ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–HQ–OAR–2011–0151; FRL–9919–85–OAR]

RIN 2060–AQ95

General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is finalizing general permits for use in Indian country pursuant to the Federal Minor New Source Review (NSR) Program in Indian Country for new or modified minor sources in the following two source categories: Hot mix asphalt (HMA) plants; and stone quarrying, crushing, and screening (SQCS) facilities. The EPA is also finalizing permits by rule for use in Indian country for new or modified minor sources in three source categories: Auto body repair and miscellaneous surface coating operations; gasoline dispensing facilities (GDFs), except in California; and petroleum dry cleaning facilities. The EPA is also taking final action authorizing the use of general permits established under the program to create synthetic minor sources for the HMA and SQCS source categories.

DATES: The final rule is effective on June 1, 2015.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0151. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, the EPA/DC, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Christopher Stoneman, Outreach and Information Division, Office of Air Quality Planning and Standards, (C–304–03), Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–0823, facsimile number (919) 541–0072, email address: *stoneman.chris@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''reviewing authority,'' ''we,'' ''us'' and ''our'' refer to the EPA. The information in this preamble is organized as follows:

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I. General Information

A. Does this action apply to me?

Entities potentially affected by this final action consist of owners and operators of facilities included in the following source categories that are located, or planning to locate, in Indian country as defined in 18 U.S.C. 1151 where there is no EPA-approved program in place and that are subject to the requirements of the program:

TABLE 1—SOURCE CATEGORIES

Industry category	North American Industry Classification System	Examples of regulated entities
HMA Facilities	324122	Asphalt Shingles and Coating Materials Manufacturing.
	324121	Asphalt Paving Mixture and Block Manufacturing.
SQCS Facilities	212311	Dimension Stone Mining and Quarrying.
	212312	Crushed and Broken Limestone Mining and Quarrying.
	212313	Crushed and Broken Granite Mining and Quarrying.
	212319	Other Crushed and Broken Stone Mining and Quarrying.
	212321	Construction Sand and Gravel Mining.
Auto Body Repair and Miscellaneous Surface Coating Operations.	811121	Automotive Body, Paint, and Interior Repair and Maintenance.
	332812	Metal Coating, Engraving (Except Jewelry and Silverware), and Allied Services to Manufacturers.

TABLE 1—SOURCE CATEGORIES—Continued

Industry category	North American Industry Classification System	Examples of regulated entities
GDFs	4471	Gasoline Stations.
	44711	Gasoline Stations without Convenience Stores.
	447110	Gasoline Stations with Convenience Stores.
	44719	Other Gasoline Stations.
	447190	Other Gasoline Stations.
Petroleum Dry Cleaning Facilities	812320	Dry Cleaning and Laundry Services (Except Coin-Operated).
	812310	Coin-Operated Laundries and Dry Cleaners.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be potentially affected by this action. To determine whether your facility could be affected by this action, you should examine the applicability criteria in the final federal minor NSR program for Indian country, 40 CFR 49.153. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

In addition to being available in the docket, an electronic copy of this final rule is posted in the regulations and standards section of our NSR home page located at *http://www.epa.gov/nsr* and on the tribal NSR page at *http://www.epa.gov/air/tribal/tribalnsr.html.*

II. Overview of the Final Rule

In July 2011, the EPA issued the Federal Minor New Source Review Program in Indian Country rule [1] (the Federal Indian Country Minor NSR rule or Rule) that established, among other things, the requirements and process for the preconstruction permitting of minor sources in Indian country. Under the Rule, existing true minor sources were required to register with the EPA by March 1, 2013. True minor sources that commence construction after the Rule's effective date must also register within certain timeframes spelled out in the Rule (40 CFR 49.160). In addition, beginning September 2, 2014, an owner or operator must obtain a preconstruction permit from the reviewing authority [2] if the owner/operator will construct a new true minor source,[3] will modify an existing true minor source in Indian country, or will modify an existing major source in Indian country. In addition, existing synthetic minor sources [4] beginning construction of minor modifications were required to obtain preconstruction permits under the rule beginning August 30, 2011. The rule also specified the process and requirements for using general permits as a streamlined permitting approach to authorize construction and modifications at true minor sources. General permits streamline the preconstruction permitting of new or modified true minor sources because they involve the issuance of one permit that can apply to multiple stationary sources that have similar emissions units.

In today's action, the EPA is finalizing the use of two types of minor NSR preconstruction permits to help streamline the EPA's permitting of true minor sources—and synthetic minor sources in select source categories—that construct or modify in Indian country and belong to one of five different source categories. The first type of permit is a general permit. The second type is a permit by rule, which is another mechanism for streamlining the issuance of preconstruction permits. Permits by rule use a regulatory-type structure (*i.e.,* the permit requirements are codified in the Code of Federal Regulations) to permit sources by pre-authorizing construction and modification activities carried out in accordance with the codified requirements. To become covered by a permit by rule, as we are finalizing today, a source must notify the EPA that it meets the terms of coverage and is complying with the permit's terms and conditions but does not need approval of a Request for Coverage. The source must also submit its Notification of Coverage Form in fulfillment of the minor source registration requirement in the Federal Indian Country Minor NSR rule (40 CFR 49.160(c)(1)(iii)). Once it has done so and the reviewing authority has posted the Notification of Coverage Form online, the source may commence construction of a new source or modification of an existing source.

In this final action, we are finalizing general permits for HMA plants and SQCS facilities. We are finalizing permits by rule for GDFs (except for California), auto body repair and miscellaneous surface coating operations, and petroleum dry cleaning facilities.[5] For permits by rule, we are finalizing the regulatory framework via rulemaking that: (a) Defines a permit by rule; (b) explains how we will issue them; (c) describes the process for granting coverage; and (d) provides the general and specific permit terms and conditions. For all of the permits we are finalizing today, we are providing the following implementation documents and tools: Questionnaires; Instructions; Potential to Emit (PTE) Calculators; and Background Documents. For the general permits we are finalizing today, we are

[1] "Review of New Sources and Modifications in Indian Country," U.S. Environmental Protection Agency, 76 FR 38748, July 1, 2011, *https://www.federalregister.gov/articles/2011/07/01/2011–14981/review-of-new-sources-and-modifications-in-indian-country.*

[2] In this document, reviewing authority refers to an EPA Regional Office. However, tribes can become reviewing authorities if they decide to assist the EPA with implementation of the minor NSR program in their area, and the EPA delegates the authority to assist the EPA to the tribe.

[3] At 40 CFR 49.152(d), true minor source is defined as a source, not including the exempt emissions units and activities listed in § 49.153(c), that emits or has the potential to emit regulated NSR pollutants in amounts that are less than the major source thresholds in § 49.167 (Major NSR program for Nonattainment Areas) or § 52.21 (Prevention of Significant Deterioration program), 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. The PTE includes fugitive emissions, to the extent that they are quantifiable, only if the source belongs to one of the 28 source categories listed in part 51, Appendix S, paragraph II.A.4(iii) or § 52.21(b)(1)(iii) of 40 CFR, as applicable.

[4] At 40 CFR 49.152(d), 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, 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.

[5] The general permits are available online at: *http://www.epa.gov/air/tribal/tribalnsr.html* and at Docket ID No. EPA–HQ–OAR–2011–0151.

providing Request for Coverage Forms (applications). For the permits by rule we are finalizing today, we are providing Notification of Coverage Forms.[6]

In this action, the EPA is also finalizing the use of general permits to create synthetic minor sources for the HMA and SQCS source categories. We have decided to issue final general permits for these two categories (and not the three others) that involve more complex operations and multiple pollutants because the general permit approval process provides an opportunity for case-specific reviewing authority review. Because permits by rule do not provide for the same level of review, the EPA is not finalizing the use of permits by rule to create synthetic minor sources. Finally, in this action we are promulgating three minor amendments to the Federal Indian Country Minor NSR rule. One amendment will allow sources to use a general permit immediately upon the permit becoming final.[7] The second and third amendments ensure that it is clear the permit by rule is an option available to true minor sources that are required to obtain a minor NSR permit.

III. Background

A. Federal Indian Country Minor NSR Rule

1. What is the Federal Indian Country Minor NSR rule?

On August 21, 2006, the EPA proposed the regulation: ''Review of New Sources and Modifications in Indian Country'' (commonly referred to as the Federal Indian Country NSR rule).[8] Within this proposed regulation, the EPA proposed to protect air quality in Indian country, as defined in 18 U.S.C. 1151, by establishing a federal implementation plan (FIP) program to regulate, among other matters, the modification and construction of minor stationary sources consistent with the requirements of section 110(a)(2)(c) of the Clean Air Act (CAA). We refer to this part of the Federal Indian Country NSR rule as the Federal Indian Country Minor NSR rule. Under the Federal Indian Country Minor NSR rule, we proposed to fill a regulatory gap and provide a mechanism for issuing preconstruction permits for the construction of new minor sources and certain modifications of major and minor sources in Indian country. We promulgated final rules on July 1, 2011,[9] and the FIP became effective on August 30, 2011.

The Federal Indian Country Minor NSR rule applies to new and modified minor stationary sources and to minor modifications at existing major stationary sources located in Indian country[10] where there is no EPA-approved program in place. Tribes can elect to develop and implement their own EPA-approved program under the Tribal Authority Rule,[11] but they are not required to do so.[12] In the absence of an approved tribal program, EPA implements this program. Alternatively, tribes can take delegation of the program from EPA and become the reviewing authority.

Beginning September 2, 2014, any new stationary sources that will emit, or will have the PTE, a regulated NSR pollutant in amounts that will be: (a) Equal to or greater than the minor NSR thresholds, established in the Federal Indian Country Minor NSR rule; and (b) less than the amount that would qualify the source as a major source or a major modification for purposes of the Prevention of Significant Deterioration (PSD) or nonattainment major NSR programs, must apply for and obtain a minor NSR permit before beginning construction of the new source. Likewise, any existing stationary source (minor or major) must apply for and obtain a minor NSR permit before beginning construction of a physical or operational change that will increase the allowable emissions of the stationary source by more than the specified threshold amounts, if the change does not otherwise trigger the permitting requirements of the PSD or nonattainment major NSR program(s).[13]

Among other things, the Federal Indian Country Minor NSR rule created a framework for the EPA to streamline the issuance of preconstruction permits to true minor sources by using general permits.

2. What is a true minor source and how does it differ from a synthetic minor source?

''True minor source,'' under the Federal Indian Country Minor NSR rule means a source that emits, or has the potential to emit, regulated NSR pollutants in amounts that are less than the major source thresholds under either the PSD Program at 40 CFR 52.21, or the Federal Major New Source Review Program for Nonattainment Areas in Indian Country at 40 CFR 49.166–49.173, but equal to or greater than the minor NSR thresholds in § 49.153, without the need to take an enforceable restriction to reduce its PTE to such levels. A source's PTE includes fugitive emissions, to the extent that they are quantifiable, only if the source belongs to one of the 28 source categories listed in part 51, Appendix S, paragraph II.A.4(iii) or § 52.21(b)(1)(iii) of 40 CFR, as applicable. By contrast, ''synthetic minor source'' means a source that otherwise has the potential to emit regulated NSR pollutants in amounts that are at or above those thresholds for major sources, but that has taken a restriction so that its PTE is less than such amounts. Such restrictions must be enforceable as a legal and practical matter.

3. What is a general permit?

A general permit, for purposes of this action, is a permit document that contains standardized requirements that

[6] All of the implementation documents and tools are available online at: *http://www.epa.gov/air/tribal/tribalnsr.html.*

[7] Under the current Rule, a general permit becomes final either when the time for challenging the permit has expired or the review process for challenging a permit has been completed and the permit has been upheld. See 40 CFR 49.159.

[8] ''Review of New Sources and Modifications in Indian Country,'' U.S. Environmental Protection Agency, 71 FR 48696, August 21, 2006, *http://www.gpo.gov/fdsys/pkg/FR-2006-08-21/html/06-6926.htm.*

[9] ''Review of New Sources and Modifications in Indian Country,'' U.S. Environmental Protection Agency, 76 FR 38748, July 1, 2011, *https://www.federalregister.gov/articles/2011/07/01/2011-14981/review-of-new-sources-and-modifications-in-indian-country.*

[10] The Federal Indian Country Minor NSR rule defines ''Indian country'' to include three categories of lands consistent with 18 U.S.C. 1151, *i.e.,* Indian reservations, dependent Indian communities, and Indian allotments. The U.S. Court of Appeals for the District of Columbia Circuit vacated the rule with respect to non-reservation areas of Indian country (*i.e.,* dependent Indian communities and Indian allotments) (*Oklahoma Dept. of Environmental Quality* v. *EPA,* 740 F.3d 185 (D.C. Cir. 2014)). The court held that the state, not tribes or the EPA, has initial primary responsibility for implementation plans under Clean Air Act section 110 in non-reservation areas of Indian country in the absence of a demonstration of tribal jurisdiction by the EPA or a tribe. The rule, therefore, does not apply in non-reservation areas of Indian country unless a tribe or the EPA has demonstrated that a tribe has jurisdiction in a particular non-reservation area of Indian country.

[11] To develop and implement an EPA-approved program, under the Tribal Authority Rule a tribe must meet four requirements: (1) be a federally-recognized tribe, (2) have a functioning government, (3) have the legal authority and (4) have the capacity to run the program. For more information go to: ''Indian Tribes: Air Quality Planning and Management,'' U.S. Environmental Protection Agency, 63 FR 7254, February 12, 1998, *http://www.gpo.gov/fdsys/pkg/FR-1998-02-12/pdf/98-3451.pdf.*

[12] Under tribal law, tribes can also establish permit fees under a tribal permitting program as do most states.

[13] A source may, however, be subject to certain monitoring, recordkeeping and reporting (MRR) requirements under the major NSR programs, if the change has a reasonable possibility of resulting in a major modification. A source may be subject to both the Federal Indian Country Minor NSR rule and the reasonable possibility MRR requirements of the major NSR program(s).

multiple stationary sources can use. The Federal Indian Country Minor NSR rule specified the process and requirements for using general permits to authorize construction and modifications at minor sources as a streamlined permitting approach. The EPA may issue a general permit for categories of emissions units or stationary sources that are similar in nature, have substantially similar emissions, and would be subject to the same or substantially similar permit requirements.[14] ''Similar in nature'' refers to size, processes, and operating conditions. The purpose of a general permit is to provide for protection of air quality while simplifying the permitting process for similar minor sources. General permits offer a cost-effective means of issuing permits and provide a quicker and simpler mechanism for permitting minor sources than the site-specific permitting process.

