minimum sample of 30 dry standard cubic feet.

(3) *Dust*. Each owner or operator shall operate and maintain the existing dust suppression methods for controlling dust from the coal handling and storage facilities. Within ninety (90) days after promulgation of this section, the owner or operator shall submit to the Regional Administrator a description of the dust suppression methods for controlling dust from the coal handling and storage facilities, flyash handling and storage, and road sweeping activities. Within 548 days of promulgation of this section each owner or operator

shall not emit dust with an opacity greater than 20 percent from any crusher, grinding mill, screening operation, belt conveyor, or truck loading or unloading operation.

(4) *Opacity*. No owner or operator shall discharge or cause the discharge of emissions from the stacks of Units 4 and 5 into the atmosphere exhibiting greater than 20% opacity, excluding uncombined water droplets, averaged over any six (6) minute period, except for one six (6) minute period per hour of not more than 27% opacity.

(5) *Oxides of nitrogen*. No owner or operator shall discharge or cause the discharge of NO_x into the atmosphere.

(i) From either Unit 1 or 2 in excess of 0.85 lb/MMBtu of heat input per unit, and from either Units 3, 4, or 5 in excess of 0.65 lb/MMBtu of heat input per unit averaged over any successive thirty (30) boiler operating day period;

(ii) In excess of 335,000 lb per 24-hour period when coal burning equipment is operating, on a plant-wide basis; for each hour when coal burning equipment is not operating, this limitation shall be reduced. If the unit which is not operating is Unit 1, 2, or 3, the limitation shall be reduced by 1,542 lb per hour for each unit which is not operating. If the unit which is not operating is Unit 4 or 5, the limitation shall be reduced by 4,667 lb per hour for each unit which is not operating.

(e) *Testing and Monitoring*. Upon completion of the installation of continuous emissions monitoring systems (CEMS) software as required in this section, compliance with the emissions limits set for SO₂ and NO_x shall be determined by using data from a CEMS unless otherwise specified in paragraphs (e)(2) and (e)(4) of this section. Compliance with the emissions limit set for particulate matter shall be tested annually, or at such other time as requested by the Regional Administrator, based on data from testing conducted in accordance with 40 CFR part 60, appendix A, Methods 1 through 5, or any other method receiving prior approval from the Regional Administrator. Compliance with the emissions limits set for opacity shall be determined by using data from a Continuous Opacity Monitoring System (COMS)

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except during saturated stack conditions (uncombined water droplets). If the baghouse is operating within its normal operating parameters, the baghouse is not fully closed, and a high opacity reading occurs, it will be presumed that the occurrence was caused by saturated stack conditions and shall not be considered a violation.

(1) The owner or operator shall maintain and operate CEMS for SO₂, NO or NO_x, a diluent and, for Units 4 and 5 only, COMS, in accordance with 40 CFR 60.8 and 60.13, and appendix B of 40 CFR part 60. Within six (6) months of promulgation of this section, the owner or operator shall install CEMS and COMS software which complies with the requirements of this section. The owner or operator of the Plant may petition the Regional Administrator for extension of the six (6) month period for good cause shown. Completion of 40 CFR part 75 monitor certification requirements shall be deemed to satisfy the requirements under 40 CFR 60.8 and 60.13 and appendix B of part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75, and all reports required thereunder shall be submitted to the Regional Administrator. The owner or operator shall provide the Regional Administrator notice in accordance with 40 CFR 75.61.

(2) *Sulfur Dioxide.* For the purpose of determining compliance with this section, the sulfur dioxide inlet concentration (in lb/MMBtu) shall be calculated using the daily average percent sulfur and Btu content of the coal combusted. The inlet sulfur concentration and Btu content shall be determined in accordance with American Society for Testing and Materials (ASTM) methods or any other method receiving prior approval from the Regional Administrator. A daily fuel sample shall be collected using the coal sampling tower conforming to the ASTM specifications. The analyses shall be done on the daily sample using ASTM methods or any other method receiving prior approval from the Regional Administrator.

(i) The inlet sulfur dioxide concentration shall be calculated using the following formula:

$$I_s = 2(\%S_f)/GCV \times 10^4 \text{ English units}$$

Where:

I_s = sulfur dioxide inlet concentrations in pounds per million Btu;

$\%S_f$ = weight

percent sulfur content of the fuel; and

GCV = Gross calorific value for the fuel in Btu per pound.

(ii) The total pounds of SO₂ generated by burning the coal shall be calculated by multiplying the SO₂ inlet concentration by the daily total heat input determined by the 40 CFR part 75 acid rain monitoring. This will determine the pounds of SO₂ produced per day. The SO₂ emitted from the stacks shall be determined by adding the daily SO₂ emissions from each stack as determined by the 40 CFR part 75 acid rain monitors. Compliance with the emission limit shall be determined for each day by adding that day's SO₂ emissions and that day's SO₂ produced to the previous 364 days and then dividing the 365 days of emissions by the 365 days of SO₂ produced. Compliance is demonstrated if this fraction, converted to a percent, is equal to or less than 12.0 percent. The data from the 40 CFR part 75 monitors shall not be bias adjusted. If a valid SO₂ pounds per hour or heat input is not available for any hour for a unit, that heat input and SO₂ pounds per hour shall not be used in the calculation of the annual plant-wide average.

(3) *Particulate matter.* Particulate matter emissions shall be determined by averaging the results of three test runs. Each test run shall be sixty (60) minutes in duration and shall collect a minimum volume of thirty (30) dry standard cubic feet. Within six (6) months of promulgation of this section, particulate matter testing shall be conducted annually and at least six (6) months apart, with the equipment within 90 percent of maximum operation in accordance with 40 CFR 60.8 and appendix A to 40 CFR part 60. The owner or operator shall submit written notice of the date of testing no later than 21 days prior to testing. Testing may be performed on a date other than that already provided in a notice as long as notice of the new date is provided either in writing or by telephone or other means acceptable to the Region 9 Enforcement Office, and the notice is provided as soon as practicable

after the new testing date is known, but no later than 7 days (or a shorter period as approved by the Region 9 Enforcement Office) in advance of the new date of testing.

(4) *Oxides of nitrogen.* The total daily plant-wide oxides of nitrogen emissions in pounds of NO₂ per day shall be calculated using the following formula:

$$TE = \sum_{i=1}^n \sum_{j=1}^m (E_{ij} \times H_{ij})$$

Where:

TE = total plant-wide nitrogen dioxide emissions (lb NO₂/day);
 E_{ij} = hourly average emissions rate of each unit (lb NO₂/MMBtu);
 H_{ij} = hourly total heat input for each unit (MMBtu);
 n = the number of units of coal burning equipment operating during the hour;
 m = the number of operating hours in a day, from midnight to midnight.

(5) Continuous emissions monitoring shall apply during all periods of operation of the coal burning equipment, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring SO₂, NO_x, and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Hourly averages shall be computed using at least one data point in each fifteen minute quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant in an hour) if data are unavailable as a result of performance of calibration, quality assurance, preventive maintenance activities, or backups of data from data acquisition and handling system, and recertification events. When valid SO₂ pounds per hour, NO₂ pounds per hour, or NO₂ pounds per million Btu emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by the EPA to pro-

vide emission data for a minimum of 18 hours in at least 22 out of 30 successive boiler operating days. If a parameter essential for determining either the SO₂ pound per hour or the heat input is not valid or unavailable, that hour for that unit shall not be used in calculating the percent emissions of SO₂ for the plant-wide limit. The necessary software for determining compliance with the SO₂ plantwide annual average shall be installed and operating within 180 days of the effective date of this rule. The first day for determining compliance with the plantwide SO₂ limit shall be 365 days after the successful installation of the software.

(6) The owner or operator shall maintain a set of opacity filters to be used as audit standards.

(7) Nothing herein shall limit EPA's ability to ask for a test at any time under Section 114 of the Clean Air Act, 42 U.S.C. 7414, and enforce against any violation.

(8) In order to provide reasonable assurance that the scrubbers for control of particulate matter from Units 1, 2, and 3 are being maintained and operated in a manner consistent with good air pollution control practice for minimizing emissions, the owner or operator shall comply with the following provisions:

(i) The owner or operator shall develop a plan to monitor, record, and report parameter(s) indicative of the proper operation of the scrubbers to provide a reasonable assurance of compliance with the particulate matter limits in paragraph (d)(2) of this section. The owner or operator shall submit this plan to the Regional Administrator no later than sixty (60) days after the effective date of this FIP. The owner or operator shall implement this plan within 90 days of approval by the Regional Administrator and shall commence reporting the data generated pursuant to the monitoring plan in accordance with the schedule in paragraph (e)(8)(v) of this section. If requested by the Regional Administrator, this plan shall be revised and submitted to the Regional Administrator for approval within sixty (60) days of the request. The revised plan shall be implemented within sixty (60)

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days of the Regional Administrator's approval.

(ii) In the event that the owner or operator is unable to develop the plan required in paragraph (e)(8)(i) of this section due to technical difficulties, fails to submit the plan within sixty (60) days of the effective date of this FIP, or the Regional Administrator disapproves the plan, the owner or operator shall install and operate devices to measure the pressure drop across each scrubber module and the total flow of scrubbing liquid to the venturi section of each scrubber module. The data from these instruments shall be monitored and recorded electronically. A minimum of one reading every 15 minutes shall be used to calculate an hourly average which shall be recorded and stored for at least a five-year period. The owner or operator shall report in an electronic format either all hourly data, or one-hour averages deviating by more than 30 percent from the levels measured during the last particulate matter stack test that demonstrated compliance with the limit in this section. The owner or operator shall implement this requirement no later than one hundred eighty (180) days after the effective date of this FIP if it failed to submit the plan within sixty (60) days after the effective date of this FIP; or no later than 60 days after the Regional Administrator's disapproval of the plan.

(iii) The monitoring required under paragraphs (e)(8)(i) and (e)(8)(ii) of this section shall apply to each Unit at all times that the Unit is operating, except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments). A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(iv) The owner or operator may petition the Regional Administrator for an extension of the sixty (60) day deadline. Such extension shall be granted only if the owner or operator demonstrates to

the satisfaction of the Regional Administrator that:

(A) The delay is due to technical infeasibility beyond the control of the owner or operator; and

(B) The requested extension, if granted, will allow the owner or operator to successfully complete the plan.

(v) The owner or operator shall submit to the Regional Administrator reports of the monitoring data required by this section semi-annually. The reports shall be postmarked within 30 days of the end of each calendar quarter.

(vi) The owner or operator shall develop and document a quality assurance program for the monitoring and recording instrumentation. This program shall be updated or improved as requested by the Regional Administrator.

(vii) In the event that a program for parameter monitoring on Units 1, 2, and 3 is approved pursuant to the Compliance Assurance Monitoring rule, 40 CFR Part 64, such program will supersede the provisions contained in paragraph (e)(8) of this section.

(f) *Reporting and Recordkeeping Requirements.* Unless otherwise stated all requests, reports, submittals, notifications, and other communications to the Regional Administrator required by this section shall be submitted, unless instructed otherwise, to the Director, Navajo Environmental Protection Agency, P.O. Box 339, Window Rock, Arizona 86515, (928) 871-7692, (928) 871-7996 (facsimile), and to the Director, Air Division, U.S. Environmental Protection Agency, Region IX, to the attention of Mail Code: AIR-5, at 75 Hawthorne Street, San Francisco, California 94105, (415) 972-3990, (415) 947-3579 (facsimile). For each unit subject to the emissions limitation in this section and upon completion of the installation of CEMS and COMS as required in this section, the owner or operator shall comply with the following requirements:

(1) For each emissions limit in this section, comply with the notification and recordkeeping requirements for CEMS compliance monitoring in 40 CFR 60.7(c) and (d). For Units 4 and 5, periods of excess opacity due to water

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droplets shall be reported in the summary report required by 40 CFR 60.7(d).

(2) For each day, provide the 365 day percent SO₂ emitted, the total SO₂ emitted that day, and the total SO₂ produced that day. For any hours on any unit where data for SO₂ hourly pounds or heat input is missing, identify the unit number and monitoring device that did not produce valid data that caused the missing hour.

(3) Furnish the Regional Administrator with reports describing the results of the annual particulate matter emissions tests postmarked within sixty (60) days of completing the tests. Each report shall include the following information:

- (i) The test date;
- (ii) The test method;
- (iii) Identification of the coal burning equipment tested;
- (iv) Values for stack pressure, temperature, moisture, and distribution of velocity heads;
- (v) Average heat input;
- (vi) Emissions data, identified by sample number, and expressed in pounds per MMBtu;
- (vii) Arithmetic average of sample data expressed in pounds per MMBtu; and
- (viii) A description of any variances from the test method.

(4) *Excess Emissions Report.* (i) For excess emissions (except in the case of saturated stack conditions), the owner or operator shall notify the Navajo Environmental Protection Agency Director and the U.S. Environmental Protection Agency Regional Administrator by telephone or in writing within one business day (initial notification). A complete written report of the incident shall be submitted to the Navajo Environmental Protection Agency Director and the U.S. Environmental Protection Agency Regional Administrator within ten (10) working days of the initial notification. This notification should be sent to the Director, Navajo Environmental Protection Agency, by mail to: P.O. Box 339, Window Rock, Arizona 86515, or by facsimile to: (928) 871-7996 (facsimile), and to the Regional Administrator, U.S. Environmental Protection Agency, by mail to the attention of Mail Code: AIR-5, at 75 Hawthorne Street, San

Francisco, California 94105, by facsimile to: (415) 947-3579 (facsimile), or by e-mail to: r9.aeo@epa.gov. The complete written report shall include:

- (A) The name and title of the person reporting;
- (B) The identity and location of the Plant and Unit(s) involved, and the emissions point(s), including bypass, from which the excess emissions occurred or are occurring;
- (C) The time and duration or expected duration of the excess emissions;
- (D) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions;
- (E) The nature of the condition causing the excess emissions and the reasons why excess emissions occurred or are occurring;
- (F) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction;
- (G) For an opacity exceedance, the 6-minute average opacity monitoring data greater than 20 percent for the 24 hours prior to and during the exceedance for Units 4 and 5; and
- (H) The efforts taken or being taken to minimize the excess emissions and to repair or otherwise bring the Plant into compliance with the applicable emissions limit(s) or other requirements. For this reporting requirement, excess opacity due to saturated stack conditions is exempted.
- (ii) If the period of excess emissions extends beyond the submittal of the written report, the owner or operator shall also notify the Regional Administrator in writing of the exact time and date when the excess emissions stopped. Compliance with the excess emissions notification provisions of this section shall not excuse or otherwise constitute a defense to any violations of this section or of any law or regulation which such excess emissions or malfunction may cause.
- (g) *Equipment Operations.* At all times, including periods of startup, shutdown, and malfunction, the owner

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or operator shall, to the extent practicable, maintain and operate the Plant including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the Plant. With regard to the operation of the baghouses on Units 4 and 5, placing the baghouses in service before coal fires are initiated will constitute compliance with this paragraph. (If the baghouse inlet temperature cannot achieve 185 degrees Fahrenheit using only gas fires, the owner or operator will not be expected to place baghouses in service before coal fires are initiated; however, the owner or operator will remain subject to the requirements of this paragraph.)

(h) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether the Plant would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard in the plan.

(2) During periods of startup and shutdown the otherwise applicable emission limits or requirements for opacity and particulate matter shall not apply provided that:

(i) At all times the facility is operated in a manner consistent with good practice for minimizing emissions, and the owner or operator uses best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limit;

(ii) The frequency and duration of operation in start-up or shutdown mode are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, it shall be an affirmative defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equipment or of a process to operate in a normal or usual manner;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were taken in an expeditious fashion to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(i) Regional Haze Best Available Retrofit Technology limits for this plant are in addition to the requirements of paragraphs (a) through (h) of this section. All definitions and testing and monitoring methods of this section apply to the limits in this paragraph (i) except as indicated in paragraphs (i)(1) through (4) of this section. The interim NO_x emission limit in paragraph (i)(2)(ii) of this section shall be effective 180 days after re-start of the unit after installation of add-on post-combustion NO_x controls for that unit and until the plant-wide limit goes into effect. The plant-wide NO_x limit shall be effective no later than 5 years after October 23, 2012. The owner or operator may elect to meet the plant-wide limit

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early to remove the individual unit limits. Particulate limits for Units 4 and 5 shall be effective 60 days after restart following the scheduled major outage for Units 4 and 5 in 2013 and 2014.

(1) Particulate Matter from Units 4 and 5 shall be limited to 0.015 lb/MMBtu for each unit as measured by the average of three test runs with each run collecting a minimum of 60 dscf of sample gas and with a duration of at least 120 minutes. Sampling shall be performed according to 40 CFR Part 60 Appendices A-1 through A-3, Methods 1 through 4 and Method 5 or Method 5e. The averaging time for any other demonstration of the particulate matter compliance or exceedance shall be based on a 6-hour average. Particulate testing shall be performed annually as required by paragraph (e)(3) of this section. This test with 120 minute test runs may be substituted and used to demonstrate compliance with the particulate limits in paragraph (d)(2) of this section.

(2) Plant-wide nitrogen oxide emission limits.

(i) The plant-wide nitrogen oxide limit, expressed as nitrogen dioxide (NO_2), shall be 0.11 lb/MMBtu as averaged over a rolling 30-calendar day period. NO_x emissions for each calendar day shall be determined by summing the hourly emissions measured as pounds of NO_2 for all operating units. Heat input for each calendar day shall be determined by adding together all hourly heat inputs, in millions of Btu, for all operating units. Each day the rolling 30-calendar day average shall be determined by adding together that day's and the preceding 29 days' pounds of NO_2 and dividing that total pounds of NO_2 by the sum of the heat input during the same 30-day period. The results shall be the rolling 30-calendar day-average pound per million Btu emissions of NO_x .

(ii) The interim NO_x limit for the first 750 MW boiler retrofitted with add-on post-combustion NO_x control shall be 0.11 lb/MMBtu, based on a rolling average of 30 successive boiler operating days.

(iii) Schedule for add-on post-combustion NO_x controls installation

(A) Within 4 years of the effective date of this rule, FCPP shall have installed add-on post-combustion NO_x controls on at least 750 MW (net) of generation to meet the interim emission limit in paragraph (i)(2)(ii)(A) of this section.

(B) Within 5 years of the effective date of this rule, FCPP shall have installed add-on post-combustion NO_x controls on all 2060 MW (net) of generation to meet the plant-wide emission limit for NO_x in paragraph (i)(2)(i) of this section.

(iv) Testing and monitoring shall use the 40 CFR part 75 monitors and meet the 40 CFR part 75 quality assurance requirements. In addition to these 40 CFR part 75 requirements, relative accuracy test audits shall be performed for both the NO_x pounds per hour measurement and the heat input measurement. These shall have relative accuracies of less than 20 percent. This testing shall be evaluated each time the 40 CFR part 75 monitors undergo relative accuracy testing.

(v) If a valid NO_x pounds per hour or heat input is not available for any hour for a unit, that heat input and NO_x pounds per hour shall not be used in the calculation of the 30 day plant-wide rolling average.

(vi) Upon the effective date of the plant-wide NO_x average, the owner or operator shall have installed CEMS and COMS software that complies with the requirements of this section.

(3) In lieu of meeting the NO_x requirements of paragraph (i)(2) of this section, FCPP may choose to permanently shut down Units 1, 2, and 3 by January 1, 2014 and meet the requirements of this paragraph to control NO_x emissions from Units 4 and 5. By July 31, 2018, Units 4 and 5 shall be retrofitted with add-on post-combustion NO_x controls to reduce NO_x emissions. Units 4 and 5 shall each meet a 0.098 lb/MMBtu emission limit for NO_x expressed as NO_2 based on a rolling average of 30 successive boiler operating days. A "boiler operating day" is defined as any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit. Emissions from each unit shall be measured with the 40 CFR part

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75 continuous NO_x monitor system and expressed in the units of lb/MMBtu and recorded each hour. A valid hour of NO_x data shall be determined per 40 CFR part 75. For each boiler operating day, every valid hour of NO_x lb/MMBtu measurement shall be averaged to determine a daily average. Each daily average shall be averaged with the preceding 29 valid daily averages to determine the 30 boiler operating day rolling average. The NO_x monitoring system shall meet the data requirements of 40 CFR 60.49Da(e)(2) (at least 90 percent valid hours for all operating hours over any 30 successive boiler operating days). Emission testing using 40 CFR part 60 Appendix A Method 7E may be used to supplement any missing data due to continuous monitor problems. The 40 CFR part 75 requirements for bias adjusting and data substitution do not apply for adjusting the data for this emission limit.

(4) By January 1, 2013, the owner or operator shall submit a letter to the Regional Administrator updating EPA of the status of lease negotiations and regulatory approvals required to comply with paragraph (i)(3) of this section. By December 31, 2013, the owner or operator shall notify the Regional Administrator by letter whether it will comply with paragraph (i)(2) of this section or whether it will comply with paragraph (i)(3) of this section and shall submit a plan and time table for compliance with either paragraph (i)(2) or (3) of this section. The owner or operator shall amend and submit this amended plan to the Regional Administrator as changes occur.

(5) The owner or operator shall follow the requirements of 40 CFR part 71 for submitting an application for permit revision to update its Part 71 operating permit after it achieves compliance with paragraph (i)(2) or (3) of this section.

(j) *Dust.* Each owner or operator shall operate and maintain the existing dust suppression methods for controlling dust from the coal handling and ash handling and storage facilities. Within ninety (90) days after promulgation of this paragraph, the owner or operator shall develop a dust control plan and submit the plan to the Regional Administrator. The owner or operator

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shall comply with the plan once the plan is submitted to the Regional Administrator. The owner or operator shall amend the plan as requested or needed. The plan shall include a description of the dust suppression methods for controlling dust from the coal handling and storage facilities, ash handling, storage, and landfills, and road sweeping activities. Within 18 months of promulgation of this paragraph each owner or operator shall not emit dust with opacity greater than 20 percent from any crusher, grinding mill, screening operation, belt conveyor, or truck loading or unloading operation.

[72 FR 25705, May 7, 2007. Redesignated at 76 FR 23879, Apr. 29, 2011; 77 FR 51647, Aug. 24, 2012; 78 FR 60704, Oct. 2, 2013]

EFFECTIVE DATE NOTE: At 73 FR 67109, Nov. 13, 2008, paragraph (d)(3) of §49.23 was stayed until further notice. §49.23 was redesignated as §49.5512 at 76 FR 23879, Apr. 29, 2011.

§49.5513 Federal Implementation Plan Provisions for Navajo Generating Station, Navajo Nation.

(a) *Applicability.* The provisions of this section shall apply to each owner or operator of the fossil fuel-fired, steam-generating equipment designated as Units 1, 2, and 3, equipment associated with coal and ash handling, and the two auxiliary steam boilers at the Navajo Generating Station (NGS) on the Navajo Nation located in the Northern Arizona Intrastate Air Quality Control Region (see 40 CFR 81.270).

