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Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

03-28-05 P04:42 IN

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on these Federal Implementation Plans (FIPs) under the Clean Air Act (CAA) for Indian reservations in Idaho, Oregon, and Washington. The FIPs put in place basic air quality regulations to protect health and welfare on Indian reservations located in the Pacific Northwest.

DATES: This regulation is effective [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR-2004-0067. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in

EDOCKET or in hard copy at the EPA Air and Radiation Docket and Information Center, located at 1301 Constitution Avenue, NW, Room B102, Mail Code 6102T, Washington, D.C. 20004 (mailing address is 1200 Pennsylvania Avenue, NW, Mail Code 6102T, Washington, D.C. 20460). The EPA Air and Radiation Docket and Information Center is open from 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding legal holidays. The phone number for the Docket's Public Reading Room is (202) 566-1744. The docket is also available for public inspection and copying at the EPA Region 10 office, Office of Air, Waste, and Toxics, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101 between 8:30 a.m. and 3:30 p.m. Pacific Time, Monday through Friday, excluding legal holidays. EPA Region 10 requests that, if at all possible, you contact the person listed in the FOR FURTHER INFORMATION CONTACT section to schedule your inspection. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: David Bray, Office of Air, Waste and Toxics (AWT-107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101-1128, (206) 553-4253, or e-mail address: bray.dave@epa.gov.

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I. Background of the Final Rules

On March 15, 2002, the Environmental Protection Agency (EPA, Agency, or we) proposed to establish Federal Implementation Plans (FIPs) under the Clean Air Act (CAA or Act) (42 U.S.C. 7401 to 7671q) for 39 Indian reservations in Idaho, Oregon, and Washington. 67 FR 11748-11801, March 15, 2002 and 67 FR 51802-51803, August 9, 2002. EPA stated that the proposed rules would be an important step in ensuring that basic air quality protection is in place to protect health and welfare on Indian reservations located in the Pacific Northwest. The proposal was widely publicized, and residents of the reservations, as well as affected Tribes, local governments, and States commented on the proposed rules. During the comment period that ended on October 10, 2002, EPA also held a public hearing in Toppenish, Washington on September 10, 2002. We received 155 written comments during the comment period and 28 people provided oral testimony at the public hearing. Today's *Federal Register* action announces EPA's final action on all of the proposed regulations, except for **§ 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources**. We have not made a final determination on the proposed § 49.136.

In promulgating today's rules, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA to promulgate such implementation plan provisions as are

necessary or appropriate to protect air quality within the Indian reservations that are specifically identified in 40 CFR part 49, subpart M Implementation Plans for Tribes – Region X.

After evaluating air quality issues for the Indian reservations in Idaho, Oregon, and Washington, EPA continues to be concerned that there is a gap in air quality requirements in these areas under the CAA. Many Tribes in the Region are in the process of developing air quality management programs under the CAA; however, as of December 2004, no Tribe in Region 10 has submitted Tribal regulations for EPA approval as a Tribal Implementation Plan (TIP). Furthermore, States generally lack the authority to regulate air quality in Indian country. EPA is promulgating these rules today because we have concluded that they are appropriate for protecting air quality on Indian reservations in the Pacific Northwest. The rules will apply to any person who owns or operates an air pollution source within the exterior boundaries of an Indian reservation in Idaho, Oregon, or Washington, as set forth in 40 CFR part 49, subpart M.

The gap-filling rules EPA proposed in March 2002 were generally based upon the aspects of neighboring State and local rules most relevant to the air polluting activities on reservations in the Pacific Northwest, and follow a level of control of a typical air quality control program. EPA does not intend, nor does it expect, these gap-filling regulations to impose significantly different regulatory burdens upon industry or residents within reservations than those imposed by the rules of State and local air agencies in the surrounding areas. As a general matter, these regulations are not as restrictive as the most stringent State and local rules for the same class of sources or activities; likewise, they are not as lenient as the least stringent of the State and local rules. Included in the docket for the proposed rulemaking were copies of all the State and local rules that EPA considered in this process, as well as a technical support document with summary

tables showing the State and local agency levels of control as compared with the proposed regulations and a description of why EPA believed the proposed rules were appropriate.

During the comment period, a number of Tribal governments, the States of Idaho, Oregon, and Washington, and many local air agencies in Washington submitted comments supporting the rules proposed by EPA and offered suggestions for improving the proposed rules. These commenters urged EPA to finalize the rules. Several Tribes also urged EPA to continue assisting Tribes to build and implement their air quality management programs that will operate in coordination with EPA's rules.

A number of comments were submitted that objected to the proposal generally or to particular provisions, EPA's reasons for proposing the rules, or how the proposal was developed. As discussed in detail below, many commenters objected to the rules because they misunderstood the proposal as authorizing Tribal governments to regulate the activities of nonmembers of the Tribe on privately deeded land within the reservation. Many of those commenters also disagreed with EPA that there is a regulatory gap under the CAA on Indian reservations. The commenters asserted that nonmember reservation residents and their private property within a reservation are under State jurisdiction, and that the proposed rules usurp the rights of State and local air authorities to manage, control, and enforce air quality requirements on non-trust parcels within the exterior boundaries of the reservation. Several comments criticized EPA for failing to follow its own public participation requirements for early involvement prior to publishing the proposed rules. In addition, EPA was criticized for consulting with Tribal governments for a number of years during the development of the proposed rules, but not providing adequate time for local governments to participate.

The proposal to regulate open burning drew many comments. While the commenters generally supported EPA's proposal to regulate open burning, there was a great deal of concern about the proposal to allow the burning of combustible household wastes in burn barrels. A number of commenters also misunderstood the proposal as banning agricultural field burning and wrote about the economic importance of field burning to the agricultural community.

Commenters also wrote that EPA should ensure it has adequate resources, both personnel and financial, to support implementation of the rules. Several Tribes urged EPA to provide sufficient resources for implementation, such as for responding to complaints and taking enforcement actions where there are violations of the rules. As mentioned above, Tribes also want EPA to continue to support capacity building by Tribes for Tribal air programs and to provide adequate resources so the Tribes can assist EPA in administering the rules.

After evaluating all the comments that were received, EPA is moving forward with final rules for the 39 reservations. In these final rules, also referred to as the Federal Air Rules for Indian Reservations in Idaho, Oregon, and Washington (FARR), we are making certain modifications that reflect what EPA has learned from the extensive information provided by commenters and from consultation with the affected Tribal governments. This preamble to the final rules responds to the major issues raised by commenters and describes the final rules and significant changes from the proposal. All other comments are addressed in a document entitled "Response to Comments" that can be found in the docket for this rulemaking cited above.

II. Major Issues Raised by Commenters

A. EPA's Authority under the CAA. Several commenters wrote that the new Federal rules would duplicate State and local government rules, and therefore subject sources to another set of

regulations for the same activity. Some commenters wrote that EPA has erroneously determined that the State of Washington does not have authority to administer environmental laws for non-trust lands in the State under an approved program. Other commenters wrote that EPA has not properly determined that the State does not have such jurisdiction as required, in their view, by State of Michigan v. EPA, 268 F.3d 1075 (D.C. Cir.2001). A State environmental agency disagreed with EPA's position that States generally lack the authority to regulate air quality in Indian country, and cited section 116 of the CAA as specifically preserving State law from preemption with respect to air emission standards. Commenters expressed a variety of other views as to why they believe States, not the Federal government, have jurisdiction for air quality programs in Indian country. One commenter wrote that Congress has given too much power to EPA, and that EPA has exceeded its delegation of responsibility. One citizen stated that the regulatory gap referred to in the proposed rules is a jurisdictional gap created by EPA, and that EPA has redefined a reservation to include all properties, regardless of their ownership. The commenter stated that such a gap does not exist, and that nonmember residents and their private property within a reservation are regulated by applicable State and county authorities in charge of air quality. Some commenters also expressed concern that EPA would extend the Federal regulatory program to include areas in an airshed that lie outside of the reservation boundaries. One commenter also asked EPA to describe how it will determine the reservation status of a source and whether there is a question of the Indian country status of the source.

Several commenters wrote that EPA has exceeded its authority by establishing emission limitations that are not required in order to meet National Ambient Air Quality Standards (NAAQS). These commenters asserted that the CAA authorizes EPA regulations only if needed

to meet or attain the NAAQS, and then only at levels justified to achieve health-based measures. These commenters assert that the CAA does not provide authority to regulate sources in an attainment area. An industry commenter also stated that the rules to protect air quality from the potential for significant deterioration caused by particulate matter (such as §§ 49.124, 49.125, 49.126, and 49.128) and rules for protecting air quality from the potential for significant deterioration caused by sulfur dioxide release (§§ 49.129 and 49.130) appear to conflict with the CAA's regulatory scheme for stationary sources because EPA has not clearly characterized the state of air quality, as measured by the NAAQS, in the areas subject to the rules. This commenter and a number of others also questioned how EPA determined the stringency of the proposed emission limitations, with some commenters stating that the requirements should be more stringent, other commenters stating that the requirements should be less stringent, and some noting that the levels appear to be arbitrary.

A local government agency commented that instead of adopting Federal requirements, EPA should use the process of approving Tribes for "treatment in the same manner as a State" (commonly referred to as "TAS"), set forth in the CAA. One commenter stated that EPA should ensure that the proposed rules do not circumvent the TAS process as the method for approving Tribes to administer programs under the CAA.

Other commenters criticized EPA for not establishing milestones to implement CAA provisions as soon as practicable, since States and delegated local air agencies must do so. These commenters also criticized EPA for not establishing schedules for implementation, as States are required to do under the CAA.

EPA Response. In the final rule entitled "Indian Tribes: Air Quality Planning and Management,"

generally referred to as the “Tribal Authority Rule” or “TAR,” EPA explains that it intends to use its authority under the CAA “to protect air quality throughout Indian country”¹ by directly implementing the CAA’s requirements where Tribes have chosen not to develop or are not implementing a CAA program. 63 FR 7254, February 12, 1998. The final TAR at 40 CFR 49.11 states that EPA would “promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality” for these areas. EPA is exercising its authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate FIPs in order to remedy an existing regulatory gap under the CAA with respect to Indian reservations located in Idaho, Oregon, and Washington. Although many facilities in these areas may have historically followed State and local government air quality programs, with only one exception, EPA has never approved those governments to exercise regulatory authority under the CAA on any Indian reservations.² Since the CAA was amended in 1990, EPA has been clear in its approvals of State programs that the approved State program does not extend into Indian country. It is EPA’s position that, absent an explicit finding of jurisdiction and approval in Indian country, State and local governments lack authority under the CAA over air pollution

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

² For purposes of approving the Washington Department of Ecology (WDOE) operating permits program under 40 CFR part 70, EPA explicitly found that WDOE demonstrated that the Washington Indian (Puyallup) Land Claims Settlement Act, 25 U.S.C. 1773, gives explicit authority to State and local governments to administer their environmental laws on all non-trust lands within the 1873 Survey Area of the Puyallup Reservation in Tacoma, Washington.

sources, and the owners or operators of air pollution sources, throughout Indian country. Given the longstanding air quality concerns in some areas and the need to establish requirements in all areas to maintain CAA standards, EPA believes that these FIP provisions are appropriate to protect air quality on the identified reservations. The rules published today are based on the same CAA authority as EPA has used elsewhere in rulemaking that has been affirmed by the courts. As described below in II.D, EPA's interpretation of its authority has been affirmed by the U.S. Court of Appeals for the District of Columbia Circuit in Arizona Public Service Co. v. EPA, 211 F.3d 1280 (D.C. Cir. 2000), cert. denied 121 S. Ct. 1600 (2001). In addition, EPA's authority to issue operating permits to major stationary sources located in Indian country under Title V of the Act, pursuant to regulations at 40 CFR part 71, was affirmed in State of Michigan v. EPA, 268 F.3d 1075 (D.C. Cir. 2001). EPA has used this same authority to issue a number of FIPs to address air pollution concerns at specific facilities located in Indian country. See Federal Implementation Plan for Tri-Cities landfill, Salt River Pima-Maricopa Indian Community, 40 CFR 49.22 (64 FR 65663, November 23, 1999) and Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM10 Nonattainment Area, 40 CFR 49.10711 (65 FR 51412, August 23, 2000).

Effects of State Law. The rules established by EPA here are in effect under the CAA. EPA recognizes that in a few cases, other governmental entities may have established air quality or fire safety requirements that the commenters believe apply to them for the same activity. However, unless those rules or requirements have been approved by EPA under the CAA to apply on Indian reservations, compliance with those other requirements does not relieve a source from complying with the applicable FARR. As EPA has stated elsewhere, States generally lack

the authority to regulate air quality in Indian country. See Alaska v. Native Village of Venetie Tribal Government, 522 U.S. 520, 527 fn.1 (1998) (“Generally speaking, primary jurisdiction over land that is Indian country rests with the Federal Government and the Indian Tribe inhabiting it, and not with the States.”), California v. Cabazon Band of Mission Indians, 480 U.S. 202, 216 and n.18 (1987); see also HRI v. EPA, 198 F.3d 1224, 1242 (10th Cir. 2000); see also discussion in EPA’s final rule for the Federal operating permits program, 64 FR 8251 - 8255, February 19, 1999. Furthermore, EPA interprets the CAA as establishing unitary management of reservation air resources and as a delegation of Federal authority to eligible Tribes to implement the CAA over all sources within reservations, including non-Indian sources on fee lands. Accordingly, even if a State could demonstrate authority over non-Indian sources on fee lands, EPA believes that the CAA generally provides the Agency the discretion to Federally implement the CAA over all reservation sources in order to ensure an efficient and effective transition to Tribal CAA programs and to avoid the administratively undesirable checkerboarding of reservation air quality management based on land ownership. EPA believes that Congress intended that EPA take a territorial view of implementing air programs within reservations. EPA believes that air quality planning for a checkerboarded area would be more difficult and that it would be inefficient if a State were to exercise regulation over piecemeal tracts of land within a reservation, possibly with similar reservation sources being subject to different substantive requirements. EPA’s approach provides for coherent and consistent environmental regulation within reservations.

Although EPA does not recognize State or local air regulations as being effective within Indian country for purposes of the CAA, absent an express approval by EPA of those regulations

for an area of Indian country, today's rulemaking does not address the validity of State and local law and regulations with respect to sources in Indian country, or the authority of State and local agencies to regulate such sources, for purposes other than the Federal CAA. We are specifically not making a determination that these Federal CAA rules override or preempt any other laws that have been established. For example, in the area of open burning, EPA recognizes that some Federal, State, local, and Tribal agencies may have established requirements covering topics such as solid waste management and fire safety in addition to air quality management. The general open burning rule at § 49.131 specifically provides that nothing in the rule exempts or excuses any person from complying with the applicable laws and ordinances of other governmental jurisdictions.

Application of the FARR to Sources within the Exterior Boundaries of Reservations.