While the final Federal Indian Country Minor NSR rule contemplated issuance of general permits by the EPA Regional Offices,[15] we have determined (for the permits on which we are taking final action) that a nationwide action is appropriate. Through this action, we are finalizing general permits to serve as preconstruction permit authorizations that contain emission limitations and other restrictions to govern how sources construct, modify and operate.

4. What is a permit by rule?

Like a general permit, a permit by rule is a standard set of requirements that can apply to multiple stationary sources with similar emissions characteristics. For purposes of this action, a permit by rule would differ from a general permit in that the agency would codify a permit by rule directly into the Federal Indian Country Minor NSR rule. The process for a source to gain coverage under a permit by rule is more streamlined compared to a general permit, or a site-specific permit. The permits by rule program establishes a more streamlined notification of coverage process that allows an individual applicant to notify the reviewing authority that it meets the eligibility criteria for the permit and the permit conditions rather than have to go through a reviewing authority review and approval process. This ''notification'' process streamlines permitting for eligible sources and makes it easier for the reviewing authority to implement the permit by rule program compared to traditional site-specific permits and standard general permits.

B. General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country—Proposed Rule

1. What was in the proposed rule?

On January 14, 2014 (79 FR 2545), the EPA published a proposed rule, ''General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country,'' to simplify the CAA permitting process for five source categories: HMA plants, SQCS facilities, auto body repair and miscellaneous surface coating operations, GDFs (except in California), and petroleum dry cleaning facilities.[16] The proposed action is intended to ensure that air quality in Indian country is protected by facilitating the implementation of the Federal Indian Country Minor NSR rule issued by the EPA in July 2011.

As the preferred approach, the EPA proposed draft general permits for new or modified minor sources in the following five categories of emission sources: HMA plants, SQCS facilities, GDFs, auto body repair and miscellaneous surface coating operations, and petroleum dry cleaning facilities. As an alternative approach, we proposed a permit by rule for new or modified minor sources in three of the five source categories: GDFs, auto body repair and miscellaneous surface coating operations, and petroleum dry cleaning facilities. We also proposed five changes to the following provisions in the Federal Indian Country Minor NSR rule: § 49.151(c)(1)(iii)(B); § 49.156(e); and § 49.160(c)(1)(ii) and (c)(1)(iii). The changes are:

(a) Shortening the general permit application review process from 90 to 45 days for certain source categories;

(b) Adjusting the deadline by which minor sources covered by a general permit need to obtain a preconstruction permit;

(c) Extending the permitting deadline for true minor sources within the oil and gas source category;

(d) Removing a provision to make clear that sources may seek coverage under a general permit as soon as it is effective and need not wait an additional 4 months; and

(e) Adjusting the deadline for oil and gas sources for certain registration-related requirements to be consistent with the proposed permitting deadline extension.

2. Previously Finalized Actions From the January 14, 2014, Proposal

In a final rulemaking dated May 22, 2014, and published June 16, 2014,[17] the EPA amended the Federal Indian Country Minor NSR rule by finalizing the following three actions:

- Adjusted the deadline by which minor sources covered by a general permit need to obtain a preconstruction permit by eliminating a requirement for all true minor sources that begin operation before September 2, 2014, to obtain a minor NSR permit 6 months after the EPA publishes a general permit (no general permits have been finalized to date, so the provision is now moot; item (b) above) (§ 49.151(c)(1)(iii)(B));
- Extended the permitting deadline for true minor sources within the oil and gas source category (item (c) above) (§ 49.151(c)(1)(iii)(B)); and
- Adjusted the deadline for oil and gas sources for certain registration-related requirements to be consistent with the proposed permitting deadline extension (item (e) above) (§ 49.151(c)(1)(iii)(A); § 49.160(c)(1)(ii) and (c)(1)(iii)).

IV. Final Rulemaking Action

This section outlines the major areas where we sought comment in the January 14, 2014, proposal, highlights our responses and describes our final action in those areas. The complete Response to Comments Document (RTC) can be found in docket EPA–HQ–OAR–2011–0151 and contains more detailed summaries of the comments we received and our responses to them. As noted in Section III. Background, we have already responded to some of the comments made on the January 14, 2014, proposal in the final action we took on May 22, 2014. In addition, as noted below, we will address comments related to the permitting of minor sources in the oil and natural gas sector in the context of the EPA's follow up to

[14] ''Review of New Sources and Modifications in Indian Country,'' U.S. Environmental Protection Agency, 76 FR 38770, July 1, 2011, *https://www.federalregister.gov/articles/2011/07/01/2011-14981/review-of-new-sources-and-modifications-in-indian-country.*

[15] If a tribe develops an EPA-approved implementation plan, then under that plan it could also issue its own general permits.

[16] On July 17, 2014, the EPA published a second proposed rule to simplify the permitting process for six source categories: Concrete batch plants, boilers, stationary spark ignition engines, stationary compression ignition engines, graphic arts and printing operations, and sawmills. This second proposed rule can found at: ''General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country,'' 79 FR 41846, July 17, 2014, *http://www.gpo.gov/fdsys/pkg/FR-2014-07-17/pdf/2014-16814.pdf.* EPA will finalize permits for these six source categories in a separate action.

[17] ''Review of New Sources and Modifications in Indian Country Amendments to the Registration and Permitting Deadlines for True Minor Sources,'' 79 FR 34231, June 16, 2014, *http://www.gpo.gov/fdsys/pkg/FR-2014-06-16/pdf/2014-14030.pdf.*

an Advance Notice of Proposed Rulemaking [18] (ANPR). In the ANPR, we sought feedback on how to address minor source NSR permitting for oil and natural gas sources in Indian country.

A. Permit Documents and Implementation Tools

1. Proposed Rule

As our preferred approach, the EPA proposed general permits for use in Indian country pursuant to the Federal Indian Country Minor NSR rule for new or modified minor sources in the following five source categories: HMA plants, SQCS facilities, auto body repair and miscellaneous surface coating operations, GDFs, and petroleum dry cleaning facilities. In the alternative, we also proposed permits by rule for use in Indian country for new or modified minor sources for three of the five source categories: Auto body repair and miscellaneous surface coating operations, GDFs, and petroleum dry cleaning facilities. Overall, we sought comment on all aspects of the permit documents and implementation tools for these five source categories. Specifically, Section VI. Summary of Specific Terms and Conditions of the General Permits and Request for Comment of the January 14, 2014, proposal, provided a summary of the specific terms and conditions of the general permits and indicated specific areas where we requested comment. Detailed responses to the comments on the permits and related tools and documents are addressed in Sections 3.1 to 3.5 of the RTC Document.[19]

2. Final Action, Comments and Responses

This section provides a brief summary of what the EPA considers to be the most significant comments received and our responses to those comments. Overall, on our January 14, 2014, proposal, we received 26 comments: 13 from industry (or their representatives), 11 from tribes (or their representatives), 1 from a local air quality agency and 1 from a state environmental agency.

Overall, based in part on our review of the comments, in this final action the EPA is issuing general permits for two source categories: HMA plants and SQCS facilities. These are available at: *http://www.epa.gov/air/tribal/tribalnsr.html.* We are also promulgating permits by rule for three source categories: Auto body repair and miscellaneous surface coating operations, GDFs, and petroleum dry cleaning facilities. These are available in this **Federal Register** notice and will be codified at 40 CFR 49.162. For all of these permits, the implementation tools and documents are available at: *http://www.epa.gov/air/tribal/tribalnsr.html.* The tools and documents are: Request for Coverage Forms (applications for general permits); Notification of Coverage Forms (permits by rule); Questionnaires; Instructions; PTE Calculators and Background Documents.

The following sections provide an abbreviated summary of significant comments on the proposed draft permits for the five source categories addressed in this final rule and our responses. In our final action, based in part on our review of the comments, we have made changes to the terms and conditions for the two draft general permits and the three proposed permits by rule and to the related implementation tools in the following areas: Setback requirements; throughput limits; various control requirements; and enhancements and clarifications to the implementation tools.

(a) Overview of Changes to Implementation Tools and Permits

In response to public comments, we are making the following changes to the implementation tools:

(1) Retitled the implementation tools for the three categories for which we are promulgating permits by rule to reflect that they are not general permits but are, in fact, permits by rule;

(2) For the Notification of Coverage Forms for the three permits by rule we are promulgating today, we have added requirements for (a) a list of equipment that will be present at the new or modified source; (b) PTE; (c) at existing sources, estimated annual emissions based on actual operating conditions and equipment [20] to satisfy the minor source registration requirement of § 49.160; and (d) clarified that sources covered by the permits by rule must also register under § 49.160 and that submittal of the Notification of Coverage Form satisfies that requirement;

(3) For the permits by rule, we have separated the screening processes from the Notification of Coverage Forms and created a separate 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'';

(4) For the Request for Coverage Forms for the two general permits we are promulgating today, we have added a request for estimates of PTE and, at existing sources, actual emissions to satisfy the minor source registration requirement of § 49.160; clarified that sources covered by the general permits rule must also register under § 49.160 (submittal of the Request for Coverage Form satisfies that requirement); and added a section in which a source can list multiple source locations in which a portable source is planning to locate and for which it wants reviewing authority approval;

(5) For the instructions and questionnaires, we have made the changes necessary to reflect the changes made to the Notification of Coverage Forms and Request for Coverage Forms;

(6) For the questionnaires, to avoid confusion and redundancy with the eligibility criteria provided in the Notification of Coverage Forms and Request for Coverage Forms, we have removed the list of eligibility criteria at the front of the documents; and

(7) For the background documents, we have made the changes necessary to reflect the changes made to permit requirements in areas such as setbacks and throughput limits (see Sections IV.F. and IV.G. below for more detail).

In addition, we have made some changes in the permits being finalized in this action as a result of comments received on the July 17, 2014, proposed rule we issued for general permits and permits by rule in Indian country.[21] These changes concern general provisions in the permits and, thus, need to be reflected in all of the final permits from both proposals. One commenter stated that the condition in the draft general permits concerning Notification of Change in Ownership is unclear in establishing whether it is the responsibility of the new permittee or the old permittee to comply with the notification requirements. The same commenter requested that certain conditions of the draft general permit be clarified to cover situations in which there is a change of operator, but the ownership of the equipment is the same. In response to the comments, the EPA has clarified in the permits for the five source categories covered by this action that it is the responsibility of the *new*

[18] ''Managing Emissions from Oil and Natural Gas Production Indian Country,'' 79 FR 32502, June 5, 2014, *http://www.gpo.gov/fdsys/pkg/FR-2014-06-05/pdf/2014-12951.pdf.*

[19] The document is available online at: *http://www.epa.gov/air/tribal/tribalnsr.html* and at: Docket ID No. EPA–HQ–OAR–2011–0151.

[20] Estimates of emissions take into account equipment, operating conditions, and air pollution control measures and are 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.

[21] ''General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country,'' 79 FR 41846, July 17, 2014, *http://www.gpo.gov/fdsys/pkg/FR-2014-07-17/pdf/2014-16814.pdf.*

permittee to submit a written or electronic notice to the reviewing authority within 90 days before or after the change in ownership is effective. For the permits, we have also modified two Change in Ownership conditions [22] that appear in §§ 49.162(d)(5)(ii), 49.163(d)(5)(ii), and 49.164(d)(5)(ii) to include the word ''operator'' to clarify that these conditions also cover a change in operators where ownership of the equipment is the same.

One commenter stated that the term ''Responsible Official'' should be defined to ensure truth, accuracy and completeness of required reports. In response to the comment, EPA has added a definition of *Responsible Official* to each of the final permits.

Two commenters supported the proposed rule's approach of requiring each source to post the current approval of the Request for Coverage and to label each affected emissions unit and associated air pollution control technology with the identification numbers listed in the approval. One commenter recommended that the General Permit and the most current approval of the Request for Coverage for the permitted source ''must be made available immediately upon request,'' as opposed to ''must be posted.'' The commenter stated that it was not necessary to label the air pollution control equipment as the description and serial numbers are provided in the application. The EPA acknowledges the support of the commenters with respect to posting the Approval of the Request for Coverage. Upon review of comments received related to the posting of the General Permit in addition to the Approval of the Request for Coverage, EPA is revising the permits to exclude the requirement that the General Permit must be posted. Posting of the Approval of the Request for Coverage is required under 40 CFR 49.156(e)(6), but the General Permit itself is not required under the regulation to be posted and only needs to be available on site as needed. Regarding the labeling of emission units and air pollution control equipment, identification and labeling of these units is needed to facilitate identification of equipment covered under the General Permit by any potential inspectors. Therefore, EPA is finalizing the labeling requirements as proposed.

[22] The Change in Ownership condition in Section 6 of the proposed permits by rule has been dropped from the final permits by rule because there is no Approval of Coverage to change for permits by rule.

(b) Hot Mix Asphalt Plants and Stone, Quarrying, Crushing, and Screening Facilities

The EPA received numerous comments [23] on the draft General Air Quality Permit for New or Modified True Minor Source Hot Mix Asphalt Facilities in Indian Country and the related implementation tools.

One commenter recommended that the EPA use South Coast Air Quality Management District (SCAQMD) documents to develop some of the standards for asphalt plant equipment. We did consider SCAQMD rules when we developed some of the nonattainment area emission requirements in the HMA general permit because many of the nation's tribal nonattainment areas are in California. One commenter recommended that asphalt batch plants, process heaters, and storage tanks also be subject to Best Available Control Technology (BACT [24]). We agree that additional requirements for combustion units and asphalts tanks at HMA plants planning to locate or modify in nonattainment areas is appropriate and, accordingly, have modified the HMA general permit to include additional requirements for combustion units and asphalt tanks for nonattainment areas.

One commenter recommended that the EPA add a requirement for hot asphalt conveying, mixing, and truck load out to have ''Blue Smoke Control.'' The EPA considers the proposed opacity limits and weekly opacity monitoring requirements to be adequate for controlling visible emissions from HMA facilities. Two commenters stated that the requirements to submit annual compliance and deviation reports are overly cumbersome when compared to state requirements applicable immediately outside reservations. The EPA notes that the provision requiring submittal of annual compliance monitoring and deviation reports is included in the Federal Indian Country Minor NSR rule itself and is, therefore, properly included in general permits.

Commenters noted that, while the EPA used existing state general permits as the standard for the proposed HMA general permit, it picked more stringent permit requirements from the state permits reviewed, and created overly burdensome and duplicative requirements, creating an economic disadvantage for operators on tribal lands. The EPA notes that the primary purpose of a preconstruction review program is to protect air quality. The EPA believes that establishing a reasonable level of equality between what is required of sources locating in Indian country and sources locating outside of Indian country is an important secondary consideration; however, it is challenging to develop a single general permit for use across all tribal lands that would adequately protect air quality and create a perfectly level playing field.