(b) *Compliance dates.* Compliance with the requirements of this section is required upon the effective date of this section.

(c) *Definitions.* For the purposes of this section:

(1) *Absorber upset transition period* means the 24-hour period following an upset of an SO₂ absorber module which resulted in the absorber being taken out of service.

(2) *Affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding. This rule

provides an affirmative defense to actions for penalties brought for excess emissions that arise during certain malfunction episodes.

(3) *Malfunction* means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

(4) *Owner or Operator* means any person who owns, leases, operates, controls or supervises the NGS, any of the fossil fuel-fired, steam-generating equipment at the NGS, or the auxiliary steam boilers at the NGS.

(5) *Plant-wide* means a weighted average of particulate matter and SO₂ emissions for Units 1, 2, and 3 based on the heat input to each unit as determined by 40 CFR part 75.

(6) *Point source* means any crusher, any conveyor belt transfer point, any pneumatic material transferring, any baghouse or other control devices used to capture dust emissions from loading and unloading, and any other stationary point of dust that may be observed in conformance with Method 9 of Appendix A-4 of 40 CFR Part 60 (excluding stockpiles).

(7) *Regional Administrator* means the Regional Administrator of the Environmental Protection Agency Region 9 or his/her authorized representative.

(8) *Startup* shall mean the period from start of fires in the boiler with fuel oil, to the time when the electrostatic precipitator is sufficiently heated such that the temperature of the air pre-heater inlet reaches 400 degrees Fahrenheit and when a unit reaches 300 MW net load. Proper startup procedures shall include energizing the electrostatic precipitator prior to the combustion of coal in the boiler. This rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during startup epi-

sodes. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

(9) *Shutdown* shall begin when the unit drops below 300 MW net load with the intent to remove the unit from service. The precipitator shall be maintained in service until boiler fans are disengaged. This rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during shutdown episodes. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

(10) *Oxides* of nitrogen (NO_x) means the sum of nitrogen oxide (NO) and nitrogen dioxide (NO₂) in the flue gas, expressed as nitrogen dioxide.

(d) *Emissions limitations and control measures*—(1) *Sulfur oxides*. No owner or operator shall discharge or cause the discharge of sulfur oxides into the atmosphere from Units 1, 2, or 3 in excess of 1.0 pound per million British thermal units (lb/MMBtu) averaged over any three (3) hour period, on a plant-wide basis.

(2) *Particulate matter*. No owner or operator shall discharge or cause the discharge of particulate matter into the atmosphere in excess of 0.060 lb/MMBtu, on a plant-wide basis, as averaged from at least three sampling runs per stack, each at a minimum of 60 minutes in duration, each collecting a minimum sample of 30 dry standard cubic feet.

(3) *Dust*. Each owner or operator shall operate and maintain the existing dust suppression methods for controlling dust from the coal handling and storage facilities. Within ninety (90) days after promulgation of these regulations the owner or operator shall submit to the Regional Administrator a description of the dust suppression methods for controlling dust from the coal handling and storage facilities, fly ash handling and storage, and road sweeping activities. Each owner or operator shall not emit dust with an opacity greater than 20% from any crusher,

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grinding mill, screening operation, belt conveyor, truck loading or unloading operation, or railcar unloading station, as determined using 40 CFR Part 60, Appendix A-4 Method 9.

(4) *Opacity.* No owner or operator shall discharge or cause the discharge of emissions from the stacks of Units 1, 2, or 3 into the atmosphere exhibiting greater than 20% opacity, excluding condensed uncombined water droplets, averaged over any six (6) minute period and 40% opacity, averaged over six (6) minutes, during absorber upset transition periods.

(e) *Testing and monitoring.* (1) On and after the effective date of this regulation, the owner or operator shall maintain and operate Continuous Emissions Monitoring Systems (CEMS) for NO_x and SO₂ and Continuous Opacity Monitoring Systems (COMS) on Units 1, 2, and 3 in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and Appendix B of Part 60. The owner or operator shall comply with the quality assurance procedures for CEMS and COMS found in 40 CFR part 75.

(2) The owner or operator shall conduct annual mass emissions tests for particulate matter on Units 1, 2, and 3, operating at rated capacity, using coal that is representative of that normally used. The tests shall be conducted using the appropriate test methods in 40 CFR Part 60, Appendix A.

(3) During any calendar year in which an auxiliary boiler is operated for 720 hours or more, and at other times as requested by the Administrator, the owner or operator shall conduct mass emissions tests for sulfur dioxide, nitrogen oxides and particulate matter on the auxiliary steam boilers, operating at rated capacity, using oil that is representative of that normally used. The tests shall be conducted using the appropriate test methods in 40 CFR Part 60, Appendix A. For particulate matter, testing shall consist of three test runs. Each test run shall be at least sixty (60) minutes in duration and shall collect a minimum volume of thirty (30) dry standard cubic feet.

(4) The owner or operator shall maintain two sets of opacity filters for each type of COMS, one set to be used as calibration standards and one set to be used as audit standards. At least one

set of filters shall be on site at all times.

(5) All emissions testing and monitor evaluation required pursuant to this section shall be conducted in accordance with the appropriate method found in 40 CFR Part 60, Appendices A and B.

(6) The owner or operator shall install, maintain and operate ambient monitors at Glen Canyon Dam for particulate matter (PM_{2.5} and PM₁₀), nitrogen dioxide, sulfur dioxide, and ozone. Operation, calibration and maintenance of the monitors shall be performed in accordance with 40 CFR Part 58, manufacturer's specification, and "Quality Assurance Handbook for Air Pollution Measurements Systems", Volume II, U.S. EPA as applicable to single station monitors. Data obtained from the monitors shall be reported annually to the Regional Administrator. All particulate matter samplers shall operate at least once every six days, coinciding with the national particulate sampling schedule.

(7) Nothing herein shall limit EPA's ability to ask for a test at any time under section 114 of the Clean Air Act, 42 U.S.C. 7413, and enforce against any violation of the Clean Air Act or this section.

(8) A certified EPA Reference Method 9 of Appendix A-4 of 40 CFR Part 60 observer shall conduct a weekly visible emission observation for the equipment and activities described under Section 49.24(d)(3). If visible emissions are present at any of the equipment and/or activities, a 6-minute EPA Reference Method 9 observation shall be conducted. The name of the observer, date, and time of observation, results of the observations, and any corrective actions taken shall be noted in a log.

(f) *Reporting and recordkeeping requirements.* Unless otherwise stated all requests, reports, submittals, notifications and other communications to the Regional Administrator required by this section shall be submitted to the Director, Navajo Environmental Protection Agency, P.O. Box 339, Window Rock, Arizona 86515, (928) 871-7692, (928) 871-7996 (facsimile), and to the Director, Air Division, U.S. Environmental Protection Agency, Region IX, to the attention of Mail Code: AIR-5, at 75

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Hawthorne Street, San Francisco, California 94105, (415) 972-3990, (415) 947-3579 (facsimile). For each unit subject to the emissions limitations in this section the owner or operator shall:

(1) Comply with the notification and recordkeeping requirements for testing found in 40 CFR 60.7. All data/reports of testing results shall be submitted to the Regional Administrator and post-marked within 60 days of testing.

(2) For excess emissions, notify the Navajo Environmental Protection Agency Director and the U.S. Environmental Protection Agency Regional Administrator by telephone or in writing within one business day. This notification should be sent to the Director, Navajo Environmental Protection Agency, by mail to: P.O. Box 339, Window Rock, Arizona 86515, or by facsimile to: (928) 871-7996 (facsimile), and to the Regional Administrator, U.S. Environmental Protection Agency Region 9, by mail to the attention of Mail Code: AIR-5, at 75 Hawthorne Street, San Francisco, California 94105, by facsimile to: (415) 947-3579 (facsimile), or by e-mail to: r9.aeo@epa.gov. A complete written report of the incident shall be submitted to the Regional Administrator within ten (10) working days after the event. This notification shall include the following information:

(i) The identity of the stack and/or other emissions points where excess emissions occurred;

(ii) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions;

(iii) The time and duration or expected duration of the excess emissions;

(iv) The identity of the equipment causing the excess emissions;

(v) The nature and cause of such excess emissions;

(vi) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction; and

(vii) The steps that were taken or are being taken to limit excess emissions.

(3) Notify the Regional Administrator verbally within one business day of determination that an exceedance of the NAAQS has been measured by a monitor operated in accordance with this regulation. The notification to the Regional Administrator shall include the time, date, and location of the exceedance, and the pollutant and concentration of the exceedance. Compliance with this paragraph (f)(3)(v) shall not excuse or otherwise constitute a defense to any violations of this section or of any law or regulation which such excess emissions or malfunction may cause. The verbal notification shall be followed within fifteen (15) days by a letter containing the following information:

(i) The time, date, and location of the exceedance;

(ii) The pollutant and concentration of the exceedance;

(iii) The meteorological conditions existing 24 hours prior to and during the exceedance;

(iv) For a particulate matter exceedance, the 6-minute average opacity monitoring data greater than 20% for the 24 hours prior to and during the exceedance; and

(v) Proposed plant changes such as operation or maintenance, if any, to prevent future exceedances.

(4) Submit quarterly excess emissions reports for sulfur dioxide and opacity as recorded by CEMS and COMS together with a CEMS data assessment report to the Regional Administrator no later than 30 days after each calendar quarter. The owner or operator shall complete the excess emissions reports according to the procedures in 40 CFR 60.7(c) and (d) and include the Cylinder Gas Audit. Excess opacity due to condensed water vapor in the stack does not constitute a reportable exceedance; however, the length of time during which water vapor interfered with COMs readings should be summarized in the 40 CFR 60.7 (c) report.

(g) *Compliance certifications.* Notwithstanding any other provision in this implementation plan, the owner or operator may use any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance

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test had been performed, for the purpose of submitting compliance certifications.

(h) *Equipment operations.* The owner or operator shall operate all equipment or systems needed to comply with this section in accordance with 40 CFR 60.11(d) and consistent with good engineering practices to keep emissions at or below the emissions limitations in this section, and following outages of any control equipment or systems the control equipment or system will be returned to full operation as expeditiously as practicable.

(i) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not a person has violated or is in violation of any standard in the plan.

(2) During periods of start-up and shutdown the otherwise applicable emission limits or requirements for opacity and particulate matter shall not apply provided that:

(i) At all times the facility is operated in a manner consistent with good practice for minimizing emissions, and the owner or operator uses best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limit;

(ii) The frequency and duration of operation in start-up or shutdown mode are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, it shall be an affirmative defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equip-

ment and did not result from inadequate design or construction of the process or air pollution control equipment;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were immediately taken to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(j)(1) *Applicability.* Regional Haze Best Available Retrofit Technology limits for NO_x for this plant are in addition to the requirements of paragraphs (a) through (i) of this section. The provisions of this paragraph (j) are severable, and if any provision of this paragraph (j), or the application of any provision of this paragraph (j) to any owner/operator or circumstance, is held invalid, the application of such provision to other owner/operators and other circumstances, and the remainder of this paragraph (j), will not be affected thereby. Nothing in this paragraph (j) allows or authorizes any Unit to emit NO_x at a rate that exceeds its existing emission limit of 0.24 lb/MMBtu as established by EPA permit AZ 08-01 issued on November 20, 2008.

(2) *Definitions.* Terms not defined below have the meaning given to them in the Clean Air Act or EPA's regulations implementing the Clean Air Act and in paragraph (c) of this section. For purposes of this paragraph (j):

(i) *2009–2029 NO_x Cap* means a limit on emissions from Units 1, 2, and 3 of no more than 416,865 tons of NO_x.

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(ii) *2009–2044 NO_x Cap* means a limit on emissions from Units 1, 2, and 3 of no more than 494,899 tons of NO_x.

(iii) *Boiler operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam-generating unit. It is not necessary for fuel to be combusted the entire 24-hour period.

(iv) *Coal-fired unit* means any of Units 1, 2, or 3 at Navajo Generating Station.

(v) *Continuous Emission Monitoring System or CEMS* means the equipment required by 40 CFR part 75 and this paragraph (j).

(vi) *Departing Participant* means either Los Angeles Department of Water and Power or Nevada Energy, also known as NV Energy or Nevada Power Company.

(vii) *Emission limitation or emission limit* means the federal emissions limitation required by this paragraph.

(viii) *Existing Participant* means the existing owners of NGS: Los Angeles Department of Water and Power; Nevada Energy, also known as NV Energy or Nevada Power Company; Salt River Project Agricultural Improvement and Power District; Arizona Public Service Company; and Tucson Electric Company, together with the United States, acting through the Bureau of Reclamation.

(ix) *lb* means pound(s).

(x) *Low-NO_x Burners and Separated Over-Fire Air or LNB/SOFA* means combustion controls installed on each Unit between 2009 and 2011.

(xi) *Navajo Nation* means the Navajo Nation, a federally recognized Indian Tribe.

(xii) *NGS or Navajo Generating Station* means the steam electric generating station located on the Navajo Reservation near Page, Arizona, consisting of Units 1, 2, and 3, each 750 MW (nameplate rating), the switchyard facilities, and all facilities and structures used or related thereto.

(xiii) *NO_x* means nitrogen oxides expressed as nitrogen dioxide (NO₂).

(xiv) *Owner/operator* means any person(s) who own(s) or who operate(s), control(s), or supervise(s) one or more of the Units of the Navajo Generating Station.

(xv) *MMBtu* means million British thermal unit(s).

(xvi) *Operating hour* means any hour that fossil fuel is fired in the unit.

(xvii) *Unit* means any of Units 1, 2, or 3 at Navajo Generating Station.

(xviii) *Valid data* means CEMs data that is not out of control as defined in 40 CFR part 75.

(3) *“Better than BART” alternative for NO_x*. Total cumulative NO_x emissions from Units 1, 2, and 3, from January 1, 2009 to December 31, 2044, may not exceed the 2009–2044 NO_x Cap. The owner/operator must implement the applicable operating scenario, under paragraph (j)(3)(i) of this section, to ensure NO_x emission reductions sufficient to maintain total cumulative NO_x emissions from Units 1, 2, and 3 below the 2009–2044 NO_x Cap.

(i) *Operating scenarios to comply with 2009–2044 NO_x Cap*. The owner/operator must comply with one of the following operating scenarios based on the applicability provisions in paragraph (j)(3)(ii) of this section.

(A) *Alternative A1*. (1) By December 31, 2019, the owner/operator must permanently cease operation of one coal-fired Unit; and

(2) By December 31, 2030, the owner/operator must comply with a NO_x emission limit of 0.07 lb/MMBtu, based on a rolling average of 30 boiler operating days, on each of the two remaining coal-fired Units.

(3) The owner/operator must permanently cease operation of Units 1, 2, and 3 if total cumulative emissions of NO_x from Units 1, 2, and 3, based on annual reports required under paragraph (j)(4)(ii) of this section, exceed the 2009–2044 NO_x Cap at any time prior to December 31, 2044.

(B) *Alternative A2*. (1) By December 31, 2019, the owner/operator must permanently cease operation of one coal-fired Unit; and

(2) By December 31, 2019, the owner/operator may increase net generating capacity of the remaining two coal-fired Units by a combined total of no more than 189 MW. The actual increase in net generating capacity shall be limited by the sum of 19 MW and the ownership interest, in net MW capacity, purchased by the Navajo Nation by December 31, 2019. Nothing in paragraph

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(j) of this section alters any regulatory requirements, including those for pre-construction permitting, associated with any increase in the net generating capacity of the Unit(s).

(3) By December 31, 2030, the owner/operator must comply with a NO_x emission limit of 0.07 lb/MMBtu, based on a rolling average of 30 boiler operating days, on each of the two remaining coal-fired Units.

(4) The owner/operator must permanently cease operation of Units 1, 2, and 3 if total cumulative emissions of NO_x from Units 1, 2, and 3, based on annual reports required under paragraph (j)(4)(ii) of this section, exceed the 2009-2044 NO_x Cap at any time prior to December 31, 2044.

(C) *Alternative A3.* (1) By December 31, 2019, the owner/operator must reduce the net generating capacity of NGS by no less than 561 MW. The actual reduction in net generating capacity of NGS shall be determined by the difference between 731 MW and the ownership interest, in net MW capacity and limited to 170 MW, purchased by the Navajo Nation by December 31, 2019.

(2) By December 31, 2030, the owner/operator must comply with a NO_x emission limit of 0.07 lb/MMBtu, based on a rolling average of 30 boiler operating days, on two Units.

(3) The owner/operator must permanently cease operation of Units 1, 2, and 3 if total cumulative emissions of NO_x from Units 1, 2, and 3, based on annual reports required under paragraph (j)(4)(ii) of this section, exceed the 2009-2044 NO_x Cap at any time prior to December 31, 2044.

(D) *Alternative B.* (1) Total cumulative NO_x emissions from Units 1, 2, and 3 may not exceed the 2009-2044 NO_x Cap or the 2009-2029 NO_x Cap.

(2) The owner/operator must cease operation of Units 1, 2, and 3 if total cumulative emissions of NO_x from Units 1, 2, and 3, based on annual reports required under paragraph (j)(4)(ii) of this section, exceed the 2009-2029 NO_x Cap at any time prior to December 31, 2029. The owner/operator may restart operation of Units 1, 2, and 3 after January 1, 2030, as long as total cumulative emissions of NO_x from Units 1, 2, and 3, based on annual reports required under paragraph (j)(4)(ii) of this sec-

tion, do not exceed the 2009-2044 NO_x Cap.

(3) The owner/operator must permanently cease operation of Units 1, 2, and 3 if total cumulative emissions of NO_x from Units 1, 2, and 3, based on annual reports required under paragraph (j)(4)(ii), exceed the 2009-2044 NO_x Cap at any time prior to December 31, 2044.

(ii) *Applicability of alternatives.* (A) Alternative A1 applies if by December 31, 2019, one of the following occurs:

(1) Both of the Departing Participants retire their ownership interests in NGS by December 31, 2019, and the Navajo Nation does not purchase an ownership interest in NGS; or

(2) Both of the Departing Participants sell their ownership interests in NGS to Existing Participants, and the Navajo Nation does not purchase an ownership interest in NGS; or

(3) One of the Departing Participants retires its ownership interest in NGS and the other Departing Participant sells its ownership interest in NGS to an Existing Participant, and the Navajo Nation does not purchase an ownership interest in NGS.

(B) Alternative A2 applies if by December 31, 2019, one of the following occurs:

(1) Both of the Departing Participants sell their ownership interests in NGS to Existing Participants, the Navajo Nation has purchased an ownership interest in NGS, and the owner/operator has increased net generating capacity of the two remaining Units by a combined total of no more than 189 MW; or

(2) One of the Departing Participants retires its ownership interest in NGS and the other Departing Participant sells its ownership interest in NGS to an Existing Participant, the Navajo Nation has purchased an ownership interest in NGS, and the owner/operator has increased net generating capacity of the two remaining Units by a combined total of no more than 189 MW.

(C) Alternative A3 applies if by December 31, 2019, one of the following occurs:

(1) Both of the Departing Participants sell their ownership interests in NGS to Existing Participants, the Navajo Nation has purchased an ownership

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interest in NGS, and the owner/operator has not increased net generating capacity of the Units at NGS; or

(2) One of the Departing Participants retires its ownership interest in NGS and the other Departing Participant sells its ownership interest in NGS to an Existing Participant, the Navajo Nation has purchased an ownership interest in NGS, and the owner/operator has not increased net generating capacity of the Units at NGS.

(D) Alternative B applies if, by December 31, 2019, if one of the following occurs:

(1) Any of the Departing Participants sell their ownership interests in NGS to a Party other than the Navajo Nation that is not an Existing Participant, or

(2) Any of the Departing Participants remains as a participant in NGS.

(iii) By December 22, 2044, the owner/operator shall permanently cease conventional coal-fired electricity generation by all coal-fired Units at NGS.

(4) *Reporting and implementation requirements for BART.* (i) No later than December 1, 2019, the owner/operator must notify EPA of the applicable Alternative for ensuring compliance with the 2009–2044 NO_x Cap.

(ii) Beginning in 2015, and annually thereafter until the earlier of December 22, 2044 or the date on which the owner/operator ceases conventional coal-fired electricity generation by all coal-fired Units at NGS, the owner/operator must report to EPA, the annual heat input, the annual emissions of sulfur dioxide, carbon dioxide, and NO_x from the previous full calendar year. In addition, the owner/operator must also report total cumulative emissions of NO_x from NGS to assure compliance with the 2009–2044 NO_x Cap and the 2009–2029 NO_x Cap (if applicable). The owner/operator must make this report available to the public, either through a link on its Web site or directly on its Web site. The report must be made available within 30 days of the submittal deadline associated with the annual emission inventory required by the Part 71 Operating Permit for NGS.

(iii) No later than December 31, 2020, the owner/operator must submit an application to revise its existing Part 71 Operating Permit to incorporate the

requirements and emission limits of the applicable Alternative to BART under paragraph (j)(3) of this section. The Part 71 Operating Permit for NGS must incorporate practically enforceable limits for NO_x of 0.24 lb/MMBtu, on a 30-day rolling average basis, for each Unit equipped with LNB/SOFA, and 0.07 lb/MMBtu on a rolling average basis of 30 boiler operating days, for each Unit equipped with SCR, as federally enforceable permit conditions.

(iv) In addition to the requirements of paragraphs (j)(4)(i), (ii) and (iii) of this section, if Alternative B applies, the owner/operator must submit annual Emission Reduction Plans to the Regional Administrator.

(A) No later than December 31, 2019 and annually thereafter through December 31, 2028, the owner/operator must submit an Emission Reduction Plan containing anticipated year-by-year emissions from Units 1, 2, and 3 covering the period from 2020 to 2029 that will assure that the operation of NGS will result in emissions of NO_x that do not exceed the 2009–2029 NO_x Cap. The Emission Reduction Plan may contain several potential operating scenarios and must set forth the past annual actual emissions and the projected emissions for each potential operating scenario. Each potential operating scenario must demonstrate compliance with the 2009–2029 NO_x Cap. The Emission Reduction Plan shall identify emission reduction measures that may include, but are not limited to, the installation of advanced emission controls, a reduction in generation output, or other operating strategies determined by the owner/operator. The owner/operator may revise the potential operating scenarios set forth in the Emission Reduction Plan, provided the revised plan ensure that NO_x emissions remain below the 2009–2029 NO_x Cap.

(B) No later than December 31, 2029 and annually thereafter, the owner/operator shall submit an Emission Reduction Plan containing year-by-year emissions covering the period from January 1, 2030 to December 31, 2044 that will assure that the operation of NGS will result in emissions of NO_x that do not exceed the 2009–2044 NO_x Cap. The Emission Reduction Plan

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shall identify emission reduction measures that may include, but are not limited to, the installation of advanced emission controls, a reduction in generation output, or other operating strategies determined by the owner/operator. The owner/operator may revise the potential operating scenarios set forth in the Emission Reduction Plan, provided the revised plan ensure that NO_x emissions remain below the 2009-2044 NO_x Cap.