Since these rules will apply only to sources located within the boundaries of the specified Indian reservations, EPA believes it will be relatively easy for a source or activity located on an Indian reservation to determine whether it is subject to the provisions of the rules that are included in the implementation plan for that reservation in 40 CFR part 49, subpart M. The rules adopted here do not apply directly to sources located outside these reservations. A source that is uncertain regarding the applicability of a rule may submit a written request to EPA for an applicability determination. In response, EPA will issue a written determination stating whether the source or activity is subject to a particular Federal air quality rule. In most cases, determining whether the source or activity is on an Indian reservation will be straightforward and non-controversial. For example, in most cases EPA and the source will be able to easily determine whether a source is located within the exterior boundaries of a reservation, including Tribal trust

lands. If a source is located on land within the exterior boundaries of an Indian reservation recognized by the Department of the Interior, that source will be subject to the FIP established for that reservation notwithstanding the ownership status of the land.³ EPA will not consider the status of an area to be in question if it is clearly within the boundaries of an Indian reservation.⁴ In the rarer, more complex factual cases, EPA will, as appropriate, work with the U.S. Department of the Interior, Tribes, and stakeholders to assess the reservation status of the location. After EPA has reviewed the relevant materials, the Agency will send a letter to the source stating EPA's determination of whether the source is located within the boundaries of a reservation. Such sources or activities located on Indian reservations will be expected to comply with the applicable requirements of these FIPs.

EPA's Approach. EPA's intention is to promulgate Federal regulations that are an important initial step to fill the regulatory gap on Indian reservations in Idaho, Oregon, and Washington. However, EPA does not intend, nor does it expect, these gap-filling regulations to impose significantly different regulatory burdens upon industry or residents within reservations than those imposed by the rules of State and local air agencies in the surrounding areas. This

³ Section 301(d)(2)(B) of the Act, 42 U.S.C. 7601(d)(2)(B), refers to management and protection of resources within the exterior boundaries of the reservation; section 110(o) of the Act, 42 U.S.C. 7410(o), states: "When such [implementation] plan becomes effective in accordance with the regulations promulgated under section 7601(d) of this title, the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation."

⁴ Since the rules promulgated today pursuant to Subchapter III of the Act apply only to sources within the boundaries of the specified Indian reservations, which are clearly Indian country under 18 U.S.C. 1151 and the CAA, these rules are consistent with the decision in State of Michigan v. EPA, 268 F.3d 1075 (D.C. Cir.2001).

approach is intended to formally “level the playing field.” In other words, the intent of these rules is to provide people living within reservation boundaries with air quality protection similar to surrounding areas, and to require that emissions from sources located within reservations are controlled to levels similar to those of sources located outside the reservations. EPA believes that in light of the particular air quality problems generally present on reservations in the Pacific Northwest and based on our expertise in this area, it is appropriate to establish each of the air quality rules for each reservation that are promulgated today.

These gap-filling rules are generally based upon the aspects of State and local rules most relevant to the air-polluting activities on reservations in the Pacific Northwest, and reflect a level of control of a typical air quality control program. As a general matter, these regulations are not as restrictive as the most stringent State and local rules for the same class of sources or activities; likewise, they are not as lenient as the least stringent of the State and local rules. EPA has used its best professional judgment to determine limits that provide protection where none existed yet are similar enough to adjacent rules so as to not create hardships for industry, Tribes, or the general public. In some areas a particular rule is more or less stringent than a rule in areas directly adjacent to the reservation, but on the whole, we believe these rules are roughly equivalent to the rules in surrounding jurisdictions.

EPA’s final rules published here address clearly identified air pollution concerns of the Pacific Northwest Indian reservations based on information gathered in a number of ways, including review of State and local air agency implementation plans, as discussed in the proposal. EPA believes that it is appropriate to focus initially on the sources in Region 10 that have been identified as ones that may cause or contribute to prevalent air quality problems on

reservations and in shared airsheds of the Pacific Northwest. Aside from existing national emissions standards and Federal requirements described elsewhere, these FIPs are the first building blocks under the CAA to address such emissions.

EPA Authority for these FIPs. As described below, EPA disagrees that its authority under the CAA is limited to regulate sources only as proven necessary to attain or maintain the NAAQS and also disagrees with the commenters' position that the Prevention of Significant Deterioration (PSD) authority of section 165 of the Act only applies to new major sources. EPA believes it has ample authority under the CAA to regulate air pollutants that may pose a threat to human health and the environment.

While the authority for EPA to establish these Federal rules for Indian reservations comes primarily from section 301(d) of the CAA, the Agency will look to all of its CAA authorities when establishing requirements that apply to both criteria and non-criteria pollutants. The primary guide for evaluating the scope of implementation plans is found in section 110 of the CAA. Section 110(a)(1) of the CAA is the basis for authority to establish implementation plan requirements that provide for the maintenance of a primary or secondary NAAQS; however, the CAA also provides authority to establish requirements for pollutants where a NAAQS has not been established. For example, the emergency power authority required by section 110(a)(2)(G) provides authority to establish requirements for pollutants where a pollution source or combination of sources is presenting an imminent and substantial endangerment to public health or welfare or the environment, without regard to whether a pollutant is regulated by a NAAQS. Under the authority of section 110 and part C of the CAA, EPA is authorized to establish requirements for regulated air pollutants for which EPA has not promulgated standards under

section 109. There are also several other applicable authorities in part C of the CAA, which addresses PSD. Section 160(1) of the CAA authorizes EPA “to protect public health and welfare from any actual or potential adverse effect which in the Administrator’s judgment may be reasonably anticipate[d] to occur from air pollution or from exposures to pollutants in other media . . . notwithstanding attainment and maintenance of all national ambient air quality standards.” Section 161 of the CAA states that each applicable implementation plan will contain “emission limitations and such other measures as may be necessary . . . to prevent significant deterioration of air quality” in attainment or unclassifiable areas. Section 110(a)(2)(D) states that each implementation plan should contain provisions prohibiting “any source or other type of emissions activity within the State from emitting any air pollutant in amounts” which will interfere with measures required under a part C implementation plan “to prevent significant deterioration of air quality or protect visibility.” These provisions of the CAA authorize EPA to establish permit conditions and other requirements to regulate activities that emit pollutants, even where pollutant levels in the ambient air are below the NAAQS for criteria pollutants in attainment or unclassifiable areas. The FIPs issued by EPA also can rely on other authorities in the CAA to regulate and obtain information about sources of pollutants other than NAAQS pollutants, such as our authority to require reporting and recordkeeping under section 114 of the CAA. EPA believes its authority to promulgate these rules under the CAA is clear and consistent with its previous rules promulgated pursuant to section 301(d) that were upheld by applicable courts of the United States.

The rules established here neither affect a Tribe’s eligibility for TAS nor change EPA’s rules establishing the TAS process. EPA is promulgating these gap-filling rules for Indian

reservations in Idaho, Oregon, and Washington after consulting with the affected Tribes about air quality issues they face. These rules, as described elsewhere, are intended to fill the gap in current regulations until such time as individual Tribes develop and implement approved TIPs.

Implementation Schedule. With regard to the comment on implementation schedules, EPA thoroughly discussed in the final TAR rulemaking (63 FR 7265) how it is meeting the deadlines established in section 110 of the CAA. EPA has interpreted the CAA as offering flexibility to Tribes regarding the time needed to establish a CAA program, and the CAA does not compel Tribes to establish a CAA program. Therefore, EPA determined that it would be infeasible and inappropriate to subject Tribes to the mandatory submittal deadlines imposed by the Act on States. However, the TAR includes a specific obligation at § 49.11 to establish a FIP to protect air quality within a reasonable time as necessary or appropriate if Tribal efforts do not result in adoption and approval of Tribal plans or programs. Thus, EPA will continue to be subject to the basic requirement to issue any necessary or appropriate FIP for affected Tribal areas within a reasonable time.

Section 116 of the Act. EPA believes that Federal implementation of the Act does not conflict with CAA section 116. Section 116 does not extend State jurisdiction into Indian country. Instead, section 116 provides that the CAA does not preclude or deny the right of any State to adopt or enforce any standard or limitation respecting emissions of air pollutants or any requirement respecting control or abatement of air pollution. As EPA wrote in the final rule establishing the Federal Operating Permits Rule at 40 CFR part 71 (64 FR 8247, 8252, February 19, 1999), section 116 reserves to the States the right to set State emission standards and limitations that are more stringent than and/or in addition to Federal requirements. Section 116

does not preclude EPA from implementing CAA programs. For purposes of this rulemaking, EPA does not believe it is necessary to resolve whether States are precluded from regulating air resources in Indian country solely under color of State law or whether the reservation of rights embodied in section 116 extends to any area of Indian country.

B. Open Burning Rule. The proposal to regulate open burning drew many comments. The most significant topic of concern was the proposed provision that would allow the burning of household wastes in burn barrels. Commenters were concerned about the health and fire safety risks posed by unregulated open burning of waste materials, especially for susceptible populations such as people with asthma, children, and the elderly. A wide variety of commenters questioned the exemption for burning household wastes in burn barrels, since such use is already prohibited by many State and local air quality, waste disposal, or fire safety rules or requirements.

EPA Response: EPA received many comments with compelling information about the threats to human health that can result from open burning, especially from burning garbage in burn barrels. In addition to the numerous comments that objected to allowing the burning of household wastes in burn barrels, EPA has learned of many efforts to stop backyard burning, especially in residential areas. EPA's Office of Solid Waste is implementing a national program to encourage the use of alternatives to open burning, and the State of Washington is attempting to eliminate all outdoor burning.

Based on these comments and other information, EPA is revising the final open burning rule to eliminate the exemption for burning combustible household wastes in burn barrels at single-family residences or residential buildings of four or fewer dwelling units. EPA recognizes

that the use of burning to dispose of household wastes is disfavored by a wide variety of government agencies, and many residents of reservations spoke out against this practice.

The proposed exemption allowed the burning of combustible household wastes, including garbage, plastic containers, paper, paper products, cardboard, and other materials resulting from general residential activities. The only element of the proposed exemption that EPA is retaining in the final rule is to allow for open burning on-site of paper, paper products, and cardboard that are generated by single-family residences or residential buildings with four or fewer dwelling units. EPA proposed to allow the burning of household wastes in burn barrels based on our understanding that solid waste handling alternatives were not readily available to all persons living on reservations. A reservation solid waste survey conducted in 1997 (Reservation Solid Waste Survey, The Northwest Renewable Resource Center, ed. John M. Kliem) indicated that two-thirds of Tribal governments in Idaho, Oregon, and Washington do not have solid waste management programs and many reservations do not have garbage pickup service. Further, several Tribes confirmed during consultation that alternatives to residential burning were not readily available to all persons on their reservations. However EPA heard from other commenters that many reservations have access to garbage collection services. We have insufficient information to conclude that solid waste handling alternatives are readily available on all reservations. Therefore, while we are eliminating the exemption for burning combustible household wastes in burn barrels due to the health effects and other environmental and safety concerns, EPA believes, on balance, that it is not appropriate to completely prohibit the outdoor burning of paper, paper products, and cardboard at this time.

Under today's final rule outdoor burning cannot be used to dispose of garbage, plastics, or

plastic products, including plastic containers and styrofoam. It should be noted that the removal of the proposed exemption for burning household wastes in burn barrels does not mean that all burning in burn barrels is prohibited by this rule. Under this rule, burn barrels may be used to dispose of materials that are allowed to be open burned, such as tree trimmings, yard waste, and paper generated by a single-family residence. EPA emphasizes that open burning must also comply with any fire safety codes or other applicable regulations that may also govern outdoor burning and the use of burn barrels.

EPA recognizes that removing the exemption from the final rule may mean that some reservation residents who currently dispose of household wastes by burning may not be in compliance with the rule. As with the other rules being published today, EPA's initial focus on compliance assurance work will be in the form of assistance, outreach, and education that will inform affected individuals and organizations of the new rules and the adverse health effects of burning. We intend to work with Tribal and local governments to identify alternatives to open burning and plan to use a variety of tools to monitor and respond to violations of the general open burning rule. EPA's approach for implementation of the FARR is described in section II.F.

Through outreach and education, it is EPA's goal to eliminate open burning disposal practices where alternative methods are feasible and practicable, to encourage the development of alternative disposal methods, to emphasize resource recovery, and to encourage utilization of the highest and best practicable burning methods to minimize emissions where other disposal practices are not feasible. EPA strongly supports Tribes, States, and other entities in continuing efforts to reduce open burning in their jurisdictions and generally encourages alternate methods for disposing of waste. EPA is working with both Tribes and States to enhance the awareness of

the health concerns of open burning and facilitate the use of alternate disposal methods through outreach and recycling programs.

EPA is still concerned about the health effects of even limited outdoor burning. Therefore, we intend to continue to evaluate our approach as we gain experience implementing the rules published today, and consider whether outdoor burning should be further limited or completely banned in the future. We are interested in input regarding whether we should consider additional separate rulemaking to ban all outdoor burning on reservations, or only allow limited open burning where garbage pickup or recycling is not reasonably available.

C. Economic Impacts. In response to EPA's request in the proposal for information about the assumptions EPA used to estimate the economic impacts of the rules, a number of commenters wrote that the proposed rules may have an economic effect on the agricultural sector and could affect business development on reservations. A number of farmers and organizations that represent the farming community expressed concern that the proposed rules will establish requirements to eliminate field burning. The comments described the value of the agricultural sector within specific reservations, and expressed concern that the proposed rules in general would hinder the farmers' ability to use their land to make a living and also diminish the value of their land. Many of those commenters and several local governments were concerned that if the rules authorize Tribal governments to regulate nonmember residents of a particular reservation, the jurisdictional issues that arise from these rules would have a negative impact on businesses in the affected areas. The commenters were worried that jurisdictional conflicts could inhibit new business and industry from locating on property subject to Tribal air quality control and drive businesses out of the affected areas. However, no commenters provided any specific information

about the potential economic impacts of the proposed rules.

EPA Response. The commenters in the agricultural community who expressed concern that the rules as proposed would cause economic disruption by eliminating field burning appear to have misunderstood the proposal. EPA did not propose a ban on agricultural field burning, and these final rules do not establish any ban on field burning. The rule for general open burning at § 49.131 prohibits certain materials from being openly burned, but does not prohibit agricultural burning. On the Nez Perce Reservation and Umatilla Indian Reservation, in addition to the general open burning rule, EPA is establishing a rule for agricultural burning permits at § 49.133 that requires farmers to obtain approval of a permit from EPA before conducting an agricultural burn. Currently, EPA and the Nez Perce Tribe have established an intergovernmental agreement with the Idaho State Department of Agriculture and the Idaho Department of Environmental Quality that provides for a coordinated management of agricultural burning activities in the Clearwater Airshed; if necessary, the agreement will be modified to reflect the role of these rules. EPA expects to establish a similar intergovernmental agreement with the Confederated Tribes of the Umatilla Indian Reservation. Additionally, the requirements in the FIPs for agricultural burning permits and open burning are similar to requirements in surrounding jurisdictions.