Two commenters stated that the EPA failed to recognize that many HMA plants are portable in operation, and that the proposed general permit does not allow the flexibility necessary to easily relocate HMA plants. The EPA notes that the proposed HMA general permit includes provisions allowing relocation of the HMA facility as long as the alternate location(s) is (are) identified in the Approval of the Request for Coverage. For HMA facilities (and SQCS facilities), three commenters recommended that the EPA adopt an approach based on generalized relocation criteria that would not require identification of specific locations. The EPA disagrees with the commenters. The purpose of the preconstruction permitting program is to protect air quality and a determination of whether that goal is actually being met is dependent on knowing where a particular facility is going to be located. The EPA has, however, revised the Request for Coverage Form to clarify that the applicant may identify multiple locations for which the applicant is seeking coverage under the General Permit, including potential future locations.

One commenter stated that requiring operators to submit to the EPA a notice of construction each time the facility begins or resumes operations provides unnecessary enforcement risk to operators on tribal lands and should be stricken from the proposed HMA general permit. The EPA considers these notifications necessary to document when the requirements in the permit become applicable. Two commenters recommended that the EPA recognize an existing stack test on the same facility approved by an adjoining state agency, as stack tests are expensive, and the HMA industry has thin (profit) margins, creating an economic disadvantage for operators on tribal lands. The EPA has determined that it will allow a previous performance test that meets the performance test requirements

[23] Comments received on throughput limits and setback requirements for the HMA plants and SQCS facilities general permits are addressed in Sections IV.F. and IV.G., respectively.

[24] For federal purposes, BACT is a requirement for major sources under the PSD Program. However, the term is being used as it is used by the SCAQMD air program in the context of minor source NSR permitting in nonattainment areas.

identified in the HMA general permit to be used in lieu of an initial performance test, as long as conditions that might affect the facility's performance have not changed since the previous performance test was conducted.

One commenter stated that the restriction on HMA plants locating in severe and extreme ozone nonattainment areas and serious carbon monoxide (CO) nonattainment areas would place a restraint on any Indian tribe in these areas that might want to establish or attract an HMA plant for economic development purposes. The EPA notes that in severe and extreme ozone nonattainment areas, the air quality is already considerably degraded and that any additional impacts associated with a new facility must, therefore, be carefully evaluated before allowing construction to proceed. Although the EPA considered throughput limits for facilities locating in severe and extreme ozone nonattainment areas, we determined that these limits would need to be set at very low levels and would not provide sufficient flexibility for sources. The EPA revised the proposed HMA general permit to allow sources locating in serious CO nonattainment areas to be eligible for the permit, but maintained the exclusion for severe and extreme ozone nonattainment areas.

Two commenters noted that the proposed HMA permit requirements create major-source like requirements for true minor sources and synthetic minor sources, and noted that the proposed HMA general permit is a very complex permit for a not very complex industry. The EPA believes that the conditions in the general permit for this source category are appropriate. The complexity of this source category is demonstrated by there being multiple pieces of equipment and/or processes and pollutants and it being typically collocated with SQCS facilities. Protecting air quality for sources in such a source category necessitates a more comprehensive and specific set of emissions limitations and standards and associated requirements. It is important to also keep in mind that a comparison of the requirements in the EPA's proposed HMA general permit and the limits listed in Attachment A of the HMA background document [25] demonstrate that the EPA's proposed general permit for HMA plants is not the most stringent, nor the least stringent, in the country for HMA plants. The EPA's limits on throughput, fuel use, fuel sulfur content, nitrogen oxides emissions, CO emissions, and particulate matter (PM) emissions for attainment, unclassifiable or attainment/unclassifiable areas are all within the range of limits established by states in their general permits.

Two commenters noted that the EPA did not provide any opportunity to use on-specification waste oil or used oil, which is common in the asphalt industry, and could create an economic disadvantage for operators on tribal lands. Another commenter stated that the HMA permit sulfur content limit for liquid fuels (<0.0015 percent sulfur) is a very stringent on-road fuel standard being applied to stationary or non-road equipment, and that this creates a disadvantage for operations on tribal land. The EPA has accounted for the use of waste oil and recycled oil in the definition of ''distillate fuel'' in Attachment B to the final General Permit.[26] ''Distillate fuel'' is defined as ''fuel oils, including recycled oils that comply with the specifications for fuel oil numbers 1 and 2, as defined by ASTM 396, or equivalent.'' Regarding sulfur content limits, we have limited the sulfur content for all fuels used to less than 0.0015 percent sulfur in order to maintain consistency with the current fuel standards for sulfur in 40 CFR 80.510, which are already required for engines under NSPS subpart IIII (Stationary Compression Ignition Internal Combustion Engines) and National Emission Standards for Hazardous Air Pollutants (NESHAP) subpart ZZZZ (Stationary Reciprocating Internal Combustion Engines). One commenter noted that the EPA created duplicative requirements for engines that already have extensive federal requirements applicable through EPA engine standards: NSPS, Maximum Achievable Control Technology (MACT), and on-road engine rules. The EPA acknowledges that the permit includes requirements for engines that are covered by NSPS and NESHAP engine rules. However, we did not simply duplicate the NSPS and NESHAP requirements in the permits. Instead, we conducted a case-by case control technology review of the source category and established engine requirements that are consistent with the NSPS and NESHAP requirements. This approach is consistent with the requirement of the Federal Indian Country Minor NSR rule, which requires that each permit include applicable emission limitations that assure each affected emissions unit will comply with all requirements of parts 60, 61 and 63.

One commenter stated that fuel consumption limits are overly burdensome and unnecessary for determining compliance with the HMA general permit, and recommended that they be removed from the General Permit. The EPA is retaining the fuel consumption limits in the final general permit in lieu of ton-per-year emission limits because tracking fuel use is easier for sources and, thus, reduces the burden of having to calculate and track emissions. Two commenters noted that the EPA did not provide any allowance or justification for not allowing wet scrubbers for particulate controls when they may be allowed on adjoining state lands, creating an economic disadvantage for operators on tribal lands. The EPA agrees with the commenter and has added provisions to the HMA general permit to allow for the use of a wet scrubber in appropriate circumstances. One commenter recommended that the EPA remove the provision requiring that extra bags and spare parts be maintained onsite, and allow operators the choice to shut down a facility that has a torn bag in the baghouse until a replacement is transported to the site. The EPA agrees with the commenter and has modified the permit to suggest the permittee maintain extra bags and spare parts on site to ensure timely repair. However, replacements bags can be transported on site when needed. In either case, the permittee must shut down the facility until a replacement bag is installed.

The EPA received numerous comments on the draft General Permit for New or Modified True Minor Source Stone Quarrying, Crushing and Screening Facilities in Indian Country and the related implementation tools. Two commenters stated that a monthly total emissions limitation based on a 30-day rolling total would be appropriate since an SQCS facility can relocate much like an HMA plant, and even perhaps to an area in nonattainment for PM_{10}. One commenter recommended that, as an alternative, the EPA could retain the 12-month period limits on raw material throughput but establish different throughput production limits for areas in attainment and for areas in serious, severe, or extreme nonattainment for PM.[27] The EPA has considered the commenters' suggestion

[25] The background documents are available online at: *http://www.epa.gov/air/tribal/tribalnsr.html* and at Docket ID No. EPA–HQ–OAR–2011–0151.

[26] The final general permits are available online at: *http://www.epa.gov/air/tribal/tribalnsr.html* and at Docket ID No. EPA–HQ–OAR–2011–0151.

[27] Subpart 4, which contains the provisions governing requirements for PM nonattainment areas, provides for only moderate and serious classifications.

and agrees that the approach used in the HMA general permit is appropriate for SQCS facilities since they often also need to relocate and are frequently collocated with HMA plants. The EPA replaced the proposed annual throughput limit with monthly throughput limits for both raw material and fuel. The limits are set at a level which will generally keep the combined emissions of a collocated SQCS facility and a HMA plant at a level that does not trigger title V applicability (see Section IV.K. Use of More Than One General Permit and/or Permit by Rule for a Source at a Single Location). The general permits for both HMA plants and SQCS facilities are written for use by both true minor sources and synthetic minor sources. The permits contain one set of requirements for each that apply to true minor sources and synthetic minor sources and include a margin of safety between the permitted throughput limit and the major source thresholds (see Section IV.I. Use of General Permits and Permits by Rule to Create Synthetic Minor Sources). In addition, the control technology determinations proposed are contained in the final general permits. They cover a myriad of emissions points at sources in these categories, including engines, mixers, dryers, and heaters.

One commenter recommended that the EPA consider SCAQMD Rule 1157 to address particulate emissions from SQCS equipment. The EPA has reviewed Rule 1157 and notes that the draft permit conditions appear to be at least as stringent as those suggested by the commenter. One commenter noted that the draft general permit assumes that all engines used for this operation would be diesel-fired compression ignition engines and asked why provisions for spark ignition (SI) engines and the use of other fuels were not included. The EPA has not included provisions for SI engines in the final SQCS permit because the EPA believes that it is unlikely that many minor sources in this source category are using SI engines. Electricity for the motors running the crushers, screens, and conveyors at SQCS facilities is provided either by grid electric power or by diesel engines. Diesel engines are preferred in this source category because of their improved efficiency and reliability in these heavy work-intensive, industrial applications versus SI engines. In the EPA's view, adding SI engines to the SQCS general permit is, therefore, not necessary.

One commenter recommended that the general permit reference the specifics of compliance such as stack testing and emission limits to the NSPS and MACT requirements in the federal regulations. The EPA notes that the emission limitations in the SQCS general permit are intended to ensure compliance with the applicable NSPS and NESHAPs for this source category, as required by the Federal Indian Country Minor NSR rule. However, the EPA's pre-construction permitting program under the Federal Indian Country Minor NSR rule is not an operating permit program. The terms and conditions in permits issued pursuant to the Federal Indian Country Minor NSR rule are enforceable independent of the NSPS and NESHAP requirements.

Two commenters stated that the requirements in the SQCS permit can be damaging to tribal member-owned companies and may cause them to go out of business. The EPA does not believe that the requirements in the SQCS permit will be damaging to tribal member-owned companies. During the development of the draft permit, the EPA conducted research to identify, review and incorporate similar throughput limits, fuel usage limits, fuel sulfur limits, fugitive dust suppression methods, and engine emission and opacity limitations in state-issued permits. Based on this analysis, we have determined that the emission limitations and controls proposed in the general permit for both attainment and nonattainment areas are consistent with what is required of similarly located SQCS facilities across the country and, therefore, would not present an unfair or undue burden for tribal member-owned sources.

The EPA received comments on whether to establish a single, combined permit for HMA and SQCS facilities. One commenter stated its preference for a permitting approach that requires each HMA plant and SQCS facility to request coverage under its own general permit, rather than placing both sources under one general permit. Another commenter stated that collocation of HMAs and SQCSs is quite probable, but believed that they cannot be combined and permitted in one permit. One commenter did not support offering a single permit for both facilities because most often it would be two different companies. One commenter recommended that HMAs and SQCSs be permitted separately, but when operated at the same location and utilizing materials from one operation to another that they combine (and limit) the emissions (as if they were one source) to protect the airshed without creating an emissions loophole. Another commenter recommended that a single general permit should be issued covering sources that are co-located in addition to issuing separate general permits for each source, noting that the requirement for co-located sources would be used to ensure that the two sources' combined emissions are below the major source thresholds.

The EPA has considered the concerns and recommendations of commenters and has determined that it is appropriate to maintain separate permits for HMA and SQCS sources even when they are co-located. In the final HMA and SQCS general permits, however, the EPA is providing alternative throughput and fuel limits for instances where an HMA operation and an SQCS operation are co-located and the owner/operator wants to ensure that combined emissions are below the title V permitting thresholds. Each source should contact its reviewing authority if it intends to rely on the emission limitations and standards in the HMA and SQCS general permits to prevent having to obtain a title V permit. The Request for Coverage Forms were revised to allow applicants to request the co-location option.

In addition, the co-location option for these source categories is not available in serious, severe and extreme ozone nonattainment areas. For severe and extreme areas, the co-location option is not available because the HMA general permit alone is not available in those areas because the major stationary source thresholds are very low in these types of areas, and we do not envision that any minor source HMA plants would be able to meet the thresholds through a general permit. Similarly, for serious areas, in trying to set co-location limits for these source categories that are set low enough to meet the 50 tons per year major source threshold for serious areas, we found that we would have to set the throughput limits at levels so low that we do not envision minor, co-located sources being able to meet the limits. In these cases, we believe that co-location is more appropriately handled for these sources thorough a site-specific permit.

(c) Auto Body Repair and Miscellaneous Surface Coating Operations

The EPA received numerous comments on the draft General Air Quality Permit for New or Modified True Minor Source Auto body Repair and Miscellaneous Surface Coating Operations in Indian Country [28] (the

[28] The comments we received also apply to the Air Quality Permit by Rule for New or Modified True Minor Source Auto body Repair and Miscellaneous Surface Coating Operations in Indian Country that the EPA proposed in the alternative.

Continued

Auto body General Permit) and the related implementation tools. One commenter recommended that, for ozone nonattainment regions, the EPA should consider requiring the most stringent emissions limitation or installation of BACT based on the requirements of the neighboring air district regardless of a facility's PTE or throughput, and recommended that the EPA use the most recent version of the SCAQMD BACT requirements for serious, severe, and extreme ozone nonattainment regions. The EPA has incorporated many of the SCAQMD BACT [29] requirements, as well as amended volatile organic compound (VOC) content limits, into the Permit by Rule that we are finalizing for this source category versus a general permit. We did not include requirements for activities that we do not expect to be located at sources eligible for this permit by rule.

One commenter stated that the materials-use provisions in the draft Auto body General Permit are unclear, while another commenter recommended that the EPA specify the coating VOC content limits in grams per liter or pounds (lbs) per gallon, excluding water. The EPA based the material-use provisions in the draft Auto body General Permit on a worst-case VOC content limit of 8.34 lbs per gallon and then limited use to 5,000 gallons of materials with a VOC content of 8.34 lbs per gallon or less per year. As recommended, the EPA has also specified coating content limits in grams per liter. One commenter recommended that an emission limit based on the Federal Indian Country Minor NSR rule ton per year permitting thresholds be used instead of a throughput limitation. The EPA chose to include limitations on material use in lieu of ton-per-year emission limits because tracking material use is easier for sources and, thus, reduces burden. The EPA's research of state permitting programs indicates that states are using material-use limits for these sources.