(C) The requirement to submit annual Emission Reduction Plans beginning no later than December 31, 2019, shall be incorporated into the Part 71 Operating Permit for NGS as federally enforceable permit conditions.

(5) *Continuous emission monitoring system (CEMS).* (i) At all times, the owner/operator of each unit must maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR part 75, to accurately measure NO_x, diluent, and stack gas volumetric flow rate from each unit. All hourly valid data will be used to determine compliance with the emission limitations for NO_x in paragraph (j)(3) of this section for each unit. If the CEMS data is not valid, that CEMS data shall be treated as missing data and not used to calculate the emission average. CEMS data does not need to be bias adjusted as defined in 40 CFR part 75. Each required CEMS must obtain valid data for at least 90 percent of the unit operating hours, on an annual basis.

(ii) The owner/operator of each unit shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75. In addition to these Part 75 requirements, relative accuracy test audits shall be calculated for both the NO_x pounds per hour measurement and the heat input measurement. The calculation of NO_x pounds per hour and heat input relative accuracy shall be evaluated each time the CEMS undergo relative accuracy testing.

(6) *Compliance determination for NO_x emission limits.* (i) Compliance with the NO_x emission limits under paragraphs (j)(3)(i) of this section shall be determined on a rolling average basis of thirty (30) Boiler Operating Days on a unit by unit basis. Compliance shall be calculated in accordance with the fol-

lowing procedure: Sum the total pounds of NO_x emitted from the Unit during the current Boiler Operating Day and the previous twenty-nine (29) Boiler Operating Days; sum the total heat input to the Unit in MMBtu during the current Boiler Operating Day and the previous twenty-nine (29) Boiler Operating Days; and divide the total number of pounds of NO_x by the total heat input in MMBtu during the thirty (30) Boiler Operating Days. A new 30 Boiler Operating Day rolling average shall be calculated for each new Boiler Operating Day. Each 30 Boiler Operating Day rolling average shall include all emissions that occur during periods within any Boiler Operating Day, including emissions from startup, shutdown, and malfunction.

(ii) If a valid NO_x pounds per hour or heat input is not available for any hour for a Unit, that heat input and NO_x pounds per hour shall not be used in the calculation for that 30 boiler operating day period.

(7) *Recordkeeping.* The owner/operator of each Unit must maintain the following records until the earlier of December 22, 2044 or the date that conventional coal-fired operation of all units at NGS permanently ceases:

(i) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results as required by Part 75 and as necessary to calculate each units pounds of NO_x and heat input for each hour.

(ii) Each Boiler Operating Day rolling average emission rate for NO_x calculated in accordance with paragraph (j)(6)(i) of this section.

(iii) Each unit's 30 Boiler Operating Day pounds of NO_x and heat input.

(iv) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR part 75.

(v) Records of the relative accuracy calculation of the NO_x lb/hr measurement and hourly heat input.

(vi) Any other records required by 40 CFR part 75.

(8) *Reporting.* All reports and notifications under this paragraph (j) must be submitted to the Director, Navajo Environmental Protection Agency, P.O.

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Box 339, Window Rock, Arizona 86515, and to the Director of Enforcement Division, U.S. EPA Region IX, at 75 Hawthorne Street, San Francisco, CA 94105.

(i) The owner/operator must notify EPA within two weeks after completion of installation of NO_x control technology on any of the units subject to this section.

(ii) Within 30 days after the first applicable compliance date in paragraph (j)(3) of this section and within 30 days of every second calendar quarter thereafter (i.e., semi-annually), the owner/operator must submit a report that lists for each calendar day, calculated in accordance with paragraph (j)(6) of this section, total lb of NO_x and heat input (as used to calculate compliance per paragraph (j)(6) of this section, for each unit's last 30 boiler operating days. The owner/operator must include the results of the last relative accuracy test audit and the calculated relative accuracy for lb/hr NO_x and heat input performed 45 days prior to the end of that reporting period. The end of the year report shall also include the percent valid data for each NO_x, diluent, and flow monitor used in the calculations of compliance with paragraph (j)(6) of this section.

(9) *Enforcement.* Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable emission limit in the plan.

(10) *Equipment operations.* At all times, including periods of startup, shutdown, and malfunction, the owner

operator shall, to the extent practicable, maintain and operate the unit including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator, or their designee, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

(11) *Affirmative defense.* The affirmative defense provisions of paragraphs (c)(2) and (i) of this section do not apply to this paragraph (j).

[75 FR 10179, Mar. 5, 2010. Redesignated at 76 FR 23879, Apr. 29, 2011. Amended at 79 FR 46552, Aug. 8, 2014]

IMPLEMENTATION PLAN FOR THE PECHANGA BAND OF LUISEÑO MISSION INDIANS OF THE PECHANGA RESERVATION**§ 49.5514 EPA-approved Tribal rules and plans.**

(a) *Purpose and scope.* This section contains the approved implementation plan for the Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation dated May 2014. The plan consists of a redesignation request, a demonstration of maintenance of the 1997 8-hour ozone national ambient air quality standard, and related commitments to continue monitoring and to implement contingency provisions in the event of a monitored violation of the standard.

(b)-(c) [Reserved]

(d) *EPA-approved nonregulatory provisions and quasi-regulatory measures.*

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES FOR THE PECHANGA BAND OF LUISEÑO MISSION INDIANS OF THE PECHANGA RESERVATION

Name of nonregulatory or quasi-regulatory TIP provision	Tribal submittal date	EPA approval date	Explanation
Ozone Redesignation Request and Maintenance Plan for Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation Nonattainment Area (May 2014).	November 4, 2014	80 FR 18130, April 3, 2015.	Tribal redesignation request and maintenance plan for the 1997 8-hour ozone standard.

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[80 FR 18130, Apr. 3, 2015]

IMPLEMENTATION PLAN FOR THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

§ 49.5515 Federal implementation plan for Tri-Cities landfill, Salt River Pima-Maricopa Indian Community.

(a) *Applicability.* This section applies to the owner or operator of the project located on the Reservation of the Salt River Pima Maricopa Indian Community (SRPMIC) in Arizona, including any new owner or operator in the event of a change in ownership of the project.

(b) *Definitions.* The following definitions apply to this section. Except as specifically defined herein, terms used in this section retain the meaning accorded them under the Clean Air Act.

Actual emissions means the actual rate of emissions of a pollutant from an emissions unit as determined in paragraphs (1)–(3) of this definition:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. EPA shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) EPA may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

Begin actual construction means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of oper-

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ating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

Building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (*i.e.*, which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

Commence as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has: (1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

Construction means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

EPA means United States Environmental Protection Agency, Region 9.

Fugitive emissions means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

Lowest achievable emission rate means the more stringent rate of emissions based on the following:

(1) The most stringent emissions limitation which is contained in any State, Tribal, or federal implementation plan for such class or category of

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stationary source, unless the owner or operator of the project demonstrates that such limitations are not achievable; or

(2) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

Major stationary source means a stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this project whether it is a major stationary source.

Potential to emit means the maximum capacity of a stationary 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 only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

Project means the construction of electricity-generating engines owned and operated by the Salt River Project at the Tri-Cities landfill, which are fueled by collected landfill gas.

Secondary emissions means emissions which would occur as a result of the construction or operation of a major stationary source, but do not come from the major stationary source itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source which causes the sec-

ondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act.

(c) *Requirement to submit an application.* The owner or operator of the project shall submit an application for a permit to construct to EPA which contains all information necessary to perform any analysis or make any determination as required by this Federal Implementation Plan.

(d) *Source obligations.* (1) The owner or operator of the project shall not begin actual construction on the project without obtaining a nonattainment New Source Review permit regulating emissions of air pollutants. The EPA Region 9 Regional Administrator has the authority to issue such a permit. Any permit issued by EPA shall ensure that the project meets the following requirements:

(i) By the time the project is to commence operation, the owner or operator of the project must have obtained sufficient reductions in actual emissions from existing facilities within the same nonattainment area which satisfy the requirements of section 173 of the Clean Air Act, to offset the potential to emit of the project;

(ii) The owner or operator of the project must comply with the lowest achievable emissions rate;

(iii) The owner or operator of the project must demonstrate that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) located on the reservation of the SRPMIC are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Act; and

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(iv) The owner or operator of the project has provided an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location or construction.

(2) If the owner or operator constructs or operates the project not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or if the owner or operator subject to this section commences construction after January 24, 2000 without applying for and receiving approval under this section, then the owner or operator shall be subject to appropriate enforcement action.

(3) Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Administrator may extend the 18-month period upon a satisfactory showing that an extension is justified.

(4) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the Federal implementation plan and any other requirements under Tribal or Federal law.

(e) *Public participation.* (1) When issuing a permit for the project, the EPA Region 9 Regional Administrator shall follow the procedures for decision making for PSD permits contained in 40 CFR part 124, including the requirements for public notice, consideration of and response to public comment, and the opportunity for public hearing.

(2) Within 30 days after the EPA Region 9 Regional Administrator has issued a final permit decision, any person who filed comments on the draft permit or participated in the public hearing, if one has been held, may petition the Environmental Appeals Board to review any condition of the permit. Review of the permit decision will be governed by the regulations for review

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of PSD permits contained in 40 CFR part 124.

[64 FR 65663, Nov. 23, 1999. Redesignated at 83 FR 13191, Mar. 28, 2018]

§§ 49.5516–49.9860 [Reserved]**Subpart M—Implementation Plans for Tribes—Region X**

SOURCE: 65 FR 51433, Aug. 23, 2000, unless otherwise noted.

IMPLEMENTATION PLAN FOR THE BURNS PAIUTE TRIBE OF THE BURNS PAIUTE INDIAN COLONY OF OREGON

SOURCE: 70 FR 18110, Apr. 8, 2005, unless otherwise noted.

§ 49.9861 Identification of plan.

This section and §§ 49.9862 through 49.9890 contain the implementation plan for the Burns Paiute Tribe of the Burns Paiute Indian Colony. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Burns Paiute Indian Colony.

§ 49.9862 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Burns Paiute Indian Colony.

§ 49.9863 Legal authority. [Reserved]**§ 49.9864 Source surveillance. [Reserved]****§ 49.9865 Classification of regions for episode plans.**

The air quality control region which encompasses the Reservation of the Burns Paiute Indian Colony is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

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§ 49.9866 Contents of implementation plan.

The implementation plan for the Reservation of the Burns Paiute Indian Colony consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9867 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9868 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9869 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9870 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Burns Paiute Indian Colony:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9871–49.9890 [Reserved]

IMPLEMENTATION PLAN FOR THE CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, WASHINGTON

SOURCE: 70 FR 18110, Apr. 8, 2005, unless otherwise noted.

§ 49.9891 Identification of plan.

This section and §§ 49.9892 through 49.9920 contain the implementation plan for the Confederated Tribes of the Chehalis Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Chehalis Reservation.

§ 49.9892 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Chehalis Reservation.

§ 49.9893 Legal authority. [Reserved]

§ 49.9894 Source surveillance. [Reserved]

§ 49.9895 Classification of regions for episode plans.

The air quality control region which encompasses the Chehalis Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III

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Pollutant	Classification
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§49.9896 Contents of implementation plan.

The implementation plan for the Chehalis Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§49.9897 EPA-approved Tribal rules and plans. [Reserved]**§49.9898 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§49.9899 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

40 CFR Ch. I (7-1-20 Edition)**§49.9900 Federally-promulgated regulations and Federal implementation plans.**

The following regulations are incorporated and made part of the implementation plan for the Chehalis Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§49.9901-49.9920 [Reserved]**IMPLEMENTATION PLAN FOR THE COEUR D'ALENE TRIBE OF THE COEUR D'ALENE RESERVATION, IDAHO**

SOURCE: 70 FR 18111, Apr. 8, 2005, unless otherwise noted.

§49.9921 Identification of plan.

This section and §§49.9922 through 49.9950 contain the implementation plan for the Coeur D'Alene Tribe of the Coeur D'Alene Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Coeur D'Alene Reservation.

§49.9922 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Coeur D'Alene Reservation.

Environmental Protection Agency**§ 49.9951****§ 49.9923 Legal authority. [Reserved]****§ 49.9924 Source surveillance. [Reserved]****§ 49.9925 Classification of regions for episode plans.**

The air quality control region which encompasses the Coeur D'Alene Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	II

§ 49.9926 Contents of implementation plan.

The implementation plan for the Coeur D'Alene Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9927 EPA-approved Tribal rules and plans. [Reserved]**§ 49.9928 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9929 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9930 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Coeur D'Alene Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

NOTE TO § 49.9930: EPA entered into a Partial Delegation of Administrative Authority with the Coeur d'Alene Tribe on August 26, 2008 for the rules listed in paragraphs (b), (g), and (i) of this section.

[70 FR 18111, Apr. 8, 2005, as amended at 73 FR 61742, Oct. 17, 2008]

§§ 49.9931–49.9950 [Reserved]**IMPLEMENTATION PLAN FOR THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION, WASHINGTON**

SOURCE: 70 FR 18111, Apr. 8, 2005, unless otherwise noted.

§ 49.9951 Identification of plan.

This section and §§ 49.9952 through 49.9980 contain the implementation plan for the Confederated Tribes of the Colville Reservation. This plan consists of a combination of Tribal rules and

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measures and Federal regulations and measures which apply within the Colville Reservation.

§ 49.9952 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Colville Reservation.

§ 49.9953 Legal authority. [Reserved]**§ 49.9954 Source surveillance. [Reserved]****§ 49.9955 Classification of regions for episode plans.**

The air quality control region which encompasses the Colville Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.9956 Contents of implementation plan.

The implementation plan for the Colville Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.127 Rule for woodwaste burners.
- (f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.
- (g) Section 49.129 Rule for limiting emissions of sulfur dioxides.
- (h) Section 49.130 Rule for limiting sulfur in fuels.
- (i) Section 49.131 General rule for open burning.
- (j) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (k) Section 49.137 Rule for air pollution episodes.

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(l) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(m) Section 49.139 Rule for non-Title V operating permits.

§ 49.9957 EPA-approved Tribal rules and plans. [Reserved]**§ 49.9958 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9959 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR part 71 in accordance with the requirements of § 49.139.

§ 49.9960 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Colville Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.127 Rule for woodwaste burners.
- (f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.
- (g) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (h) Section 49.130 Rule for limiting sulfur in fuels.
- (i) Section 49.131 General rule for open burning.
- (j) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (k) Section 49.137 Rule for air pollution episodes.
- (l) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (m) Section 49.139 Rule for non-Title V operating permits.

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NOTE TO § 49.9960: The EPA entered into a Partial Delegation of Administrative Authority with the Confederated Tribes of the Colville Reservation on October 26, 2015 for the rules listed in paragraphs (b), (i), and (k) of this section.

[70 FR 18111, Apr. 8, 2005, as amended at 81 FR 12826, Mar. 11, 2016]

§ 49.9961–49.9980 [Reserved]

IMPLEMENTATION PLAN FOR THE CONFEDERATED TRIBES OF THE COOS, LOWER UMPQUA AND SIUSLAW INDIANS OF OREGON

SOURCE: 70 FR 18112, Apr. 8, 2005, unless otherwise noted.

§ 49.9981 Identification of plan.

This section and §§ 49.9982 through 49.10010 contain the implementation plan for the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians.

§ 49.9982 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians.

§ 49.9983 Legal authority. [Reserved]

§ 49.9984 Source surveillance. [Reserved]

§ 49.9985 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.9986 Contents of implementation plan.

The implementation plan for the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9987 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9988 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9989 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9990 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians:

- (a) Section 49.123 General provisions.

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- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9991–49.10010 [Reserved]**IMPLEMENTATION PLAN FOR THE COQUILLE TRIBE OF OREGON**

SOURCE: 70 FR 18113, Apr. 8, 2005, unless otherwise noted.

§ 49.10011 Identification of plan.

This section and § 49.10012 through 49.10040 contain the implementation plan for the Coquille Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Coquille Tribe.

§ 49.10012 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Coquille Tribe.

§ 49.10013 Legal authority. [Reserved]**§ 49.10014 Source surveillance. [Reserved]****§ 49.10015 Classification of regions for episode plans.**

The air quality control region which encompasses the Reservation of the Coquille Tribe is classified as follows for purposes of episode plans:

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Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10016 Contents of implementation plan.

The implementation plan for the Reservation of the Coquille Tribe consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10017 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10018 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10019 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

Environmental Protection Agency**§ 49.10048****§ 49.10020 Federally-promulgated regulations and Federal implementation plans.**

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Coquille Tribe:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10021–49.10040 [Reserved]**IMPLEMENTATION PLAN FOR THE COW CREEK BAND OF UMPQUA INDIANS OF OREGON**

SOURCE: 70 FR 18113, Apr. 8, 2005, unless otherwise noted.

§ 49.10041 Identification of plan.

This section and §§ 49.10042 through 49.10100 contain the implementation plan for the Cow Creek Band of Umpqua Indians. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Cow Creek Band of Umpqua Indians.

§ 49.10042 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Cow Creek Band of Umpqua Indians.

§ 49.10043 Legal authority. [Reserved]**§ 49.10044 Source surveillance. [Reserved]****§ 49.10045 Classification of regions for episode plans.**

The air quality control region which encompasses the Reservation of the Cow Creek Band of Umpqua Indians is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10046 Contents of implementation plan.

The implementation plan for the Reservation of the Cow Creek Band of Umpqua Indians consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10047 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10048 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major

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stationary sources pursuant to 40 CFR 52.21.

§ 49.10049 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10050 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Cow Creek Band of Umpqua Indians:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10051–49.10100 [Reserved]**IMPLEMENTATION PLAN FOR THE CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON**

SOURCE: 70 FR 18114, Apr. 8, 2005, unless otherwise noted.

§ 49.10101 Identification of plan.

This section and §§ 49.10102 through 49.10130 contain the implementation plan for the Confederated Tribes of the Grand Ronde Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within

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the Reservation of the Confederated Tribes of the Grand Ronde Community.

§ 49.10102 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Confederated Tribes of the Grand Ronde Community.

§ 49.10103 Legal authority. [Reserved]**§ 49.10104 Source surveillance. [Reserved]****§ 49.10105 Classification of regions for episode plans.**

The air quality control region which encompasses the Reservation of the Confederated Tribes of the Grand Ronde Community is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10106 Contents of implementation plan.

The implementation plan for the Reservation of the Confederated Tribes of the Grand Ronde Community consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

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(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10107 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10108 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10109 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR part 71 in accordance with the requirements of § 49.139.

§ 49.10110 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Confederated Tribes of the Grand Ronde Community:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10111–49.10130 [Reserved]**IMPLEMENTATION PLAN FOR THE HOH INDIAN TRIBE OF THE HOH INDIAN RESERVATION, WASHINGTON**

SOURCE: 70 FR 18114, Apr. 8, 2005, unless otherwise noted.

§ 49.10131 Identification of plan.

This section and §§ 49.10132 through 49.10160 contain the implementation plan for the Hoh Indian Tribe of the Hoh Indian Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Hoh Indian Reservation.

§ 49.10132 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Hoh Indian Reservation.

§ 49.10133 Legal authority. [Reserved]**§ 49.10134 Source surveillance. [Reserved]****§ 49.10135 Classification of regions for episode plans.**

The air quality control region which encompasses the Hoh Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10136 Contents of implementation plan.

The implementation plan for the Hoh Indian Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

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(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10137 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10138 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10139 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10140 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Hoh Indian Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

40 CFR Ch. I (7-1-20 Edition)**§§ 49.10141–49.10160 [Reserved]****IMPLEMENTATION PLAN FOR THE JAMES-TOWN S'KLALLAM TRIBE OF WASHINGTON**

SOURCE: 70 FR 18115, Apr. 8, 2005, unless otherwise noted.

§ 49.10161 Identification of plan.

This section and §§ 49.10162 through 49.10190 contain the implementation plan for the Jamestown S'Klallam Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Jamestown S'Klallam Tribe.

§ 49.10162 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Jamestown S'Klallam Tribe.

§ 49.10163 Legal authority. [Reserved]**§ 49.10164 Source surveillance. [Reserved]****§ 49.10165 Classification of regions for episode plans.**

The air quality control region which encompasses the Reservation of the Jamestown S'Klallam Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10166 Contents of implementation plan.

The implementation plan for the Reservation of the Jamestown S'Klallam Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

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- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10167 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10168 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10169 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10170 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Jamestown S'Klallam Tribe:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10171–49.10190 [Reserved]**IMPLEMENTATION PLAN FOR THE KALISPEL INDIAN COMMUNITY OF THE KALISPEL RESERVATION, WASHINGTON**

SOURCE: 70 FR 18116, Apr. 8, 2005, unless otherwise noted.

§ 49.10191 Identification of plan.

This section and §§ 49.101912 through 49.10220 contain the implementation plan for the Kalispel Indian Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Kalispel Reservation.

§ 49.10192 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Kalispel Reservation.

§ 49.10193 Legal authority. [Reserved]**§ 49.10194 Source surveillance. [Reserved]****§ 49.10195 Classification of regions for episode plans.**

The air quality control region which encompasses the Kalispel Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10196 Contents of implementation plan.

The implementation plan for the Kalispel Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.

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- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10197 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10198 Permits to construct.

- (a) Permits to construct are required for new major stationary sources and major modifications to existing stationary sources pursuant to 40 CFR 52.21.
- (b) In accordance with section 164 of the Clean Air Act and the provisions of 40 CFR 52.21(g), the original Kalispel Reservation, as established by Executive Order No. 1904, signed by President Woodrow Wilson on March 23, 1914, is designated as a Class I area for the purposes of prevention of significant deterioration of air quality.

[84 FR 34313, July 18, 2019]

§ 49.10199 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10200 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Kalispel Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.

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- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10201-49.10220 [Reserved]

IMPLEMENTATION PLAN FOR THE KLAMATH INDIAN TRIBE OF OREGON

SOURCE: 70 FR 18116, Apr. 8, 2005, unless otherwise noted.

§ 49.10221 Identification of plan.

This section and §§ 49.10222 through 49.10250 contain the implementation plan for the Klamath Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Klamath Indian Tribe.

§ 49.10222 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Klamath Indian Tribe.

§ 49.10223 Legal authority. [Reserved]

§ 49.10224 Source surveillance. [Reserved]

§ 49.10225 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Klamath Indian Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III

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Pollutant	Classification
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10226 Contents of implementation plan.

The implementation plan for the Reservation of the Klamath Indian Tribe consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10227 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10228 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10229 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10230 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Klamath Indian Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10231–49.10250 [Reserved]**IMPLEMENTATION PLAN FOR THE KOOTENAI TRIBE OF IDAHO**

SOURCE: 70 FR 18117, Apr. 8, 2005, unless otherwise noted.

§ 49.10251 Identification of plan.

This section and §§ 49.10252 through 49.10280 contain the implementation plan for the Kootenai Tribe of Idaho. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Kootenai Tribe of Idaho.

§ 49.10252 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Kootenai Tribe of Idaho.