As discussed elsewhere, a number of commenters misunderstood the proposed rules as providing authority to Tribal governments over nonmembers. The commenters' concerns that the FARR would inhibit new businesses and drive out existing businesses appear to be based upon this misunderstanding. The FIPs are Federal rules issued by EPA under the Federal CAA, and do not provide any authority for Tribes to use Tribal laws to regulate nonmember conduct on any reservation or for Tribes to enforce Tribal law against nonmembers in Tribal courts. Since

these rules are Federal rules, we are not expressing any opinion about the validity of such concerns at this time. From a Federal perspective, EPA already regulates businesses on these Indian reservations under the CAA under existing Federal regulatory programs such as the PSD, National Emission Standards for Hazardous Air Pollutants (NESHAP), and New Source Performance Standards (NSPS) programs. Today's rules establish additional Federal requirements for industry and residents on reservations that are similar to the requirements imposed by the rules of State and local air agencies in the surrounding areas. The rule authorizing non-Title V operating permits at § 49.139 offers a real benefit to industry and businesses by providing a means to obtain enforceable limits on the source's potential to emit for purposes of PSD, Title V, or section 112 of the Act. Today's rules also provide greater certainty to businesses by clearly identifying applicable CAA requirements.

In developing the proposed rulemaking, EPA estimated the economic impacts of these requirements in an Economic Impact Analysis (EIA). In the *Federal Register* notice for the proposal, EPA specifically solicited comments on certain assumptions regarding capital costs, operation and maintenance (O&M) costs, and the costs of meeting visible emission and fugitive emission requirements, conducting source tests, and meeting the sulfur content in fuel limits. EPA explained that, for the purposes of generating cost estimates in the EIA for each of the proposed rules, EPA assumed that there would be no capital costs incurred under any of these rules. EPA stated that it believes sources generally are complying with State and local rules in the absence of Federal rules because the sources may have believed they were subject to State and local rules or otherwise chose to follow such rules. Furthermore, based on information obtained from Tribal, State, and local authorities, as well as businesses and other entities affected

by these rules, EPA did not anticipate that facilities would add control devices as a result of these rules. In the proposal, EPA did not estimate O&M costs to comply with these rules because insufficient data were available to estimate them. EPA has again evaluated the potential economic impacts of these rules, after considering comments on the proposed rules. No specific information was submitted about the EIA assumptions in comments on the proposed rulemaking to indicate that the EIA prepared by EPA for the rules is incorrect. The EIA has been updated to reflect rule revisions, updated wage rates, and new information about the sources on the 39 Indian reservations. As described in the EIA, annualized labor costs are estimated to be \$120,872, annualized non-labor costs are estimated to be \$17,475 (which is divided between annualized start-up costs of \$14,175 and recurring annual [O&M] costs of \$3,300), and incremental pollution abatement capital equipment expenditures are assumed to be zero for a total estimated cost of \$138,347 annually after all rules are fully implemented. These estimates are the cumulative costs for all businesses affected by the rules. The final Economic Impact Analysis is available in the docket for this rulemaking.

D. Delegation of Authority to Tribes. A number of commenters were concerned that the proposed rules would delegate authority to Tribal governments to regulate the activities of non-Tribal members on privately owned land within the reservation. The commenters believed that such rules would be unconstitutional, stating that non-Tribal citizens have no voice or representation in Tribal government and are not able to vote in Tribal elections.

Several commenters had questions about how the delegation process is different than the process for a Tribe to be approved for TAS. Several Tribes reminded EPA that the CAA was enacted with the expectation that Tribal governments would be managing air quality on

reservations. The commenters asked EPA to ensure that these rules and the delegation provisions do not diminish the rights or ability of Tribes to establish requirements under Tribal law.

In its comments on the proposed delegation provision at § 49.122, a State environmental agency stated that it supported delegation of provisions of the FARR to Tribes, but requested that the State, affected stakeholders, and local communities be given an opportunity to participate in the development of delegation agreements by at least being offered the opportunity to comment. Another local government also requested an opportunity to comment on proposed delegation agreements. The State also requested that, prior to delegation, EPA require the Tribe to demonstrate that it has sufficient resources to ensure that the terms and conditions of the agreement can be met. The State also asked EPA to explain the specific Federal functions that would be subject to delegation under the proposed regulation.

EPA Response: The rule EPA is finalizing at § 49.122 authorizes a partial delegation of administrative authority to a Tribal government for the purpose of assisting EPA in administering one or more of the Federal rules that have been promulgated for a Tribe's reservation. While a Tribe may be delegated administrative authority for one or more of the Federal rules, EPA will maintain sole authority to enforce the FARR. Since this would be a delegated Federal program, any Federal requirement administered by a delegated Tribe is subject to EPA enforcement and EPA appeal procedures, not the Tribe's, under Federal law. The delegation provision allows EPA to delegate distinct roles for assisting EPA and severable Federal regulations to qualified Tribes for administration, without requiring a Tribe to take on all aspects of the FARR. This provision provides EPA additional flexibility for implementing these rules where EPA believes

delegation is appropriate. The delegation process in this rule is similar to the process EPA uses to delegate authority to States to administer Federal programs such as PSD and Title V. Nothing in these rules requires EPA to delegate administrative authorities to Tribes. The partial delegation would authorize a Tribal government to administer specific functions of the FARR rules, with Tribal government employees acting as authorized representatives of EPA. EPA and the delegated Tribe would, as appropriate, establish mechanisms to fund the work by Tribal staff, that may include Federal funding assistance through cooperative agreements and grants and/or user fees and charges established by the Tribe to fund its administrative activities on behalf of EPA. The Tribe would be authorized to administer one or more of the rules, with the oversight of EPA staff. Any challenges to an action will be handled directly by EPA, and any formal appeals or enforcement actions will proceed under EPA's administrative and civil judicial procedures.

As EPA stated in the proposed rulemaking, the administrative delegation from EPA to a Tribe to implement a specific Federal air rule is to be distinguished from EPA's interpretation that the CAA is a delegation of Federal authority from Congress to Tribes. It is EPA's position that the CAA TAS provision constitutes a statutory delegation of authority to eligible Tribes over their reservations. Under the CAA, Tribes may develop air programs covering their reservations and non-reservation areas within their jurisdiction for submission to EPA for approval in the same manner as States. 63 FR 7254-7259; 59 FR 43958-43960. The U.S. Court of Appeals for the District of Columbia Circuit upheld the TAR in Arizona Public Service Co. v. EPA, 211 F.3d 1280 (D.C. Cir. 2000), cert. denied 121 S. Ct. 1600 (2001). The TAR established how EPA can approve Tribal eligibility applications for a Tribe to operate a CAA program under Tribal law

using a modular approach. EPA expects that many Tribes will develop their own air quality programs. However, Tribes are not required to adopt and implement all CAA programs at once.

The approach being used in these final regulations will allow Tribes that are building air quality programs to gain experience by assisting EPA with implementation of the Federal rules before they decide to adopt their own Tribal rules. EPA recognizes that a Tribe may choose not to develop a Tribal air program under Tribal law for approval under the TAR, but may still want to assist EPA in implementing the Federal air quality requirements for its reservation and to build its capacity in managing an air quality program. However, EPA stresses that establishing a delegation agreement to assist EPA in implementing the FARR on a reservation will not affect a Tribe's eligibility for TAS. EPA anticipates that the capability and experience gained through assisting EPA will help Tribes decide whether to establish their own CAA programs to either supplement or substitute for the Federal rules for their particular reservation.

EPA recognizes that a number of the commenters believe it is unconstitutional for a Federal law to subject nonmembers to the laws of an Indian Tribe. As noted above, however, these commenters have misunderstood these rules because the FARR consists of Federal requirements, to be enforced by the Federal government. Still, it is important to note that the commenters' concerns have been addressed by the courts including, as noted above, in relation to EPA's interpretation of the CAA TAS provision as a Congressional delegation of authority to Tribes over their reservations which was upheld by the U.S. Court of Appeals for the D.C. Circuit.

EPA stresses that a delegation agreement is not the only mechanism by which a Tribe can assist EPA in implementing one or more of the rules. EPA may choose to make arrangements

with Indian Tribes under a variety of Federal assistance authorities, such as grants, cooperative agreements, or contracts, where the work to be accomplished would be specified in the financial assistance documents.

The final rule at § 49.122 retains the same provision as proposed by EPA to delegate to a Tribe the authority to help EPA implement the FARR on the Tribe's reservation. EPA is, however, making several revisions to the rules in response to comments. For example, the title of the rule is changed to read "Partial Delegation of Administrative Authority." This revised title is designed to clarify that the rule authorizes EPA to delegate only the authority to assist in the administration of, but not enforce, the rules. The final rule at § 49.122(a) explicitly states that the rules covered by a delegation agreement would be enforced by EPA, as appropriate.

In response to requests for an opportunity to participate in the development of these partial delegation agreements, this rule includes a new subsection, § 49.122(d)(1), that provides for stakeholder involvement prior to completing a partial delegation agreement. This new subsection of the rule provides that prior to completing a partial delegation agreement under the rule, EPA will consult with appropriate governmental entities outside of the specified reservation, and with city and county governments located within the boundaries of the specified reservation. EPA has defined appropriate governmental entities as States, Tribes, and other Federal entities located contiguous to the Tribe applying for eligibility. See generally, 56 FR 64876, 64884 (December 12, 1991) and 63 FR 7267 (February 12, 1998). EPA does not believe that it is necessary or appropriate to require additional public participation procedures for establishing a partial delegation agreement between EPA and a Tribe because it will be limited to describing how a Tribe will assist EPA by administering one or more of the rules. EPA will

however, publish a notice in the *Federal Register* informing the public of any partial delegation agreement for a particular Indian reservation and will indicate such delegation in the implementation plan for the Indian reservation. EPA will also publish an announcement of the partial delegation agreement in local newspapers.

EPA agrees that it will delegate authority to help administer these rules only to Tribes capable of doing the work properly. The final rule is modified to expressly require a Tribe to demonstrate both the technical capability and adequate resources to administer the rule under a partial delegation agreement. The FARR at § 49.122(b) describes the criteria a Tribe must meet when applying for a partial delegation, including that the Tribe has (or is acquiring) the technical capability and resources to carry out the aspects of the rules and provisions for which delegation is requested. As already noted, EPA has no obligation to delegate administrative authorities to Tribes, and we will do so only where the Tribe has demonstrated that the work will be carried out properly. EPA also expects the partial delegation agreements will include provisions to regularly review performance by the Tribe and identify implementation issues that could be addressed by modifying the delegation agreement.

Consistent with the proposal, this final rule does not list the rules or Federal functions that may be delegated. For some portions of the FARR, EPA expects to initially retain full administration of the program without administratively delegating any aspects to Tribes so that we can gain experience with the process for implementation and become familiar with the regulated community. For example, EPA wants to gain experience with implementing the rule for non-Title V operating permits at § 49.139 by using Federal administrative procedures. A number of rules are not subject to delegation because they are self-implementing standards that

are to be met by the regulated community, such as the rules at § 49.124 (Rule for limiting visible emissions), § 49.125 (Rule for limiting the emissions of particulate matter), § 49.126 (Rule for limiting fugitive particulate matter emissions), § 49.127 (Rule for woodwaste burners), § 49.128 (Rule for limiting particulate matter emissions from wood products industry sources), and § 49.129 (Rule for limiting emissions of sulfur dioxide). On the Nez Perce Reservation, where we have been working closely with the Tribe, and the Umatilla Indian Reservation, where EPA is promulgating burning permit programs for both reservations, EPA expects to establish delegation agreements with the Tribes to provide local handling of permitting and implementation needs.

Tribal governments will be able to provide a variety of expertise to assist EPA in implementing these rules. For example, EPA anticipates arrangements for administering the open burning rule may include coordination with local fire marshals and fire safety officials. The specific provisions of each delegation agreement will be tailored, as appropriate, in light of each Tribal government's operations, the location of the reservation, or other relevant factors.

E. Public Participation in the Rulemaking. When the proposed rules were published on March 15, 2002, EPA provided a 90-day public comment period ending on June 13, 2002. Before the close of the comment period, some local governments and several individuals requested more time to comment on the proposed rules, writing that more time was needed to provide all affected parties an opportunity to comment and to allow thorough review of the proposed rules by elected officials. In response to the requests for additional time to comment on the proposal, EPA reopened the comment period from August 9, 2002 until October 10, 2002 and held a public hearing in Toppenish, Washington, on the Yakama Reservation, on September 10, 2002. The hearing was advertised in various newspapers in Washington, Oregon, and Idaho.

EPA offered an afternoon information session for questions and answers before the evening hearing in Toppenish. Approximately 90 people attended the information session and hearing, and 28 people testified at the hearing. A copy of the transcript from the public hearing is in the docket.

During the second comment period, EPA received a number of additional comments requesting more time for public participation. A number of commenters criticized EPA for consulting with Tribal governments for a number of years during the development of the proposed rules, and stated that EPA had not provided adequate time for local governments to participate. A number of other commenters wrote that EPA had offered enough time for interested parties to comment.

Several comments criticized EPA, asserting that EPA failed to follow the EPA Public Involvement Policy (46 FR 5736, January 19, 1981 and 68 FR 33946, June 6, 2003) for early consultation and involvement prior to publishing the proposed rules. Commenters also stated that EPA failed to comply with Executive Order 13132 on Federalism, asserting that EPA did not meet its requirements for early consultation with State and local officials during rule development. Several commenters stated that EPA had not completed an environmental assessment of the rules, which the commenters believed was subject to the National Environmental Policy Act (NEPA).

EPA Response: EPA believes it provided adequate time and opportunity for the public, as well as State and local agencies, to fully participate in the rulemaking. EPA invited review of the proposed rules from State and local air agencies well in advance of starting the public comment period in March 2002, reopened the original 90-day comment period at the request of

commenters, and held a public hearing one month before the public comment period ended.

When determining how much time to offer for public comment, EPA also considered that State and local air agencies had opportunities to review and comment on the proposal well in advance of the public comment period. As noted in the proposal, EPA provided advance draft copies of the proposed rules to State and local air agencies in Idaho, Oregon, and Washington. Specifically, EPA provided a draft of the proposal to State and local air agencies in July 2001 and solicited input. Generally, the States and local air agencies were pleased that EPA was developing rules for Indian reservations and provided useful feedback on the draft.

EPA disagrees with the commenters who think that EPA should not have worked so closely with Tribal governments. The Agency believes it has proceeded with this rulemaking consistent with all Agency policies and Presidential directives. The approach EPA followed to consult with affected Tribes in Region 10 in the development of these rules is consistent with EPA's National Indian Policy, Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments," 65 FR 67249 (November 6, 2000), and other Federal policies on Tribal consultation that require EPA to develop an accountable process to ensure meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.