One commenter recommended that the EPA consider adding a requirement that prohibits the use of automotive coatings that contain cadmium or chromium to help ensure adequate public health protection. The Federal Indian Country Minor NSR rule permitting program does not provide the EPA authority to regulate hazardous air pollutants (HAPs) other than through the issuance of a synthetic minor permit. Therefore, the content limits do not address cadmium or chromium. One commenter recommended that the EPA add limits and work practices for stripping operations in the permit. The EPA notes that the recommended limits for stripping operations primarily address HAPs. As the EPA lacks authority under the NSR program to impose such limits and the commenter did not provide information indicating that such work practices are necessary for other reasons, the EPA has not included limits or work practices for stripping operations.

One commenter stated that the term ''reasonable time'' is subjective and not easily enforceable as it pertains to reviewing authority information requests of permittees. This commenter recommended that a specific time frame should be included in the permit. The EPA agrees with the commenter and replaced ''reasonable time'' with ''30 days unless another timeframe is specified by the EPA.'' We have made this change in all of the final permits in this action. One commenter recommended that the Auto body General Permit identify a specific test method to ensure consistency in determining the efficiency of filters used in conjunction with capturing paint overspray in enclosed painting areas. The EPA agrees and has revised the permit by rule accordingly. One commenter noted that airless and air-assisted airless spray guns are not equivalent to high volume, low pressure (HVLP) spray guns and recommends that their use not be allowed under Section 2: Emission Limitations and Standards, Conditions 19 and 33 of the draft general permits, unless the spray gun manufacturer can demonstrate that their device is capable of achieving transfer efficiency comparable to that of an HVLP spray gun. The EPA agrees with the comment in the context of serious, severe, and extreme ozone nonattainment areas. The more stringent requirement recommended by the commenter will only apply to these nonattainment areas. For other areas, consistency with the spray gun requirements in 40 CFR part 63 Subpart HHHHHH is more appropriate. One commenter requested that the exemption for spray guns with a cup capacity of 3 fluid ounces or less be removed for facilities located in serious, severe or extreme ozone nonattainment areas. The commenter recommended continuing to exempt spray guns with this capacity used in air brush operations. The EPA agrees, and has changed the permit by rule. One commenter recommended that the EPA require installation and maintenance of a pressure gauge across each filter bank. The EPA agrees, and has revised the permit by rule, accordingly.

One commenter recommended that the EPA revise the definitions for ''Air Brush Operations,'' ''Freeboard Area,'' ''Freeboard Height'' and ''Liquid Leak.'' The EPA agrees that the suggested changes are appropriate and, therefore, revised the definitions as suggested, except for ''Air Brush Operations'' because the term is not included in any of the conditions of the final Auto body Permit by Rule. One commenter recommended that, in the surface coating permit, the expected transfer efficiency of the HVLP spray gun be defined. The EPA disagrees. The draft Auto body General Permit defines an HVLP spray gun consistent with 40 CFR part 63 Subpart HHHHHH, and we prefer to maintain consistency with this regulation. One commenter stated that the materials use provisions for cold cleaning solvent in the draft Auto body General Permit are unclear, and recommended that an emission limit be used instead. The EPA believes that the requirements are sufficiently clear and that the materials use requirements are preferable to an emission limit in this context because it is far easier for small sources to track material use than emissions. As a result, the EPA is retaining material use limits in the final permit by rule.

One commenter requested clarification on whether sources that do not exceed the permitting limit in the Federal Indian Country Minor NSR rule, but are subject to the MACT, still need to obtain a general permit. In response, the EPA notes that sources that are subject to a NESHAP, but whose emissions do not exceed the permitting thresholds for the Federal Indian Country Minor NSR rule, are not required to obtain a minor source permit. One commenter stated that the Auto body General Permit requires the permittee to keep records of the VOC and HAP content of the solvent used in a solvent degreaser, but asked why the permittee would need to keep records when there are no limits on the VOC content of the solvents. The EPA agrees and revised these recordkeeping requirements to require the Material Safety Data Sheet (MSDS) to be maintained for each solvent degreaser, consistent with the requirements for other VOC-containing material in the permit.

One commenter noted that, in the notification of construction or modification requirement, it is not clear

In this final action, we are promulgating a permit by rule for the auto body source category.

[29] For federal purposes BACT is a requirement for major sources under the PSD Program. However, the term is being used as it is used by the SCAQMD air program in the context of minor source NSR permitting in nonattainment areas.

whether the notification required for beginning operations is within 30 days of start of construction or within 30 days after operations begin or resume. The EPA has revised the final Auto body Permit by Rule to clarify that the permittee must provide written notice within 30 days of beginning construction, and within 30 days of beginning initial operations or resuming operations after a modification.

One commenter requested clarification on when the refresher training is required for spray booth operators. The EPA has updated § 49.162(f) to the final Auto body Permit by Rule to specify that training must be conducted within 180 days for new hires and that operators must be re-certified at least every 5 years thereafter.

(d) Gasoline Dispensing Facilities

The EPA received numerous comments on the draft General Air Quality Permit for New or Modified True Minor Source Gasoline Dispensing Facilities in Indian Country [30] (the GDF General Permit) and the related implementation tools.[31] One commenter stated that, for GDFs, the percent onboard refueling vapor recovery (%ORVR) estimate seems optimistic, and that basing applicability on throughput based on those assumptions may under estimate source emissions. The EPA disagrees with the commenter. The EPA determined the %ORVR for the vehicle fleet based on an agency analysis using the 2012 memorandum, ''Updated Data for ORVR Widespread Use Assessment,'' [32] and believes this analysis is well substantiated. Therefore, the EPA has continued to rely on this analysis in establishing the throughput limits in the Permit by Rule that we are finalizing for this source category versus a general permit. One commenter supports the inclusion in the GDF General Permit of standing loss control (SLC) requirements for above ground storage tanks (ASTs) in those parts of Indian country that are located in serious, severe and extreme ozone nonattainment areas. The EPA has determined that SLC requirements for VOC emissions from ASTs should be applied to GDFs in Indian country serious, severe and extreme ozone nonattainment areas as we proposed. In doing this, the EPA has tried to balance the requirement to protect the National Ambient Air Quality Standards (NAAQS) with the desire to provide a level regulatory playing field.

One commenter noted that the proposed GDF General Permit requires Stage I control for both underground and aboveground storage tanks and SLC for aboveground storage tanks, but that Stage II control is not required under the General Permit, even though Stage II control is still required in some states. The commenter recommended that the EPA require Stage II controls in states that still require Stage II controls, Phase II Enhanced Vapor Recovery (EVR) systems, and Phase II EVR systems in all serious, severe or extreme nonattainment areas. Another commenter recommended that the EPA require In-Station Diagnostics (ISD) for all GDFs that dispense more than 600,000 gallons per year. Another commenter recommended that vapor recovery systems be certified.

The EPA previously issued a notice of final rulemaking to allow states to phase out Stage II controls for serious, severe and extreme ozone nonattainment areas (77 FR 28772, May 12, 2012). At that time, the Administrator made the determination that ORVR is in widespread use, and that Stage II controls could be removed to reduce costs for redundant control, as authorized under section 202(a)(6) of the CAA. The rule allowed, but did not require, states to discontinue Stage II vapor recovery programs. California has chosen to continue requiring the program. The additional emission reductions associated with the use of Stage II controls continue to be necessary and are required to be included in California plans for demonstrating how they will attain the NAAQS. We do not, however, anticipate any other areas in the country continuing to require Stage II controls at new or modified GDFs. Based on California's decision to continue to require the use of Stage II controls, and the fact that such controls are not necessary in other areas of the country, we have, however, determined that the use of the proposed permit by rule, which does not include Stage II controls, in California is not appropriate. As a result, while the final permit by rule for GDFs will not include Stage II controls, sources located in California will not be eligible to use the permit by rule. This approach will allow EPA Region 9, the current reviewing authority in all areas of California, to develop a general permit or permit by rule for areas within California that is tailored to address the unique air quality concerns in that area of the country. Requirements for the use of ISD and the certification of vapor recovery systems are not included in this final permit as these requirements are associated with Stage II systems.

One commenter supports the exemption for tanks with less than 250 gallon capacity. Commenters requested that the EPA modify several conditions in the draft GDF General Permit and Appendices to clarify control equipment requirements, add housekeeping measures, revise testing requirements, delete inconsistencies, and revise definitions. The EPA agrees with some of these requests and disagrees with others. The EPA made changes to the permit where we deemed that the change would strengthen the permit's ability to protect air quality. One commenter requested that the EPA revise the monitoring requirements in the draft GDF General Permit to add a requirement for the daily visual inspection of equipment. The EPA revised the permit to include a requirement for a daily visual inspection of equipment in extreme ozone nonattainment areas. One commenter recommended that the EPA make several changes in the draft general permit to Attachment C: Vapor Balance System Design Criteria, Management Practices, and Performance Testing, Paragraph 11, relating to applicability, technical references, and certifications for ASTs. The EPA concurs and has made the changes.

One commenter recommended that the MACT standard for GDFs, 40 CFR part 63, subpart CCCCCC, should be referenced in the GDF General Permit, and noted that the permit conditions in the draft general permit are more stringent than are the MACT requirements in some respects. The requirements included in the permit are intended to harmonize with the existing NESHAP rule to the greatest extent possible. We have tried to maintain consistency with 40 CFR part 63, subpart CCCCCC to streamline the permit and to reduce burden to sources who may need to comply with both requirements. More stringent requirements were included for GDFs in certain nonattainment areas to protect the NAAQS.

(d) Petroleum Dry Cleaning Facilities

The EPA received comments on the draft General Air Quality Permit for New or Modified True Minor Source Petroleum Dry Cleaning Facilities in

[30] The comments we received also apply to the Air Quality Permit by Rule for New or Modified True Minor Source Gasoline Dispensing Facilities in Indian Country that the EPA proposed in the alternative. In this final action, we are promulgating a permit by rule for the GDF source category.

[31] While we did not receive comments on setting a throughput limit for the GDF permit by rule for marginal and moderate ozone nonattainment areas, we are adding one for the GDF permit by rule for those areas (see Section IV.F. for a fuller discussion of throughput limits).

[32] The memorandum can be found at: Docket Id. No. The EPA–HQ–OAR–2010–1076.

Indian Country [33] (the Petroleum Dry Cleaning General Permit) and the related implementation tools. Two commenters agreed with the throughput limits and inspection requirements for dry cleaning facilities, while another commenter stated the inspection timeframes and repair deadlines for dry cleaning dryers were burdensome. One commenter recommended that the EPA include BACT [34] guidelines for new petroleum dry cleaning equipment in nonattainment areas identical to the SCAQMD BACT guidelines, while another commenter noted there would be costs associated with meeting the draft requirements for nonattainment areas in the permit. One commenter recommended that the MACT standard for dry cleaners be referenced in the General Permit. One commenter stated its belief that the draft permit conditions are more stringent than the MACT requirements, and recommended that the EPA remove any sections from the General Permit that duplicate the MACT rule. The EPA has determined that it will maintain the proposed throughput limits and inspection requirements in the Permit by Rule that we are finalizing for this source category versus a general permit. The EPA believes the timeframe for inspections and repair is reasonable, as these are equivalent to requirements in the Petroleum Dry Cleaners NSPS (40 CFR part 60, subpart JJJ). The EPA intended to include more stringent requirements for sources locating in certain ozone nonattainment areas. The EPA did not intend to include standards from the NESHAP standard for perchloroethylene dry cleaners (40 CFR 63, subpart M) in the permit by rule as the permit is not intended to regulate emissions of HAP. Instead, the EPA drew upon requirements from the Petroleum Dry Cleaners NSPS (40 CFR part 60, subpart JJJ) in establishing the requirements in the draft permit. The EPA believes that more stringent provisions are necessary in serious, severe, and extreme ozone nonattainment areas and has included such provisions in the final permit by rule. As these nonattainment provisions are largely drawn from state and local requirements, the EPA believes that the final permit conditions are reasonable for areas with impaired air quality and consistent with the requirements in other areas outside of Indian country.

B. Requirements of the Endangered Species Act (ESA) and the National Historic Preservation Act (NHPA)

1. Proposed Rule

The ESA requires federal agencies to ensure, in consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (the Services), that any action they authorize, fund, or carry out will not likely jeopardize the continued existence of any listed threatened or endangered species, or destroy or adversely modify the designated critical habitat of such species. Under relevant ESA implementing regulations, federal agencies consult with the Service(s) on actions that may affect listed species or designated critical habitat.

The NHPA requires federal agencies to take into account the effects of their undertakings on historic properties—*i.e.,* properties that are either listed on, or eligible for listing on, the National Register of Historic Places—and to provide the Advisory Council on Historic Preservation (the Council) a reasonable opportunity to comment on such undertakings. Under relevant NHPA implementing regulations, NHPA consultations are generally conducted with the appropriate Tribal and/or State Historic Preservation Officers in the first instance, with opportunities for direct Council involvement in appropriate circumstances. The Federal Minor NSR Program in Indian Country has increased the number of activities for which the EPA is the permitting authority. To ensure appropriate consideration of listed species and historic properties, we provided draft screening processes in Appendices A and B to the draft Request for Coverage Forms for the draft general permits that we made available for comment.

2. Final Action, Comments and Responses

This section provides a brief summary of significant comments received and our responses. Overall, as a result of the comments in this final action, we are largely retaining the processes we proposed, but with some important adjustments. In terms of process, as discussed in Section IV.H. Permit by Rule Regulatory Framework, we have modified the permit by rule process to require that a source planning to seek coverage under a permit by rule must first demonstrate it has adequately completed the screening processes for threatened and endangered species and historic properties, and received a written letter from the EPA indicating that the processes have been satisfactorily addressed, prior to notifying the reviewing authority that it is covered under the permit by rule.[35] (To this end, as noted above, for the permits by rule, we have separated the screening processes from the Notification of Coverage Forms and created a separate 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.'') Responses to individual comments are set forth in Section 2.4 of the RTC Document.

One commenter expressed support for requiring applicants to meet the screening requirements for protected resources. We note that the EPA has revised terminology in the screening procedures for the protected resource screening procedures to provide greater clarity, but has otherwise largely retained the proposed procedures. One commenter asked if the EPA will be including the endangered species and historic preservation requirements in all air permitting actions. At this time, the EPA is only requiring sources to complete threatened and endangered species and historic property screening procedures in order to obtain coverage under the general permits and permits by rule being finalized in this action. Any issues related to other air permitting action not included by this final action are beyond the scope of this action.