§ 49.10253 Legal authority. [Reserved]**§ 49.10254 Source surveillance. [Reserved]****§ 49.10255 Classification of regions for episode plans.**

The air quality control region which encompasses the Reservation of the Kootenai Tribe of Idaho is classified as follows for purposes of episode plans:

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Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	III

§ 49.10256 Contents of implementation plan.

The implementation plan for the Reservation of the Kootenai Tribe of Idaho consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10257 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10258 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10259 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

40 CFR Ch. I (7-1-20 Edition)**§ 49.10260 Federally-promulgated regulations and Federal implementation plans.**

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Kootenai Tribe of Idaho:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10261–49.10280 [Reserved]**IMPLEMENTATION PLAN FOR THE LOWER ELWHA TRIBAL COMMUNITY OF THE LOWER ELWHA RESERVATION, WASHINGTON**

SOURCE: 70 FR 18117, Apr. 8, 2005, unless otherwise noted.

§ 49.10281 Identification of plan.

This section and §§ 49.10282 through 49.10310 contain the implementation plan for the Lower Elwha Tribal Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Lower Elwha Reservation.

§ 49.10282 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Lower Elwha Reservation.

Environmental Protection Agency**§ 49.10311****§ 49.10283 Legal authority. [Reserved]****§ 49.10284 Source surveillance. [Reserved]****§ 49.10285 Classification of regions for episode plans.**

The air quality control region which encompasses the Lower Elwha Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10286 Contents of implementation plan.

The implementation plan for the Lower Elwha Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10287 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10288 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10289 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10290 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Lower Elwha Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10291–49.10310 [Reserved]**IMPLEMENTATION PLAN FOR THE LUMMI TRIBE OF THE LUMMI RESERVATION, WASHINGTON**

SOURCE: 70 FR 18118, Apr. 8, 2005, unless otherwise noted.

§ 49.10311 Identification of plan.

This section and §§ 49.10312 through 49.10340 contain the implementation plan for the Lummi Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Lummi Reservation.

§ 49.10312**40 CFR Ch. I (7-1-20 Edition)****§ 49.10312 Approval status.**

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Lummi Reservation.

§ 49.10313 Legal authority. [Reserved]**§ 49.10314 Source surveillance. [Reserved]****§ 49.10315 Classification of regions for episode plans.**

The air quality control region which encompasses the Lummi Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10316 Contents of implementation plan.

The implementation plan for the Lummi Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10317 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10318 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10319 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10320 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Lummi Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10321–49.10340 [Reserved]

IMPLEMENTATION PLAN FOR THE MAKAH INDIAN TRIBE OF THE MAKAH INDIAN RESERVATION, WASHINGTON

SOURCE: 70 FR 18119, Apr. 8, 2005, unless otherwise noted.

§ 49.10341 Identification of plan.

This section and §§ 49.10342 through 49.10370 contain the implementation

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plan for the Makah Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Makah Indian Reservation.

§ 49.10342 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Makah Indian Reservation.

§ 49.10343 Legal authority. [Reserved]

§ 49.10344 Source surveillance. [Reserved]

§ 49.10345 Classification of regions for episode plans.

The air quality control region which encompasses the Makah Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10346 Contents of implementation plan.

The implementation plan for the Makah Indian Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10347 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10348 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10349 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10350 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Makah Indian Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10351–49.10370 [Reserved]

IMPLEMENTATION PLAN FOR THE MUCKLESHOOT INDIAN TRIBE OF THE MUCKLESHOOT RESERVATION, WASHINGTON

SOURCE: 70 FR 18119, Apr. 8, 2005, unless otherwise noted.

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§ 49.10371 Identification of plan.

This section and §§ 49.10372 through 49.10400 contain the implementation plan for the Muckleshoot Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Muckleshoot Reservation.

§ 49.10372 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Muckleshoot Reservation.

§ 49.10373 Legal authority. [Reserved]

§ 49.10374 Source surveillance. [Reserved]

§ 49.10375 Classification of regions for episode plans.

The air quality control region which encompasses the Muckleshoot Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10376 Contents of implementation plan.

The implementation plan for the Muckleshoot Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.

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(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10377 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10378 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10379 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10380 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Muckleshoot Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

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SOURCE: 70 FR 18120, Apr. 8, 2005, unless otherwise noted.

§ 49.10401 Identification of plan.

This section and §§ 49.10402 through 49.10430 contain the implementation plan for the Nez Perce Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Nez Perce Reservation, as described in the 1863 Nez Perce Treaty.

§ 49.10402 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Nez Perce Reservation.

§ 49.10403 Legal authority. [Reserved]**§ 49.10404 Source surveillance. [Reserved]****§ 49.10405 Classification of regions for episode plans.**

The air quality control region which encompasses the Nez Perce Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	III

§ 49.10406 Contents of implementation plan.

The implementation plan for the Nez Perce Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.127 Rule for woodwaste burners.

(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.

(g) Section 49.129 Rule for limiting emissions of sulfur dioxides.

(h) Section 49.130 Rule for limiting sulfur in fuels.

(i) Section 49.131 General Rule for open burning.

(j) Section 49.132 Rule for general open burning permits.

(k) Section 49.133 Rule for agricultural burning permits.

(l) Section 49.134 Rule for forestry and silvicultural burning permits.

(m) Section 49.135 Rule for emissions detrimental to public health or welfare.

(n) Section 49.137 Rule for air pollution episodes.

(o) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(p) Section 49.139 Rule for non-Title V operating permits.

§ 49.10407 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10408 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10409 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10410 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Nez Perce Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.127 Rule for woodwaste burners.

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- (f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.
- (g) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (h) Section 49.130 Rule for limiting sulfur in fuels.
- (i) Section 49.131 General rule for open burning.
- (j) Section 49.132 Rule for general open burning permits.
- (k) Section 49.133 Rule for agricultural burning permits.
- (l) Section 49.134 Rule for forestry and silvicultural burning permits.
- (m) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (n) Section 49.137 Rule for air pollution episodes.
- (o) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (p) Section 49.139 Rule for non-Title V operating permits.

NOTE TO § 49.10410: EPA entered into a Partial Delegation of Administrative Authority Agreement with the Nez Perce Tribe on June 27, 2005 for the rules listed in paragraphs (b), (i), (j), (k), (l) and (n) of this section.

[70 FR 18120, Apr. 8, 2005, as amended at 70 FR 54639, Sept. 16, 2005]

§ 49.10411 Permits for general open burning, agricultural burning, and forestry and silvicultural burning.

- (a) Beginning June 7, 2005, a person must apply for and obtain a permit under § 49.132 Rule for general open burning permits.
- (b) Beginning June 7, 2005, a person must apply for and obtain approval of a permit under § 49.133 Rule for agricultural burning permits.
- (c) Beginning June 7, 2005, a person must apply for and obtain approval of a permit under § 49.134 Rule for forestry and silvicultural burning permits.

§§ 49.10412–49.10430 [Reserved]

IMPLEMENTATION PLAN FOR THE NISQUALLY INDIAN TRIBE OF THE NISQUALLY RESERVATION, WASHINGTON

SOURCE: 70 FR 18120, Apr. 8, 2005, unless otherwise noted.

40 CFR Ch. I (7-1-20 Edition)**§ 49.10431 Identification of plan.**

This section and §§ 49.10432 through 49.10460 contain the implementation plan for the Nisqually Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Nisqually Reservation.

§ 49.10432 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Nisqually Reservation.

§ 49.10433 Legal authority. [Reserved]**§ 49.10434 Source surveillance. [Reserved]****§ 49.10435 Classification of regions for episode plans.**

The air quality control region which encompasses the Nisqually Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10436 Contents of implementation plan.

The implementation plan for the Nisqually Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.

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(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10437 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10438 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10439 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10440 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Nisqually Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10441–49.10460 [Reserved]**IMPLEMENTATION PLAN FOR THE NOOKSACK INDIAN TRIBE OF WASHINGTON**

SOURCE: 70 FR 18121, Apr. 8, 2005, unless otherwise noted.

§ 49.10461 Identification of plan.

This section and §§ 49.10462 through 49.10490 contain the implementation plan for the Nooksack Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Nooksack Indian Tribe.

§ 49.10462 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Nooksack Indian Tribe.

§ 49.10463 Legal authority. [Reserved]**§ 49.10464 Source surveillance. [Reserved]****§ 49.10465 Classification of regions for episode plans.**

The air quality control region which encompasses the Reservation of the Nooksack Indian Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10466 Contents of implementation plan.

The implementation plan for the Reservation of the Nooksack Indian Tribe consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

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- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§49.10467 EPA-approved Tribal rules and plans. [Reserved]**§49.10468 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§49.10469 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§49.10470 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Nooksack Indian Tribe:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

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- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10471–49.10490 [Reserved]**IMPLEMENTATION PLAN FOR THE PORT GAMBLE INDIAN COMMUNITY OF THE PORT GAMBLE RESERVATION, WASHINGTON**

SOURCE: 70 FR 18122, Apr. 8, 2005, unless otherwise noted.

§49.10491 Identification of plan.

This section and §§ 49.10492 through 49.10520 contain the implementation plan for the Port Gamble Indian Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Port Gamble Reservation.

§49.10492 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Port Gamble Reservation.

§49.10493 Legal authority. [Reserved]**§49.10494 Source surveillance. [Reserved]****§49.10495 Classification of regions for episode plans.**

The air quality control region which encompasses the Port Gamble Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§49.10496 Contents of implementation plan.

The implementation plan for the Port Gamble Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.

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- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10497 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10498 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10499 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10500 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Port Gamble Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.

- (i) Section 49.137 Rule for air pollution episodes.

- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10501–49.10520 [Reserved]**IMPLEMENTATION PLAN FOR THE PUYALLUP TRIBE OF THE PUYALLUP RESERVATION, WASHINGTON**

SOURCE: 70 FR 18122, Apr. 8, 2005, unless otherwise noted.

§ 49.10521 Identification of plan.

This section and §§ 49.10522 through 49.10550 contain the implementation plan for the Puyallup Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply to trust and restricted lands within the 1873 Survey Area of the Puyallup Reservation (the Puyallup Reservation), consistent with the Puyallup Tribe of Indians Land Claims Settlement Act, ratified by Congress in 1989 (25 U.S.C. 1773).

§ 49.10522 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the lands in trust that are within the Puyallup Reservation.

§ 49.10523 Legal authority. [Reserved]**§ 49.10524 Source surveillance. [Reserved]****§ 49.10525 Classification of regions for episode plans.**

The air quality control region which encompasses the lands in trust that are within the Puyallup Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

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§ 49.10526 Contents of implementation plan.

The implementation plan for the lands in trust that are within the Puyallup Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10527 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10528 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10529 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10530 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the land in trust are within the Puyallup Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.

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(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10531-49.10550 [Reserved]

IMPLEMENTATION PLAN FOR THE QUILEUTE TRIBE OF THE QUILEUTE RESERVATION, WASHINGTON

SOURCE: 70 FR 18123, Apr. 8, 2005, unless otherwise noted.

§ 49.10551 Identification of plan.

This section and §§ 49.10552 through 49.10580 contain the implementation plan for the Quileute Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Quileute Reservation.

§ 49.10552 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Quileute Reservation.

§ 49.10553 Legal authority. [Reserved]

§ 49.10554 Source surveillance. [Reserved]

§ 49.10555 Classification of regions for episode plans.

The air quality control region which encompasses the Quileute Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III

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Pollutant	Classification
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10556 Contents of implementation plan.

The implementation plan for the Quileute Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10557 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10558 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10559 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10560 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Quileute Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10561–49.10580 [Reserved]**IMPLEMENTATION PLAN FOR THE QUINAULT TRIBE OF THE QUINAULT RESERVATION, WASHINGTON**

SOURCE: 70 FR 18123, Apr. 8, 2005, unless otherwise noted.

§ 49.10581 Identification of plan.

This section and §§ 49.10582 through 49.10640 contain the implementation plan for the Quinault Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Quinault Reservation.

§ 49.10582 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Quinault Reservation.

§ 49.10583 Legal authority. [Reserved]**§ 49.10584 Source surveillance. [Reserved]****§ 49.10585 Classification of regions for episode plans.**

The air quality control region which encompasses the Quinault Reservation is classified as follows for purposes of episode plans:

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Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10586 Contents of implementation plan.

The implementation plan for the Quinault Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10587 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10588 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10589 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10590 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the imple-

mentation plan for the Quinault Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

NOTE TO § 49.10590: EPA entered into a Partial Delegation of Administrative Authority with the Quinault Indian Nation on October 4, 2007 for the rules listed in paragraphs (b), (g), and (i) of this section.

[70 FR 18123, Apr. 8, 2005, as amended at 73 FR 18162, Apr. 3, 2008]

§§ 49.10591–49.10640 [Reserved]**IMPLEMENTATION PLAN FOR THE SAUK-SUIATTLE INDIAN TRIBE OF WASHINGTON**

SOURCE: 70 FR 18124, Apr. 8, 2005, unless otherwise noted.

§ 49.10641 Identification of plan.

This section and §§ 49.10642 through 49.10670 contain the implementation plan for the Sauk-Suiattle Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Sauk-Suiattle Tribe.

§ 49.10642 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Sauk-Suiattle Tribe.

Environmental Protection Agency**§ 49.10671****§ 49.10643 Legal authority. [Reserved]****§ 49.10644 Source surveillance. [Reserved]****§ 49.10645 Classification of regions for episode plans.**

The air quality control region which encompasses the Reservation of the Sauk-Suiattle Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10646 Contents of implementation plan.

The implementation plan for the Reservation of the Sauk-Suiattle Tribe consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10647 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10648 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10649 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10650 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Sauk-Suiattle Tribe:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10651–49.10670 [Reserved]**IMPLEMENTATION PLAN FOR THE SHOALWATER BAY TRIBE OF THE SHOALWATER BAY INDIAN RESERVATION, WASHINGTON**

SOURCE: 70 FR 18125, Apr. 8, 2005, unless otherwise noted.

§ 49.10671 Identification of plan.

This section and §§ 49.10672 through 49.10700 contain the implementation plan for the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Shoalwater Bay Indian Reservation.

§ 49.10672

§ 49.10672 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Shoalwater Bay Indian Reservation.

§ 49.10673 Legal authority. [Reserved]

§ 49.10674 Source surveillance. [Reserved]

§ 49.10675 Classification of regions for episode plans.

The air quality control region which encompasses the Shoalwater Bay Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10676 Contents of implementation plan.

The implementation plan for the Shoalwater Bay Indian Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

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§ 49.10677 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10678 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10679 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10680 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Shoalwater Bay Indian Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10681–49.10700 [Reserved]

IMPLEMENTATION PLAN FOR THE SHOSHONE-BANNOCK TRIBES OF THE FORT HALL INDIAN RESERVATION OF IDAHO

§ 49.10701 Identification of plan.

This section and §§ 49.10702 through 49.10730 contain the implementation plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation. This plan consists of a combination of

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Tribal rules and measures and Federal regulations and measures which apply within the Fort Hall Indian Reservation.

[70 FR 18125, Apr. 8, 2005]

§ 49.10702 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Fort Hall Indian Reservation.

[70 FR 18125, Apr. 8, 2005]

§ 49.10703 Legal authority. [Reserved]**§ 49.10704 Source surveillance. [Reserved]****§ 49.10705 Classification of regions for episode plans.**

The air quality control region which encompasses the Fort Hall Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	II

[70 FR 18125, Apr. 8, 2005]

§ 49.10706 Contents of implementation plan.

The implementation plan for the Fort Hall Indian Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

(l) Section 49.10711 Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM-10 nonattainment Area.

[70 FR 18125, Apr. 8, 2005]

§ 49.10707 EPA-approved tribal rules and plans. [Reserved]**§ 49.10708 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10709 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

[70 FR 18126, Apr. 8, 2005]

§ 49.10710 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Fort Hall Indian Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

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(k) Section 49.139 Rule for non-Title V operating permits.

(l) Section 49.10711 Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM-10 Nonattainment Area.

[70 FR 18126, Apr. 8, 2005]

§49.10711 Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM-10 Nonattainment Area.

(a) *Applicability.* This section applies to the owner(s) or operator(s) of the Astaris-Idaho LLC's elemental phosphorus facility located on the Fort Hall Indian Reservation in Idaho, including any new owner(s) or operator(s) in the event of a change in ownership or operation of the Astaris-Idaho facility.

(b) *Definitions.* The terms used in this section retain the meaning accorded them under the Clean Air Act, except as follows:

Astaris-Idaho or Astaris-Idaho facility means all of the pollutant-emitting activities that comprise the elemental phosphorus plant owned by or under the common control of Astaris-Idaho LLC in Township 6 south, Range 33 east, Sections 12, 13, and 14, and that lie within the exterior boundaries of the Fort Hall Indian Reservation, in Idaho, including, without limitation, all buildings, structures, facilities, installations, material handling areas, storage piles, roads, staging areas, parking lots, mechanical processes and related areas, and other processes and related areas. For purposes of this section, the term "Astaris-Idaho" or "Astaris-Idaho facility" shall not include pollutant emitting activities located on lands outside the exterior boundaries of the Fort Hall Indian Reservation.

Bag leak detection guidance means Office of Air Quality Planning and Standards (OAQPS): Fabric Filter Bag Leak Detection Guidance, EPA 454/R-98-015 (Sept. 1997).

Begin actual construction means, in general, initiation of physical on-site construction activities on a source which are of a permanent nature. Such activities include, but are not limited to, installation of building supports

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and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in the method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

Certified observer means a visual emissions observer who has been properly certified using the initial certification and periodic semi-annual recertification procedures of 40 CFR part 60, appendix A, Method 9.

Construction means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of a source) which would result in a change in actual emissions.

Emergency means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator of the Astaris-Idaho facility, including acts of God, which requires immediate corrective action to restore normal operation. An emergency shall not include events caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

Emission limitation or emission standard means a requirement which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operations or maintenance procedures to assure continuous emission reduction.

EPA means United States Environmental Protection Agency, Region 10.

Excess emissions means emissions of an air pollutant in excess of an emission limitation.

Excursion means a departure from a parameter range approved under paragraphs (e)(3) or (g)(1) of this section, consistent with any averaging period specified for averaging the results of monitoring.

Fugitive emissions means those emissions that do not actually pass through a stack, chimney, vent, or other functionally equivalent opening.

Malfunction means any sudden and unavoidable breakdown of process or

control equipment. A sudden breakdown which could have been avoided by better operation and maintenance is not a malfunction.

Method 5 is the reference test method described in 40 CFR part 60, appendix A, conducted in accordance with the requirements of this section.

Method 9 is the reference test method described in 40 CFR part 60, appendix A.

Methods 201, 201A, and 202 are the reference test methods described in 40 CFR part 51, appendix M, conducted in accordance with the requirements of this section.

Mini-flush means the process of flushing elemental phosphorus, which has solidified in the secondary condenser, to the elevated secondary condenser flare or to the ground flare, and thus into the atmosphere.

Modification means any physical change in or a change in the method of operation of, an existing source which increases the amount of particulate matter emitted by that source. The following shall not, by themselves, be considered modifications:

(1) Maintenance, repair, and replacement which the Regional Administrator determines to be routine for the particular source;

(2) An increase in production rate of an existing source, if that increase can be accomplished without a physical change to the source or the Astaris-Idaho facility;

(3) An increase in the hours of operation of an existing source, if that increase can be accomplished without a physical change to the source or the Astaris-Idaho facility;

(4) Use of an alternative fuel or raw material, if the existing source is capable of accommodating that alternative without a physical change to the source or the Astaris-Idaho facility; or

(5) The addition, replacement, or use of any system or device whose primary function is the reduction of an air pollutant, except when an emissions control system is removed or replaced by a system which the Regional Administrator determines to be less environmentally beneficial.

Monitoring malfunction means any sudden, infrequent, not reasonably preventable failure of the monitoring to

provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not monitoring malfunctions.

O&M plan means an operation and maintenance plan developed by Astaris-Idaho and submitted to EPA in accordance with paragraph (e)(8) of this section.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

Opacity action level means the level of opacity of emissions from a source requiring the owner or operator of the Astaris-Idaho facility to take prompt corrective action to minimize emissions, including without limitation those actions described in the approved operations and maintenance plan.

Owner or operator means any person who owns, leases, operates, controls, or supervises the Astaris-Idaho facility or any portion thereof.

Particulate matter means any airborne finely-divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

PM-10 or PM-10 emissions means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air as measured by an applicable reference method such as Method 201, 201A, or 202, of 40 CFR Part 51, appendix M, or an equivalent or alternative method specifically approved by the Regional Administrator.

Regional Administrator means the Regional Administrator, EPA Region 10, or a duly designated representative of the Regional Administrator.

Road means access and haul roads, driveways or established vehicle paths, permanent or temporary, which are graded, constructed, used, reconstructed, improved, or maintained for use in vehicle movement throughout the Astaris-Idaho facility.

Shutdown means the cessation of operation of a source for any purpose.

Slag Pit Area means the area of the Astaris-Idaho facility immediately bordering the south side of the furnace building extending out 100 yards.

Source means any building, structure, facility, installation, material handling area, storage pile, road, staging

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area, parking lot, mechanical process or related area, or other process or related area which emits or may emit particulate matter.

Startup means the setting in operation of a source for any purpose.

Title V permit means an operating permit issued under 40 CFR part 70 or 71.

Trades means the Shoshone-Bannock Tribes.

Visible emissions means the emission of pollutants into the atmosphere, excluding uncombined condensed water vapor (steam), that is observable by the naked eye.

Visual observation means the continuous observation of a source for the presence of visible emissions for a period of ten consecutive minutes conducted in accordance with section 5 of EPA Method 22, 40 CFR part 60, appendix A, by a person who meets the training guidelines described in section 1 of Method 22.

(c) *Emission limitations and work practice requirements.* (1)(i) Except as otherwise provided in paragraphs (c)(1)(ii), (c)(1)(iii), and (c)(2) of this section, there shall be no visible emissions from any location at the Astaris-Idaho facility at any time, as determined by a visual observation.

(ii) Emissions from the following equipment, activities, processes, or sources shall not exceed 20% opacity over a six minute average. Method 9, of 40 CFR part 60, appendix A, is the reference test method for this requirement.

(A) Brazing, welding, and welding equipment and oxygen-hydrogen cutting torches;

(B) Plant upkeep, including routine housekeeping, preparation for and painting of structures;

(C) Grinding, sandblasting, and cleaning operations that are not part of a routine operation or a process at the Astaris-Idaho facility;

(D) Cleaning and sweeping of streets and paved surfaces;

(E) Lawn and landscaping activities;

(F) Repair and maintenance activities;

(G) Landfill operations;

(H) Laboratory vent stacks; and

(I) Pond piping discharges.

(iii) Except as otherwise provided in paragraph (c)(1)(ii) of this section,

emissions from equipment, activities, processes, or sources not identified in Table 1 to this section shall not exceed 10% opacity over a six minute average provided that Astaris-Idaho has complied with the requirements of paragraph (c)(11) of this section and provided further that a more stringent opacity limit has not been established for the source in this section. Method 9, 40 CFR Part 60, appendix A, is the reference test method for this requirement.