Moreover, as discussed above, EPA also provided State and local air agencies an opportunity to review and comment on a complete draft. When we issued the proposed rules, EPA published many notices of the public comment opportunity and offered to hold a public hearing if requested. When we decided to reopen the comment period, we gave widespread notice of the additional time and of the scheduled public hearing. The fact that many citizens and

Tribal, State, and local governments were aware of the proposal, submitted written comments, and attended the public hearing demonstrates the effectiveness of the notice provided. The public participation process EPA used here is consistent with EPA's Public Involvement Policy, that by its terms is designed merely to guide the Agency's efforts. EPA also has fully complied with all Executive Orders applicable to this rulemaking. In the proposal, EPA specifically evaluated Executive Order 13132, Federalism, concluding that it did not apply to the proposed rules because they 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. These rules only prescribe regulations for facilities in areas where a State does not administer an approved CAA program, and thus do not have any direct effect on any State. Moreover, it does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this rulemaking. In summary, EPA believes that we have met all requirements for public participation applicable to this rulemaking.

With regard to NEPA, Congress passed the Energy Supply and Environmental Coordination Act in 1974, which exempts all actions under the CAA from NEPA.

F. Implementation of the Rules. Commenters from Tribes, States, and local air agencies generally supported the FARR and encouraged EPA to finalize the rules. A number of commenters asked how EPA is planning to implement the FARR on the 39 Indian reservations, and requested more information about the resource needs, timeframe, and scope of Federal implementation of the rules, and how Tribes will be involved in the implementation. Commenters with concerns about enforcement of the rules asked how EPA is going to ensure

compliance. Other commenters had specific suggestions for revising the proposed rules so as to minimize the burden on the regulated businesses.

EPA Response: EPA has developed an Implementation Framework as a first step toward describing our overall approach to FARR implementation. The Implementation Framework, which is a working draft subject to further changes and refinement, is intended to give a general sense of EPA’s approach to the implementation of each section of the FARR; how EPA intends to align resources with implementation needs; and the ways in which EPA will involve Tribes in FARR implementation. This document, “Framework for Implementation of the FARR” is available in the docket.

The level of effort needed for EPA’s implementation planning and response will vary among different parts of the FARR. EPA has experience in the areas of permitting, compliance monitoring, complaint response, and enforcement in Indian country, so refining these programs to include full implementation of the FARR should be relatively straightforward. For elements such as a source registration system, a burn permit program, or monitoring air pollution episodes, much more work will be needed to develop the programs and integrate them into EPA’s ongoing work. As EPA develops experience in implementing these rules, we expect that such experience will lead to refinements in our implementation approach and, possibly, to proposals for rule changes.

1. Compliance Dates

The effective date of the final rules is **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. Air pollution sources within the exterior boundaries of an Indian reservation in Idaho, Oregon, or Washington, as set forth in 40 CFR part

49, subpart M, will be required to comply with the requirements in the final rules beginning on the effective date. A few of the rules require sources to take specific actions by certain dates, and these “implementation dates” are also clearly identified in the final rules. For example, the registration rule at § 49.138 requires existing sources (except for those exempted) to submit an initial registration by February 15, 2007; the burn permit rules at § 49.132, § 49.133, and § 49.134 require people who want to burn on the Nez Perce Reservation to apply for a permit beginning on the effective date of the FARR; and the burn permit rules at § 49.132, § 49.133, and § 49.134 require those who want to burn on the Umatilla Indian Reservation to apply for a permit beginning on January 1, 2007.

2. Resources

As noted above, a number of commenters urged EPA to provide sufficient resources for implementation activities, such as responding to complaints and taking enforcement actions where there are violations of the rules. Tribes also encouraged EPA to continue to support capacity-building by Tribes for Tribal air programs and to provide adequate resources so the Tribes can assist EPA in administering the rules.

As we stated when proposing these rules, EPA is issuing regulations that it believes it has the resources to implement and enforce. Over the near term, EPA does not anticipate adding significant new resources, either for EPA or for the Tribes, for implementation of the FARR, although EPA expects to shift some existing resources to respond to the FARR workload. Since EPA is committed to continue funding Tribes to build their capacity for air quality matters, EPA Region 10 will seek additional national and regional resources as needed or appropriate to support Tribes and to further this innovative regional initiative.

To the extent practicable, these regulations minimize the implementation burdens upon EPA and the regulated community while establishing requirements that are unambiguous and enforceable. EPA is making a number of changes to the final rules to this end, such as phasing in the implementation of the open burning rule at § 49.131 and the burn permits programs at §§ 49.132 - 49.134, and exempting *de minimis* sources from the registration rule at § 49.138. For a more detailed discussion of these rule changes, see section III of this document. The “phasing in” of requirements for different elements of the FARR will help EPA spread out the implementation work and prioritize our resources for implementation.

EPA is phasing in the open burning rule at § 49.131 by focusing on outreach and education in the initial stages of implementation, as discussed further below. EPA is also using a phased approach to establish burn permit programs for agricultural burning, forestry burning, and open burning on the Nez Perce Reservation and the Umatilla Indian Reservation. EPA is first starting the burning permit programs on the Nez Perce Reservation, where EPA and the Tribe have been operating under an intergovernmental agreement with the Idaho Department of Environmental Quality and the Idaho State Department of Agriculture to manage agricultural field burning in the Clearwater Airshed. For the Nez Perce Reservation, anyone who wants to conduct agricultural, forestry, or open burning after the effective date of the FARR must apply for and obtain a permit. For the Umatilla Indian Reservation, anyone who wants to conduct agricultural, forestry, or open burning after January 1, 2007 must apply for and obtain a permit. These dates will provide time for EPA and the Tribes to develop burning permit programs.

EPA also is limiting the burden on regulated sources and itself is by exempting sources with relatively insignificant emissions from registration and emissions reporting requirements

under the registration rule at § 49.138. Examples of exempted sources include air pollution sources that do not have the potential to emit more than two tons per year of any air pollutant, single family residences, small boilers and heaters used for space heating, and open burning. EPA believes that an accurate inventory of sources and emissions can be assembled for purposes of air quality management without requiring sources with small or *de minimis* emission levels to register.

3. Outreach and Education

One of the most important aspects of implementation of the FARR will be outreach to affected communities. EPA is developing a comprehensive outreach strategy that includes plans to adequately educate people and sources affected by the FARR. EPA will provide appropriate information to each sector (e.g., citizens, Tribal governments and air quality staff, and source owners and operators) so that they understand what the rules require of them. The outreach strategy will also address timing for delivery of outreach and the resources available to provide adequate outreach. EPA intends to involve stakeholders in the development of outreach plans so the materials created will be effective and culturally-sensitive for both Tribal members and non-Tribal members living on the reservations.

EPA expects that the air pollution episode rule at § 49.137 (see below) and the open burning rule at § 49.131 will require the most outreach resources. Through outreach and education, it is EPA's goal to eliminate open burning disposal practices where alternative methods are feasible and practicable, to encourage the development of alternative disposal methods, to emphasize resource recovery, and to encourage utilization of the highest and best practicable burning methods to minimize emissions where other disposal practices are not

feasible. In addition to communicating the threats to human health that can result from improper use of burn barrels and residential waste burning in general, we will communicate the requirements of the rule, including what can and cannot be burned.

Implementation of the open burning rule as it relates to residential activities will pose unique challenges in assuring compliance. EPA recognizes that removing the exemption for burning combustible household wastes in burn barrels from the final rule may mean that some reservation residents who dispose of household wastes by burning may not be in compliance with the rule. EPA anticipates the need to work with Tribes to design and implement effective outreach and education, design and implement complaint tracking and response programs, and work cooperatively with solid waste programs to address alternatives to burning.

As with the other rules being published today, EPA's initial focus on compliance assurance work will be in the form of outreach efforts to inform affected individuals and organizations of the new rules. We intend to work with Tribal governments and other stakeholders, such as local governments, to identify alternatives to open burning, and expect to use a variety of tools to monitor and respond to violations of the general open burning rule. EPA will prioritize which reservations receive the outreach and education resources first based on many factors, including the severity of the problem to be addressed and overall outreach prioritization. EPA will also give priority to the reservations where the Tribes are interested and able to assist with implementation of this rule.

EPA also plans to provide an information point of contact, such as a toll-free telephone number, to answer questions, provide forms, and provide other FARR-related information. EPA will also have information available on the EPA Region 10 website at

<http://www.epa.gov/r10earth/FARR.htm>.

4. Compliance Assurance

EPA anticipates its compliance assurance and enforcement policies will be similar to response policies currently used by State and local air agencies in Region 10 for similar types of violations, but with the additional use of the Region 10 Enforcement Procedures in Indian Country (available in the final rule docket).

EPA defines “compliance assurance” broadly to include compliance assistance, compliance incentives, compliance monitoring, and enforcement response. The FARR compliance assurance program will include all four elements. Compliance assistance is closely linked to the overall outreach effort so that the regulated community understands the new rules and what they must do to comply. Compliance monitoring includes a wide range of activities to evaluate and determine compliance such as on-site inspections and review of records, monitoring results, and other information about, or from, regulated sources. Compliance incentives will be guided by EPA’s Audit Policy and Small Business Policy. Enforcement response to violations generally takes a variety of forms depending on the nature of the compliance issue and the relative priority for EPA response.

As a general approach, EPA will focus initially on compliance monitoring and enforcement for regulated industrial sources. Priority will be given to facilities that meet the definition of “major facility” or that are non-major stationary sources of interest to EPA due to their pollution potential.

To implement the compliance assurance program, we will use EPA staff and, where available, staff of the Tribal government for that reservation. EPA may also use other resources,

such as a “circuit rider” to assist EPA in the field by making regular visits to conduct specific oversight or provide technical assistance to Tribes. Although such arrangements to assist EPA may be in the form of contracts, EPA also will look for opportunities to promote Tribal participation through formal agreements such as partial delegations or Direct Implementation Tribal Cooperative Agreements (DITCAs), and through work-sharing and collaboration where there is no formal delegation (e.g., EPA may request that a Tribe conduct fact finding in response to complaints or make opacity readings) as discussed below.

5. Partial Delegation Agreements

EPA anticipates that it will establish delegation agreements with Tribes in order to best use limited resources for implementing the FARR on 39 Indian reservations. The FARR authorizes a partial delegation of administrative authority to a Tribal government for the purpose of assisting EPA in administering one or more of the Federal rules. Under § 49.122, EPA may delegate administration of distinct and severable Federal regulations to a qualified Tribe, without requiring a Tribe to administer all aspects of the FARR. While a Tribe may be delegated administrative authority for the Federal rules, EPA will maintain sole authority to enforce the FARR.

EPA is developing standard procedures for negotiating delegation agreements. Procedures will cover eligibility criteria, timing and mechanisms for delegation, requirements for documentation of eligibility, opportunities for input on the delegation agreement, and monitoring of performance under the agreement.

Although the partial delegation rule provides a process for EPA to formally delegate administration of one or more of the FARR requirements to a Tribe, Tribes can provide

substantial assistance to EPA without a delegation agreement. For example, pursuant to a grant under section 103 of the CAA, Tribal air staff could distribute information packets to regulated sources, coordinate Tribal air and solid waste alternatives to burning, or otherwise serve as EPA's on-scene assistant for implementation of the rules. Where an official partial delegation agreement is not yet in effect, EPA will explore the use of Memoranda of Agreement, grants, cooperative agreements, and other forms of agreement to document understandings about respective roles and responsibilities for such tasks.

Experience involved in implementing the FARR will help EPA and the Tribes identify which rules are most appropriate for delegation to Tribes. It will also help to identify the most efficient mechanisms to provide needed financial support for Tribal assistance. Because assisting with the FARR will build Tribal capacity to adopt Tribal air quality regulations, it will serve as a logical step in moving the Tribes toward development of their own TIPs. Several Tribes have expressed an interest in assuming delegation of administrative authority for one or more provisions of the FARR. Others have indicated that they wish to help in other ways.

These partial delegation agreements would authorize a Tribal government to administer specific functions of the FARR rules, with Tribal government employees acting as authorized representatives of EPA. EPA and the delegated Tribe would, as appropriate, establish mechanisms to fund the work by Tribal staff, that may include Federal funding assistance through cooperative agreements and grants, and/or user fees and charges established by the Tribe to fund its administrative activities on behalf of EPA. Under a delegation agreement, the Tribe would be authorized to administer one or more of the rules, with the oversight of EPA staff. Any challenges to an action will be handled directly by EPA, and any formal appeals or enforcement

actions will proceed under EPA's administrative and civil judicial procedures. For more discussion on delegation, please see section II.D of this document.

6. Burn Bans

Implementing the general rule for open burning (§ 49.131) and the rule for air pollution episodes (§ 49.137) will require significant EPA coordination with local partners to inform individuals living on reservations of poor air quality episodes and the mandatory burn bans that accompany such episodes. Under the FARR, the Regional Administrator may issue an air stagnation advisory when meteorological conditions are conducive to the buildup of air pollution. An air pollution alert, air pollution warning, or air pollution emergency may be declared by the Regional Administrator whenever it is determined that the accumulation of air pollutants in any place is approaching, or has reached, levels that could lead to a threat to human health. Burn bans may also be declared whenever particulate matter levels exceed, or are expected to exceed, 75% of any NAAQS for particulate matter, and these levels are projected to continue or reoccur over at least the next 24 hours.

State and local air agencies in Region 10 currently declare burn bans and issue air stagnation advisories, alerts, warnings, and emergencies for areas within their jurisdiction, including areas adjacent to or surrounding the reservations. Prior to implementing the FARR, EPA will establish a protocol with these State and local air agencies for coordination of burn bans and air quality announcements. When a State or local air agency declares a burn ban or an air pollution episode, EPA will determine if similar conditions also exist within any reservations. To determine if similar conditions exist within a reservation, EPA will consider existing air quality as measured by air quality monitors determined to be representative of air quality on each

reservation. Once EPA determines that it is appropriate to declare a burn ban and/or an air pollution episode on a reservation, EPA will take appropriate steps to communicate this information to the residents of the affected reservation.

Initially, EPA's implementation of the burn ban provisions and the air pollution episode rule will rely largely on air quality data being collected at existing air monitors operated by State and local air agencies. Over time, and as resources permit, an increase in continuous air monitors located on reservations would provide additional air quality data that EPA would consider prior to declaring burn bans or air pollution episodes for reservations. Reservations that would be candidates for additional continuous monitors are those where the existing State and local monitoring networks may not adequately characterize the air quality on the reservations and where elevated levels of pollution could be expected to occur.