One commenter inquired if the threatened and endangered species clause (*i.e.,* the ESA) is also included in the title V permits. This rulemaking action is not within the scope of the title V permit program (*i.e.,* sources in Indian country that are defined as major sources or otherwise required to obtain operating permits under 40 CFR part 71); thus, the comment is outside the scope of this action. One commenter requested clarification on which geographic areas the ESA ''action areas'' would encompass. For purposes of the listed species screening procedures, the EPA uses the definition of the term ''action area'' found in 50 CFR 402.02 of the ESA regulations; however, we have added additional information in the

[33] The comments we received also apply to the Air Quality Permit by Rule for New or Modified True Minor Source Dry Cleaning Facilities in Indian Country that the EPA proposed in the alternative. In this final action, we are promulgating a permit by rule for the petroleum dry cleaning source category.

[34] For federal purposes BACT is a requirement for major sources under the PSD Program. However, the term is being used as it is used by the SCAQMD air program in the context of minor source NSR permitting in nonattainment areas.

[35] In some cases, the EPA may delegate to an Indian tribe the authority to assist the EPA with administration of the Federal Indian Country Minor NSR rule (including the permits by rule). However, even where such a delegation occurs, the EPA will retain responsibility for providing notification to sources that the listed species and historic property processes have been satisfactorily addressed.

screening process to further explain considerations in determining the action area.

Multiple commenters expressed concerns about the ability of permit applicants to meet the time, expertise, and cost burdens associated with complying with the listed species and historic property screening requirements. The EPA understands that satisfactorily addressing the screening procedures for threatened and endangered species and historic properties will impose some burden on sources seeking permits. However, we have attempted to streamline the screening processes in order to minimize the effort needed to complete them. For example, both sets of procedures have been clarified to make more explicit that sources can rely on prior assessments performed by other federal agencies to satisfy the procedures.

One commenter believes that it is not appropriate for the EPA to use a process to demonstrate compliance with the ESA and NHPA that is modeled after the National Pollutant Discharge Elimination System (NPDES) general permit for Stormwater Discharge from Construction Activities. The commenter requested that the EPA defer the regulation of ESA and NHPA to Federal Land Management Agencies (FLMs). The EPA believes that the screening procedures included in the general permits and permits by rule are appropriate means to ensure proper review of possible effects on threatened and endangered species and historic properties as sources seek coverage under the permits. Where available, and to avoid duplication of efforts, we believe it is appropriate for facilities seeking to be covered under the general permits or permits by rule to use listed species and historic property assessments, analyses, and outcomes obtained through the FLMs' separate compliance with the ESA and NHPA in connection with their own actions to satisfy the relevant screening procedures of the minor NSR general permits and permits by rule. For the permits by rule, we have modified the protected resource procedures in Appendix A of the document titled ''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'' to clarify that this approach is the first consideration in the screening process. For the general permits, we have made the same change to the protected resource procedures that are attached to the Request for Coverage Forms.

One commenter stated that, because no regulatory text has been provided with respect to the EPA's proposed approach to addressing ESA and NHPA requirements, it is impossible to fully evaluate the EPA's proposal. The commenter also noted that the EPA's ESA/NHPA approach poses a number of potentially significant problems: (a) The proposed rule does not expressly address whether this rulemaking action is itself subject to the ESA and NHPA; (b) the process the EPA identifies for ensuring compliance with the ESA and NHPA involves requiring applicants to interface with the agencies responsible for guiding implementation of the ESA and NHPA in the absence of any procedure governing that interaction; (c) there are no clear timeframes for these agencies to respond to an applicant's request for coordination; and (d) the legal consequences of certifying compliance with the ESA and NHPA are undefined. This commenter also noted that the process does not acknowledge the importance of the EPA's role in compliance with the ESA and NHPA, stating that the no effect determination, or any obligation to undertake consultation with other federal agencies, is the EPA's responsibility and that the EPA should not defer to the opinions of other agencies.

The EPA notes that it is the issuance of the general permit or permit by rule that triggers any ESA/NHPA requirement, not the separate coverages of individual sources. To address these requirements, the EPA has established the listed species and historic properties screening procedures via this action to provide an effective means of identifying and addressing any impacts on the protected resources as sources seek coverage. We note that sources must demonstrate satisfactory completion of the screening procedures and that this demonstration must form part of the legal basis that the source is eligible for coverage under the general permit or permit by rule. To provide an opportunity for the public to review these screening procedures, all of the five proposed general permits and associated implementation tools were made available in the docket for review and comment. The applications for each draft general permit contain appendices (Appendix A for listed species and Appendix B for historic properties) with the detailed screening procedures that an applicant will follow to assess the potential impacts of their source as it pertains to the relevant protected resources. We specifically requested comment on these general permits and implementation tools and believe that our process provided an appropriate opportunity for public involvement.

One commenter recommended that the EPA should include a determination expressly finding that the minor sources on tribal lands subject to the Federal Indian Country Minor NSR rule will have no effect on any species listed under the ESA, nor any potential effects on resources protected by the NHPA in the final permit. This commenter stated that the use of the term ''significant risk'' (''. . . based on the evaluation of available information, that the sources that are the subject of this proposal are unlikely to present a significant risk to listed species and critical habitat and to historic properties . . .'') confuses the issue, as that term is not the relevant standard under the ESA or NHPA for determining whether regulatory requirements pursuant to those statutes apply. The commenter believes that the EPA should instead conclude that minor sources on tribal lands subject to the Federal Indian Country Minor NSR rule are likely to have ''no effect'' on any listed species or critical habitat, and no potential to affect historic properties.

The EPA does not believe that a single determination for all new sources in Indian country that may be covered under a general permit or permit by rule would be appropriate. To ensure that appropriate consideration of any potential impacts on listed species or historic properties occurs, we believe a level of site-specific assessment is needed, primarily for the purpose of investigating potential land disturbance activities but also to address any other potential impacts. We believe the source screening procedures contained in the Request for Coverage Forms for general permits and ''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'' for permits by rule are the most efficient way to make those determinations.

C. Use of Streamlined General Permit Applications

1. Proposed Rule

In the proposed rule, we sought comment on the appropriateness of utilizing permits by rule for three source categories as an alternative to general permits: auto body repair and miscellaneous surface coating operations, GDFs, and petroleum dry cleaning facilities. We specifically requested comment on the permit by rule notification procedures.

2. Final Action, Comments and Responses

This section provides a brief summary of significant comments received regarding the appropriateness of utilizing permits by rule and streamlined notification forms, and our responses. (Since we are not issuing general permits for the three source categories, we will not be issuing any general permit applications for those categories.) Responses to comments on the use of streamlined notification forms for the permits by rule in today's action can be found in Section 4.0 of the RTC Document.

Several commenters provided support for EPA's proposed use of streamlined permit applications for permits by rule. Some commenters noted that several states and local reviewing authorities use permits by rule to authorize construction of minor sources and that the EPA has approved several state or local permits by rule in State Implementation Plans. Three commenters asserted that the use of permits by rule would expedite the permitting process and reduce administrative burdens and costs for permitting agencies and/or operators. Four commenters opposed the use of permits by rule for the three source categories. One commenter also opposed the use of permits by rule for any future source categories that the EPA may propose. One of these commenters stated that a lack of notification could result in a permittee missing out on critical permitting steps. The commenter also asked how the EPA or a tribe would be able to review and confirm that a facility is providing the correct information. The commenter asserted that this scenario is no different than the process before the Federal Indian Country Minor NSR rule.

The EPA believes that the use of permits by rule is appropriate for the three source categories. Permits by rule provide a streamlined approach that (a) reduces the time permitting authorities must devote to reviewing permit applications and issuing permits, (b) protects air quality by controlling emissions-generating activities that pose little environmental concern and (c) simplifies the permitting process for sources that pose little environmental concern. The EPA has attempted to balance air quality concerns in Indian country with the resource and workload needs of reviewing authorities. The issuance of general permits for these facilities as compared to covering them with a permit by rule would greatly add to the workload of the reviewing authority without providing greater benefits to air quality. Given the relative simplicity and generally lower emissions of these sources, we have determined that we do not need to conduct a case-specific review to evaluate whether an individual source qualifies for the permit, and we are comfortable requiring only a streamlined notification form from these sources. Because we will need to continue to balance the workload and resource needs of the reviewing authority with the need to protect air quality, we do not agree with the comment that permits by rule should not be used for any future source categories. We note that the permit by rule notifications do not ask for detailed source information because these source categories reflect facilities that are straightforward in their configuration and emissions (they are primarily VOC emission sources), and do not require detailed review or confirmation of the information.

D. Administrative Aspects of General Permits

1. Proposed Rule

The EPA requested comment on the administrative aspects of general permits. Specifically, among other areas, we requested comment on two issues:

(a) Whether the EPA's proposed approach of incorporating by reference each reviewing authority's approval of a Request for Coverage into the general permit is necessary and appropriate; and

(b) The appropriateness of draft permit terms related to the reviewing authority's ability to reopen, revise, or terminate an individual approval of coverage under the general permit.

2. Final Action, Comments and Responses

This section provides a brief summary of significant comments received related to administrative procedures for permit issuance and obtaining coverage under a general permit and permit by rule. Responses to these comments are also addressed in Sections 1.2 and 1.3 of the RTC Document. In this final action, we are providing responses to issues raised in comments, but we have concluded that those comments do not necessitate any substantive changes to the administrative aspects of the permits.

One commenter disagreed with the EPA's proposed procedure for amending general permits, noting that the provision is overly broad and inconsistent with the procedures for amending source-specific permits. This commenter recommends that the EPA treat sources covered by general permits (or permits by rule) in the same manner as facilities covered by source-specific permits.

The EPA's procedure for issuing general permits is governed by 40 CFR 49.156, and the EPA interprets the Federal Indian Country Minor NSR rule to require the provision in 40 CFR 49.156 to be used anytime a general permit is revised (amended). In the proposal (79 FR 2546), the EPA clarified that although a general permit may be revised in the future, we do not intend to use the revision process to subject existing sources already covered by a general permit to new control requirements, unless and until they modify. This process is consistent with how site-specific permits are revised.

A few commenters expressed concern on how the Federal Indian Country Minor NSR rule would address permitting a source that could cause or contribute to a NAAQS violation or a PSD increment violation. Commenters also objected to the EPA's stated preference for general permits, noting that the proposed rule does not address the fundamental problem of a lack of staff at local agencies to process these new regulatory requirements, and recommended that the EPA include a staffing plan and the funding to support it, or use permits by rule instead. Commenters noted that the EPA's ability to terminate a permit for ''cause'' would create uncertainty, and puts tribally owned companies at risk. The EPA believes that the ability to deny coverage is necessary to prevent exceedances of the NAAQS due to cumulative increases in emissions. The EPA recommends that tribes planning to construct tribally-owned facilities work with the specific reviewing authority in their area to address these concerns. The general permit program will help alleviate any potential backlog in the issuance of minor source permits to sources that would otherwise require site-specific permits, allowing limited agency resources to be focused on more complicated sources that require more in-depth review. The conditions under which a permit can be terminated for cause are defined in each general permit; therefore, the situations for which coverage under a general permit would be terminated are fairly specific.

One commenter pointed out that the proposed rule did not include specific regulatory language for any of the proposed permits by rule. This commenter argued that the lack of regulatory text prevented full and complete public review and comment on the proposed rule. The commenter asked that the EPA provide regulatory text and a full explanation of the permit

by rule approach before finalizing the rule. The EPA did not provide specific regulatory language for any of the proposed permits by rule, but rather proposed to codify the requirements of the proposed general permits of the specified source category. For the permits by rule in this final action, we are codifying the requirements as contained in the draft general permit for the three source categories, including changes that we have identified are appropriate based on our review of public comments. We believe that the proposed general permits have provided the public with a sufficient understanding of the contents of the final rule, and, therefore, satisfy our obligations under section 301(a) of the CAA.

E. Control Technology Review

1. Proposed Rule

In the proposal, we requested comment on the EPA's conclusion, based on its control technology review, that the control measures in the draft general permits are currently used by other similar sources in other areas of the country and that the measures in the draft permits are, therefore, technically and economically feasible and cost-effective.

2. Final Action, Comments and Responses

This section provides a brief summary of significant comments received and our responses. Responses to these comments are also addressed in Section 2.2 of the RTC Document. The EPA is largely retaining the basic approach to the control technology review outlined in the January 14, 2014, proposal.

A few commenters expressed concern with the EPA's decision to apply local control requirements on a nationwide basis. They stated that this might lead to a competitive advantage or disadvantage for sources locating in Indian country and tribes could lose revenue as a result. Commenters recommended that the EPA issue regional permits, and that the control requirements for each region should be based on the rules and regulations in adjacent areas, and on the nonattainment status of the area. The EPA addressed the challenge of developing a single general permit for use across a broad range of Indian country by evaluating national EPA standards, as well as state and some local standards currently in place, and then adopting requirements we feel are appropriate and that reflect commonly used standards.

F. Use of Throughput Limits

1. Proposed Rule

The Federal Indian Country Minor NSR rule requires the reviewing authority to establish annual allowable emission limitations for each affected emissions unit and for each NSR regulated pollutant emitted by the unit, if the unit is issued an enforceable limitation lower than the PTE of that unit. *See* 40 CFR 49.155(a)(2). The EPA included throughput, fuel usage, and materials usage limitations and compliance monitoring requirements in the proposed general permits and permits by rule as a means for limiting emissions and demonstrating compliance with those limits. For the five source categories that are the subject of this action, some states (but not all) provide both annual ton per year allowable emission limitations and throughput limits in their general permits. Other state reviewing authorities provide only overall production limits that limit the amount of throughput a facility can process over a period of time. We requested comment on the use of throughput limits as a surrogate for ton-per-year allowable emission limitations, or, alternatively, establishment of annual allowable emission limitations for each pollutant, and the use of throughput limits as surrogate monitoring measures to demonstrate compliance with ton-per-year annual allowable emission limitations.

2. Final Action, Comments and Responses

This section provides a brief summary of significant comments received and our responses. Responses to all comments regarding this issue are set forth in Section 2.3 of the RTC Document. In our final action, we are retaining throughput limits; however, in response to comments we received, we are making adjustments to the throughput limits for the general permits for HMA plants and SQCS facilities. We believe these adjustments are appropriate for three reasons:

- They provide monthly throughput limitations to reflect the fact that HMA plants and SQCS facilities relocate often (see Section IV.A. Permit Documents and Implementation Tools);
- They provide co-located throughput limits to reflect the fact that these facilities are often sited together (see Section IV.K. Use of More Than One General Permit and/or Permit by Rule for a Source at a Single Location); and
- They ensure a margin of safety between a source's permitted throughput limit and the major source thresholds for synthetic minor sources since the general permits for these two source categories are written for use by both true minor and synthetic minor sources (see Section IV.I. Use of General Permits and Permits by Rule to Create Synthetic Minor Sources).