(2) For each source identified in Column II of Table 1 to this section, the owner or operator of the Astaris-Idaho facility shall comply with the emission limitations and work practice requirements for that source established in Column III of Table 1 to this section.

(3) The opacity limits for the following fugitive emission sources, which are also identified in Column II of Table 1 to this section, apply to adding of material to, taking of material from, reforming, or otherwise disturbing the pile: main shale pile (Table 1 of this section, source 2), emergency/contingency raw ore shale pile (Table 1 of this section, source 3), stacker and reclaimer (Table 1 of this section, source 4), recycle material pile (Table 1 of this section, source 8b), nodule pile (Table 1 of this section, source 11), and screened shale fines pile (Table 1 of this section, source 14).

(4)(i) Except as provided in paragraph (c)(4)(ii) of this section, beginning November 1, 2000, the following activities shall be prohibited:

(A) The discharge of molten slag from furnaces or slag runners onto the ground, pit floors (whether dressed with crushed slag or not), or other non-mobile permanent surface.

(B) The digging of solid slag in the slag pit area or the loading of slag into transport trucks in the slag pit area.

(ii) The prohibition set forth in paragraph (c)(4)(i) of this section shall not apply to the lining of slag pots and the handling (including but not limited to loading, crushing, or digging) of cold slag for purposes of the lining of slag pots.

(5)(i) Beginning January 1, 2001, no furnace gas shall be burned in the existing elevated secondary condenser

flare or the existing ground flare (Table 1 of this section, source 26a).

(ii) Until December 31, 2000, the owner or operator of the Astaris-Idaho facility shall take the following measures to reduce PM-10 emissions from mini-flushes and to ensure there is no bias toward conducting mini-flushes during night-time hours.

(A) Mini-flushes shall be limited to no more than 50 minutes per day (based on a monthly average) beginning January 1, 1999. Failure to meet this limit for any given calendar month will be construed as a separate violation for each day during that month that mini-flushes lasted more than 50 minutes. The monthly average for any calendar month shall be calculated by summing the duration (in actual minutes) of each mini-flush during that month and dividing by the number of days in that month.

(B)(7) No mini-flush shall be conducted at any time unless one of the following operating parameters is satisfied:

(i) The flow rate of recirculated phossy water is equal to or less than 1800 gallons per minute; or

(ii) The secondary condenser outlet temperature is equal to or greater than 36 degrees Centigrade.

(2) The prohibition set forth in paragraph (c)(5)(ii)(B)(1) of this section shall not apply during periods of malfunction or emergency, provided the owner or operator of the Astaris-Idaho facility complies with the requirements of paragraph (c)(9) of this section.

(6) At all times, including periods of startup, shutdown, malfunction, or emergency, the owner or operator of the Astaris-Idaho facility shall, to the extent practicable, maintain and operate each source of PM-10 at the Astaris-Idaho facility, including without limitation those sources identified in Column II of Table 1 to this section and associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not

limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(7) Maintaining operation of a source within approved parameter ranges, promptly taking corrective action, and otherwise following the work practice, monitoring, record keeping, and reporting requirements of this section do not relieve the owner or operator of the Astaris-Idaho facility from the obligation to comply with applicable emission limitations and work practice requirements at all times.

(8) An affirmative defense to a penalty action brought for emissions in excess of an emission limitation shall be available if the excess emissions were due to startup or shutdown and all of the following conditions are met:

(i) The owner or operator of the Astaris-Idaho facility notifies EPA and the Tribes in writing of any startup or shutdown that is expected to cause excess emissions. The notification shall be given as soon as possible, but no later than 48 hours prior to the start of the startup or shutdown, unless the owner or operator demonstrates to EPA's satisfaction that a shorter advanced notice was necessary. The notice shall identify the expected date, time, and duration of the excess emissions event, the source involved in the excess emissions event, and the type of excess emissions event.

(ii) The periods of excess emissions that occurred during startup or shutdown were short and infrequent and could not have been prevented through careful planning and design.

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(iv) If the excess emissions were caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(v) At all times, the facility was operated in a manner consistent with good practice for minimizing emissions.

(vi) The frequency and duration of operation in startup or shutdown mode

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was minimized to the maximum extent practicable.

(vii) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality.

(viii) All emission monitoring systems were kept in operation if at all possible.

(ix) The owner or operator's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(x) The owner or operator of the Astaris-Idaho facility submitted notice of the startup or shutdown to EPA and the Tribes within 48 hours of the time when emission limitations were exceeded due to startup or shutdown. This notice fulfills the requirement of paragraph (g)(5) of this section. This notice must contain a description of the startup or shutdown, any steps taken to mitigate emissions, and corrective actions taken.

(xi) No exceedance of the 24-hour PM-10 National Ambient Air Quality Standard, 40 CFR 50.6(a) was recorded on any monitor located within the Fort Hall PM-10 nonattainment area that regularly reports information to the Aerometric Information Retrieval System-Air Quality Subsystem, as defined under 40 CFR 58.1(p), on any day for which the defense of startup or shutdown is asserted.

(xii) In any enforcement proceeding, the owner or operator of the Astaris-Idaho facility has the burden of proof on all requirements of this paragraph (c)(8).

(9) An affirmative defense to a penalty action brought for emissions in excess of an emission limitation shall be available if the excess emissions were due to an emergency or malfunction and all of the following conditions are met:

(i) The excess emissions were caused by a sudden, unavoidable breakdown of technology, beyond the control of the owner or operator of the Astaris-Idaho facility.

(ii) The excess emissions:

(A) Did not stem from any activity or event that could have been foreseen and avoided or planned for; and

(B) Could not have been avoided by better operation and maintenance practices.

(iii) To the maximum extent practicable the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions.

(iv) Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable.

(v) The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions.

(vi) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality.

(vii) All emission monitoring systems were kept in operation if at all possible.

(viii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(ix) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(x) The owner or operator of the Astaris-Idaho facility submitted notice of the emergency or malfunction to EPA and the Tribes within 48 hours of the time when emission limitations were exceeded due to the emergency or malfunction. This notice fulfills the requirement of paragraph (g)(5) of this section. This notice must contain a description of the emergency or malfunction, any steps taken to mitigate emissions, and corrective actions taken.

(xi) No exceedance of the 24-hour PM-10 National Ambient Air Quality Standard, 40 CFR 50.6(a), was recorded on any monitor located within the Fort Hall PM-10 nonattainment area that regularly reports information to the Aerometric Information Retrieval System-Air Quality Subsystem, as defined under 40 CFR 58.1(p), on any day for

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which the defense of emergency or malfunction is asserted.

(xii) In any enforcement proceeding, the owner or operator of the Astaris-Idaho facility has the burden of proof on all requirements of this paragraph (c)(9).

(10) For each source identified in Column II of Table 2 to this section, the owner or operator of the Astaris-Idaho facility shall take appropriate actions to reduce visible emissions from the source if opacity exceeds the opacity action level for that source identified in Column III of Table 2 of this section. Such actions shall be commenced as soon as possible but not to exceed 24 hours after an exceedance of the opacity action level is first identified and shall be completed as soon as possible. Such actions shall include, but not be limited to, those actions identified in the O&M plan for the source. Exceedance of an opacity action level does not constitute a violation of this section, but failure to take appropriate corrective action as identified in this paragraph (c)(10) does constitute a violation of this section.

(11) The owner or operator of the Astaris-Idaho facility shall notify EPA prior to the construction of a new source of PM-10 at the Astaris-Idaho facility or the modification of an existing source at the Astaris-Idaho facility in a manner that increases emissions of PM-10 as follows:

(i) Such notification shall be submitted to EPA at least 90 days prior to commencement of the construction or modification.

(ii) Such notification shall include the following information:

(A) A description of the source, including location of the process and associated control equipment, and any modification thereto;

(B) An estimate of potential PM-10 emissions from the source on both a 24-hour and annual basis, without consideration of any proposed air pollution control equipment;

(C) The expected daily hours of operation of the source, including any seasonal variation, and an estimate of actual PM-10 emissions from the source on both a 24-hour and annual basis, considering the effect of any proposed air pollution control equipment; and

(D) A description of any PM-10 control technology to be implemented at the source along with an analysis of alternative control technologies considered but rejected.

(iii) Any source identified in this section shall continue to be subject to the requirements of this section notwithstanding the modification of the source.

(iv) The requirements of this paragraph (c)(11) are in addition to any other requirements to obtain a permit under the Clean Air Act.

(v) This paragraph (c)(11) shall cease to apply if either of the following events occur:

(A) EPA promulgates a minor new source review program for PM-10 that applies to the Astaris-Idaho facility; or

(B) The Tribes promulgate a minor new source review program for PM-10 that applies to the Astaris-Idaho facility and EPA approves the Tribes' program under of this part.

(vi) If, after receipt of the notice referred to in this paragraph (c)(11), EPA notifies Astaris-Idaho in writing that a 90 day delay in the commencement of construction or modification is not required, Astaris-Idaho may proceed with the commencement of the construction or modification as described in the notice, subject to the other requirements of this section.

(d) *Reference test methods.* (1) For each source identified in Column II of Table 1 to this section, the reference test method for the corresponding emission limitation in Column III of Table 1 to this section for that source is identified in Column IV of Table 1 to this section. For each source identified in Column II of Table 2 to this section, the reference test method for the corresponding opacity action level in Column III of Table 2 to this section for that source is identified in Column IV of Table 2 to this section.

(2) When Method 201/201A or Methods 201/201A and 202 of 40 CFR Part 60, appendix A, are specified as the reference test methods, the testing shall be conducted in accordance with the identified test methods and the following additional requirements:

(i) Each test shall consist of three runs, with each run a minimum of one hour.

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(ii) Method 202 shall be run concurrently with Method 201 or Method 201A. Unless Method 202 is specifically designated as part of the reference test method, Method 202 shall be performed on each source for informational purposes only and the results from the Method 202 test shall not be included in determining compliance with the mass emission limit for the source.

(iii) The source shall be operated at a capacity of at least 90% of maximum during all tests unless the Regional Administrator determines in writing that other operating conditions are representative of normal operations.

(iv) Only regular operating staff may adjust the processes or emission control device parameters during a performance test or within two hours prior to the tests. Any operating adjustments made during a performance test, which are a result of consultation during the tests with source testing personnel, equipment vendors, or other consultants may render the source test invalid.

(v) For all reference tests, the sampling site and minimum number of sampling points shall be selected according to EPA Method 1 (40 CFR part 60, appendix A).

(vi) EPA Methods 2, 2C, 2D, 3, 3A, and 4 (40 CFR part 60, appendix A) shall be used, as appropriate, for determining mass emission rates.

(vii) The mass emission rate of PM-10 shall be determined as follows:

(A)(1) Where Method 201/201A is identified as the reference test method, the mass emission rate of PM-10 shall be determined by taking the results of the Method 201/201A test and then multiplying by the average hourly volumetric flow rate for the run.

(2) Where Methods 201/201A and 202 are identified as the reference test methods, the mass emission rate of PM-10 shall be determined by first adding the PM-10 concentrations from Methods 201/201A and 202, and then multiplying by the average hourly volumetric flow rate for the run.

(B) The average of the three required runs shall be compared to the emission standard for purposes of determining compliance.

(viii) Two of the three runs from a source test of each Medusa-Andersen

stack on the furnace building (Table 1 of this section, sources 18d, 18e, 18f, and 18g) shall include at least 20 minutes of slag tapping and a third run shall include at least 20 minutes of metal tapping.

(ix) At least one of the three runs from a source test of the excess CO burner (Table 1 of this section, source 26b) shall be conducted during either a mini-flush or hot-flush that lasts for at least 30 minutes.

(3) Method 5 shall be used in place of Method 201 or 201A for the calciner scrubbers (Table 1 of this section, source 9a) and any other sources with entrained water drops. In such case, all the particulate matter measured by Method 5 must be counted as PM-10, and the testing shall be conducted in accordance with paragraph (d)(2) of this section.

(4) Method 5 may be used as an alternative to Method 201 or 201A for a particular point source, provided that all of the particulate measured by Method 5 is counted as PM-10 and the testing is conducted in accordance with paragraph (d)(2) of this section.

(5)(i) An alternative reference test method or a deviation from a reference test method identified in this section may be approved as follows:

(A) The owner or operator of the Astaris-Idaho facility must submit a written request to the Regional Administrator at least 60 days before the performance test is scheduled to begin which includes the reasons why the alternative or deviation is needed and the rationale and data to demonstrate that the alternative test method or deviation from the reference test method:

(1) Provides equal or improved accuracy and precision as compared to the specified reference test method; and

(2) Does not decrease the stringency of the standard as compared to the specified reference test method.

(B) If requested by EPA, the demonstration referred to in paragraph (d)(5)(i)(A) of this section must use Method 301 in 40 CFR part 63, appendix A to validate the alternative test method or deviation.

(C) The Regional Administrator must approve the request in writing.

(ii) Until the Regional Administrator has given written approval to use an

alternative test method or to deviate from the reference test method, the owner or operator of the Astaris-Idaho facility is required to use the reference test method when conducting a performance test pursuant to paragraph (e)(1) of this section.

(6) For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any requirement of this section, nothing in this section shall preclude the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or reference test or procedure had been performed.

(e) *Monitoring and additional work practice requirements.* (1) The owner or operator of the Astaris-Idaho facility shall conduct a performance test to measure PM-10 emissions as follows:

(i) The owner or operator of the Astaris-Idaho facility shall conduct a performance test to measure PM-10 emissions from each of the following sources on an annual basis using the specified reference test methods: east shale baghouse (Table 1 of this section, source 5a), middle shale baghouse (Table 1 of this section, source 6a), west shale baghouse (Table 1 of this section, source 7a), calciner cooler vents (Table 1 of this section, source 10), north nodule discharge baghouse (Table 1 of this section, source 12a), south nodule discharge baghouse (Table 1 of this section, source 12b), proportioning building-east nodule baghouse (Table 1 of this section, source 15a), proportioning building-west nodule baghouse (Table 1 of this section, source 15b), nodule stockpile baghouse (Table 1 of this section, source 16a), dust silo baghouse (Table 1 of this section, source 17a), furnace building-east baghouse (Table 1 of this section, source 18a), furnace building-west baghouse (Table 1 of this section, source 18b), furnace #1, #2, #3, and #4—Medusa-Andersen scrubbers (Table 1 of this section, sources 18d, 18e, 18f and 18g), coke handling baghouse (Table 1 of this section, source 20a), and phos dock-Andersen scrubber (Table 1 of this section, source 21a).

(A) The first annual test for each source shall be completed within 16 months of August 23, 2000. Subsequent annual tests shall be completed within 12 months of the most recent previous test.

(B) If, after conducting annual source tests for a particular source for two consecutive years, the emissions from that source are less than 80% of the applicable emission limit, then the frequency of source testing for that source may be reduced to every other year. The frequency of source testing shall revert to annually if the emissions from any source test on the source are greater than or equal to 80% of the applicable emission limit.

(ii) The owner or operator of the Astaris-Idaho facility shall conduct a performance test to measure PM-10 emissions from the calciner scrubbers (Table 1 of this section, source 9a) and the excess CO burner (Table 1 of this section, source 26b) on a semi-annual basis using the specified reference test methods.

(A) The first semi-annual performance test for each source shall be conducted within 90 days after the date on which the PM-10 emission limitations become applicable to the source. Subsequent semi-annual tests shall be completed within 6 months of the most recent previous test.

(B) If, after conducting semi-annual source tests for the calciners or the excess CO burner for two consecutive years, the emissions from that source during each of the four previous consecutive semi-annual tests are less than 80% of the applicable emission limit, then the frequency of source testing for the source may be reduced to annual testing. The frequency of source testing shall revert to semi-annually if the emissions from any source test on the source are greater than or equal to 80% of the applicable emission limit.

(iii) The owner or operator of the Astaris-Idaho facility shall conduct a performance test to determine the control efficiency of the calciner scrubbers (Table 1 of this section, source 9a) and the excess CO burner (Table 1 of this section, source 26b) using the specified reference test methods as follows:

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(A) A performance test for the calciner scrubbers shall be conducted within 90 days after the date on which the PM-10 emission limitations become applicable to the source.

(B) The first performance test for the excess CO burner shall be conducted within 90 days after the date on which the PM-10 emission limitations become applicable to the source. Subsequent semi-annual tests shall be completed within 6 months of the most recent previous test.

(C) If, after conducting semi-annual source tests for the excess CO burner for two consecutive years, the emissions from that source during each of the four previous consecutive semi-annual tests are less than 80% of the mass emission limit, then the frequency of source testing for the control efficiency requirement for the excess CO burner may be reduced to annual testing. The frequency of source testing shall revert to semi-annually if the emissions from any source test on the source are greater than or equal to 80% of the mass emission limit.

(iv) If a source test indicates an exceedence of the emission limit applicable to the source, the owner or operator of the Astaris-Idaho facility shall conduct a performance test of that source within 90 days of the source test showing the exceedence. The schedule for conducting future source tests shall not be affected by this requirement.

(v) The time period for conducting any source test may be extended by a period of up to 90 days provided that:

(A) The owner or operator of the Astaris-Idaho facility submits a written request to the Regional Administrator at least 30 days prior to the expiration of the time period for conducting the test which demonstrates the need for the extension; and

(B) The Regional Administrator approves the request in writing.

(vi) The owner or operator of the Astaris-Idaho facility shall provide the Regional Administrator a proposed test plan at least 30 days in advance of each scheduled source test. If the proposed test plan is unchanged for the next scheduled source test on the source, the owner or operator of the Astaris-Idaho facility shall not be required to resubmit a source test plan. Astaris-

Idaho shall submit a new source test plan to EPA in accordance with this paragraph (e)(1) if the proposed test plan will be different from the immediately preceding source test plan that had been submitted to EPA.

(vii) The owner or operator of the Astaris-Idaho facility shall provide the Regional Administrator at least 30 days prior written notice of any performance test required under this section to afford the Regional Administrator the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of the Astaris-Idaho facility shall notify the Regional Administrator as soon as possible of any delay in the original test date, either by providing at least 7 days prior notice of the rescheduled date of the performance test or by arranging a rescheduled date with the Regional Administrator by mutual agreement.

(viii)(A) The owner or operator of the Astaris-Idaho facility shall provide, or cause to be provided, performance testing facilities as follows:

(1) Sampling ports adequate for test methods applicable to the source. This includes:

(i) Constructing any new or modified air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by the applicable test methods and procedures; and

(ii) Except with respect to the calciner scrubber stacks (Table 1 of this section, source 9a), providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures.

(2) Safe sampling platforms.

(3) Safe access to sampling platforms.

(4) Utilities for sampling and testing equipment.

(B) A modification to these requirements can be approved with respect a particular source provided that:

(1) The owner or operator of the Astaris-Idaho facility submits a written request to the Regional Administrator which demonstrates the need for the modification; and

(2) The Regional Administrator approves the request in writing.

(ix) During each test run and for at least two hours prior to the test and two hours after the test is completed, the owner or operator of the Astaris-Idaho facility shall monitor and record the parameters specified in paragraphs (e)(2), (e)(3), (e)(4), (e)(5), and (e)(6) of this section, as appropriate, for the source being tested, and shall report the results to EPA as part of the performance test report referred to in paragraph (g)(3)(i)(G) of this section.

(x) The owner or operator of the Astaris-Idaho facility shall conduct a 12 minute visible emission observation using Method 9 of 40 CFR Part 60, appendix A, at least twice during the performance test at an interval of no less than one hour apart, and shall report the results of this observation to EPA as part of the performance test report referred to in paragraph (g)(3)(i)(G) of this section.

(xi) Concurrently with the performance testing, the owner or operator of the Astaris-Idaho facility shall measure the flow rate (throughput to the control device) using Method 2 of 40 CFR Part 60, appendix A, for the calciner scrubbers (Table 1 of this section, source 9a) and the phos dock Andersen scrubber (Table 1 of this section, source 21a) and shall report the results to EPA as part of the performance test report referred to in paragraph (g)(3)(i)(G) of this section.

(2) The owner or operator of the Astaris-Idaho facility shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications a device to continuously measure and continuously record the pressure drop across the baghouse for each of the following sources identified in Column II of Table I: east shale baghouse (Table 1 of this section, source 5a), middle shale baghouse (Table 1 of this section, source 6a), west shale baghouse (Table 1 of this section, source 7a), north nodule discharge baghouse (Table 1 of this section, source 12a), north reclaim baghouse (Table 1 of this section, source 13), south nodule discharge baghouse (Table 1 of this section, source 12b), proportioning building-east nodule baghouse (Table 1 of this sec-

tion, source 15a), proportioning building-west nodule baghouse (Table 1 of this section, source 15b), nodule stockpile baghouse (Table 1 of this section, source 16a), dust silo baghouse (Table 1 of this section, source 17a), furnace building-east baghouse (Table 1 of this section, source 18a), furnace building-west baghouse (Table 1 of this section, source 18b), and coke handling baghouse (Table 1 of this section, source 20a).

(i) The devices shall be installed and fully operational no later than 210 days after August 23, 2000.

(ii) Upon EPA approval of the acceptable range of baghouse pressure drop for each source, as provided in paragraph (g)(1) of this section, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the approved range. Until EPA approval of the acceptable range of baghouse pressure drop for each source, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the proposed range for that source, as provided in paragraph (g)(1) of this section.

(iii) If an excursion from an approved range occurs, the owner or operator of the Astaris-Idaho facility shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring source operation back within the approved range.

(iv) The owner or operator of the Astaris-Idaho facility shall complete the corrective action as expeditiously as possible.

(3) The owner or operator of the Astaris-Idaho facility shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications and the bag leak detection guidance a triboelectric monitor to continuously monitor and record the readout of the instrument response for each of the following sources identified in Column II of Table 1 to this section: east shale baghouse (Table 1 of this section, source 5a), middle shale baghouse (Table 1 of this section, source 6a), west shale baghouse (Table 1 of this section, source 7a), north nodule discharge baghouse (Table 1 of this

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section, source 12a), south nodule discharge baghouse (Table 1 of this section, source 12b), north reclaim baghouse (Table 1 of this section, source 13), proportioning building-east nodule baghouse (Table 1 of this section, source 15a), proportioning building-west nodule baghouse (Table 1 of this section, source 15b), nodule stockpile baghouse (Table 1 of this section, source 16a), dust silo baghouse (Table 1 of this section, source 17a), furnace building-east baghouse (Table 1 of this section, source 18a), furnace building-west baghouse (Table 1 of this section, source 18b), and coke handling baghouse (Table 1 of this section, source 20a).

(i) The triboelectric monitors shall be installed and fully operational no later than 210 days after August 23, 2000.

(ii) The owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the approved range. For the triboelectric monitors, the "approved range" shall be defined as operating the source so that an "alarm," as defined in and as determined in accordance with the bag leak detection guidance, does not occur.

(iii) If an excursion from an approved range occurs, the owner or operator of the Astaris-Idaho facility shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring source operation back within the approved range.