7. Part 71 Permits

40 CFR part 71 authorizes the Agency to administer a Federal operating permit program in areas without an approved permitting program under 40 CFR part 70 (40 CFR part 71). Promulgation of the FARR will compel "reopening for cause" of the part 71 air operating permits that EPA has already issued on the covered reservations to include FARR requirements⁵. The procedures for re-issuing such a permit are the same as for issuing initial and renewed permits. Because some permits will have less than three years remaining on their terms, they will not need

⁵As previously stated in section II.A, although the authority for EPA to establish these Federal rules for Indian reservations comes primarily from section 301(d) of the CAA, the Agency has looked to all of its CAA authorities in issuing these FIPs. EPA also made clear that it is issuing these FIPs primarily as a first step in meeting the goals of section 110(a) of the CAA. See 67 FR 11749. It is EPA's position that the requirements of these FIPs are "standards or other requirements provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implement the relevant requirements of the Act" and thus are "applicable requirements" as defined in 40 CFR 70.2 and 71.2. As such, the requirements of these FIPs must be included in Title V air operating permits issued to Title V sources subject to these FIPs.

to be reopened when the FARR becomes effective, but will be updated when their term naturally expires. The FARR requirements are effective for part 71 sources upon the effective date of this rulemaking even though the requirements may not yet be incorporated in the part 71 permit.

For part 71 sources, adding the FARR requirements will fill important gaps in the permits such as limits for visible emissions, particulate matter, sulfur dioxide, etc. To speed up and simplify the process, EPA may use a single notice and comment opportunity for multiple permits.

G. Applicability of the Rules to Specific Source Categories. EPA received numerous comments on the proposed emission limitations, permitting provisions and other control measures. Comments were submitted by State and local air authorities, Tribes, industries, farmers, other governmental agencies, and the general public. EPA is making a number of revisions to the proposed rules as a result of these comments. These revisions are described later in this preamble in the section titled “Summary of the Final Rules and Significant Changes from the March 2002 Proposal.” A complete summary of the comments on each rule, and EPA’s response to those comments, is included in the “Response to Comment” document, which is available in the docket.

The most frequent type of comments, which were submitted by many different parties, involved the categories of air pollution sources that EPA proposed to exempt from each of the various rules. Some commenters asked for more source categories to be exempted while other commenters requested that certain exemptions be removed from the proposed rules. In response to these comments, EPA is making only minor changes to the exemptions for the various rules. In some instances, EPA agreed with the commenter that the rule was not appropriate for application to a suggested source category and is adding that category to the exemptions. In most

cases, EPA disagreed with the commenter and is retaining the exemptions as proposed.

We recognize that some of these exempted source categories may have the potential to be areas of concern and may be regulated in other areas of the Region. We do not have sufficient information at this time, however, to determine that they are a problem in need of regulation on the 39 Indian reservations in Idaho, Oregon, and Washington. This rulemaking is a first step to fill the regulatory gap on Indian reservations in Idaho, Oregon, and Washington. As we have noted elsewhere, in the future we may promulgate additional rules if we determine the rules are necessary or appropriate.

Finally, EPA notes that section § 49.135 provides regulatory authority to address specific air quality problems associated with any air pollution source, even those exempted from particular emission standards. While sources such as single family residences, agricultural activities, and public roads are exempted from certain rules, should EPA determine that further controls are needed pursuant to § 49.135, EPA may establish a source-specific requirement if such would be appropriate.

III. Summary of the Final Rules and Significant Changes from the March 2002 Proposal

EPA believes that in light of the particular air quality problems generally present on reservations in the Pacific Northwest, it is appropriate to establish the air quality rules for each reservation that are adopted today. These rules will regulate activities, pollutants, and sources by supplementing the existing Federal regulatory requirements such as the PSD, NESHAP, and NSPS rules. Today's rules will provide additional regulatory tools for EPA to use to implement the CAA on Indian reservations and help to fill the current regulatory gap that exists in controlling important sources of air pollution on Indian reservations in Idaho, Oregon and

Washington.

The FIPs for each reservation include a number of basic provisions to establish the infrastructure of a CAA regulatory program. The basic FIP rules that will apply on all 39 reservations include **§ 49.123 General provisions; § 49.124 Rule for limiting visible emissions; § 49.125 Rule for limiting the emissions of particulate matter; § 49.126 Rule for limiting fugitive particulate matter emissions; § 49.129 Rule for limiting emissions of sulfur dioxide; § 49.130 Rule for limiting sulfur in fuels; § 49.131 General rule for open burning; § 49.135 Rule for emissions detrimental to public health or welfare; § 49.137 Rule for air pollution episodes; § 49.138 Rule for the registration of air pollution sources and the reporting of emissions; and § 49.139 Rule for non-Title V operating permits.**

Also, EPA is establishing certain additional rules for specific reservations where EPA has determined, in consultation with the relevant Tribe, that such additional regulatory measures are appropriate. During the course of its consultation with Tribes and analysis of regulatory needs, EPA found, for example, certain types of wood products industries, or certain practices of agricultural or forestry burning, were prevalent on particular reservations and could be important contributors to air pollution concerns. Therefore, in close consultation with specific Tribes, EPA is promulgating additional rules for three Indian reservations, including **§ 49.127 Rule for woodwaste burners on the Colville and Nez Perce Indian Reservations; § 49.128 Rule for limiting particulate matter emissions from wood products industry sources on the Colville and Nez Perce Indian Reservations; § 49.132 Rule for general open burning permits on the Nez Perce and Umatilla Indian Reservations; § 49.133 Rule for agricultural burning permits on the Nez Perce and Umatilla Indian Reservations; and § 49.134 Rule for forestry and**

silvicultural burning permits on the Nez Perce and Umatilla Indian Reservations.

EPA proposed that **§ 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources** would apply on two reservations, the Nez Perce Reservation and the Umatilla Indian Reservation and **§ 49.135 Rule for emissions detrimental to public health or welfare** would apply on all other reservations in Idaho, Oregon, and Washington. Because EPA is not finalizing § 49.136 at this time, we are promulgating § 49.135 for the Nez Perce and Umatilla Indian Reservations in place of § 49.136, as described in the proposal. See 67 FR 11751.

In developing these regulations, EPA also had two other objectives in mind, in addition to filling the regulatory gap. First, EPA is issuing regulations for which it has the technical capability and adequate resources to implement and enforce them. As described above, EPA is developing an Implementation Framework to guide how EPA and the affected Tribes will implement the rules on each reservation. To the extent practicable, these regulations minimize the implementation burdens upon EPA and the regulated community while establishing requirements that are unambiguous and enforceable. EPA is changing the final rules to this end, such as exempting *de minimis* sources from the registration rule at § 49.138.

Second, EPA anticipates that these regulations can serve as models for Tribes as they develop their own air quality programs. EPA will continue to encourage Tribes to develop individual TIPs and will work with Tribes seeking to replace these rules with TIPs. These FIPs will apply until they are replaced by Tribal regulations in an approved TIP.

The following paragraphs summarize each of the rules that are made final today and any significant revisions to the rules that EPA proposed. Some of the changes to the rules are

discussed above in the section on the major issues raised by commenters. Other significant changes to the rules are discussed below. A more detailed discussion of rule revisions made in response to public comments can be found in the Response to Comments document. The actual rule requirements will be published in 40 CFR part 49, subpart C.

Changes that affect several sections. Since the time that this rulemaking was proposed, the new PM2.5 NAAQS have become effective, and therefore, the FARR is revised to recognize that there are now particulate matter ambient air quality standards for both PM10 and PM2.5. EPA is revising the final rules to include a definition of PM2.5 and to revise the definition of particulate matter to include PM2.5. These changes to the rules have no effect upon the emission limitations established here, but acknowledge that the emission limitations will control both PM10 and PM2.5. EPA is not adding specific PM2.5 levels to § 49.137, Rule for air pollution episodes, at this time. After EPA revises part 51 to establish episode levels for PM2.5, EPA Region 10 will revise this rule accordingly. The list of pollutants to be reported under § 49.138, Rule for the registration of air pollution sources and the reporting of emissions, is revised to include PM2.5, which is consistent with the new emissions inventory reporting requirements at 40 CFR part 51, subpart A.

In response to comments, EPA is removing several paragraphs (§ 49.124(e)(3), § 49.125(e)(2), § 49.127(d)(2), § 49.128(d)(2), and § 49.129(e)(3)) from the final rules that state that these rules do not require any person to conduct a source test unless specifically required by the Regional Administrator in a permit to construct or a permit to operate. While EPA does not agree with the commenter that these statements would limit EPA's authority to obtain emission information, we do agree that they are unnecessary and possibly confusing. Though EPA is

removing this language from the rules, it does not change the fact that the FARR, in and of itself, does not require sources to conduct a source test, but that a source test may be required through other means (permit to construct, permit to operate, order under section 114, etc).

Section 49.122 - Partial delegation of administrative authority to a Tribe. Section 49.122 establishes a process for EPA to delegate to a Tribal government the authority to assist EPA in administering one or more of the Federal rules that have been promulgated for the Tribe's reservation. This provision sets out the process a Tribe must follow to request a partial delegation, how that delegation will be accomplished, and how the public and regulated sources will be informed of the delegation. This provision allows EPA to delegate distinct and severable Federal regulations to a qualified Tribe for implementation, without requiring a Tribe to take on all aspects of the Federal air regulations. Nothing in these rules requires EPA to delegate administrative authorities to Tribes. As a delegated Federal program, any Federal requirement administered by a delegated Tribe is subject to EPA enforcement and EPA formal appeal procedures, not the Tribe's, under Federal law. Under a partial delegation agreement, EPA would authorize a Tribal government to administer specific functions of one or more of the FARR rules, with Tribal government employees acting as authorized representatives of EPA and with the oversight of EPA staff. Any challenges to an action will be handled directly by EPA, and any formal appeals or enforcement actions will proceed under EPA's administrative and civil judicial procedures.

The final rule modifies the proposal in several ways. This section is retitled **Partial delegation of administrative authority to a Tribe** to clarify that EPA will not be delegating enforcement authority to a Tribe under this provision. The final rule also explicitly states that the

rules covered by a delegation agreement would be enforced by EPA. The rule is also revised to clarify that a Tribe must show that it will have both adequate resources and the technical capability to administer the delegated rule(s). Finally, to provide more participation in the development of delegation agreements, the rule provides that, prior to finalizing a partial delegation agreement with a Tribe, EPA will consult with appropriate governmental entities outside of the reservation and city and county governments located within the boundaries of the reservation.

Section 49.123 - General provisions. This section includes definitions of the terms used in these rules, as well as general provisions regarding requirements for emission testing, monitoring, recordkeeping, reporting, the use of credible evidence in compliance certifications and for establishing violations, and the incorporation by reference of ASTM methods referenced in this rulemaking. Each section in these rules contains a paragraph that lists the defined terms used in that section. Note that these lists include terms used directly in the section and also terms used within the definitions of those terms.

This section is revised by adding definitions of some terms, deleting definitions of terms that are no longer used in the rules, and amending definitions of some terms. Specifically, definitions of the terms “forestry or silvicultural activities,” “part 71 source,” “PM2.5,” “smudge pot,” and “source” are added; the definitions of the terms “burn barrel” and “combustible household waste” are deleted; and the definitions of the terms “actual emissions,” “air pollution source,” “emission factor,” “Federally enforceable,” and “particulate matter” are amended to make them more understandable. Editorial changes are made to a number of other definitions to make them internally consistent or consistent with other EPA rules, such as, the new emission

inventory reporting requirements at 40 CFR part 51, subpart A. Most of the substantive changes are made in direct response to public comments. The addition of the definitions of the terms “PM2.5” and “source” and the amendments to the terms “air pollution source” and “particulate matter” resulted from changes EPA made to improve the final rules.

Also note that the final rules are updated to incorporate by reference the latest versions of the ASTM methods that are used in these rules.

Section 49.124 - Visible emissions. Section 49.124 establishes that visible emissions from air pollution sources may not exceed 20% opacity, averaged over six consecutive minutes, as measured by EPA Method 9. This section does not apply to certain sources, such as: open burning; agricultural activities; forestry and silvicultural activities; non-commercial smoke houses; sweat houses or lodges; smudge pots; furnaces and boilers used exclusively to heat residential buildings with four or fewer units; fugitive dust from public roads owned or maintained by any Federal, Tribal, State, or local government; and fuel combustion in mobile sources. The visible emissions from an oil-fired boiler or solid fuel-fired boiler that continuously measures opacity with a continuous opacity monitoring system (COMS) may exceed the 20% opacity limit during start-up, soot-blowing, and grate-cleaning for a single period of up to 15 consecutive minutes in any eight consecutive hours, but must not exceed 60% opacity at any time.

The final rule is revised in response to public comments to clarify that this section does not apply to forestry and silvicultural activities.

Section 49.125 - Particulate matter. This section establishes that particulate matter emissions from combustion sources (except for wood-fired boilers), process sources, and other

sources may not exceed an average of 0.23 grams per dry standard cubic meter (0.1 grains per dry standard cubic foot), corrected to seven percent oxygen (for combustion sources), during any three-hour period. Particulate matter emissions from wood-fired boilers must be limited to an average of 0.46 grams per dry standard cubic meter (0.2 grains per dry standard cubic foot), corrected to seven percent oxygen, during any three-hour period. Exempted from this section are woodwaste burners, furnaces, and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour, non-commercial smoke houses, sweat houses or lodges, open burning, and mobile sources.

The final rule is revised in response to public comments to clarify that the particulate matter emission limitations do not apply to open burning. The final rule is also revised to clarify that the limitations apply to stacks that can be tested using the reference test method at any combustion source, process source, or other source.

Section 49.126 - Fugitive particulate matter. This section requires the owner or operator of any source of fugitive particulate matter emissions to take all reasonable precautions to prevent fugitive particulate matter emissions and to maintain and operate the source to minimize these emissions. A person subject to this section is required to annually survey the air pollution source to determine if there are sources of fugitive particulate matter emissions, determine and document in a written plan the reasonable precautions that will be taken to prevent fugitive particulate matter emissions, including appropriate monitoring and recordkeeping, and then implement the plan. For new sources and new operations, including those at an existing air pollution source, a survey must be conducted within thirty days after commencing operation. For construction and demolition activities, the written plan must be prepared prior to commencing

construction or modification. This section does not apply to open burning, agricultural activities, forestry and silvicultural activities, sweat houses or lodges, non-commercial smoke houses, public roads owned or maintained by any Federal, Tribal, State, or local government, or activities associated with single-family residences or residential buildings with four or fewer dwelling units.

The final rule is revised in response to public comments to clarify that the requirements for taking all reasonable precautions to prevent fugitive emissions do not apply to open burning, forestry and silvicultural activities, sweat houses or lodges, and non-commercial smoke houses. The rule is also revised to reduce the burden by requiring an annual survey, with new surveys conducted when a new source or new operation commences operation, instead of quarterly and weekly surveys. EPA is also revising the rule so that construction and demolition activities will no longer have to perform weekly surveys, but will prepare a written dust control plan prior to commencing construction or demolition and will only do a survey if the work lasts for more than 30 days. Finally, the provision requiring owners or operators to consider the environmental implications of any particular fugitive emissions control measure is deleted from the final rule, but EPA continues to encourage owners or operators to take such effects into account when choosing the approach to complying with this section.