We are also adding a throughput limit to the GDF permit by rule for marginal and moderate ozone nonattainment areas.

The EPA received comments on the use of throughput limitations for HMA and SQCS facilities. A few commenters agreed with the throughput production limits and fuel-type and usage limits stated in the draft permits for HMA plants and SQCS facilities and believe that the emission limitations based on those factors are reasonable. One commenter asserted that the inclusion of different throughput limits in general permits for attainment versus nonattainment areas is unnecessary because each such nonattainment area will have a nonattainment state implementation plan (SIP) that, by definition, will include measures adequate to achieve attainment. The EPA disagrees that the existence of nonattainment SIPs renders the inclusion of nonattainment-area specific emission limitations unnecessary. A state's SIP may or may not account for activities in Indian country and the state may lack authority to implement or enforce the SIP there.[36] As a result, the EPA believes that establishing different throughput limits for nonattainment areas is necessary to help move such areas toward attainment.

Several commenters supported the use of throughput limits noting that monitoring throughput limits, hours of operation and production are more efficient and cost-effective methods for minor sources to demonstrate their compliance. A few commenters advocated that sources be allowed flexibility in demonstrating compliance, including using alternative methods to a throughput limit so that facility capacity is not unnecessarily constrained. A few commenters requested that the General Permit also include clearly defined, enforceable, annual allowable emission limits.

[36] In *Oklahoma Dept. of Environmental Quality* v. *EPA,* 740 F.3rd 185 (D.C. Cir. 2014), the U.S. Court of Appeals for the District of Columbia Circuit held that the state, not tribes or the EPA, has initial primary responsibility for implementation plans under Clean Air Act section 110 in non-reservation areas of Indian country (*i.e.,* dependent Indian communities and Indian allotments) in the absence of a demonstration of tribal jurisdiction by the EPA or a tribe. However, SIPs generally do not apply in reservations, including informal reservations or trust lands, and these areas are believed to comprise the bulk of Indian country.

The EPA notes that these types of permit terms and conditions are commonly found in state general permits and permits by rule. Throughput, materials usage, and hours of operation are easy to track. As a result, limitations on throughput, materials usage and hours of operation are less burdensome than requiring sources to determine emissions on a regular basis in order to demonstrate compliance with an emission limit. If a source feels an alternative limit or compliance monitoring method is more compatible with their operational procedures, they may apply for a source-specific permit to have such criteria considered.

G. Setback Requirements

1. Proposed Rule

For HMA plants and SQCS facilities, we included permit provisions regarding the location of the emitting activities relative to the source property boundary. We call these provisions, which are designed to minimize the near-field impacts of emissions, setback requirements. Under the proposed setback requirement, sources could not locate within a specific distance of the property boundary and nearest residences. We proposed that these provisions seemed both reasonable and prudent measures to protect local air quality and are economically feasible and cost effective.

We invited comments to identify other source categories for which setback requirements should apply. We also welcomed comments on the types of buildings from which we should establish setbacks (*e.g.,* schools, nursing homes). Lastly, we further requested comment on whether the setback requirements conflict with tribal authority over zoning-related matters, and, if so, on how we should resolve that conflict.

2. Final Action, Comments and Responses

One commenter recommended that the EPA add a setback requirement to the HMA permit similar to the one included in the proposed SQCS facilities permit. Another commenter noted that the setback requirements may be difficult for existing sources to meet if the source is modified. Due to the lack of an EPA analysis demonstrating the air quality benefits of requiring setbacks, we lack sufficient information to incorporate them in the final general permits for HMA plants and SQCS facilities. Therefore, the final general permits for HMA plants and SQCS facilities do not contain setback provisions. Nonetheless, the reviewing authority retains the discretion to deny the granting of source coverage under the general permits based on local air quality concerns. The many comments the EPA received on its inclusion of setback requirements in the SQCS and HMA permits, and our responses to those comments, are found in Sections 3.2.1.1, 3.2.1.2, 3.2.4.1, 3.3.4, and 4.2.1 of the RTC Document.

H. Permit by Rule Regulatory Framework

1. Proposed Rule

We proposed to codify a nationally applicable permit by rule for source categories or emissions generating activities for which we have determined that the permit by rule mechanism would offer permit streamlining benefits, while at the same time protecting air quality, into a new section of the Federal Indian Country Minor NSR rule. As proposed, permits by rule would be used to address source categories of true minor sources, where the reviewing authority does not need to conduct an in-depth review to evaluate whether an individual source meets all of the requirements in the permit. 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. We requested comment on all aspects of the streamlined permit by rule approach.

2. Final Action, Comments and Responses

This section provides a brief summary of significant comments received. In our final action, we are codifying nationally applicable permits by rule for three source categories: GDFs, auto body repair and miscellaneous surface coating operations, and petroleum dry cleaning facilities. Overall, as described in greater detail below, we are making two significant changes to the process or framework we proposed in January 14, 2014. First, we are requiring that sources obtain advance, written confirmation from the EPA that the screening procedures have been completed correctly for threatened and endangered species and historic properties. To provide clarification, we have created a new 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,'' that sources will need to use prior to submitting a Notification of Coverage Form. Second, we are making clear the process citizens will need to follow to appeal a source's coverage under a permit by rule.

Under these three permits by rule, individual sources eligible for coverage will be subject to the operational, monitoring and recordkeeping requirements specified in the relevant rule. In this action, in addition to promulgating the three permits by rule, we are amending the Indian Country Minor NSR rule general permit provisions at 40 CFR 49.156 to set forth the unique elements of the permits by rule process. The permits by rule program establishes a more streamlined notification of coverage process that allows an individual applicant to notify the reviewing authority that it meets the eligibility criteria for the permit and the permit conditions. The source will complete the Notification of Coverage Form and submit copies of the form to both the reviewing authority and the appropriate tribal entity to satisfy the registration requirement at 40 CFR 49.160(c)(1)(iii). A copy of the completed form must be kept onsite and made available upon request. This ''notification'' process streamlines permitting for eligible sources and makes it easier for the reviewing authority to implement the permit by rule program compared to traditional site-specific permits and standard general permits.

A permit by rule must be issued according to the applicable requirements in §§ 49.154(c), 49.154(d) and 49.155. A source category permit by rule must include the permit elements listed in § 49.155(a). The reviewing authority will determine which categories of true minor sources are appropriate for coverage under a permit by rule. 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.

Prior to submitting the Notification of Coverage Form to the reviewing authority, a source must demonstrate to the EPA that the endangered or threatened species and historic property screening procedures set forth in the procedures document [37] provided for

[37] The processes are contained in the following document: ''Procedures to Address Threatened and Endangered Species and Historic Properties for

that purpose for the permits by rule have been satisfactorily completed. The source must submit documentation of the endangered or threatened species and historic property screening evaluations to the EPA (and the tribe in the area in which the source is located/locating) for review prior to submitting the completed Notification of Coverage Form and obtaining coverage under a permit by rule. Thirty days after receipt of the documentation, the EPA must notify the source by letter of one of two possible outcomes: (a) The documentation is satisfactory (*i.e.,* the listed species and historic property screening procedures have been completed properly); or (b) the documentation is not adequate and additional information/evaluation is needed. If the initial submittal is deemed deficient, the EPA will identify any deficiencies and may offer further direction on completing the screening process(es). Once the source has addressed the noted deficiencies it must resubmit its updated screening procedure documentation to the EPA for review. The source must obtain written confirmation from the EPA indicating that it has adequately documented that the screening procedures have been properly completed before it can submit its Notification of Coverage Form.

If the source qualifies for a permit by rule and intends to notify the reviewing authority that it is covered under the rule, the source may submit its Notification of Coverage Form upon the effective date of the permit by rule, generally 60 days after publication of the permit by rule in the **Federal Register**. Pursuant to the registration requirement of § 49.160(c)(1)(iii), the source must submit a completed Notification of Coverage Form to the reviewing authority. The Notification of Coverage Forms are available online at *http://www.epa.gov/air/tribal/tribalnsr.html* or at: Docket ID No. EPA–HQ–OAR–2011–0151. The source must also submit a copy of the completed Notification of Coverage Form to the tribe in whose area of Indian country the source is locating or expanding.

Upon receiving the Notification of Coverage Form, the EPA must post the notification on its Web site. The posting of the notification form is considered final agency action with respect to its applicability to an individual source. The sole issue that may be appealed after an individual source is covered under a permit by rule is the applicability of the permit by rule to that particular source. Appeals must be made to the U.S. Court of Appeals within 60 days of EPA's action. The EPA is promulgating this process as a separate regulation from 40 CFR 49.159 to provide a process for permits by rule that is streamlined compared to the two-step process provided in 40 CFR 49.159 for general permits.

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

Coverage under a permit by rule becomes invalid if construction is not commenced within 18 months after the date of the posting of the completed Notification of Coverage Form 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. Any source category covered by a permit by rule may also instead apply for a source-specific permit under 40 CFR 49.154.

The EPA received many comments on the regulatory framework proposed for establishing permits by rule. Summaries of all of these comments, and the EPA's responses, are found in Section 4.1 of the RTC Document. Many of these commenters supported the EPA's proposed use of permits by rule for GDFs, auto body repair and miscellaneous surface coating, and petroleum dry cleaning facilities, stating that a permit by rule is appropriate for these types of sources and that several states already use permits by rule for these source categories. A few commenters asserted that the use of permit by rule would expedite the permitting process, reduce administrative burdens and costs for permitting agencies, and allow the EPA to more efficiently manage minor sources. Two commenters expressed concerns about whether the EPA has the resources to process general permits in a timely manner, referenced issues experienced by the EPA Region 8 office when the synthetic minor source permitting program for that region became effective, and pointed to the Fort Berthold Indian Reservation FIP [38] used in that region as a model for EPA's minor source permitting. Two commenters asserted that the permit by rule approach provides sufficient opportunities for public input, as well as retaining the public's right to judicial review of any source's receipt of coverage under a permit by rule. One commenter recommended that the requirement for certification of compliance be retained in the final rule, and that the applicant be required to mail a copy of the application to the reviewing authority for the reviewing authority's records. A few commenters opposed use of permits by rule for these three source types, stating that the process does not allow for public notice and comment. Two commenters stated that a facility may not be aware of all aspects of the permitting process they must meet to comply. One commenter noted that neither the EPA nor the tribe would be able to review and confirm that a facility is providing the correct information.

After carefully considering all of the comments on these issues, the EPA concludes that permits by rule are appropriate for the following three source categories and is, therefore, finalizing them: GDFs, auto body repair and miscellaneous surface coating operations, and petroleum dry cleaning facilities. In doing this, the EPA addresses the goal of protecting air quality, while reducing workloads of reviewing authorities and minimizing delays associated with the permitting process by providing a streamlined approach for permitting construction of less complex minor sources that have the simplest compliance requirements.

The EPA disagrees with those commenters opposing the use of permits by rule. These three source types are relatively straightforward sources (compared to HMA plants and SQCS facilities), have similar operations and can be adequately controlled with a single set of control requirements without the need for additional reviewing authority evaluation or further public notice. Requiring these facilities to seek coverage under a general permit would add to the workload of the reviewing authority

New or Modified True Minor Sources in Indian Country Seeking Air Quality Permits by Rule,'' *http://www.epa.gov/air/tribal/tribalnsr.html.*

[38] ''Approval and Promulgation of Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa, and Arikara Nation), North Dakota,'' U.S. Environmental Protection Agency, 78 FR 17836, March 22, 2013, *http://www.gpo.gov/fdsys/pkg/FR-2013-03-22/pdf/2013-05666.pdf.*

without providing substantial benefits to air quality since a general permit would be unlikely to impose any additional substantive requirements. Since we are establishing the permit by rule through notice and comment rulemaking, the public has had an adequate opportunity to comment on the proposed rule and the provisions of the permits by rule for the three source categories. The public retains the opportunity for judicial review on the issue of whether the source should be able to gain coverage under the permit by rule. Regarding the concern that a facility may not be aware of all aspects of the permitting process, the EPA has developed multiple implementation tools and documents to provide facilities with the information necessary to understand the permitting process, assist facilities in navigating the permitting process and help to ensure that a facility meets critical permitting requirements. The EPA is adding the requirement to submit a copy of the Notification of Coverage Form to the relevant tribal government office when notifying the reviewing authority in order to ensure that the tribal government is aware of new facilities. The EPA is also clarifying that under 40 CFR 49.160(c)(1)(iii), minor source applicants [39] (other than sources in the oil and natural gas sector) that must register with the EPA beginning on September 2, 2014, will do so by providing a copy of their minor source permit Notification of Coverage Form.

One commenter argued that the use of permits by rule would effectively mean that sources exceeding the minor source permit threshold are exempt from a permit. Another commenter asserted that permits by rule are not appropriate for either true minor or synthetic minor sources. The commenter also stated that it is difficult to enforce against a source that has constructed in violation of the ''permit by rule'' requirements. The EPA disagrees. Permits by rule are only available to true minor sources. As with source-specific permits and general permits, the permit by rule contains a set of enforceable terms and conditions that will ensure that facilities remain true minor sources. Facilities that cannot meet the throughput limitations or emission controls in the permits by rule would not be eligible for coverage. Facilities must submit a Notification of Coverage Form certifying that the facility will comply with all of the terms and conditions in the relevant permit by rule. Each permit by rule contains clear, enforceable terms and conditions such that noncompliance can quickly be identified. If a source operates in violation of the terms in a permit by rule for which the owner/operator has submitted a completed Notification of Coverage Form, the reviewing authority can revoke coverage under the permit by rule and the owner/operator may be subject to an enforcement action for failing to obtain a permit prior to commencing construction.

One commenter pointed out that the proposed rule did not include ''specific regulatory language'' for any of the proposed permits by rule, and argued that the lack of regulatory text prevented full and complete public review and comment on the proposed rule. As discussed in Section VIII (Proposed Permits by Rule) of the preamble to the proposed rule, rather than proposing separate, specific regulatory language for any of the proposed permits by rule, we proposed a general approach to issuing permits by rule and to codify the requirements of the draft general permits for the specified source category. Therefore, EPA did effectively propose specific regulatory language for each proposed permit by rule.