(iv) The owner or operator of the Astaris-Idaho facility shall complete the corrective action as expeditiously as possible.

(4) The owner or operator of the Astaris-Idaho facility shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications, a device to continuously measure and continuously record the pressure drop across the scrubber and the scrubber liquor flowrate for each of the calciner scrubbers (Table 1 of this section, source 9a).

(i) The devices for the calciner scrubbers (Table 1 of this section, source 9a) shall be installed and fully operational on or before December 1, 2000.

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(ii) Upon EPA approval of the acceptable range of pressure drop, scrubber liquor flow rate, and scrubber liquor pH for the calciner scrubbers, as provided in paragraph (g)(1) of this section, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the approved range. Until EPA approval of the acceptable ranges for each source, the owner or operator of the Astaris-Idaho facility shall maintain and operate the calciner scrubbers to stay within the proposed range for that source, as provided in paragraph (g)(1) of this section.

(iii) If an excursion from an approved range occurs, Astaris-Idaho shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring calciner scrubber operation back within the approved range.

(iv) The owner or operator of the Astaris-Idaho facility shall complete the corrective action as expeditiously as possible.

(5) The owner or operator of the Astaris-Idaho facility shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications, a device to continuously measure and continuously record the pressure drop across the scrubber for each of the following sources identified in Column II of Table 1 to this section: furnaces #1, #2, #3 and #4—Medusa-Andersen scrubbers (Table 1 of this section, sources 18d, 18e, 18f and 18g), phos dock Andersen scrubber (Table 1 of this section, source 21a), and excess CO burner—Andersen scrubber (Table 1 of this section, source 26b).

(i) The device for furnaces #1, #2, #3 and #4—Medusa-Andersen scrubbers (Table 1 of this section, sources 18d, 18e, 18f and 18g) and the phos dock Andersen scrubber (Table 1 of this section, source 21a) shall be installed and fully operational no later than 210 days after August 23, 2000. The device for the excess CO burner (Table 1 of this section, source 26b) shall be installed and fully operational no later than January 1, 2001.

(ii) Upon EPA approval of the acceptable range of scrubber pressure drop for each source, as provided in paragraph

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(g)(1) of this section, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the approved range. Until EPA approval of the acceptable ranges of scrubber pressure drop for each source, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the proposed range for that source, as provided in paragraph (g)(1) of this section.

(iii) If an excursion from an approved range occurs, the owner or operator of the Astaris-Idaho facility shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring source operation back within the approved range.

(iv) The owner or operator of the Astaris-Idaho facility shall complete the corrective action as expeditiously as possible.

(6) The owner or operator of the Astaris-Idaho facility shall develop and implement a written plan for monitoring the scrubber water quality (through a parameter(s) such as total dissolved solids, total suspended solids, conductivity, specific gravity, etc) on a daily basis for the following sources: calciner scrubbers (Table 1 of this section, source 9a) and furnace #1, #2, #3 and #4—Medusa-Andersen scrubbers (Table 1 of this section, sources 18d, 18e, 18f and 18g).

(i) The plan for furnaces #1, #2, #3 and #4—Medusa-Andersen scrubbers (Table 1 of this section, sources 18d, 18e, 18f and 18g) shall be submitted to the Regional Administrator within 180 days after September 22, 2000. The plan for the calciner scrubbers (Table 1 of this section, source 9a) shall be submitted to the Regional Administrator no later than December 1, 2000.

(ii) Upon EPA approval of the acceptable parameter range for water quality for each source, as provided in paragraph (g)(1) of this section, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the approved range. Until EPA approval of the acceptable range of water quality for each source, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay

within the proposed range for that source, as provided in paragraph (g)(1) of this section.

(iii) If an excursion from an approved range occurs, the owner or operator of the Astaris-Idaho facility shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring source operation back within the approved range.

(iv) The owner or operator of the Astaris-Idaho facility shall complete the corrective action as expeditiously as possible.

(7) For each of the pressure relief vents on the furnaces (Table 1 of this section, source 24), Astaris-Idaho shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications, devices to continuously measure and continuously record the temperature and pressure of gases in the relief vent downstream of the pressure relief valve and the water level of the pressure relief valve.

(i) The devices shall be installed and fully operational no later than 90 days after August 23, 2000.

(ii) A “pressure release” is defined as an excursion of the temperature, pressure, or water level outside of the parameters approved in accordance with paragraph (g)(1) of this section. Until EPA approval of the acceptable range of parameters for the pressure release vents, a “pressure release” is defined as an excursion of the temperature, pressure, or water level outside of the parameters proposed by the owner or operator of the Astaris-Idaho facility for the pressure relief vents, as provided in paragraph (g)(1) of this section.

(iii) The release point on each pressure relief vent shall be maintained at no less than 18 inches of water.

(iv) When a pressure release through a pressure relief vent is detected, the owner or operator of the Astaris-Idaho facility shall, within 30 minutes of the beginning of the pressure release, inspect the pressure relief valve to ensure that it has properly sealed and verify that at least 18 inches of water seal pressure is maintained.

(8) The owner or operator of the Astaris-Idaho facility shall develop and

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implement a written O&M plan covering all sources of PM-10 at the Astaris-Idaho facility, including without limitation, each source identified in Column II of Table 1 of this section and uncaptured fugitive and general fugitive emissions of PM-10 from each source.

(i) The purpose of the O&M plan is to ensure each source at the Astaris-Idaho facility will be operated and maintained consistent with good air pollution control practices and procedures for maximizing control efficiency and minimizing emissions at all times, including periods of startup, shutdown, emergency, and malfunction, and to establish procedures for assuring continuous compliance with the emission limitations, work practice requirements, and other requirements of this section.

(ii) The O&M plan shall be submitted to the Regional Administrator within 60 days of September 22, 2000 and shall cover all sources and requirements for which compliance is required 90 days after August 23, 2000.

(A) A revision to the O&M plan covering each source or requirement with a compliance date of more than 60 days after September 22, 2000 shall be submitted at least 60 days before the source is required to comply with the requirement.

(B) The owner or operator of the Astaris-Idaho facility shall review and, as appropriate, update the O&M plan at least annually.

(C) The Regional Administrator may require the owner or operator of the Astaris-Idaho facility to modify the plan if, at any time, the Regional Administrator determines that the O&M plan does not:

(1) Adequately ensure that each source at the Astaris-Idaho facility will be operated and maintained consistent with good air pollution control practices and procedures for maximizing control efficiency and minimizing emissions at all times;

(2) Contain adequate procedures for assuring continuous compliance with the emission limitations, work practice requirements, and other requirements of this section;

(3) Adequately address the topics identified in this paragraph (e)(8); or

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(4) Include sufficient mechanisms for ensuring that the O&M plan is being implemented.

(iii) The O&M plan shall address at least the following topics:

(A) Procedures for minimizing fugitive PM-10 emissions from material handling, storage piles, roads, staging areas, parking lots, mechanical processes, and other processes, including but not limited to:

(1) A visual inspection of all material handling, storage piles, roads, staging areas, parking lots, mechanical processes, and other processes at least once each week at a regularly scheduled time. The O&M plan shall include a list of equipment, operations, and storage piles, and what to look for at each source during this regularly scheduled inspection.

(2) A requirement to document the time, date, and results of each visual inspection, including any problems identified and any corrective actions taken.

(3) A requirement to take corrective action as soon as possible but no later than within 48 hours of identification of operations or maintenance problems identified during the visual inspection (unless a shorter time frame is specified by this rule or is warranted by the nature of the problem).

(4) Procedures for the application of dust suppressants to and the sweeping of material from storage piles, roads, staging areas, parking lots, or any open area as appropriate to maintain compliance with applicable emission limitations or work practice requirements. Such procedures shall include the specification of dust suppressants, the application rate, and application frequency, and the frequency of sweeping. Such procedures shall also include the procedures for application of latex to the main shale pile (source 2) and the emergency/contingency raw ore shale pile (source 3) after each reforming of the pile or portion of the pile.

(B) Specifications for parts or elements of control or process equipment needing replacement after some set interval prior to breakdown or malfunction.

(C) Process conditions that indicate need for repair, maintenance or cleaning of control or process equipment,

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such as the need to open furnace access ports or holes.

(D) Procedures for the visual inspection of all baghouses, scrubbers, and other control equipment of at least once each week at a regularly scheduled time.

(E) Procedures for the regular maintenance of control equipment, including without limitation, procedures for the rapid identification and replacement of broken or ripped bags for all sources controlled by a baghouse, bag dimensions, bag fabric, air-to-cloth ratio, bag cleaning methods, cleaning type, bag spacing, compartment design, bag replacement schedule, and typical exhaust gas volume.

(F) Procedures that meet or exceed the manufacturer's recommendations for the inspection, maintenance, operation, and calibration of each monitoring device required by this part.

(G) Procedures for the rapid identification and repair of equipment or processes causing a malfunction or emergency and for reducing or minimizing the duration of and emissions resulting from any malfunction or emergency.

(H) Procedures for the training of staff in procedures listed in paragraph (e)(8)(i) of this section.

(I) For each source identified in Column II of Table 2 to this section, additional control measures or other actions to be taken if the emissions from the source exceed the opacity action level identified in Column III of Table 2 to this section.

(9) For each source identified in Column II of Table 1 to this section, the owner or operator of the Astaris-Idaho facility shall conduct a visual observation of each source at least once during each calendar week.

(i) If visible emissions are observed for any period of time during the observation period, the owner or operator of the Astaris-Idaho facility shall immediately, but no later than within 24 hours of discovery, take corrective action to minimize visible emissions from the source. Such actions shall include, but not be limited to, those actions identified in the O&M plan for the source. Immediately upon completion of the corrective action, a certified observer shall conduct a visible

emissions observation of the source using the reference test method for the opacity limit with an observation duration of at least six minutes. If opacity exceeds the opacity action level, the owner or operator of the Astaris-Idaho facility shall take prompt corrective action. This process shall be repeated until opacity returns to below the opacity action level.

(ii) In lieu of the periodic visual observation under this paragraph (e)(9), the owner or operator of the Astaris-Idaho facility may conduct a visible emission observation of any source subject to the requirements of this paragraph (e)(9) using the reference test method for the opacity limit, in which case corrective action must be taken only if opacity exceeds the opacity action level.

(iii) Should, for good cause, the visible emissions reading not be conducted on schedule, the owner or operator of the Astaris-Idaho facility shall record the reason observations were not conducted. Visible emissions observations shall be conducted immediately upon the return of conditions suitable for visible emissions observations.

(iv) If, after conducting weekly visible emissions observations for a given source for more than one year and detecting no visible emissions from that source for 52 consecutive weeks, the frequency of observations may be reduced to monthly. The frequency of observations for such source shall revert to weekly if visible emissions are detected from that source during any monthly observation or at any other time.

(v) With respect to slag handling (Table 1 of this section, source 8a):

(A) Visible emission observations shall be made of the slag tapping area as viewed from the exterior of the furnace building and in the general area of the old slag pits;

(B) For the first three months after the effective date of the opacity limit, the owner or operator of the Astaris-Idaho facility shall conduct a visual observation of this source three days each week and shall submit the results of such observations at the end of the three month time frame. Thereafter, such observations shall be conducted

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weekly or as otherwise provided in this paragraph (e)(9).

(10) Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero span adjustments), the owner or operator of the Astaris-Idaho facility shall conduct all monitoring with the monitoring devices required by paragraphs (e)(2), (e)(3), (e)(4), (e)(5), (e)(6), and (e)(7) of this section in continuous operation at all times that the monitored process is in operation. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities shall not be used for purposes of this section, including data averages and calculations, or fulfilling a minimum data availability requirement. The owner or operator of the Astaris-Idaho facility shall use data collected during all other periods in assessing the operation of the control device and associated control system.

(11) The minimum data availability requirement for monitoring data pursuant to paragraphs (e)(2), (e)(3), (e)(4), (e)(5), (e)(6), and (e)(7) of this section is 90% on a monthly average basis. Data availability is determined by dividing the time (or number of data points) representing valid data by the time (or number of data points) that the monitored process is in operation.

(12) Nothing in this paragraph (e) shall preclude EPA from requiring any other testing or monitoring pursuant to section 114 of the Clean Air Act.

(f) *Record keeping requirements.* (1) The owner or operator of the Astaris-Idaho facility shall keep records of all monitoring required by this section that include, at a minimum, the following information:

(i) The date, place as defined in this section, and time of the sampling or measurement.

(ii) The dates the analyses were performed.

(iii) The company or entity that performed the analyses.

(iv) The analytical techniques or methods used.

(v) The results of the analyses.

(vi) The operating conditions existing at the time of the sampling or measurement.

(2)(i) The owner or operator of the Astaris-Idaho facility shall keep records of all inspections and all visible emissions observations required by this section or conducted pursuant to the O&M plan, which records shall include the following:

(A) The date, place, and time of the inspection or observation.

(B) The name and title of the person conducting the inspection or observation.

(C) In the case of a visible emission observation, the test method (Method 9 or visual observation), the relevant or specified meteorological conditions, and the results of the observation, including raw data and calculations. In the case of visible emission observations of slag handling (Table 1 of this section, source 8a), the owner or operator of the Astaris-Idaho facility shall also document whether visible emissions emanate from fuming of hot slag from pots or other points in the old slag pit area.

(D) For any corrective action required by this section or the O&M plan or taken in response to a problem identified during an inspection or visible emissions observation required by this section or the O&M plan, the time and date corrective action was initiated and completed and the nature of corrective action taken.

(E) The reason for any monitoring not conducted on schedule.

(ii) With respect to control devices, the requirement of paragraph (f)(2)(i) of this section is satisfied by meeting the requirements of paragraph (f)(11) of this section.

(3) The owner or operator of the Astaris-Idaho facility shall continuously record the parameters specified in paragraphs (e)(2), (e)(3), (e)(4), (e)(5), and (e)(7) of this section, and shall record the parameters specified in paragraphs (e)(6) of this section on the frequency specified in the monitoring plan required under paragraph (e)(6) of this section.

(4) The owner or operator of the Astaris-Idaho facility shall keep records of all excursions from ranges approved under paragraph (e)(3) or

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(g)(1) of this section, including without limitation, the measured excursion, time and date of the excursion, duration of the excursion, time and date corrective action was initiated and completed, and nature of corrective action taken.

(5) The owner or operator of the Astaris-Idaho facility shall keep records of:

(i) The time, date, and duration of each pressure release from a furnace pressure relief vent (Table 1 of this section, source 24), the method of detecting the release, the results of the inspection required by paragraph (e)(7) of this section, and any actions taken to ensure resealing, including the time and date of such actions; and

(ii) The time, date, and duration of the steaming and draining of the pressure relief vent drop tank.

(6) The owner or operator of the Astaris-Idaho facility shall keep records of the time, date, and duration of each flaring of the emergency CO flares (Table 1 of this section, source 25) due to an emergency, the method of detecting the emergency, and all corrective action taken in response to the emergency.

(7) Until January 1, 2001, the owner or operator of the Astaris-Idaho facility shall keep records of the date and start/stop time of each mini-flush; the phossey water flow rate and outlet temperature immediately preceding the start time; whether the operating parameters for conducting the mini-flush set forth in paragraph (c)(5)(ii) of this section were met; and, if the parameters were not met, whether the failure to comply with the parameters was attributable to a malfunction or emergency.

(8) The owner or operator of the Astaris-Idaho facility shall keep records of the application of dust suppressants to all storage piles, roads, staging areas, parking lots, and any other area, including the purchase of dust suppressants, the identification of the surface covered, type of dust suppressant used, the application rate (gallons per square foot), and date of application.

(9) The owner or operator of the Astaris-Idaho facility shall keep records of the frequency of sweeping of

all roads, staging areas, parking lots, and any other area, including the identification of the surface swept and date and duration of sweeping.

(10) The owner or operator of the Astaris-Idaho facility shall keep the following records with respect to the main shale pile (Table 1 of this section, source 2) and emergency/contingency raw ore shale pile (Table 1 of this section, source 3):

(i) The date and time of each reforming of the pile or portion of the pile.

(ii) The date, time, and quantity of latex applied.

(11) The owner or operator of the Astaris-Idaho facility shall keep a log for each control device of all inspections of and maintenance on the control device, including without limitation the following information:

(i) The date, place, and time of the inspection or maintenance activity.

(ii) The name and title of the person conducting the inspection or maintenance activity.

(iii) The condition of the control device at the time.

(iv) For any corrective action required by this section or the O&M plan or taken in response to a problem identified during an inspection required by this section or the O&M plan, the time and date corrective action was initiated and completed, and the nature of corrective action taken.

(v) A description of, reason for, and the date of all maintenance activities, including without limitation any bag replacements.

(vi) The reason any monitoring was not conducted on schedule, including a description of any monitoring malfunction, and the reason any required data was not collected.

(12) The owner or operator of the Astaris-Idaho facility shall keep the following records:

(i) The Method 9 initial certification and recertification for all individuals conducting visual emissions observations using Method 9 as required by this section.

(ii) Evidence that all individuals conducting visual observations as required by this section meet the training guidelines described in section 1 of Method 22, 40 CFR part 60, appendix A.

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(13) The owner or operator of the Astaris-Idaho facility shall keep records on the type and quantity of fuel used in the boilers (Table 1 of this section, source 23), including without limitation the date of any change in the type of fuel used.

(14) The owner or operator of the Astaris-Idaho facility shall keep records of the results of the daily monitoring of the water quality of the scrubber water in the calciner scrubbers (Table 1 of this section, source 9a) and the Medusa-Andersen furnace scrubbers (Table 1 of this section, sources 18d, 18e, 18f, and 18g) as specified in the O&M plan.

(15) The owner or operator of the Astaris-Idaho facility shall keep records of the time, date, and duration of each damper vent opening for the furnace building east and west baghouses (Table 1 of this section, sources 18a and 18b), the reason for the damper vent opening, and all corrective action taken in response to the damper vent opening.

(16) The owner or operator of the Astaris-Idaho facility shall keep a copy of all reports required to be submitted to EPA under paragraph (g) of this section.

(17) All records required to be maintained by this section and records of all required monitoring data and support information shall be maintained on site at the Astaris-Idaho facility in a readily accessible location for a period of at least five years from the date of the monitoring sample, measurement, report, or record.

(i) Such records shall be made available to EPA on request.

(ii) Support information includes all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation.

(g) *Reporting requirements.* (1) The owner or operator of the Astaris-Idaho facility shall submit to EPA, for each of the operating parameters required to be continuously monitored pursuant to paragraphs (e)(2), (e)(4), (e)(5), (e)(6), and (e)(7) of this section, a proposed range of operation, including a proposed averaging period, and documentation demonstrating that operating the source within the proposed

range will assure compliance with applicable emission limitations and work practice requirements of this section.

(i) The proposed parameter ranges shall be submitted within 210 days of August 23, 2000, for all sources except as follows:

(A) A proposed parameter range for the pressure relief vents (Table 1 of this section, source 24) shall be submitted within 90 days of August 23, 2000.

(B) Proposed parameter ranges for the calciner scrubbers (Table 1 of this section, source 9a) and the excess CO burner (Table 1 of this section, source 26b) shall be submitted no later than the date by which the emission limitations become applicable to those sources under this section.

(ii) A parameter range for each source shall be approved by EPA through the issuance of a title V operating permit to the Astaris-Idaho facility, or as a modification thereto. Until EPA approval of the acceptable range for a parameter for a source, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the proposed range for that source.

(iii) If EPA determines at any time that the proposed or approved range does not adequately assure compliance with applicable emission limitations and work practice requirements, EPA may request additional information, request that revised parameter ranges and supporting documentation be submitted to EPA for approval, or establish alternative approved parameter ranges through the issuance of a title V operating permit to the Astaris-Idaho facility, or as a modification thereto.

(iv) This requirement to submit proposed parameter ranges is in addition to and separate from any requirement to develop parameter ranges under 40 CFR part 64 (Compliance Assurance Monitoring rule). However, monitoring for any pollutant specific source that meets the design criteria of 40 CFR 64.3 and the submittal requirements of 40 CFR 64.4 may be submitted to meet the requirements of this paragraph (g)(1).

(2) The owner or operator of Astaris-Idaho shall submit to EPA a bi-monthly report covering the preceding two

calendar months (e.g., January-February, March-April). Such report shall be submitted 15 days after the end of each two month period, with the last such report covering the period of November and December 2000. The report shall include the following:

(i) The date and start/stop time of each mini-flush; the phossey water flow rate and outlet temperature immediately preceding the start time; and a "Yes/No" column indicating whether the operating parameters for conducting the mini-flush set forth in paragraph (c)(5)(ii) of this section were met.

(ii) For any "No" entry, an indication of whether the failure to comply with the parameters was attributable to a malfunction and, if so, the date and time of notification to EPA of the malfunction and a copy of the contemporaneous record described in paragraph (c)(5)(ii) of this section.

(iii) For each month, the total mini-flush time in minutes, the number of operating days for the secondary condenser, and the average minutes per operating day.

(3) The owner or operator of the Astaris-Idaho facility shall submit to EPA a semi-annual report of all monitoring required by this section covering the six month period from January 1 through June 30 and July 1 through December 31 of each year. Such report shall be submitted 30 days after the end of such six month period.

(i) The semiannual report shall:

(A) Identify each time period (including the date, time, and duration) during which a visible emissions observation or PM-10 emissions measurement exceeded the applicable emission limitation and state what actions were taken to address the exceedence. If no action was taken, the report shall state the reason that no action was taken.

(B) Identify each time period (including the date, time, and duration) during which there was an excursion of a monitored parameter from the approved range and state what actions were taken to address the excursion. If no action was taken, the report shall state the reason that no action was taken.

(C) Identify each time period (including the date, time, and duration) dur-

ing which there was an excursion above the opacity action level and state what actions were taken to address the excursion. If no action was taken, the report shall state the reason that no action was taken.

(D) Identify each time period (including date, time and duration) of each flaring of the emergency CO flares (Table 1 of this section, source 25) due to an emergency and state what actions were taken to address the emergency. If no action was taken, the report shall state the reason that no action was taken.

(E) Identify each time period (including date, time and duration) of each pressure release from a pressure relief vent (Table 1 of this section, source 24) and state what actions were taken to address the pressure release. If no action was taken, the report shall state the reason that no action was taken.

(F) Include a summary of all monitoring required under this section.

(G) Include a copy of the source test report for each performance test conducted in accordance with paragraph (e)(1) of this section.

(H) Describe the status of compliance with this section for the period covered by the semi-annual report, the methods or other means used for determining the compliance status, and whether such methods or means provide continuous or intermittent data.

(I) Such methods or other means shall include, at a minimum, the monitoring, record keeping, and reporting required by this section.

(2) If necessary, the owner or operator of Astaris-Idaho shall also identify any other material information that must be included in the report to comply with section 113(c)(2) of the Clean Air Act, which prohibits making a knowing false certification or omitting material information.