Section 49.127 - Woodwaste burners. On the Colville Indian Reservation and the Nez Perce Reservation, EPA is promulgating § 49.127 which phases out the operation of woodwaste burners (commonly known as wigwam or teepee burners). Until existing woodwaste burners are dismantled, visible emissions from a woodwaste burner may not exceed 20% opacity, averaged over six consecutive minutes, as measured by EPA Method 9, and only wood waste generated

on-site can be burned or disposed of in the woodwaste burner. The owner or operator of a woodwaste burner, including woodwaste burners that are not currently being used, must submit a plan for shutting down the woodwaste burner to EPA within 180 days after the effective date of this rule and must shut down and dismantle the woodwaste burner by no later than two years after the effective date of this rule. Sources may apply to EPA for an extension of the two-year deadline if there is no reasonably available alternative method of disposal for the wood waste.

The final rule is revised in response to public comments to clarify that the requirement to dismantle woodwaste burners applies to all existing woodwaste burners regardless of whether or not such burners are currently operating. The effect of this rule is that by two years after the effective date of the rule, no woodwaste burner will still be operational unless an extension of the two-year deadline has been granted by the Regional Administrator.

Section 49.128 - Particulate matter emissions from wood products industry sources.

On the Colville Indian Reservation and the Nez Perce Reservation, EPA is promulgating § 49.128 that applies to any person who owns or operates any of the following wood products industry sources: veneer manufacturing operations, plywood manufacturing operations, particleboard manufacturing operations, or hardboard manufacturing operations. This section imposes limits on the amount of PM10 that can be emitted from such sources, in addition to the particulate matter limits for combustion and process sources in § 49.125.

The final rule is revised to clarify that the particulate matter emission limits are for the PM10 fraction and to clarify the reference method for determining compliance by indicating that Method 201A is to be used in conjunction with Method 202 to measure the total PM10 emitted by the affected sources. Method 202 is intended to be used in conjunction with either Method

201 or 201A to measure total PM10 emissions from a source with significant condensable particulate emissions.

Section 49.129 - Sulfur dioxide. This section restricts sulfur dioxide emissions from combustion sources, process sources, and other sources to no more than an average of 500 parts per million by volume, on a dry basis, corrected to seven percent oxygen (for combustion sources), during any three-hour period. Furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 Btu per hour and mobile sources are exempt from this section.

The final rule is revised in response to public comment to clarify that the sulfur dioxide emission limitations apply only to stacks that can be tested using the reference test method.

Section 49.130 - Sulfur content of fuels. This section applies to any person who sells, distributes, uses, or makes available for use, any fuel oil, liquid fuel, coal, solid fuel, or gaseous fuel on Indian reservations. This section restricts the sulfur content of those types of fuels. Gasoline and diesel fuels, such as automotive or marine diesel fuel, regulated by EPA under 40 CFR Part 80, are exempt from this section. A person subject to this section must demonstrate compliance through recordkeeping and/or continuous monitoring or sampling. The owner or occupant of a single-family residence and the owner or manager of a residential building with four or fewer units is not subject to the sulfur content recordkeeping requirements if the furnace fuel is purchased from a licensed fuel distributor.

The final rule is revised to clarify that the sulfur limit for fuel oils applies to all liquid fuels. The exemption for mobile source fuels is revised in response to public comment to remove the requirement that the fuels actually be used in a mobile source. The effect of this

change is that mobile source fuels regulated by EPA under 40 CFR Part 80 are entirely exempt from this section. The rule is also revised in response to public comment to exempt sources from the requirement to obtain, record, and keep records of the sulfur content when combusting only wood. As with the exemption for sources that combust only purchased natural gas, the source must keep records showing that only wood was burned. Sources that combust a combination of wood and other solid, liquid, or gaseous fuels must obtain, record, and keep records of all of the fuels combusted. Finally, the provision for continuously monitoring fuel gas sulfur content is revised to allow for the use of additional methods that are more appropriate for different fuel gases.

Section 49.131 - Open burning. This section prohibits certain materials from being openly burned and describes the practices a person subject to this section must follow in conducting an open burn. Under this section, a number of materials may not be openly burned, such as: garbage, dead animals, junked motor vehicles, tires or rubber materials, plastics, plastic products, styrofoam, asphalt or composition roofing, tar, tarpaper, petroleum products, paints, paper or cardboard other than what is necessary to start a fire or that is generated at a single-family residence or residential building with four or fewer dwelling units and is burned at the residential site, lumber or timbers treated with preservatives, construction debris or demolition waste, pesticides, herbicides, batteries, light bulbs, hazardous wastes, or any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned (see actual rule language for a complete list). The following situations are generally exempted from this section: fires set for cultural or traditional purposes, including fires within structures such as sweat houses or lodges; fires set for recreational purposes, provided that no prohibited materials

are burned; with prior permission from the Regional Administrator, open outdoor fires used by qualified personnel to train firefighters in the methods of fire suppression and fire-fighting techniques, provided that these fires are not allowed to smolder after the training session has terminated; with prior permission from the Regional Administrator, one open outdoor fire each year to dispose of fireworks and associated packaging materials; and open burning for the disposal of diseased animals or other material by order of a public health official. All open burning, except for cultural and traditional purposes, is prohibited if the Regional Administrator declares a burn ban due to deteriorating air quality or the Regional Administrator issues an air stagnation advisory or declares an air pollution alert, air pollution warning, or air pollution emergency.

In response to public comment, the final rule is revised to remove the exemption for burning combustible household wastes in burn barrels at residences. The only element of the proposed exemption that EPA is retaining in the final rule is to allow for open burning on-site of paper, paper products, and cardboard that are generated by a single-family residence or a residential building with four or fewer dwelling units. The rule is also revised to clarify that it applies to the owner of the property upon which burning is conducted in addition to the person actually conducting the burning. The rule is also revised to clarify that the burn ban provisions are triggered when air quality levels have exceeded or are expected to exceed, 75% of the NAAQS for particulate matter (PM10 or PM2.5), and not the NAAQS for other pollutants.

Through education and outreach, it is EPA's goal to eliminate open burning disposal practices where alternative methods are feasible and practicable, to encourage the development of alternative disposal methods, to emphasize resource recovery, and to encourage utilization of

the highest and best practicable burning methods to minimize emissions where other disposal practices are not feasible.

Section 49.132 - General open burning permits. Under today's rule, any person who wants to conduct an open burn on the Nez Perce Reservation and the Umatilla Indian Reservation must: 1) obtain a permit for each open burn; 2) have the permit available on-site during the open burn; 3) conduct the open burn in accordance with the terms and conditions of the permit; and 4) comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP, as applicable. The following activities are exempt: fires set for cultural or traditional purposes, including fires within structures such as sweat houses or lodges; fires for recreational purposes, provided that no prohibited materials are burned; forestry and silvicultural burning (forestry and silvicultural burning is covered under § 49.134 Rule for forestry and silvicultural burning permits); and agricultural burning (agricultural burning is covered under § 49.133 Rule for agricultural burning permits). The Regional Administrator will take into consideration relevant factors including, but not limited to, the size, duration, and location of the proposed open burn, the current and projected air quality conditions, forecasted meteorological conditions, and other scheduled burning activities in the surrounding area in determining whether to issue the permit. EPA anticipates that the Nez Perce and Umatilla Tribes will seek partial delegation from EPA to implement portions of this rule on their respective reservations.

The final rule is revised to remove the proposed exemption for burn barrels, to be consistent with the final general open burning rule (§ 49.131).

As discussed above, EPA is using a phased approach to establish burn permit programs for open burning, agricultural burning, and forestry burning on the Nez Perce Reservation and the

Umatilla Indian Reservation to provide time for EPA and the Tribes to develop the burn permit programs, to allocate sufficient resources, and to establish intergovernmental agreements on how EPA and each Tribe will administer the program. EPA is first starting the burning permit programs on the Nez Perce Reservation, where EPA and the Tribe have been operating under an intergovernmental agreement with the Idaho Department of Environmental Quality and the Idaho State Department of Agriculture to manage agricultural field burning in the Clearwater Airshed. For the Nez Perce Reservation, anyone who wants to conduct open burning after the effective date of the FARR must first apply for and obtain a permit for open burning. For the Umatilla Indian Reservation, anyone who wants to conduct open burning after January 1, 2007 must first apply for and obtain a permit for open burning. These dates will provide time for EPA and the Tribes to develop burn permit programs.

Section 49.133 - Agricultural burning permits. Under the final rule, any person who wants to conduct an agricultural burn on the Nez Perce Reservation and the Umatilla Indian Reservation must: 1) apply for a permit to conduct an agricultural burn; 2) obtain approval of the permit on the day of the burn, 3) have the permit available on-site during the agricultural burn; and 4) conduct the burn in accordance with the terms and conditions of the permit. This agricultural burning permit program is a smoke management program under which final approvals to conduct burns are given on a daily basis. Prior to the requested burn days, farmers will have received preliminary permits that are effective only after the daily approvals are given. All burning activities must also comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP, as applicable. EPA anticipates that the Nez Perce and Umatilla Tribes will seek partial delegation to administer portions of this rule on their

respective reservations.

As with the general open burning permit rule and forestry and silvicultural burning permit rules at §§ 49.132 and 49.134, anyone who wants to conduct agricultural burning on the Nez Perce Reservation after the effective date of the FARR must first apply for and obtain approval of a permit for agricultural burning. For the Umatilla Indian Reservation, anyone who wants to conduct agricultural burning after January 1, 2007 must first apply for and obtain approval of a permit for agricultural burning. The provisions for approving agricultural burning permits are revised to simplify and streamline the process. The final rule provides EPA and delegated Tribes the flexibility to implement smoke management programs that, on a day-to-day operational basis, resemble those of neighboring jurisdictions or represent a typical program.

Section 49.134 - Forestry and silvicultural burning permits. Under the final rule, any person who wants to conduct a forestry or silvicultural burn on the Nez Perce Reservation and the Umatilla Indian Reservation must: 1) apply for a permit to conduct a forestry or silvicultural burn; 2) obtain approval of the permit on the day of the burn, 3) have the permit available on-site during the forestry or silvicultural burn; and 4) conduct the burn in accordance with the terms and conditions of the permit. This forestry and silvicultural burning permit program is a smoke management program under which final approvals to conduct burns are given on a daily basis. Prior to the requested burn days, land owners will have received preliminary permits that are effective only after the daily approvals are given. All burning activities must also comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP, as applicable. EPA anticipates that the Nez Perce and Umatilla Tribes will seek partial delegation to administer portions of this rule on their respective reservations.

As with the general open burning permit and agricultural burning permit rules at §§ 49.132 and 49.133, anyone who wants to conduct forestry or silvicultural burning on the Nez Perce Reservation after the effective date of the FARR must first apply for and obtain approval of a permit for forestry or silvicultural burning. For the Umatilla Indian Reservation, anyone who wants to conduct forestry or silvicultural burning after January 1, 2007 must first apply for and obtain approval of a permit for forestry or silvicultural burning. The provisions for approving forestry and silvicultural burning permits are revised to simplify and streamline the process. The final rule provides EPA and delegated Tribes the flexibility to implement smoke management programs that, on a day-to-day operational basis, resemble those of neighboring jurisdictions or represent a typical program.

Section 49.135 - Emissions detrimental to public health or welfare. Under this section, an owner or operator of an air pollution source is not allowed to cause or allow the emission of any air pollutants, in sufficient quantities and of such characteristics and duration, that the Regional Administrator determines causes or contributes to a violation of any NAAQS; or is presenting an imminent and substantial endangerment to public health or welfare, or the environment. If the Regional Administrator makes such a determination under this section, the Regional Administrator may require the source to install air pollution controls or to take reasonable precautions to reduce or prevent the emissions. The requirements would be established in a permit to construct or permit to operate.

The final rule is revised in response to comments that the standard of “is, or would likely be, injurious to human health and welfare” is too vague. We revised the rule to use language from section 303 of the Act, which reads “is presenting an imminent and substantial

endangerment to public health or welfare, or the environment.” We think that the final rule will allow us to address many of the same situations covered by the proposed rule language, while addressing the concerns raised by commenters that the proposed language is vague.

Section 49.137 - Air pollution episodes. Under § 49.137, the Regional Administrator is authorized to issue warnings about air quality that apply to any person who owns or operates an air pollution source on an Indian reservation. The Regional Administrator may issue an air stagnation advisory when meteorological conditions are conducive to the buildup of air pollution. The Regional Administrator may declare an air pollution alert, air pollution warning, or air pollution emergency whenever it is determined that the accumulation of air pollutants in any place is approaching, or has reached, levels that could lead to a threat to human health. Once EPA determines that it is appropriate to issue an air stagnation advisory or declare an air pollution alert, air pollution warning, or air pollution emergency, EPA will communicate this information to the affected public. These announcements will indicate that air pollution levels exist that could potentially be harmful to human health, describe actions that people can take to reduce exposure, request voluntary actions to reduce emissions from sources of air pollutants, and indicate that a ban on open burning is in effect. A ban on open burning goes into effect whenever the Regional Administrator issues an air stagnation advisory or declares an air pollution alert, air pollution warning, or air pollution emergency.

The final rule is revised in response to public comments to indicate that the Regional Administrator, and not the National Weather Service, will issue air stagnation advisories for the purposes of this rule because the National Weather Service no longer does this at all of its offices. The final rule is also revised to clarify that the issuance of an air stagnation advisory or

the declaration of an air pollution alert, warning, or emergency is a discretionary action on the part of the Regional Administrator. The final rule is also revised to better coordinate the burn ban provisions under this section and § 49.131, General rule for open burning.

Section 49.138 - Registration of air pollution sources and reporting of emissions.

Any person who owns or operates an air pollution source, except those expressly exempted from this section, will be required to annually register the source with EPA and report emissions. A person subject to this section must register an existing air pollution source by no later than February 15, 2007. A new air pollution source that is not exempt must register within 90 days after beginning operation. A new air pollution source is defined as a source that begins actual construction after the effective date of this rule, and an existing air pollution source is a source that exists as of the effective date of this rule or has begun actual construction before the effective date of this rule. Sources must re-register each year and provide updates on any changes to the information provided in the previous registration. In addition, a person must promptly report any changes in ownership, location or operation. All registration information and reports must be submitted on forms provided by the Regional Administrator. The following sources are exempt from this section, unless the source is subject to a standard established under section 111 or section 112 of the CAA: air pollution sources that do not have the potential to emit more than two tons per year of any air pollutant; mobile sources; single-family residences and residential buildings with four or fewer units; air conditioning units used for human comfort that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process; ventilating units used for human comfort that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process; furnaces and boilers used exclusively

for space heating with a rated heat input capacity of less than 400,000 Btu per hour; cooking of food, except for wholesale businesses that both cook and sell cooked food; consumer use of office equipment and products; janitorial services and consumer use of janitorial products; maintenance and repair activities, except for air pollution sources engaged in the business of maintaining and repairing equipment; agricultural activities and forestry and silvicultural activities, including agricultural burning and forestry and silvicultural burning; and open burning. Sources subject to a standard established under section 111 or section 112 of the CAA must register.