I. Use of General Permits and Permits by Rule To Create Synthetic Minor Sources

1. Proposed Rule

We proposed to allow a source to use coverage under general permits, including the permits by rule mechanism, to establish federally enforceable emission limitations that can restrict operations of an otherwise major source, such that the source qualifies as a synthetic minor source. We requested comment on all aspects of using general permits and permits by rule to create synthetic minor sources generally and with respect to the five source categories in the proposed rule. We requested specific comment on whether:

- Any regulatory changes in the permits being proposed would be necessary to implement this change in policy;
- A source should be allowed to qualify to use a general permit or permit by rule to become a synthetic minor source, and then subsequently use a general permit or permit by rule to authorize construction or modification activities;
- Both regulatory purposes can be achieved in a single general permit/permit by rule;
- Permits by rule are an appropriate type of permit for creating synthetic minor sources, given that the permit notification does not provide an opportunity for public input on the coverage of a particular source by a permit by rule;
- Any specific changes that would need to be made to the general permits to include provisions for creating synthetic minor permits for these source categories;
- Any specific changes that would need to be made in the production limits of each permit to properly regulate synthetic minor sources for these categories; and
- Permit conditions include sufficient monitoring, recordkeeping and reporting provisions to: (a) Assure continuous compliance; and (b) lower the emissions potential to that of a true minor source.

2. Final Action, Comments and Responses

In our final action, we have modified the EPA's policy on the use of general permits to create synthetic minor sources and are allowing the use of general permits to create synthetic minor sources. We have further concluded that it is not appropriate to allow the use of permits by rule to create synthetic minor sources. Consistent with EPA guidance,[40] we have set the throughput limits in the HMA and SQCS general permits at levels sufficiently low to ensure a margin of safety between a source's permitted throughput limit (and corresponding emissions) and the major source thresholds, since the general permits for these two source categories are written for use by both true minor and synthetic minor sources (see Section IV.F. Use of Throughput Limits).

The EPA received numerous comments regarding the use of general

[39] The language of 40 CFR 49.160(c)(1)(iii) refers specifically to ''applications.'' Eligible sources that have decided to be covered by a permit by rule are not required to submit applications. They are required to submit ''notification'' forms to the reviewing authority that they are electing to be covered under a permit by rule. Submittal of the Notification of Coverage Form to the reviewing authority satisfies the registration requirement.

[40] See the following memos available in the docket (ID No. EPA–HQ–OAR–2011–0151): ''Guidance on Limiting the Potential to Emit in New Source Permitting,'' from Terrell E. Hunt, Associate Enforcement Counsel, Office of Enforcement and Compliance Monitoring and John S. Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Counsels, 1–10, et al, June 13, 1989, *http://www.epa.gov/ttn/atw/pte/june13_89.pdf*; and ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act),'' from John S. Seitz, Director, Office of Air Quality Planning and Standards, and Robert I. Van Heuvelen, Director, Office of Regulatory Enforcement, to Air Division Directors, EPA Regions 1–10, January 25, 1995, *http://www.epa.gov/region7/air/title5/t5memos/ptememo.pdf*.

permits and specific regulatory changes to the draft permits for each source category to address synthetic minor sources. A summary of all of these comments, and the EPA's responses, are found in Sections 5.1 and 5.3 of the RTC Document.

Many commenters supported the use of general permits or permits by rule to create synthetic minor sources. A few commenters agreed that major sources should be able to take advantage of this streamlined permitting process, noted that this process would provide an incentive for sources that would otherwise be considered a major source to voluntarily reduce emissions, and that these general permits will satisfy the air quality standards set by the NSR program. As noted, the EPA is not finalizing the use of a permit by rule to create synthetic minor sources, but will allow the use of a general permit for that purpose. Because we are finalizing general permits in this action for only two source categories (HMA plants and SQCS facilities), only general permits for these two source categories can be used to create synthetic minor sources.

Several commenters stated that the use of general permits to establish federally enforceable emissions limits will ensure that emissions from synthetic minor sources are appropriately restricted. The commenters further stated that this would result in efficiency for both operators and regulatory agencies, while leading to improved health and welfare in Indian country. A few commenters requested that the EPA provide more discussion regarding the technical process for developing a general permit, and asked how the EPA plans to address compliance with the one-hour and annual NO_2 NAAQS. The EPA agrees that the use of general permits to establish federally enforceable limits on PTE will ensure that emissions from synthetic minor sources are appropriately restricted. The EPA has revised the throughput limits and fuel use limits in the HMA and SQCS general permits to keep covered sources' emissions below the NSR major source thresholds, with an adequate margin to account for uncertainties of measurement, emissions from unpermitted activities, variability in emission rates, and excess emissions during startup, shutdown, or malfunction.[41] We agree with commenters that, if appropriately restricted and monitored, synthetic minor sources covered by a general permit would not pose an environmental concern and would have emissions similar to sources subject to a source-specific permit.

With respect to the NO_2 NAAQS, EPA conducted a control technology review that is discussed in the proposed rule (See Section V. Source Categories for Which Draft General Permits in Indian Country are Available for Public Review). The EPA believes that the final permits we are issuing and promulgating today are appropriately protective of the NAAQS (see Section IV.E. Control Technology Review). However, we reserve the ability to deny coverage under a general permit based on concerns we may have about the state of air quality in the area where a source is seeking to locate or modify, and the potential impacts of an individual source in that area.

A few commenters reiterated that case-by-case permitting determinations for source types where equipment and operations do not differ significantly from source to source is unnecessary. One commenter noted that state programs have used general permits and permits by rule to authorize synthetic minor sources, and that these permitting programs afford permittees consistency, predictability, and efficiency, while reducing the administrative burden on the permitting authority and allowing permittees of similar sites to operate on a level playing field. A few commenters pointed to the Fort Berthold FIP as an example of the successful use of general permits or permits by rule for synthetic minor permits, also noting that the requirements of the Fort Berthold FIP were consistent with the requirements of the North Dakota SIP; thus, providing a level playing field. The EPA agrees with commenters that the use of general permits to create synthetic minor sources provides consistency, predictability, and efficiency, and reduces the administrative burden on the permitting authority, while allowing for greater scrutiny in the review of the permit application by the reviewing authority. The EPA is not finalizing the use of permits by rule for synthetic minor sources because permits by rule do not provide for the same level of review and scrutiny by the reviewing authority. They also do not provide the same level of public participation. The EPA does not believe it is necessary to establish a separate general permit for the specific purpose of creating synthetic minor sources. The EPA is, therefore, providing one general permit each for the HMA and SQCS source categories that are suitable for true minor and synthetic minor sources. The EPA has balanced the need to provide a level regulatory playing field with the need to protect the NAAQS. (However, the issue does not arise for the three permit by rule source categories in this action because the permit by rule is not a suitable mechanism for creating synthetic minor sources.)

Several commenters provided support for the use of general permits to create synthetic minor sources, but opposed the use of permit by rule for this purpose, while several commenters advocated for the use of a permit by rule for synthetic minor sources. Two commenters asserted that no additional risk of noncompliance would result from the use of permits by rule for synthetic minor sources, while another commenter urged the EPA to consider using the streamlined permits for synthetic minor sources on a case-by-case basis. The EPA has determined that a permit by rule approach is not appropriate for creating synthetic minor sources. We are only allowing the use of general permits to create synthetic minor sources, which allows for greater scrutiny in the review of the permit application by the reviewing authority. This level of review helps to ensure that a particular source that would otherwise be major is likely to be able to comply with the throughput limits and emissions control requirements in the general permit, thereby ensuring that the source's emissions will be below the major source threshold(s). We believe that this level of review is necessary for sources with a PTE that would otherwise be above the major source threshold(s). Because permits by rule do not provide for the same level of review regarding coverage, we are not finalizing the use of permits by rule to create synthetic minor sources.

A few commenters urged that the EPA make regulatory changes to be more explicit and to inhibit future litigation concerning the issuance of general permits or permits by rule for synthetic minor sources, while other commenters urged the EPA to include more stringent monitoring, recordkeeping and reporting requirements so that synthetic minor sources can prove their emissions are below the major source thresholds. A few commenters supported the EPA's suggestion to issue synthetic minor permits only to sources with actual emissions at a margin below the major source thresholds. This would assure

[41] The throughput limits for the permits by rule being promulgated today are also set at levels to keep covered sources' emissions below the NSR major source thresholds. However, because the permit by rule cannot be used to create synthetic minor sources, it is not necessary to lower the throughput limits for the three source categories to reflect an added margin to account for uncertainties of measurement, emissions from unpermitted activities, variability in emission rates, and excess emissions during startup, shutdown, or malfunction.

that synthetic minor sources do not inadvertently become major sources. Several commenters disagreed, stating that the EPA should not require more stringent monitoring, recordkeeping and reporting requirements for synthetic minor sources using a general permit or permit by rule. Other commenters stated that the EPA should not impose additional requirements or limitations on the use of general permits or permits by rule for synthetic minor sources. A few commenters argued that compliance with permit limits will be required regardless of whether a source is a true or synthetic minor source, and requested that the general permits, implementation documents, and tools contained in the proposed rule be amended to allow both true and synthetic minor sources to apply for coverage. The EPA is not setting a requirement that synthetic minor permits may only be issued to sources with actual emissions at a margin below the major source thresholds, but we are requiring sources to identify whether they are a synthetic minor source in their Request for Coverage Form. In the application process, permittees could apply for a general permit for purposes of creating a synthetic minor source only if they meet the eligibility requirements and are able to comply with the federally-enforceable limits established in the general permit. Once EPA approves the Request for Coverage, the requirements in the general permit become federally-enforceable limits on the source's PTE. The monitoring, recordkeeping and reporting requirements remain the same for true minor sources and synthetic minor sources.

J. Use of Both Permitting Mechanisms for Certain Source Categories

1. Proposed Rule

The EPA requested comments on finalizing both permitting mechanisms for a given source category by providing authorization to construct or modify true minor sources via permits by rule and by providing enforceable limitations to create synthetic minor sources via general permits. We sought comment on whether this concept should be applied differently or the same for different source categories.

2. Final Action, Comments and Responses

The EPA has decided to not make both permit types available for any single source category largely because we have determined that none of the five source categories would be suitable candidates for both permit types. As proposed, the EPA is finalizing general permits for the HMA and SQCS source categories, but is not finalizing permits by rule because the EPA does not believe that true minor sources in these two source categories are good candidates for permits by rule. For the other three source categories in today's final action, the EPA is finalizing only permits by rule because we do not believe that it is necessary to provide general permits for these categories as the potential impacts of emissions from sources in these categories can be readily addressed through a permit by rule. We believe that the majority of sources in the three source categories in this action for which we are promulgating permits by rule are not major sources and, therefore, would not need to seek synthetic minor status. However, any source in these three source categories that performs a PTE analysis and determines it is a major source can seek synthetic minor source status through a site-specific permit.

The EPA received comments regarding finalizing both permitting mechanisms (general permits and permits by rule) for GDFs, auto body repair and miscellaneous surface coating operations, and petroleum dry cleaning facilities. Summaries of all of these comments and our responses to them are contained in Section 5.2 of the RTC Document.

While one commenter supported the establishment of both permitting mechanisms for these three source types, several commenters opposed the EPA's proposed ''hybrid approach'' to establishing permits by rule for true minor sources and general permits for synthetic minor sources. Several commenters suggested that permits by rule would work as well as a general permit for any source category, and that the EPA should accordingly treat true and synthetic minor sources for all source categories in the same manner. As noted, the EPA is not adopting a hybrid approach of establishing general permits for synthetic minor sources and permits by rule for true minor sources. The EPA does not anticipate that these three source types would require a synthetic minor permit or that a hybrid approach would be necessary.

K. Use of More Than One General Permit and/or Permit by Rule for a Source at a Single Location

1. Proposed Rule

As proposed, the intent of this minor source permitting process is to ensure that a single stationary source gains coverage under a general permit or permit by rule only if its PTE is below major source emission levels. We requested comment on whether to allow a single stationary source to gain coverage under more than one general permit or permit by rule. We also requested comment on whether we should categorically decline to allow coverage under more than one general permit or permit by rule for a single stationary source, or whether the application/notification materials offer the EPA an adequate opportunity to verify that source-wide PTE for a stationary source is below major source levels.

2. Final Action, Comments and Response

The EPA received comments related to the use of more than one general permit or permit by rule for a source at a single location. Summaries of all of these comments and our responses to them are contained in Section 5.4 of the RTC Document. In this final action, as discussed in detail below, we are retaining the approach in our proposal on calculating PTE emissions for permit eligibility purposes, and we are adjusting the throughput limits in the HMA and SQCS general permits to accommodate cases of co-location for those two source categories.

Several commenters supported allowing the use of more than one general permit or permit by rule for a single source with different types of equipment or co-located processes. One commenter asserted that co-located sources should not be precluded from using general permits if site-wide emissions remain below major source thresholds. A few commenters expressed concerns with allowing a synthetic minor source to acquire coverage under more than one general permit or permit by rule, as it could potentially allow a source to incrementally increase emissions and avoid major NSR preconstruction review and other regulatory requirements. Other commenters disagreed, asserting that there is no basis in the rulemaking record for assuming that the use of more than one general permit or permit by rule might allow a source to increase emissions beyond regulatory requirements. Several commenters contended that a permit by rule for larger, more complex sources, or synthetic minor sources would not provide for adequate review by a reviewing authority, and suggested including a requirement to report total emissions to prove the source is in compliance.

The EPA is finalizing its proposed policy with respect to a source gaining coverage under multiple general permits

or permits by rule with modifications. Under the proposed policy, to qualify for a general permit or permit by rule a source must sum the PTE of its new, modified and existing units. If that sum is below major source thresholds, the source is a true minor source and is eligible for a true minor source general permit or permit by rule, provided it can meet the permits' throughput limits and other terms and conditions (even if the source is already subject to an existing general permit/permit by rule). In this final action, we also allow the same steps for synthetic minor sources seeking a general permit. In both cases, the agency reserves the ability to deny a general permit for synthetic minor sources seeking to combine new emissions with existing emissions if the reviewing authority has concerns about local air quality conditions.

In addition, we have modified the general permit applications for HMA plants and SQCS facilities so as to allow those source types to co-locate, if desired. If the applicant is seeking such co-location, the permit contains the option to comply with alternative throughput limits set low enough to ensure the source's emissions are below the level that would trigger the requirement to obtain a title V permit.