(3) The determination of compliance shall also take into account any excursions from the required parameter ranges reported pursuant to paragraph (g)(3)(i)(B) of this section.

(ii) Each semi-annual report submitted pursuant to this paragraph shall contain certification by a responsible official, as defined in 40 CFR 71.2, of truth, accuracy and completeness. Such certification shall state that,

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based on information and belief formed after reasonable inquiry, the statements and information in the documents are true, accurate, and complete.

(4) The owner or operator of the Astaris-Idaho facility shall notify EPA by telephone or facsimile within 48 hours of the beginning of each flaring of the emergency CO flares (Table 1 of this section, source 25) due to an emergency.

(5)(i) For emissions that continue for more than two hours in excess of the applicable emissions limitation, the owner or operator of the Astaris-Idaho facility shall notify EPA by telephone or facsimile within 48 hours. A written report containing the following information shall be submitted to EPA within ten working days of the occurrence of the excess emissions:

(A) The identity of the stack and/or other source where excess emissions occurred.

(B) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions.

(C) The time and duration or expected duration of the excess emissions.

(D) The identity of the equipment causing the excess emissions.

(E) The nature and probable cause of such excess emissions.

(F) Any corrective action or preventive measures taken.

(G) The steps taken or being taken to limit excess emissions.

(ii) Compliance with this paragraph is required even in cases where the owner or operator of the Astaris-Idaho facility does not seek to establish an affirmative defense of startup, shutdown, malfunction, or emergency under paragraphs (c)(8) or (c)(9) of this section.

(6) The owner or operator of Astaris-Idaho shall notify EPA if it uses any fuel other than natural gas in the boilers (Table 1 of this section, source 23) within 24 hours of commencing use of such other fuel.

(7) All reports and notices submitted under this section shall be submitted to EPA at the addresses set forth

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below: U.S. Environmental Protection Agency, Region 10, State and Tribal Programs Unit, Re: Astaris-Idaho FIP, Office of Air Quality, OAQ 107, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-1189, Fax: 206-553-0404.

(8) The owner or operator of the Astaris-Idaho facility shall submit a copy of each report, notice, or other document submitted to EPA under this section contemporaneously to the Shoshone-Bannock Tribes at the following address: Shoshone-Bannock Tribes, Air Quality Program, Land Use Department, P.O. Box 306, Fort Hall, Idaho, 83203, telephone (208) 478-3853; fax (208) 237-9736. The owner or operator of the Astaris-Idaho facility shall also provide contemporaneously to the Tribes notice by telephone in the event notice by telephone is provided to EPA under this section.

(h) *Title V Permit.* (1) Additional monitoring, work practice, record keeping, and reporting requirements may be included in the title V permit for the Astaris-Idaho facility to assure compliance with the requirements of this section.

(2)(i) A requirement of paragraph (e), (f), or (g) of this section may be revised through issuance or renewal of a title V operating permit by EPA to the Astaris-Idaho facility under 40 CFR part 71 or through a significant permit modification thereto, provided that:

(A) Any alternative monitoring, record keeping, or reporting requirements that revise requirements of paragraphs (e), (f), or (g) of this section:

(1) Are sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the requirements of paragraph (c) of this section; and

(2) Provide no less compliance assurance than the requirements of paragraphs (e), (f), or (g) of this section that the alternative requirements would replace.

(B) In the event the alternative monitoring, record keeping, or reporting requirements are requested by the owner or operator of the Astaris-Idaho facility, Astaris-Idaho's application for its title V operating permit or significant permit modification must include:

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(1) The proposed alternative monitoring, record keeping, or reporting permit terms or conditions;

(2) The specific provisions of paragraphs (e), (f), or (g) of this section the owner or operator of the Astaris-Idaho facility is seeking to revise; and

(3) The supporting documentation to establish that the alternative permit terms or conditions meet the requirements of paragraph (h)(2)(i)(A) of this section.

(C) The draft and final title V operating permit or significant permit modification identifies the specific provisions of paragraphs (e), (f), or (g) of this section being revised;

(D) In the event a revision to paragraphs (e), (f), or (g) of this section is accomplished through a significant

modification to Astaris-Idaho's title V operating permit, it is accomplished using the significant permit modification procedures of 40 CFR part 71; and

(ii) Upon issuance or renewal of Astaris-Idaho's title V permit or a significant permit modification thereto that revises a requirement of paragraphs (e), (f), or (g) of this section, the revision shall remain in effect as a requirement of this section notwithstanding expiration, termination, or revocation of Astaris-Idaho's title V operating permit.

(i) *Compliance schedule.* Except as otherwise provided in this section, the owner or operator of the Astaris-Idaho facility shall comply with the requirements of this section within 90 days of August 23, 2000.

TABLE 1 TO § 49.10711

I Source No.	II Source description	III Emission limitations and work practice requirements	IV Reference test method
1	Railcar unloading of shale (ore) into underground hopper.	Opacity shall not exceed 10% over a 6 minute average.	Method 9.
2	Main shale pile (portion located on Fort Hall Indian Reservation).	Opacity shall not exceed 10% over a 6 minute average.	
3	Emergency/contingency raw ore shale pile.	Latex shall be applied after each reforming of pile or portion of pile. Opacity shall not exceed 10% over a 6 minute average. Latex shall be applied after each reforming of pile or portion of pile.	Method 9. Method 9.
4	Stacker and reclaimer	Opacity shall not exceed 10% over a 6 minute average.	Method 9.
5a	East shale baghouse	a. Emissions shall not exceed 0.10 lb. PM-10/hr (excluding condensable PM-10). Opacity shall not exceed 10% over a 6 minute average.	a. Methods 201/201A. Method 9.
5b	East shale baghouse building	b. Opacity shall not exceed 10% over a 6 minute average from any portion of the building.	b. Method 9.
6a	Middle shale baghouse	a. Emissions shall not exceed 0.50 lb. PM-10/hr (excluding condensable PM-10). Opacity shall not exceed 10% over a 6 minute average.	a. Methods 201/201A. Method 9.
6b	Middle shale baghouse building ..	b. Opacity shall not exceed 10% over a 6 minute average from any portion of the building.	b. Method 9.
6c	Middle shale baghouse outside capture hood—fugitive emissions.	c. Opacity shall not exceed 10% over a 6 minute average.	c. Method 9.
7a	West shale baghouse	a. Emissions shall not exceed 0.50 lb. PM-10/hr (excluding condensable PM-10). Opacity shall not exceed 10% over a 6 minute average.	a. Methods 201/201A. Method 9.
7b	West shale baghouse building	b. Opacity shall not exceed 10% over a 6 minute average from any portion of the building.	b. Method 9.
7c	West shale baghouse outside capture hood—fugitive emissions.	c. Opacity shall not exceed 10% over a 6 minute average.	c. Method 9.
8a	a. Slag handling: slag pit area and pot rooms.	a. Until November 1, 2000, emissions from the slag pit area and the pot rooms shall be exempt from opacity limitations.	

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TABLE 1 TO § 49.10711—Continued

I Source No.	II Source description	III Emission limitations and work practice requirements	IV Reference test method
		Effective November 1, 2000, opacity of emissions in the slag pit area and from pot rooms shall not exceed 10% over a 6 minute average. <i>Exemption:</i> Fuming of molten slag in transport pots during transport are exempt provided the pots remain in the pot room for at least 3 minutes after the flow of molten slag to the pots has ceased. <i>See also</i> 40 CFR 49.10711(c)(4)	Method 9.
8b	b. Recycle material pile	b. Opacity shall not exceed 10% over a 6 minute average.	b. Method 9.
8c	c. Dump to slag pile	c. Fuming of molten slag during dump to slag pile shall be exempt from opacity limitations.	
9a	Calciner scrubbers	Effective December 1, 2000: The calciner scrubbing chain (air pollution control equipment) shall achieve an overall control efficiency ¹ of at least 90% for PM-10 (including condensable PM-10) when inlet loadings equal or exceed 0.150 grains per dry standard cubic foot. The arithmetic average of the emission concentration from the four stacks associated with each calciner shall not exceed 0.0080 grains per dry standard cubic foot PM-10 (excluding condensable PM-10) ² . The arithmetic average of the emission concentration from the four stacks associated with each calciner shall not exceed 0.0180 grains per dry standard cubic foot PM-10 (including condensable PM-10) ² . Total gas flow rate through any one outlet stack shall not exceed 40,800 dry standard cubic feet per minute. The calciner scrubbers shall be exempt from opacity limitations.	Method 5 (all particulate collected shall be counted as PM-10) and Method 202 at the scrubber outlet. Method 201A and Method 202 at the inlet to the scrubber systems. Method 5 (all particulate collected shall be counted as PM-10).
9b	Calciner traveling grate—fugitive emissions.	b. Opacity shall not exceed 10% over a 6 minute average.	Method 5 (all particulate collected shall be counted as PM-10) and Method 202 at the scrubber outlet. Method 2.
10	Calciner cooler vents	Emissions from any one calciner cooler vent shall not exceed 4.40 lb. PM-10/hr (excluding condensable PM-10). Opacity shall not exceed 10% over a 6 minute average.	Methods 201/201A.
11	Nodule pile	Opacity shall not exceed 20% over a 6 minute average.	Method 9.
12a	North nodule discharge baghouse.	a. Emissions shall not exceed 0.20 lb. PM-10/hr (excluding condensable PM-10). Opacity shall not exceed 10% over a 6 minute average.	a. Methods 201/201A. Method 9.
12b	South nodule discharge baghouse.	b. Emissions shall not exceed 0.20 lb. PM-10/hr (excluding condensable PM-10). Opacity shall not exceed 10% over a 6 minute average.	b. Methods 201/201A. Method 9.
12c	North and south nodule discharge baghouse outside capture hood—fugitive emissions.	c. Opacity shall not exceed 10% over a 6 minute average.	c. Method 9.
13	Nodule reclaim baghouse	a. Emissions shall not exceed 0.90 lb. PM-10/hr (excluding condensable PM-10). Opacity shall not exceed 10% over a 6 minute average.	Methods 201/201A. Method 9.
14	Screened shale fines pile adjacent to the West shale building. Proportioning building	Opacity shall not exceed 20% over a 6 minute average.	Method 9.
15a	a. East nodule baghouse	a. Emissions shall not exceed 0.60 lb. PM-10/hr (excluding condensable PM-10). Opacity shall not exceed 10% over a 6 minute average.	a. Methods 201/201A. Method 9.
15b	b. West nodule baghouse	b. Emissions shall not exceed 0.30 lb. PM-10/hr (excluding condensable PM-10).	b Methods 201/201A .

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TABLE 1 TO § 49.10711—Continued

I Source No.	II Source description	III Emission limitations and work practice requirements	IV Reference test method
15c	c. Proportioning building—fugitive emissions.	Opacity shall not exceed 10% over a 6 minute average.	Method 9
16a	Nodule stockpile baghouse	c. Opacity shall not exceed 10% over a 6 minute average from any portion of the building. a. Emissions shall not exceed 0.30 lb. PM-10/hr (excluding condensable PM-10). Opacity shall not exceed 10% over a 6 minute average.	c. Method 9. a. Methods 201/201A.
16b	Nodule stockpile baghouse outside capture hood—fugitive emissions.	b. Opacity shall not exceed 10% over a 6 minute average.	Method 9.
17a	Dust silo baghouse	a. Emissions shall not exceed 0.150 lb. PM-10/hr(excluding condensable PM-10). Opacity shall not exceed 10% over a 6 minute average.	a. Methods 201/201A.
17b	Dust silo fugitive emissions and pneumatic dust handling system.	b. Opacity shall not exceed 10% over a 6 minute average from any portion of the dust silo or pneumatic dust handling system.	b. Method 9.
18a	Furnace building a. East baghouse	a. Emissions shall not exceed 0.80 lb. PM-10/hr (excluding condensable PM-10). Opacity shall not exceed 10% over a 6 minute average.	a. Methods 201/201A.
18b	b. West baghouse	b. Emissions shall not exceed 0.80 lb. PM-10/hr (excluding condensable PM-10). Opacity shall not exceed 10% over a 6 minute average.	b. Methods 201/201A.
18c	c. Furnace building; any emission point except 18a, 18b, 18d, 18e, 18f, or 18g.	c. Until April 1, 2002, opacity shall not exceed 20% over a 6 minute average. Effective April 1, 2002, opacity shall not exceed 10% over a 6 minute average.	c. Method 9.
18d	d. Furnace #1 Medusa-Andersen	d, e, f, g: Emissions from any one Medusa-Andersen stack shall not exceed 2.0 lb/hr (excluding condensable PM-10).	d, e, f, g: Methods 201/201A.
18e	e. Furnace #2 Medusa-Andersen.	Opacity from any one Medusa-Andersen shall not exceed 10% over a 6 minute average.	Method 9.
18f	f. Furnace #3 Medusa-Andersen	Opacity from any one Medusa-Andersen shall not exceed 10% over a 6 minute average.	Method 9.
18g	g. Furnace #4 Medusa-Anderson.	Opacity shall not exceed 10% over a 6 minute average from any portion of the building.	Method 9.
19	Briquetting building	a. Emissions shall not exceed 1.70 lb. PM-10/hr (excluding condensable PM-10). Opacity shall not exceed 10% over a 6 minute average.	a. Methods 201/201A.
20a	a. Coke handling baghouse	b. Opacity shall not exceed 10% over a 6 minute average from any portion of the coke unloading building.	Method 9.
20b	b. Coke unloading building	a. Emissions shall not exceed 1.70 lb. PM-10/hr (excluding condensable PM-10). Opacity shall not exceed 10% over a 6 minute average.	a. Methods 201/201A.
21a	a. Phosphorous loading dock (phos dock), Andersen Scrubber.	Emissions shall not exceed 0.0040 grains per dry standard cubic foot PM-10 (excluding condensable PM-10). Flow rate (throughput to the control device) shall not exceed manufacturer's design specification. Opacity shall not exceed 10% over a 6 minute average.	a. Methods 201/201A.
21b	b. Phosphorous loading dock—fugitive emissions.	b. Opacity shall not exceed 10% over a 6 minute average.	b. Method 9.
22	All roads	Opacity shall not exceed 20% over a 6 minute average.	Method 9.
23	Boilers	Emissions from any one boiler shall not exceed 0.090 lb. PM-10/hr (excluding condensable PM-10). Opacity from any one boiler shall not exceed 10% over a 6 minute average.	Methods 201/201A.
24	Pressure relief vents	Opacity shall not exceed 10% over a 6 minute average except: (i) during a pressure release, as defined in 40 CFR 49.10711(e)(7)(ii), which shall be exempt from opacity limits; and.	Method 9.

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TABLE 1 TO § 49.10711—Continued

I Source No.	II Source description	III Emission limitations and work practice requirements	IV Reference test method
25	Furnace CO emergency flares ...	(ii) during steaming and draining of the pressure relief vent drop tank, which shall occur no more than twice each day, opacity shall not exceed 20% over a 6 minute average. Pressure release point shall be maintained at 18 inches of water pressure at all times. Except during an emergency flaring caused by an emergency as defined in 40 CFR 49.10711(b), opacity shall not exceed 10% over a 6 minute average. Emissions during an emergency flaring caused by an emergency are exempt from opacity limitations. a. See 40 CFR 49.10711(c)(5). b. Effective January 1, 2001: i. The control efficiency ¹ of the air pollution control equipment shall achieve an overall control efficiency of at least 95% for PM-10 (including condensable PM-10) when inlet loadings equal or exceed 0.50 grains per dry standard cubic foot. ii. Emissions from the excess CO burner shall not exceed 24.0 lbs PM-10/hr (including condensable PM-10). Effective January 1, 2001, opacity shall not exceed 10% over a 6 minute average.	Inspection of pressure relief vent and monitoring device Method 9.
26a	a. Existing elevated secondary condenser flare and ground flare.		
26b	b. Excess CO burner (to be built to replace the existing elevated secondary condenser flare and ground flare).		i. Methods 201/201A and Method 202 for the inlet (sampling locations to be determined). Method 201/201A (Method 5 if gas stream contains condensed water vapor) and Method 202 for the outlet. ii. Method 201/201A (Method 5 if gas stream contains condensed water vapor) and Method 202 for the outlet. Method 9.

¹ The control efficiency (as a percentage) of the air pollution control equipment shall be determined by the following equation:

$$CE (\%) = 100 \{1 - \{[Fho + Bho] / [Fhi + Bhi]\}\}$$

Where CE is the control efficiency

Fhi is the front half emissions for the inlet

Bhi is the back half emissions for the inlet

Fho is the sum of the front half emissions from each stack for the outlet

Bho is the sum of the back half emissions from each stack for the outlet

Inlet and all outlet stacks to be sampled simultaneously for required testing.

The individual source tests for the inlet and outlet to the emission control system shall be conducted simultaneously or within 3 hours of each other with the same operating conditions.

² The individual source tests for the four stacks associated with each calciner shall be conducted simultaneously or within 3 hours of each other with the same operating conditions.

TABLE 2 TO § 49.10711

I Source No.	II Source description	III Opacity action level	IV Reference test method
1	Railcar unloading of shale (ore) into underground hopper.	Any visible emissions	Visual observation.
2	Main shale pile (portion located on Fort Hall Indian Reservation).	Any visible emissions	Visual observation.
3	Emergency/contingency raw ore shale pile.	Any visible emissions	Visual observation.
4	Stacker and reclaimer	Any visible emissions	Visual observation.
5a	East shale baghouse	a. 5% over a 6 minute average	a. Method 9.
5b	East shale baghouse building ..	b. Any visible emissions	b. Visual observation.
6a	Middle shale baghouse	a. 5% over a 6 minute average	a. Method 9.
6b	Middle shale baghouse building ..	b. Any visible emissions	b. Visual observation.
6c	Middle shale baghouse outside capture hood—fugitive emissions.	c. 5% over a 6 minute average	c. Method 9.
7a	West shale baghouse	a. 5% over a 6 minute average	a. Method 9.
7b	West shale baghouse building ...	b. Any visible emissions	b. Visual observation.

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TABLE 2 TO § 49.10711—Continued

I Source No.	II Source description	III Opacity action level	IV Reference test method
7c	West shale baghouse outside capture hood—fugitive emissions.	c. 5% over a 6 minute average	c. Method 9.
8a	a. Slag handling: slag pit area and pot rooms.	a. Until November 1, 2000, emissions from the slag pit area and the pot rooms shall be exempt from opacity limits and opacity action levels. Effective November 1, 2000, the opacity action level for this source shall be 5% over a 6 minute average. <i>Exemption:</i> Fuming of molten slag in transport pots during transport are exempt from opacity limits and opacity action levels provided the pots remain in the pot room for at least 3 minutes after the flow of molten slag to the pots has ceased. b. Any visible emissions	Method 9.
8b	b. Recycle material pile	c. Fuming of molten slag during dump to slag pile shall be exempt from opacity limits and opacity action levels.	b. Visual observation.
8c	c. Dump to slag pile	a. The calciner scrubbers shall be exempt from opacity limits and opacity action levels. b. 5% over a 6 minute average.	
9a	Calciner scrubbers	5% over a 6 minute average	
9b	Calciner traveling grate—fugitive emissions.	10% over a 6 minute average	
10	Calciner cooler vents	a. 5% over a 6 minute average	Method 9.
11	Nodule pile	b. 5% over a 6 minute average	Method 9.
12a	North nodule discharge baghouse.	c. 5% over a 6 minute average	a. Method 9.
12b	South nodule discharge baghouse.	a. 5% over a 6 minute average	b. Method 9.
12c	North and south nodule discharge baghouse outside capture hood—fugitive emissions.	b. 5% over a 6 minute average	c. Method 9.
13	Nodule reclaim baghouse	c. 5% over a 6 minute average	
14	Screened shale fines pile adjacent to the West shale building. Proportioning building.	5% over a 6 minute average	Method 9.
15a	a. East nodule baghouse	10% over a 6 minute average	Method 9.
15b	b. West nodule baghouse	a. 5% over a 6 minute average	a. Method 9.
15c	c. Proportioning building—fugitive emissions.	b. 5% over a 6 minute average	b. Method 9.
16a	Nodule stockpile baghouse	c. Any visible emissions	c. Visual observation.
16b	Nodule stockpile baghouse outside capture hood—fugitive emissions.	a. 5% over a 6 minute average	a. Method 9.
17a	Dust silo baghouse	b. 5% over a 6 minute average	b. Method 9.
17b	Dust silo fugitive emissions and pneumatic dust handling system.	a. 5% over a 6 minute average	a. Method 9.
18a	Furnace building. a. East baghouse	b. Any visible emissions	b. Visual observation.
18b	b. West baghouse	c. Until April 1, 2002, 10% over a 6 minute average.	
18c	c. Furnace building; any emission point except 18a, 18b, 18d, 18e, 18f, or 18g.	Effective April 1, 2002, 5% over a 6 minute average.	
18d	d. Furnace #1 Medusa-Andersen	d. e, f, g: 5% over a 6 minute average	d, e, f, g: Method 9.
18e	e. Furnace #2 Medusa-Andersen.		
18f	f. Furnace #3 Medusa-Andersen.		
18g	g. Furnace #4 Medusa-Andersen.		
19	Briquetting building	Any visible emissions	Visual observation.
20a	a. Coke handling baghouse	a. 5% over a 6 minute average	a. Method 9.
20b	b. Coke unloading building	b. Any visible emissions	b. Visual observation.
21a	Phosphorous loading dock (phos dock), Andersen Scrubber.	a. 5% over a 6 minute average	Method 9.
21b	b. Phosphorous loading dock—fugitive emissions.	b. 5% over a 6 minute average	b. Method 9.
22	All roads	10% over a 6 minute average	Method 9.
23	Boilers	5% over a 6 minute average	Method 9.
24	Pressure relief vents	5% over a 6 minute average	Method 9.

TABLE 2 TO § 49.10711—Continued

I Source No.	II Source description	III Opacity action level	IV Reference test method
25	Furnace CO emergency flares	Any visible emissions except during an emergency flaring caused by an emergency as defined in 40 CFR 49.10711(b). Emissions during an emergency flaring caused by an emergency are exempt from opacity limits and opacity action levels.	Visual observation.
26a	a. Existing elevated secondary condenser flare and ground flare.	a. Exempt from opacity limits and opacity action levels.	
26b	b. Excess CO burner (to be built to replace the elevated secondary condenser flare and ground flare).	5% over a 6 minute average	Method 9.

§§ 49.10712–49.10730 [Reserved]**IMPLEMENTATION PLAN FOR THE CONFEDERATED TRIBES OF THE SILETZ RESERVATION, OREGON**

SOURCE: 70 FR 18126, Apr. 8, 2005, unless otherwise noted.

§ 49.10731 Identification of plan.

This section and §§ 49.10732 through 49.10760 contain the implementation plan for the Confederated Tribes of the Siletz Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Siletz Reservation.

§ 49.10732 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Siletz Reservation.