EPA changed the date when initial registration is due for existing sources from one year after the effective date of the rule to February 15, 2007. This revision will provide time for sources to have a complete year's worth of data to submit and will provide time for outreach and education to the regulated community on the rule requirements. The final rule is revised to exempt air pollution sources with relatively insignificant emissions from the requirement to register and report emissions. Specifically, sources that do not have the potential to emit more than two tons per year of any air pollutant are exempt. The final definition of "air pollution source" is also revised to clarify that the two tons per year exemption applies to the combined emissions from all of the buildings, structures, facilities, installations, activities, and equipment at a location. The proposed rule exempted from registration a list of categories of sources that EPA considered to produce only *de minimis* levels of pollutants or would be an unreasonable administrative burden to register. However, sources not within the listed categories would have been required to register, regardless of how little air pollution is emitted by the source. EPA believes that an accurate inventory of sources and emissions can be assembled for purposes of air

quality management without requiring these sources with small or *de minimis* emission levels to register. This is the same cutoff EPA uses to define insignificant emissions in the Federal operating permits rule at 40 CFR 71.5(c)(11)(ii)(A). Exempting small sources of emissions from the registration rule is also consistent with EPA's objective of minimizing the implementation burdens upon EPA and the regulated community. It is important to note that, irrespective of emission levels, any stationary source subject to a standard established under section 111 or section 112 of the Act is not exempt and must register. EPA also modified two of the categorical exemptions to reduce the burden of this section on EPA and the regulated industry. Retail businesses that both cook and sell cooked food (restaurants) are exempt from this section and all air conditioning units that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process are exempt from registration regardless of whether they are subject to Title VI. EPA believes that most of these sources would be *de minimis* and that the burden of registering these sources outweighs the benefits of the information we would gain, and therefore, EPA is revising the exemption list.

The final rule also is revised to exempt part 71 sources from some of the provisions of this section. Part 71 sources are only required to annually report their actual emissions. To reduce the sources' reporting burden, this annual report is to be submitted at the same time as the part 71 source's annual emission report and fee calculation worksheet as required by part 71 or by the source's part 71 permit.

The final rule also is revised to clarify the information that must be submitted with the initial and annual registration as well as the information that must be submitted along with any report of relocation or change of ownership. The final rule also clarifies the pollutants for which

emissions information must be submitted. This list of pollutants is consistent with those required to be addressed in implementation plans and to be reported in accordance with the new emissions inventory reporting requirements at 40 CFR part 51, subpart A.

Section 49.139 - Rule for non-Title V operating permits. This section creates a permitting program that can be used to establish Federally-enforceable requirements for air pollution sources on Indian reservations. This section applies in the following three situations: 1) the owner or operator of any source wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit and submits an application to the Regional Administrator requesting such a limitation; 2) the Regional Administrator determines that additional Federally-enforceable requirements for a source are necessary to ensure compliance with the FIP or, if applicable, TIP; or 3) the Regional Administrator determines that additional Federally-enforceable requirements for a source are necessary to ensure the attainment and maintenance of any NAAQS or PSD increment. In these three situations, the Regional Administrator may write the operating permit, following the consultation and public comment procedures described in this section. Also note that under this provision, a source that would require a part 71 Federal operating permit only because it is currently a major stationary source may obtain an operating permit under this section that limits its potential to emit to below major source thresholds so that the source is not subject to part 71.

The final rule is revised to clarify that the public will have an opportunity to request a public hearing on any draft permit. If EPA decides to hold a public hearing, we will look to the procedures in 40 CFR parts 124 and 71 for guidance.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or Tribal, State, or local governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this final rule is a “significant regulatory action” because it may raise novel legal or policy issues. This marks the first time that, under the CAA, EPA has promulgated FIPs for specific reservations that would be generally applicable to all sources within the exterior boundaries of those reservations.

However, EPA’s analysis indicates that this rulemaking will not have a significant economic impact. EPA is finding that many sources on Indian reservations have historically been following similar air programs that are established by State and local agencies acting under State law or local rules. Although EPA has not approved SIPs as extending into Indian country

under the CAA, nevertheless, some sources located on Indian reservations have made efforts to follow those programs. Most industrial sources on the Region 10 reservations have installed or upgraded air pollution control equipment to conform with State or local air programs without challenging the authority of those agencies within Indian country. As a result, these sources already have pollution controls that would meet State and local requirements.

As discussed above in sections I and II.A, this final rule will establish regulatory requirements for sources under the authority of the CAA that are substantially similar to the requirements of adjacent jurisdictions that most sources already meet. Thus, it is EPA's expectation that these rules will not impose significant costs or require significant changes at regulated sources. Nevertheless, because of the limited precedent this final rule would set, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA response to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section in Washington D.C. and at EPA Region 10 in Seattle, Washington. See the ADDRESSES section of this preamble for specific addresses and times when the docket may be reviewed.

B. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0558 (ICR No. 2020.02).

The FIPs in this final rule include information collection requirements associated with the fugitive particulate matter rule in § 49.126, the woodwaste burner rule in § 49.127; the rule for

limiting sulfur in fuels in § 49.130; the rule for open burning in § 49.131; the rules for general open burning permits, agricultural burning permits, and forestry and silvicultural burning permits in §§ 49.132, 49.133, and 49.134; the registration rule in § 49.138; and the rule for non-Title V operating permits in § 49.139. EPA believes these information collection requirements are appropriate because they will enable EPA to develop and maintain accurate records of air pollution sources and their emissions, allow EPA to issue permits or approvals, and ensure appropriate records are available to verify compliance with these FIPs. The information collection requirements listed above are all mandatory, except for the voluntary requirements in § 49.131, § 49.132, § 49.133, § 49.134, and the owner-requested operating permits in § 49.139. Regulated entities can assert claims of business confidentiality and EPA would treat these claims in accordance with the provisions of 40 CFR part 2, subpart B.

The reporting and recordkeeping burden for this collection of information is described below. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

EPA estimates that the owners or operators of facilities affected by this final rule will incur a total, for all affected facilities, of \$114,803 in annualized labor costs and \$17,475 in

annualized non-labor costs to comply with the information collection requirements of this rule over the first three years.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq., generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) a small business as defined by the RFA (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. The economic analysis that EPA prepared for this rule shows the total annual compliance costs of the final rule to be approximately \$1,500 per small business operating on the affected Indian reservations. The cost-to-sales ratio for small business entities is expected to be less than one percent for all facilities, even when the worst-case scenario is applied. EPA identified 114 small businesses and one small non-Tribal government that will be affected by this rule on the 39 reservations.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Where appropriate, EPA has included a number of exemptions in this rule to reduce impacts on small entities. Included are exemptions for sources considered sufficiently small, such as households or the owners of mobile sources. In addition, in order to better understand the implications of this rule on small entities operating on affected Indian reservations, EPA consulted extensively with Tribal governments regarding the potential impacts of this rule, as part of the consultations with Tribal representatives (see section F below).

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on Tribal, State, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to Tribal, State, and local governments,

in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for Tribal, State, and local governments, in the aggregate, or the private sector in any one year. With regard to State and local governments, there is no expenditure because these rules only apply on Indian reservations. With regard to Tribal governments, there is no expenditure to implement and enforce the rule because the rule provides that EPA will administer the program unless a Tribe chooses to assist EPA. In such a case, EPA will seek to provide funding to support these efforts. Thus, today's rule is not subject

to the requirements of sections 202 and 205 of UMRA.

In developing this rule, EPA consulted with small governments pursuant to its interim plan established under section 203 of the UMRA to address impacts of regulatory requirements in the rules that might significantly or uniquely affect small governments. As explained in the discussion of Executive Order 13175 in section F below, among other things, we notified all potentially affected Tribal governments of the requirements in this rule. Further, although there are no significant Federal intergovernmental mandates, we provided officials of all potentially affected Tribal governments an opportunity for meaningful and timely input in the development of the regulatory proposals. Finally, through consultation meetings and other forums, we will continue to keep Tribal governments involved by providing them with opportunities for learning about and receiving advice on compliance with the regulatory requirements.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.” “Policies that have Federalism implications” is defined in the Executive Order to include regulations that 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.”

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct

compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that had Federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These rules only prescribe regulations for facilities in areas where a State does not administer an approved CAA program, and thus does not have any direct effect on any State. Moreover, it does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this final rule.

EPA provided advance copies of the draft proposed rule to State and local authorities in Idaho, Oregon, and Washington. All three States and several local air agencies wrote comment letters in support of the rule. Generally, the States are pleased that EPA is developing a rule for Indian reservations, as the rule will create more parity in the regulatory environment between on-reservation and off-reservation lands. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited input on this rule from State and local officials well in advance of publishing the proposed rule, and we also received many comments from State and local agencies during the public comment period that we considered in developing the final rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." "Policies that have Tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has Tribal implications and that preempts Tribal law, unless the Agency consults with Tribal officials early in the process of developing the proposed regulation.

EPA has concluded that this final rule will have Tribal implications. These regulations would significantly affect specific Indian reservation communities by filling the gap in air quality regulations and thus creating a level of air quality protection not previously provided under the CAA. However, the air quality requirements promulgated here are applicable broadly to all sources within the identified Indian reservation areas, and are not uniquely applicable to Tribal governments. The gap-filling approach used in this rule would create Federal requirements similar to those that are already in place in jurisdictions adjacent to the reservations covered by

the proposal. Tribal governments may incur some compliance costs in meeting those requirements that apply to sources they own or operate; however, the economic impacts analysis does not indicate that those costs will be significant. Finally, although Tribal governments are encouraged to partner with EPA on the implementation of these regulations, they are not required to do so. EPA will seek to provide funding to Tribes that apply for partial delegation of administrative authority to administer specific provisions to support their activities. Since this final rule will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

Consistent with EPA policy, EPA consulted with Tribal officials and representatives of Tribal governments early in the process of developing this regulation to permit them to have meaningful and timely input into its development. The concept for this final rule grew from discussions related to implementation of the CAA and the TAR with Tribes throughout Region 10 who are engaged in developing Tribal air quality programs. EPA Region 10 began assembling an inventory of air pollution sources in 1995, and EPA has been working with Tribes and other air management agencies since then to better determine the need for specific rules and to evaluate alternatives for Tribal and Federal programs.

In 1999 and 2000, EPA consulted with interested Tribal leaders, managers, technical staff, and attorneys to obtain their views and input on the development of the proposed rule. The Administrative Requirements section of the *Federal Register* notice for the proposed rule (67 FR 11748) contains a summary of the early consultation process, and the Consultation Record in the docket provides detailed information on the consultations. Based on these discussions and the

inventory of air pollution sources, EPA proposed, and promulgates today, a rule that is tailored to the air quality issues of the reservations in Idaho, Oregon, and Washington.

The proposed rule was published on March, 15, 2002. EPA received written comments from seven of the 42 Tribes in Idaho, Oregon, and Washington. Following publication of the proposed rule and review of all comments received, EPA offered Tribes consultation on the rule. In September, October, and November of 2003, EPA met with a number of Tribes. The purpose of these meetings was to discuss a range of options EPA was considering as a result of the public comment received on the proposed rule and to obtain Tribal views and input on these options. EPA also held three conference calls with Tribes to discuss these options and sent three letters to the Tribal governments of all Tribes in Idaho, Oregon, and Washington to inform them of the opportunities to consult. In total, approximately 22 Tribes participated in these consultation opportunities. Please see the Consultation Record in the docket for this rule for more detailed information on the consultations.

As required by section 7(a), EPA's Tribal Consultation Official has certified that the requirements of the Executive Order have been met in a meaningful and timely manner. A copy of the certification is included in the Consultation Record.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must

evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children.

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

This final rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this rule is not likely to have any adverse energy effects, because most of the facilities affected already have the pollution controls in place to enable them to comply with these rules.

I. NTTAA National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of NTTAA, Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards.

This final rule includes a number of voluntary consensus standards developed or adopted by ASTM International, which are listed below in § 49.123(e) for incorporation by reference. In response to a comment on the proposed rule by ASTM International, the final rule includes the latest update for each standard and method. This final rule also includes a number of generally accepted test methods previously promulgated by EPA in other Federal rulemakings. We have not created any new EPA standards or test methods for use in this rule.

J. Congressional Review Act

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

K. Executive Order 12898: Environmental Justice Strategy

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," (59 FR 7629, February 19, 1994) requires each Federal agency to address and identify "disproportionally high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income

populations” (section 1.1).

This rule is designed to protect human health and air quality resources on Indian reservations in Idaho, Oregon, and Washington. Although there are non-Indians living and/or working on some of the reservations, the populations primarily affected by these rules are minorities, because most people living on the majority of affected reservations are American Indians. These reservations tend to have very low per capita incomes relative to the U.S. average, with a large percentage of the population below the poverty line. Therefore, the people living where this rule applies tend to be low income, as well as a minority. This final rule will not impose any negative environmental impacts on the people on the affected reservations. Therefore, there is no environmental justice concern in this case because this rule will improve human health and environmental conditions of a disadvantaged population in Region 10.

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Signature Page
**Federal Implementation Plans under the Clean Air Act for
Indian Reservations in Idaho, Oregon and Washington**
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List of Subjects

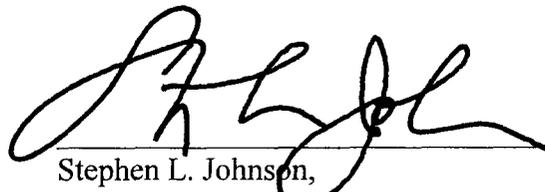
40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 49

Environmental protection, Air pollution control, Administrative practice and procedure,
Incorporation by reference, Indians, Intergovernmental relations, Reporting and recordkeeping
requirements.

Dated: MAR 25 2005


Stephen L. Johnson,
Acting Administrator.

For the reasons set out in the preamble, Parts 9 and 49, title 40, chapter I of the Code of Federal Regulations are amended to read as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901-6992k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

2. In § 9.1 the table is amended by adding §§ 49.126 through 49.139 to read as follows:

§9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation

OMB control no.

* * * * *

40 CFR Part 49—TRIBAL CLEAN AIR ACT AUTHORITY

§49.126(e)(1)(i)	2060-0558
§49.126(e)(1)(iii)	2060-0558
§49.126(e)(1)(v)	2060-0558
§49.127(e)	2060-0558
§49.130(f)(1)-(2)	2060-0558
§49.131(c)(4)-(5)	2060-0558
§49.132(d)(1)	2060-0558
§49.132(e)(1)	2060-0558
§49.133(c)(1)	2060-0558
§49.133(d)(1)	2060-0558
§49.134(c)(1)	2060-0558
§49.134(d)(1)	2060-0558
§49.138(d)-(f)	2060-0558
§49.139(c)(1)	2060-0558
§49.139(d)	2060-0558
§49.139(e)(2)	2060-0558

* * * * *

PART 49 - TRIBAL CLEAN AIR ACT AUTHORITY

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

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

4. Part 49 is amended by adding subpart C to read as follows:

Subpart C -- General Federal Implementation Plan Provisions

Sec.