L. Additional Source Categories for General Permits and/or Permits by Rule

1. Proposed Rule

In developing the proposal, the EPA solicited input from tribal governments and the EPA Regional Offices on which source categories should be covered by streamlined permitting in Indian country. The tribes and the EPA Regional Offices identified the five source categories addressed in the proposed action because they were thought to be common in Indian country and were good potential candidates for streamlined permitting for several reasons: They represent categories of emissions units or stationary sources that are similar in nature, have substantially similar emissions, and would be subject to the same or substantially similar permit requirements.[42] The following source categories were also thought to be good candidates for streamlined permitting:

- Printing operations (including solvent cleaning/degreasing);
- Engines (spark and compression ignition);
- Concrete batch plants;
- Saw mills;
- Landfill operations;
- Boilers; and
- Oil and gas production and operations.

We requested comment on whether the additional source categories identified above should receive coverage by general permits or permits by rule, including comments as to which categories are appropriate for each type of rule. With respect to landfill operations, the EPA specifically requested comment on whether enough landfill activity is occurring in Indian country to warrant the development of a general permit or permit by rule. In connection with the EPA's Municipal Solid Waste Landfills New Source Performance Standard (40 CFR 60.750, subpart WWW), the EPA created a database of active landfills across the U.S. using information from the EPA's Greenhouse Gas Reporting Program,[43] Landfill Methane Outreach Program, and Information Collection Request Center. The database indicates there is a very small number of landfills in Indian country. These results were compared to the source culling that we did with the National Emissions Inventory and the lists of sources from Regions 5 and 10, which also showed few landfills in Indian country. Based on this information, we indicated that we were not convinced that the resources necessary to develop a general permit or permit by rule for landfills would be justified and requested comment on the issue.[44]

2. Final Action, Comment and Response

The EPA received comments related to additional source categories for which general permits or permits by rule might be appropriate. Summaries of all of those comments and our responses to them are contained in Sections 6.1, 6.2, 6.3, and 6.4 of the RTC Document. The EPA received several comments in support of the use of general permits or permits by rule for minor sources for engines, concrete batch plants, saw mills, boilers, printing operations, and landfills, and only one comment in opposition. Aside from landfill operations, the source categories discussed in this section are being addressed in separate actions. In particular, in July 2014, the EPA proposed a combination of general permits and permits by rule for spark ignition engines, compression ignition engines, saw mills, graphic arts and printing operations, boilers, and concrete batch plants, but not for landfills.[45] A review of the available data for landfills in Indian country indicates that there are a limited number of these sources in Indian country, and we do not expect this to change. As a result, we do not think that the establishment of a general permit or permit by rule for this source category is warranted.

The EPA received numerous comments supporting the development of general permits or permits by rule for the oil and natural gas source category, noting that these permits offer operators a level of certainty regarding permitting requirements, will reduce emissions, and will decrease regulatory burdens for sources and regulators. A few commenters also expressed support for the use of general permits or permits by rule for synthetic minor sources in the oil and natural gas source category, because the facilities and emission controls do not significantly vary from site to site. The EPA has determined that permitting for sources in the oil and natural gas source category should be dealt with in a separate action because of the unique characteristics of those sources. Accordingly, in May 2014, the EPA issued an ANPR to solicit input on potential permitting approaches to address emissions from new, modified and existing oil and natural gas production activities. The EPA will consider the comments received in response to the original January 14, 2014, proposed rule concerning the permitting of minor oil and natural gas sources in Indian country in the action it will take as a follow up to the ANPR.

M. Final Rule Changes to the Federal Indian Country Minor NSR Rule

1. Proposed Rule

In the January 14, 2014, notice, we proposed five changes to three separate provisions in the existing Federal Indian Country Minor NSR rule to ensure the smooth functioning of the general permit program:

(a) Shortening the general permit application review process from 90 to 45 days for certain source categories (§ 49.156(e)(4));

(b) Adjusting the deadline by which minor sources covered by a general

[42] ''Review of New Sources and Modifications in Indian Country,'' U.S. Environmental Protection Agency, 76 FR 38770, July 1, 2011, *https://www.federalregister.gov/articles/2011/07/01/2011-14981/review-of-new-sources-and-modifications-in-indian-country.*

[43] For more information, go to: *http://www.epa.gov/ghgreporting/index.html.*

[44] The results of this analysis can be found at Docket ID No. The EPA–HQ–OAR–2011–0151 and online at *http://www.epa.gov/air/tribal/tribalnsr.html.*

[45] ''General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country,'' U.S. Environmental Protection Agency, 79 FR 41846, July 17, 2014, *http://www.gpo.gov/fdsys/pkg/FR-2014-07-17/pdf/2014-16814.pdf.*

permit need to obtain a preconstruction permit (§ 49.151(c)(1)(iii)(B));

(c) Extending the permitting deadline for true minor sources within the oil and gas source category (§ 49.151(c)(1)(iii)(B));

(d) Removing a provision to make it clear that sources may seek coverage under a general permit as soon as it is effective and need not wait an additional four months (§ 49.156(e)(1)); and

(e) Adjusting the deadline for oil and natural gas sources for certain registration related requirements to be consistent with the proposed permitting deadline extension (§ 49.160(c)(1)(ii) and (iii)).

We proposed the first change for three source categories: GDFs, auto body repair and miscellaneous surface coating operations, and petroleum dry cleaning facilities.

2. Final Action, Comments and Responses

On June 16, 2014, EPA issued final amendments [46] addressing three of the changes:

- Adjusted the deadline by which minor sources covered by a general permit need to obtain a preconstruction permit by eliminating a requirement for all true minor sources that begin operation before September 2, 2014, to obtain a minor NSR permit 6 months after the EPA publishes a general permit (no general permits were finalized by May 2014, so the provision was moot) (§ 49.151(c)(1)(iii)(B)) (pertains to item (b) under above Section 1. Proposed Rule);
- Extended the permitting deadline for true minor sources within the oil and gas source category (§ 49.151(c)(1)(iii)(B)) (pertains to item (c) under above Section 1. Proposed Rule); and
- Adjusted the deadline for oil and gas sources for certain registration-related requirements to be consistent with the proposed permitting deadline extension (§ 49.151(c)(1)(iii)(A)) and § 49.160(c)(1)(ii) and (iii)) (pertains to item (e) under above Section 1. Proposed Rule).

The comments received on these changes were addressed in the June 16, 2014, **Federal Register** notice.

In today's final action, we are addressing the two other proposed changes:

- Shortening the general permit application review process from 90 to 45 days for certain source categories (§ 49.156(e)(4)) (pertains to item (a) under above Section 1. Proposed Rule); and
- Removing a provision to make clear that sources may seek coverage under a general permit as soon as it is effective and need not wait an additional 4 months (§ 49.156(e)(1)) (pertains to item (d) under above Section 1. Proposed Rule).

The first change is now moot because we are finalizing permits by rule for the three source categories in question (except that the GDF permit by rule does not cover California); the permit by rule process does not include an application review. We are addressing the second change by amending § 49.156(e)(1) to make the general permits available as soon as they are effective, which is generally 60 days after signature. In addition, we have added a provision to ensure that this is also true for permits by rule that we promulgate.

The EPA received comments related to these two changes. Summaries of all comments and our responses are contained in Section 7.0 of the RTC Document. Several commenters supported the EPA's proposal to amend § 49.156(e)(1) so that minor sources would not be required to wait four months to seek coverage under the general permit after the general permit's effective date, but may seek coverage as soon as the general permit is effective. The EPA is removing the requirement for sources to wait four months after the general permit is finalized to request coverage. The EPA also received a number of comments related to shortening the general permit application review process from 90 to 45 days for certain source categories. Multiple commenters supported the EPA's proposal to shorten the general permit application review process from 90 to 45 days for 3 of the proposed source categories (GDFs, auto body repair and miscellaneous surface coating operations, and petroleum dry cleaning facilities). A few commenters recommended that the EPA consider reducing the application review period for general permits to 30 days. As noted, the EPA is not finalizing revisions to § 49.156(e)(4) to shorten the General Permit application review process from 90 to 45 days for the permits for the GDF, auto body repair and miscellaneous surface operations, or petroleum dry cleaning source categories because we are not issuing general permits for those source categories. Rather, we are establishing permits by rule, for which there is no review process for these three source categories.

We are promulgating a minor amendment to § 49.151(c)(1)(iii)(B) by adding the words ''permit by rule'' after general permit to ensure that it is clear that the permit by rule option is available to true minor sources required to obtain a minor source permit. The section reads as follows with the added amendatory words ''/permit by rule'':

''If your true minor source is not an oil and natural gas source and you wish to begin construction of a new true minor source or a 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 and you wish to begin construction of a new true minor source or a modification at an existing true minor source on or after March 2, 2016, 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). The proposed new source or modification will also be subject to the registration requirements of § 49.160, except for sources that are subject to § 49.138.''

Finally, we are promulgating a minor amendment to § 49.156 by adding the words ''permits by rule'' after general permits to ensure that it is clear that the section also contains requirements for permit by rule. The introductory paragraph to the section reads as follows with the added amendatory words ''/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 regulated NSR pollutants under this program.''

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action merely establishes general permits and/or permits by rule to satisfy the requirements of the Federal Indian Country Minor NSR rule. Such permits are already available in

[46] ''Review of New Sources and Modifications in Indian Country Amendments to the Registration and Permitting Deadlines for True Minor Sources,'' U.S. Environmental Protection Agency, 79 FR 34231, June 16, 2014, *http://www.gpo.gov/fdsys/pkg/FR-2014-06-16/pdf/2014-14030.pdf.*

many states. It does not impose any new obligations or enforceable duties on any state, local or tribal government or the private sector. Therefore, this action does not impose an information collection burden. OMB has previously approved the information collection activities in the permits in this action, which are contained in the Information Collection Request for Federal Indian Country Minor NSR rule issued in July 2011 (OMB Control No. 2060–0003).

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The EPA analyzed the impact of streamlined permitting on small entities in the Federal Indian Country Minor NSR rule (76 FR 38748, July 1, 2011). The EPA determined that that action would not have a significant economic impact on a substantial number of small entities. Today's action merely implements a particular aspect of the Federal Indian Country Minor NSR rule. As such, this action will not have a significant economic impact on a substantial number of small entities. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandates, as described in the Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The EPA has conducted outreach on this rule via on-going monthly meetings with tribal environmental professionals in the development of this final action. This action reflects tribal comments on and priorities for developing general permits and permits by rule in Indian country. The EPA offered consultation to elected tribal officials immediately after proposal on December 16, 2013, via letter to 566 tribes to provide an opportunity for meaningful and timely input into the development of this regulation. No tribal officials requested consultation on this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental, health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

The final action involves technical standards. The EPA has decided to use the EPA Methods 5, 7E and 10. While for the proposal the agency identified 13 voluntary consensus standards (ASME B133.9–1994 (2001), ISO 9096:1992 (2003), ANSI/ASME PTC–38–1980 (1985), ASTM D3685/D3685M–98 (2005), CAN/CSA Z223.1–M1977, ANSI/ASME PTC 19–10–1981—Part 10, ISO 10396:1993 (2007), ISO 12039:2001, ASTM D5835–95 (2007), ASTM D6522–00 (2005), CAN/CSA Z223.2–M86 (1999), CAN/CSA Z223.21–M1978, ASTM D3162–94 (2005)) as being potentially applicable, we are not finalizing these in this rulemaking. The use of these voluntary consensus standards would not be practical with applicable law due to a lack of equivalency, documentation, validation data and other important technical and policy considerations. The EPA did not receive comments that have caused us to alter the standards and methods in the final permits.

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

The EPA believes the human health or environmental risk addressed by this action will not have potentially, disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action does not affect the level of protection provided to human health or the environment. This final rule merely implements certain aspects of the Federal Indian Country Minor NSR rule. Therefore, this final action will not have a disproportionately high and adverse human health or environmental effects on minorities, low-income, indigenous populations in the United States.

Our primary goal in developing this program is to ensure that air resources in Indian country will be protected in the manner intended by the CAA. This Rule will reduce adverse impacts by improving air quality in Indian country. In addition, we seek to establish a flexible preconstruction permitting program for minor sources in Indian country that is comparable to similar programs in neighboring states in order to create a more level regulatory playing field for owners and operators within and outside of Indian country. This Rule will reduce an existing disparity by filling the regulatory gap.

K. Congressional Review Act

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 49

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

Dated: April 17, 2015.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, Chapter 1 of the Code of Federal Regulations is amended as follows:

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

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

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

Subpart C—General Federal Implementation Plan Revisions

■ 2. Section 49.151 is amended by revising paragraph (c)(1)(iii)(B) to read as follows:

§ 49.151 Program overview.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(B) If your true minor source is not an oil and natural gas source and you wish to begin construction of a new true minor source or a 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 and you wish to begin construction of a new true minor source or a modification at an existing true minor source on or after March 2, 2016, 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). The proposed new source or modification will also be subject to the registration requirements of § 49.160, except for sources that are subject to § 49.138.

* * * * *

■ 3. Section 49.156 is amended by revising the section heading, the introductory text, and paragraph (e)(1), and by adding paragraph (f) to read as follows:

§ 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 regulated NSR pollutants under this program.

(e) * * *

(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**.

* * * * *

(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 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/locating) 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 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.

■ 4. Section 49.162 is added to read as follows:

§ 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 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).

(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 photochemical 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*). 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 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 that 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 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.

(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 clean-up 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 gray 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 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 showing 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.

(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.

(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 re-certified 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	Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue (6PD–R), Dallas, TX 75202.	Compliance and Enforcement Correspondence: Compliance Assurance and Enforcement Division, EPA Region 6, 1445 Ross Avenue (6EN), Dallas, TX 75202.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.	800–887–6063 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

■ 5. Section 49.163 is added to read as follows:

§ 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 dyers that employs a condenser to condense and recovery 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. 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.* 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 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 (manufacture red on or after October 20, 2000) or with an evaporatively cooled condenser (manufacture red 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.

(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 nonattainment 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;

(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 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
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	Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue (6PD–R), Dallas, TX 75202.	Compliance and Enforcement Correspondence:, Compliance Assurance and Enforcement Division, EPA Region 6, 1445 Ross Avenue (6EN), Dallas, TX 75202.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.	800–887–6063 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

■ 6. Section 49.164 is added to read as follows:

§ 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 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 paragraph (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 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 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/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 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 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.

(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 available 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 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 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 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: $Pf = 2e^{-500.887/v}$, where: Pf = 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 nonattainment area the permittee shall also:

(A) Limit standing loss emissions to less than or equal to 0.57 lbs VOC per 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 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
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	Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue (6PD–R), Dallas, TX 75202.	Compliance and Enforcement Correspondence: Compliance Assurance and Enforcement Division, EPA Region 6, 1445 Ross Avenue (6EN), Dallas, TX 75202.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.	800–887–6063 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

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 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

[FR Doc. 2015–09739 Filed 4–30–15; 8:45 am]

BILLING CODE 6560–50–P