

**§ 49.161**

**40 CFR Ch. I (7–1–20 Edition)**

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-

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,

## Environmental Protection Agency

## § 49.161

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.

(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<sub>x</sub> 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