49.101-49.120 [Reserved]

GENERAL RULES FOR APPLICATION TO INDIAN RESERVATIONS IN EPA REGION 10

49.121 Introduction.

49.122 Partial delegation of administrative authority to a Tribe.

49.123 General provisions.

49.124 Rule for limiting visible emissions.

49.125 Rule for limiting the emissions of particulate matter.

49.126 Rule for limiting fugitive particulate matter emissions.

49.127 Rule for woodwaste burners.

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

49.129 Rule for limiting emissions of sulfur dioxide.

49.130 Rule for limiting sulfur in fuels.

49.131 General rule for open burning.

49.132 Rule for general open burning permits.

49.133 Rule for agricultural burning permits.

49.134 Rule for forestry and silvicultural burning permits.

49.135 Rule for emissions detrimental to public health or welfare.

49.136 [Reserved]

49.137 Rule for air pollution episodes.

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

49.139 Rule for non-Title V operating permits.

49.140-49.200 [Reserved]

Subpart C -- General Federal Implementation Plan Provisions

§§ 49.101-49.120 [Reserved]

General Rules for Application to Indian Reservations in EPA Region 10

§ 49.121 Introduction.

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

(b) How were these “General Rules for Application to Indian Reservations in EPA Region 10” developed? These “General Rules for Application to Indian Reservations in EPA Region 10” were developed in consultation with the Indian Tribes located in Idaho, Oregon, and

Washington and with input from the public and State and local governments in Region 10.

These general rules take into consideration the current air quality situations within Indian reservations, the known sources of air pollution, the needs and concerns of the Indian Tribes in that portion of Region 10, and the air quality rules in adjacent jurisdictions.

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

§ 49.122 Partial delegation of administrative authority to a Tribe.

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

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

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

(2) Identifies the Indian reservation for which delegation is requested;

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

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

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

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

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

(c) How is the partial delegation of administrative authority accomplished?

(1) A Partial Delegation of Administrative Authority Agreement will set forth the terms and conditions of the delegation, will specify the provisions that the Tribe will be authorized to administer on behalf of EPA, and will be entered into by the Regional Administrator and the Tribe. The Agreement will become effective upon the date that both the Regional Administrator

and the Tribe have signed the Agreement. Once the delegation becomes effective, the Tribe will have the authority under the Clean Air Act, to the extent specified in the Agreement, for administering one or more of the Federal requirements that are in effect in subpart M of this part for the particular Indian reservation and will act on behalf of the Regional Administrator.

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

(d) How will any partial delegation of administrative authority be publicized?

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

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

§ 49.123 General provisions.

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

meaning given to them in the Act.

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

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

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

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

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

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

term air pollutant is used.

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

Allowable emissions means the emission rate of an air pollution source calculated using the maximum rated capacity of the source (unless the source is subject to Federally-enforceable limits that restrict the operating rate, hours of operation, or both) and the most stringent of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Garbage means food wastes.

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

Grate cleaning means removing ash from fireboxes.

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

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

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

implementation plans.

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

Indian country means:

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

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

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

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

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

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

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

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

Nonroad engine means:

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

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

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

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

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

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

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

(iii) The engine that is otherwise portable or transportable remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation.

Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal

source during the full annual operating period of the seasonal source. For purposes of this paragraph, a seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least 2 years) and that operates at that single location approximately 3 months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

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

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

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. For continuous opacity monitoring systems, opacity means the fraction of incident light that is attenuated by an optical medium.

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

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

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

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

Particulate matter means any airborne finely divided solid or liquid material, other than

uncombined water. Particulate matter includes, but is not limited to, PM10 and PM2.5.

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

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

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

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

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

Potential to emit means the maximum capacity of an air pollution source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the air pollution source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is Federally enforceable.

Press/Cooling vent means any opening through which particulate and gaseous emissions from

plywood, particleboard, or hardboard manufacturing are exhausted, either by natural draft or powered fan, from the building housing the process. Such openings are generally located immediately above the board press, board unloader, or board cooling area.

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

Rated capacity means the maximum sustainable capacity of the equipment.

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

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

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

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

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

Solid fuel means wood, refuse, refuse-derived fuel, tires, tire-derived fuel, and other solid combustible material (other than coal), including any combination thereof.

Solid fuel-fired boiler means a furnace or boiler used for combusting solid fuel for the primary

purpose of producing steam or hot water by heat transfer.

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

Source means the same as air pollution source.

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

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

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

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

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

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

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

Veneer means a single flat panel of wood not exceeding 1/4 inch in thickness formed by slicing or peeling from a log.

Veneer dryer means equipment in which veneer is dried.

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

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

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

Wood-fired veneer dryer means a veneer dryer that is directly heated by the products of combustion of wood in addition to, or exclusive of, steam or natural gas or propane combustion.

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

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

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

a permit to construct or permit to operate in order to ensure compliance.

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

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

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

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

Michigan 48106.

- (i) ASTM D388-99(Reapproved 2004)^{e1}, Standard Classification of Coals by Rank, Incorporation by reference (IBR) approved for § 49.123(a).
- (ii) ASTM D396-04, Standard Specification for Fuel Oils, IBR approved for § 49.123(a).
- (iii) ASTM D240-02, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved for § 49.123(a).
- (iv) ASTM D1826-94(Reapproved 2003), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, IBR approved for § 49.123(a).
- (v) ASTM D5865-04, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for § 49.123(a).
- (vi) ASTM E711-87(Reapproved 2004) Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter, IBR approved for § 49.123(a).
- (vii) ASTM D2880-03, Standard Specification for Gas Turbine Fuel Oils, IBR approved for § 49.130(e)(1).
- (viii) ASTM D4294-03, Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectroscopy, IBR approved for § 49.130(e)(1).
- (ix) ASTM D6021-96(Reapproved 2001)^{e1}, Standard Test Method for Measurement of Total Hydrogen Sulfide in Residual Fuels by Multiple Headspace Extraction and Sulfur Specific Detection, IBR approved for § 49.130(e)(1).
- (x) ASTM D3177-02, Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke, IBR approved for § 49.130(e)(2).

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

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

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

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

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

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

(xvii) ASTM D5504-01, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, IBR approved for § 49.130(e)(4).

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

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

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

§ 49.124 Rule for limiting visible emissions.

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

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

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

(d) What are the opacity limits for air pollution sources?

(1) The visible emissions from an air pollution source must not exceed 20% opacity, averaged

over any consecutive six-minute period, unless paragraph (d)(2) or (d)(3) of this section applies to the air pollution source.

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

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

(e) What is the reference method for determining compliance?

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

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

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

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

§ 49.125 Rule for limiting the emissions of particulate matter.

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

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

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

(d) What are the particulate matter limits for air pollution sources?

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

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

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

(e) What is the reference method for determining compliance? The reference method for determining compliance with the particulate matter limits is EPA Method 5. A complete description of this method is found in appendix A of 40 CFR part 60.

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

§ 49.126 Rule for limiting fugitive particulate matter emissions.

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

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

(c) What is exempted from this section? This section does not apply to open burning, agricultural activities, forestry and silvicultural activities, sweat houses or lodges, non-

commercial smoke houses, public roads owned or maintained by any Federal, Tribal, State, or local government, or activities associated with single-family residences or residential buildings with four or fewer dwelling units.

(d) *What are the requirements for sources of fugitive particulate matter emissions?*

(1) The owner or operator of any source of fugitive particulate matter emissions, including any source or activity engaged in materials handling or storage, construction, demolition, or any other operation that is or may be a source of fugitive particulate matter emissions, must take all reasonable precautions to prevent fugitive particulate matter emissions and must maintain and operate the source to minimize fugitive particulate matter emissions.

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

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

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

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

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

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

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

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

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

(e) Are there additional requirements that must be met?

(1) A person subject to this section must:

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

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

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

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

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

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

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

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

§ 49.127 Rule for woodwaste burners.

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

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

(c) What are the requirements for woodwaste burners?

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

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

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

(d) What is the reference method for determining compliance with the opacity limit?

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

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

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

(f) Definitions of terms used in this section. The following terms that are used in this section are defined in § 49.123 **General provisions:** Air pollutant, ambient air, emission, opacity, owner or operator, particulate matter, PM10, PM2.5, reference method, Regional Administrator, stationary source, uncombined water, visible emissions, wood, and woodwaste burner.

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

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

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

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

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

(1) Veneer dryers at veneer manufacturing operations and plywood manufacturing operations.

(i) PM10 emissions from direct natural gas fired or direct propane fired veneer dryers must not exceed 0.3 pounds per 1000 square feet of veneer dried (3/8 inch basis), one-hour average.

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

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

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

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

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

(d) What is the reference method for determining compliance? The reference method for determining compliance with the PM10 limits is EPA Method 202 in conjunction with Method

201A. A complete description of these methods is found in appendix M of 40 CFR part 51.

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

§ 49.129 Rule for limiting emissions of sulfur dioxide.

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

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

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

(d) What are the sulfur dioxide limits for sources?

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

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

(e) What are the reference methods for determining compliance?

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

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

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

§ 49.130 Rule for limiting sulfur in fuels.

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

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

(c) What is exempted from this section? This section does not apply to gasoline and diesel

fuel, such as automotive and marine diesel, regulated under 40 CFR part 80.

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

- (1) For distillate fuel oil, 0.3 percent by weight for ASTM Grade 1 fuel oil;
- (2) For distillate fuel oil, 0.5 percent by weight for ASTM Grade 2 fuel oil;
- (3) For residual fuel oil, 1.75 percent sulfur by weight for ASTM Grades 4, 5, or 6 fuel oil;
- (4) For used oil, 2.0 percent sulfur by weight;
- (5) For any liquid fuel not listed in paragraphs (d)(1) through (d)(4) of this section, 2.0 percent sulfur by weight;
- (6) For coal, 1.0 percent sulfur by weight;
- (7) For solid fuels, 2.0 percent sulfur by weight;
- (8) For gaseous fuels, 1.1 grams of sulfur per dry standard cubic meter of gaseous fuel (400 parts per million at standard conditions).

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

- (1) Sulfur content in fuel oil or liquid fuels: ASTM methods D2880-03, D4294-03, and D6021-96(Reapproved 2001)^{e1} (incorporated by reference, see § 49.123(e));
- (2) Sulfur content in coal: ASTM methods D3177-02, D4239-04a, and D2492-02 (incorporated by reference, see § 49.123(e));
- (3) Sulfur content in solid fuels: ASTM method E775-87(Reapproved 2004) (incorporated by reference, see § 49.123(e));

(4) Sulfur content in gaseous fuels: ASTM methods D1072-90(Reapproved 1999), D3246-96, D4084-94(Reapproved 1999), D5504-01, D4468-85(Reapproved 2000), D2622-03, and D6228-98(Reapproved 2003) (incorporated by reference, see § 49.123(e)).

(f) *Are there additional requirements that must be met?*

(1) A person subject to this section must:

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

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

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

(2) Records of fuel purchases and fuel sulfur content must be kept for a period of five years

from date of purchase and must be made available to the Regional Administrator upon request.

(3) The owner or occupant of a single-family residence, and the owner or manager of a residential building with four or fewer dwelling units, is not subject to the requirement to obtain and record the percent sulfur content from the vendor if the fuel used in an oil, coal, or gas furnace is purchased from a licensed fuel distributor.

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

§ 49.131 **General rule for open burning.**

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

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

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

section:

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

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

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

(4) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section and with prior permission from the Regional Administrator, open outdoor fires used by qualified personnel to train firefighters in the methods of fire suppression and fire fighting techniques, provided that training fires are not allowed to smolder after the training session has terminated. Prior to igniting any structure, the fire protection service must ensure that the structure does not contain any asbestos or asbestos-containing materials; batteries; stored chemicals such as pesticides, herbicides, fertilizers, paints, glues, sealers, tars, solvents, household cleaners, or photographic reagents; stored linoleum, plastics, rubber, tires, or insulated wire; or hazardous wastes. Before requesting permission from the Regional Administrator, the fire protection service must notify any appropriate Tribal air pollution authority and obtain any permissions or approvals required by the Tribe, and by any other governments with applicable laws and ordinances;

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

with applicable laws and ordinances;

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

(d) What are the requirements for open burning?

(1) A person must not openly burn, or allow the open burning of, the following materials:

(i) Garbage;

(ii) Dead animals or parts of dead animals;

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

(iv) Tires or rubber materials or products;

(v) Plastics, plastic products, or styrofoam;

(vi) Asphalt or composition roofing, or any other asphaltic material or product;

(vii) Tar, tarpaper, petroleum products, or paints;

(viii) Paper, paper products, or cardboard other than what is necessary to start a fire or that is generated at single-family residences or residential buildings with four or fewer dwelling units and is burned at the residential site;

(ix) Lumber or timbers treated with preservatives;

(x) Construction debris or demolition waste;

(xi) Pesticides, herbicides, fertilizers, or other chemicals;

(xii) Insulated wire;

(xiii) Batteries;

(xiv) Light bulbs;

(xv) Materials containing mercury (e.g., thermometers);

- (xvi) Asbestos or asbestos-containing materials;
- (xvii) Pathogenic wastes;
- (xviii) Hazardous wastes; or
- (xix) Any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned.

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

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

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

(e) *Are there additional requirements that must be met?*

(1) A person subject to this section must conduct open burning as follows:

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

(ii) Before igniting a burn, noncombustibles must be separated from the materials to be

openly burned to the greatest extent practicable;

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

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

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

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

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

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

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

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

§ 49.132 Rule for general open burning permits.

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

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

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

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

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

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

(4) Forestry and silvicultural burning; and

(5) Agricultural burning.

(d) What are the requirements for open burning?

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

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

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

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

(e) Are there additional requirements that must be met?

(1) A person subject to this section must submit an application to the Regional Administrator for each proposed open burn. An application must be submitted in writing at least one working day, and no earlier than five working days, prior to the requested date that the burn would be conducted, and must contain, at a minimum, the following information:

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

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

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

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

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

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

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

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

compliance with this section, **§ 49.131 General rule for open burning** or the EPA-approved Tribal open burning rule, and to protect the public health and welfare.

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

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

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

§ 49.133 Rule for agricultural burning permits.

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

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

(c) What are the requirements for agricultural burning?

(1) A person must apply for a permit to conduct an agricultural burn, obtain approval of the permit on the day of the burn, have the permit available onsite during the burn, and conduct the burn in accordance with the terms and conditions of the permit.

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

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

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

(d) *Are there additional requirements that must be met?*

(1) A person subject to this section must submit an application to the Regional Administrator for each proposed agricultural burn. An application must contain, at a minimum, the following information:

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

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

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

(iv) The type and quantity of agricultural wastes proposed to be burned, including the