§ 49.10733 Legal authority. [Reserved]**§ 49.10734 Source surveillance. [Reserved]****§ 49.10735 Classification of regions for episode plans.**

The air quality control region which encompasses the Siletz Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	III
Sulfur oxides	III

§ 49.10736 Contents of implementation plan.

The implementation plan for the Siletz Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10737 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10738 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

Environmental Protection Agency**§ 49.10766****§ 49.10739 Permits to operate.**

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10740 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Siletz Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permit.

§§ 49.10741–49.10760 [Reserved]**IMPLEMENTATION PLAN FOR THE SKOKOMISH INDIAN TRIBE OF THE SKOKOMISH RESERVATION, WASHINGTON**

SOURCE: 70 FR 18126, Apr. 8, 2005, unless otherwise noted.

§ 49.10761 Identification of plan.

This section and §§ 49.10762 through 49.10820 contain the implementation plan for the Skokomish Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Skokomish Reservation.

§ 49.10762 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Skokomish Reservation.

§ 49.10763 Legal authority. [Reserved]**§ 49.10764 Source surveillance. [Reserved]****§ 49.10765 Classification of regions for episode plans.**

The air quality control region which encompasses the Skokomish Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10766 Contents of implementation plan.

The implementation plan for the Skokomish Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10767**§ 49.10767 EPA-approved Tribal rules and plans. [Reserved]****§ 49.10768 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10769 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10770 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Skokomish Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10771–49.10820 [Reserved]**IMPLEMENTATION PLAN FOR THE SPOKANE TRIBE OF THE SPOKANE RESERVATION, WASHINGTON**

SOURCE: 70 FR 18127, Apr. 8, 2005, unless otherwise noted.

§ 49.10821 Identification of plan.

This section and §§ 49.10822 through 49.10850 contain the implementation

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plan for the Spokane Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Spokane Reservation.

§ 49.10822 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Spokane Reservation.

§ 49.10823 Legal authority. [Reserved]**§ 49.10824 Source surveillance. [Reserved]****§ 49.10825 Classification of regions for episode plans.**

The air quality control region which encompasses the Spokane Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10826 Contents of implementation plan.

The implementation plan for the Spokane Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

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(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10827 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10828 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10829 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10830 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Spokane Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10831–49.10850 [Reserved]

IMPLEMENTATION PLAN FOR THE SQUAXIN ISLAND TRIBE OF THE SQUAXIN ISLAND RESERVATION, WASHINGTON

SOURCE: 70 FR 18128, Apr. 8, 2005, unless otherwise noted.

§ 49.10851 Identification of plan.

This section and §§ 49.10852 through 49.10880 contain the implementation plan for the Squaxin Island Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Squaxin Island Reservation.

§ 49.10852 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Squaxin Island Reservation.

§ 49.10853 Legal authority. [Reserved]**§ 49.10854 Source surveillance. [Reserved]****§ 49.10855 Classification of regions for episode plans.**

The air quality control region which encompasses the Squaxin Island Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10856 Contents of implementation plan.

The implementation plan for the Squaxin Island Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.

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(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10857 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10858 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10859 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10860 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Squaxin Island Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

40 CFR Ch. I (7-1-20 Edition)**§§ 49.10861-49.10880 [Reserved]****IMPLEMENTATION PLAN FOR THE STILLAGUAMISH TRIBE OF WASHINGTON**

SOURCE: 70 FR 18128, Apr. 8, 2005, unless otherwise noted.

§ 49.10881 Identification of plan.

This section and §§ 49.10882 through 49.10920 contain the implementation plan for the Stillaguamish Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Stillaguamish Tribe.

§ 49.10882 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Stillaguamish Tribe.

§ 49.10883 Legal authority. [Reserved]**§ 49.10884 Source surveillance. [Reserved]****§ 49.10885 Classification of regions for episode plans.**

The air quality control region which encompasses the Reservation of the Stillaguamish Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10886 Contents of implementation plan.

The implementation plan for the Reservation of the Stillaguamish Tribe consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

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- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10887 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10888 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10889 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10890 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Stillaguamish Tribe:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10891–49.10920 [Reserved]**IMPLEMENTATION PLAN FOR THE SUQUAMISH INDIAN TRIBE OF THE PORT MADISON RESERVATION, WASHINGTON**

SOURCE: 70 FR 18129, Apr. 8, 2005, unless otherwise noted.

§ 49.10921 Identification of plan.

This section and §§ 49.10922 through 49.10950 contain the implementation plan for the Suquamish Indian Tribe of the Port Madison Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Port Madison Reservation.

§ 49.10922 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Port Madison Reservation.

§ 49.10923 Legal authority. [Reserved]**§ 49.10924 Source surveillance. [Reserved]****§ 49.10925 Classification of regions for episode plans.**

The air quality control region which encompasses the Port Madison Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10926 Contents of implementation plan.

The implementation plan for the Port Madison Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

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- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10927 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10928 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10929 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10930 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Port Madison Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.

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- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10931-49.10950 [Reserved]**IMPLEMENTATION PLAN FOR THE SWINOMISH INDIANS OF THE SWINOMISH RESERVATION, WASHINGTON**

SOURCE: 70 FR 18129, Apr. 8, 2005, unless otherwise noted.

§ 49.10951 Identification of plan.

This section and §§ 49.10952 through 49.10980 contain the implementation plan for the Swinomish Indians. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Swinomish Reservation.

§ 49.10952 Approval status.

The implementation plan for the Swinomish Reservation includes the EPA-approved Tribal rules and measures identified in § 49.10957.

[79 FR 69765, Dec. 24, 2014]

§ 49.10953 Legal authority. [Reserved]**§ 49.10954 Source surveillance. [Reserved]****§ 49.10955 Classification of regions for episode plans.**

The air quality control region which encompasses the Swinomish Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10956 Contents of implementation plan.

The implementation plan for the Swinomish Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.

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(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) [Reserved]

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

(l) The EPA-approved Tribal open burning rules and measures approved in § 49.10957.

(1) Title, authority, jurisdiction, definitions.

(2) Open burning.

(3) Public involvement.

(4) Appeals.

(5) Repealer, severability and effective date.

(6) Enforcement.

(7) Hearings, appeals, computation of time and law applicable.

[57 FR 8390, Mar. 9, 1992, as amended at 79 FR 76063, Dec. 19, 2014]

§ 49.10957 EPA-approved Tribal rules and plans.

(a) *Purpose and scope.* This section contains the EPA-approved Tribal rules and measures in the open burning tribal implementation plan (TIP) for

the Swinomish Indians. The open burning TIP consists of a program, procedures, and regulations that cover prohibited materials, burn bans, open burning permit requirements and fees, and enforcement.

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) of this section was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material is incorporated as it exists on the date of the approval and notice of any change in the material will be published in the FEDERAL REGISTER.

(2) The EPA Region 10 certifies that the rules/regulations provided by the EPA in the Tribal implementation plan (TIP) compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated Tribal rules/regulations which have been approved as part of the TIP as of August 4, 2014.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region 10 Office at 1200 Sixth Avenue, Seattle WA, 98101; the EPA, Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave. NW., Washington, DC; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(c) *EPA-approved regulations.*

EPA-APPROVED SWINOMISH INDIANS OF THE SWINOMISH RESERVATION WASHINGTON REGULATIONS

Tribal citation	Title/subject	Tribal effective date	EPA approval date	Explanations
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Swinomish Tribal Code Title 19 Environmental Protection, Chapter 2—Clean Air Act (Swinomish TIP for Open Burning Part II)

19-02.020	Title Authority	3/9/12	11/24/14, 79 FR 69763.	
19-02.030	Jurisdiction	3/9/12	11/24/14, 79 FR 69763.	
19-02.040	Definitions	3/9/12	11/24/14, 79 FR 69763.	

Subchapter II—Open Burning

19-02.080	Applicability of Sub-chapter.	3/9/12	11/24/14, 79 FR 69763.	
19-02.090	General Rules for Open Burning.	3/9/12	11/24/14, 79 FR 69763 ..	Except D
19-02.100	Burn Bans	3/9/12	11/24/14, 79 FR 69763.	
19-02.110	Open Burn Permits	3/9/12	11/24/14, 79 FR 69763.	
19-02.120	Special Use Permits	3/9/12	11/24/14, 79 FR 69763.	

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**EPA-APPROVED SWINOMISH INDIANS OF THE SWINOMISH RESERVATION WASHINGTON
REGULATIONS—Continued**

Tribal citation	Title/subject	Tribal effective date	EPA approval date	Explanations
19-02.130	Open Burn and Special Use Permit Fees.	3/9/12	11/24/14, 79 FR 69763 ..	Except B.
19-02.140	Standard Permit Conditions.	3/9/12	11/24/14, 79 FR 69763.	
19-02.150	Additional Permit Conditions.	3/9/12	11/24/14, 79 FR 69763.	
19-02.160	Burn Notification and Inspection.	3/9/12	11/24/14, 79 FR 69763.	
Subchapter III—Public Involvement				
19-02.170	Public Information	3/9/12	11/24/14, 79 FR 69763.	
19-02.180	Public Hearings	3/9/12	11/24/14, 79 FR 69763.	
Subchapter V—Appeals				
19-02.240	Sovereign Immunity	3/9/12	11/24/14, 79 FR 69763.	
Subchapter VI—Repealer, Severability and Effective Date				
19-02.250	Repealer	3/9/12	11/24/14, 79 FR 69763.	
19-02.260	Severability	3/9/12	11/24/14, 79 FR 69763.	
19-02.270	Effective Date	3/9/12	11/24/14, 79 FR 69763 ..	

(d) [Reserved]

(e) *EPA-approved nonregulatory provisions and quasi-regulatory measures.*

**EPA-APPROVED SWINOMISH INDIANS OF
THE SWINOMISH RESERVATION WASH-
INGTON NONREGULATORY PROVISIONS
AND QUASI-REGULATORY MEASURES**

TABLE 1—AIR QUALITY PLANS

Name of plan	Tribal submittal date	EPA approval date	Explanations
Swinomish Tribal Implementation Plan for Open Burning (Swinomish TIP, Part I).	11/18/13	11/24/14, 79 FR 69763	Except the section on "Adoption Process and Procedure".

TABLE 2—SWINOMISH TRIBAL CODE APPROVED BUT NOT INCORPORATED BY REFERENCE

Tribal citation	Title/subject	Tribal effective date	EPA approval date	Explanations
Swinomish Tribal Code Title 19 Environmental Protection, Chapter 2—Clean Air Act (Swinomish TIP for Open Burning Part II)				
Subchapter IV—Enforcement				
19-02.190	Enforcement	3/9/12	11/24/14, 79 FR 69763.	
19-02.200	Penalties	3/9/12	11/24/14, 79 FR 69763.	
19-02.210	Damages	3/9/12	11/24/14, 79 FR 69763.	
Subchapter V—Appeals				
19-02.220	Appeals of Department Decisions.	3/9/12	11/24/14, 79 FR 69763.	
19-02.230	Tribal Administrative Remedies and Tribal Court.	3/9/12	11/24/14, 79 FR 69763.	

Environmental Protection Agency**§ 49.10985**TABLE 2—SWINOMISH TRIBAL CODE APPROVED BUT NOT INCORPORATED BY REFERENCE—
Continued

Tribal citation	Title/subject	Tribal effective date	EPA approval date	Explanations
Title 19—Environmental Protection, Chapter 4—Shorelines and Sensitive Areas Act				
Subchapter IX—Hearings, Appeals, Computation of Time and Law Applicable				
19-04.560	Request for Hearing Before the Planning Commission.	8/18/05	11/24/14, 79 FR 69763.	
19-04.570	Hearings by the Planning Commission.	8/18/05	11/24/14, 79 FR 69763.	
19-04.580	Appeals of Planning Commission Decisions.	8/18/05	11/24/14, 79 FR 69763.	
19-04.590	Appeals of Senate Decisions.	8/18/05	11/24/14, 79 FR 69763.	
19-04.600	Time and Finality	8/18/05	11/24/14, 79 FR 69763 ..	

[79 FR 69765, Dec. 24, 2014]

§ 49.10958 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10959 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10960 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Swinomish Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) [Reserved]
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

[57 FR 8390, Mar. 9, 1992, as amended at 79 FR 69767, Dec. 24, 2014]

§§ 49.10961–49.10980 [Reserved]**IMPLEMENTATION PLAN FOR THE TULALIP TRIBES OF THE TULALIP RESERVATION, WASHINGTON**

SOURCE: 70 FR 18130, Apr. 8, 2005, unless otherwise noted.

§ 49.10981 Identification of plan.

This section and §§ 49.10982 through 49.11010 contain the implementation plan for the Tulalip Tribes. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Tulalip Reservation.

§ 49.10982 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Tulalip Reservation.

§ 49.10983 Legal authority. [Reserved]**§ 49.10984 Source surveillance. [Reserved]****§ 49.10985 Classification of regions for episode plans.**

The air quality control region which encompasses the Tulalip Reservation is

§ 49.10986

classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10986 Contents of implementation plan.

The implementation plan for the Tulalip Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10987 EPA-approved Tribal rules and plans. [Reserved]**§ 49.10988 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10989 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

40 CFR Ch. I (7-1-20 Edition)**§ 49.10990 Federally-promulgated regulations and Federal implementation plans.**

The following regulations are incorporated and made part of the implementation plan for the Tulalip Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10991–49.11010 [Reserved]**IMPLEMENTATION PLAN FOR THE CONFEDERATED TRIBES OF THE UMATILLA RESERVATION, OREGON**

SOURCE: 70 FR 18130, Apr. 8, 2005, unless otherwise noted.

§ 49.11011 Identification of plan.

This section and §§ 49.11012 through 49.11040 contain the implementation plan for the Confederated Tribes of the Umatilla Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Umatilla Reservation.

§ 49.11012 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Umatilla Reservation.

Environmental Protection Agency**§ 49.11020****§ 49.11013 Legal authority. [Reserved]****§ 49.11014 Source surveillance. [Reserved]****§ 49.11015 Classification of regions for episode plans.**

The air quality control region which encompasses the Umatilla Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.11016 Contents of implementation plan.

The implementation plan for the Umatilla Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.132 Rule for general open burning permits.
- (i) Section 49.133 Rule for agriculture burning permits.
- (j) Section 49.134 Rule for forestry and silvicultural burning permits.
- (k) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (l) Section 49.137 Rule for air pollution episodes.
- (m) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (n) Section 49.139 Rule for non-Title V operating permits.

§ 49.11017 EPA-approved Tribal rules and plans. [Reserved]**§ 49.11018 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11019 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.11020 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Umatilla Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.132 Rule for general open burning permits.
- (i) Section 49.133 Rule for agriculture burning permits.
- (j) Section 49.134 Rule for forestry and silvicultural burning permits.
- (k) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (l) Section 49.137 Rule for air pollution episodes.
- (m) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (n) Section 49.139 Rule for non-Title V operating permits.

NOTE TO § 49.11020: EPA entered into a Partial Delegation of Administrative Authority Agreement with the Confederated Tribes of the Umatilla Indian Reservation on August

§ 49.11021

21, 2006 for the rules listed in paragraphs (a), (g), (h), (i), (j) and (l) of this section.

[70 FR 18130, Apr. 8, 2005, as amended at 71 FR 60853, Oct. 17, 2006]

§ 49.11021 Permits for general open burning, agricultural burning, and forestry and silvicultural burning.

(a) Beginning January 1, 2007, a person must apply for and obtain a permit under § 49.132 Rule for general open burning permits.

(b) Beginning January 1, 2007, a person must apply for and obtain approval of a permit under § 49.133 Rule for agricultural burning permits.

(c) Beginning January 1, 2007, a person must apply for and obtain approval of a permit under § 49.134 Rule for forestry and silvicultural burning permits.

§§ 49.11022–49.11040 [Reserved]

IMPLEMENTATION PLAN FOR THE UPPER SKAGIT INDIAN TRIBE OF WASHINGTON

SOURCE: 70 FR 18131, Apr. 8, 2005, unless otherwise noted.

§ 49.11041 Identification of plan.

This section and §§ 49.11042 through 49.11070 contain the implementation plan for the Upper Skagit Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Upper Skagit Indian Tribe.

§ 49.11042 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Upper Skagit Indian Tribe.

§ 49.11043 Legal authority. [Reserved]

§ 49.11044 Source surveillance. [Reserved]

§ 49.11045 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Upper Skagit Indian Tribe is classified as follows for purposes of episode plans:

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Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.11046 Contents of implementation plan.

The implementation plan for the Reservation of the Upper Skagit Indian Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.11047 EPA-approved Tribal rules and plans. [Reserved]

§ 49.11048 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11049 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

Environmental Protection Agency**§ 49.11078****§ 49.11050 Federally-promulgated regulations and Federal implementation plans.**

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Upper Skagit Indian Tribe:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits

§§ 49.11051–49.11070 [Reserved]**IMPLEMENTATION PLAN FOR THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON**

SOURCE: 70 FR 18132, Apr. 8, 2005, unless otherwise noted.

§ 49.11071 Identification of plan.

This section and §§ 49.11072 through 49.11100 contain the implementation plan for the Confederated Tribes of the Warm Springs Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Warm Springs Reservation.

§ 49.11072 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Warm Springs Reservation.

§ 49.11073 Legal authority. [Reserved]**§ 49.11074 Source surveillance. [Reserved]****§ 49.11075 Classification of regions for episode plans.**

The air quality control region which encompasses the Warm Springs Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.11076 Contents of implementation plan.

The implementation plan for the Warm Springs Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.11077 EPA-approved Tribal rules and plans. [Reserved]**§ 49.11078 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§49.11079**§ 49.11079 Permits to operate.**

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.11080 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Warm Springs Reservation:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.11081–49.11100 [Reserved]**IMPLEMENTATION PLAN FOR THE CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION, WASHINGTON**

SOURCE: 70 FR 18132, Apr. 8, 2005, unless otherwise noted.

§ 49.11101 Identification of plan.

This section and §§ 49.11102 through 49.11130 contain the implementation plan for the Confederated Tribes and Bands of the Yakama Nation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Yakama Reservation.

40 CFR Ch. I (7-1-20 Edition)**§ 49.11102 Approval status.**

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Yakama Reservation.

§ 49.11103 Legal authority. [Reserved]**§ 49.11104 Source surveillance. [Reserved]****§ 49.11105 Classification of regions for episode plans.**

The air quality control region which encompasses the Yakama Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	III

§ 49.11106 Contents of implementation plan.

The implementation plan for the Yakama Reservation consists of the following rules, regulations, and measures:

- (a) Section 49.123 General provisions.
- (b) Section 49.124 Rule for limiting visible emissions.
- (c) Section 49.125 Rule for limiting the emissions of particulate matter.
- (d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
- (e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
- (f) Section 49.130 Rule for limiting sulfur in fuels.
- (g) Section 49.131 General rule for open burning.
- (h) Section 49.135 Rule for emissions detrimental to public health or welfare.
- (i) Section 49.137 Rule for air pollution episodes.
- (j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
- (k) Section 49.139 Rule for non-Title V operating permits.

Environmental Protection Agency**§ 49.11107 EPA-approved Tribal rules and plans. [Reserved]****§ 49.11108 Permits to construct.**

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11109 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.11110 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Yakama Reservation:

(a) Section 49.123 General provisions.

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(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.11111–49.17810 [Reserved]

APPENDIX TO SUBPART M OF PART 49—ALPHABETICAL LISTING OF TRIBES AND CORRESPONDING SECTIONS

Indian Tribe	Refer to the following sections in subpart M
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon	§§ 49.9861 to 49.9890
Chehalis Reservation, Washington—Confederated Tribes of the	§§ 49.9891 to 49.9920
Coeur d'Alene Tribe of the Coeur D'Alene Reservation, Idaho	§§ 49.9921 to 49.9950
Colville Reservation, Washington—Confederated Tribes of the	§§ 49.9951 to 49.9980
Coos, Lower Umpqua and Siuslaw Indians of Oregon—Confederated Tribes of the	§§ 49.9981 to 49.10010
Coquille Tribe of Oregon	§§ 49.10011 to 49.10040
Cow Creek Band of Umpqua Indians of Oregon	§§ 49.10041 to 49.10070
Grand Ronde Community of Oregon—Confederated Tribes of the	§§ 49.10101 to 49.10130
Hoh Indian Tribe of the Hoh Indian Reservation, Washington	§§ 49.10131 to 49.10160
Jamestown S'Klallam Tribe of Washington	§§ 49.10161 to 49.10190
Kalispel Indian Community of the Kalispel Reservation, Washington	§§ 49.10191 to 49.10220
Klamath Indian Tribe of Oregon	§§ 49.10221 to 49.10250
Kootenai Tribe of Idaho	§§ 49.10251 to 49.10280
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington	§§ 49.10281 to 49.10310
Lummi Tribe of the Lummi Reservation, Washington	§§ 49.10311 to 49.10340
Makah Indian Tribe of the Makah Indian Reservation, Washington	§§ 49.10341 to 49.10370
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington	§§ 49.10371 to 49.10400
Nez Perce Tribe of Idaho	§§ 49.10401 to 49.10430
Nisqually Indian Tribe of the Nisqually Reservation, Washington	§§ 49.10431 to 49.10460
Nooksack Indian Tribe of Washington	§§ 49.10461 to 49.10490
Port Gamble Indian Community of the Port Gamble Reservation, Washington	§§ 49.10491 to 49.10520
Puyallup Tribe of the Puyallup Reservation, Washington	§§ 49.10521 to 49.10550
Quileute Tribe of the Quileute Reservation, Washington	§§ 49.10551 to 49.10580
Quinault Tribe of the Quinault Reservation, Washington	§§ 49.10581 to 49.10610
Sauk-Suiattle Indian Tribe of Washington	§§ 49.10641 to 49.10670
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington	§§ 49.10671 to 49.10700
Shoshone-Bannock Tribes of the Fort Hall Indian Reservation of Idaho	§§ 49.10701 to 49.10730
Siletz Reservation, Oregon—Confederated Tribes of the	§§ 49.10731 to 49.10760
Skokomish Indian Tribe of the Skokomish Reservation, Washington	§§ 49.10761 to 49.10790
Spokane Tribe of the Spokane Reservation, Washington	§§ 49.10821 to 49.10850
Squaxin Island Tribe of the Squaxin Island Reservation, Washington	§§ 49.10851 to 49.10880
Stillaguamish Tribe of Washington	§§ 49.10881 to 49.10920
Suquamish Indian Tribe of the Port Madison Reservation, Washington	§§ 49.10921 to 49.10950
Swinomish Indians of the Swinomish Reservation, Washington	§§ 49.10951 to 49.10980
Tulalip Tribes of the Tulalip Reservation, Washington	§§ 49.10981 to 49.11010
Umatilla Reservation, Oregon—Confederated Tribes of the	§§ 49.11011 to 49.11040
Upper Skagit Indian Tribe of Washington	§§ 49.11041 to 49.11070
Warm Springs Reservation of Oregon—Confederated Tribes of the	§§ 49.11071 to 49.11100
Yakama Nation, Washington—Confederated Tribes and Bands of the	§§ 49.11101 to 49.11130

[70 FR 18133, Apr. 8, 2005]