



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 49**

**[EPA-HQ-OAR-2003-0076; FRL-9818-8]**

**RIN 2060-AR25**

**Review of New Sources and Modifications in Indian Country**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing three changes to the New Source Review (NSR) program for minor sources and minor modifications at major sources in Indian country, which we refer to as the “Tribal minor NSR program.” First, we propose to expand the list of emissions units and activities that are exempt from the Tribal minor NSR program by adding several types of low-emitting units and activities. Second, we propose to more clearly define the term “commence construction” and add the term “begin construction” to better reflect the regulatory requirements associated with construction activities. We believe both of these proposed changes would simplify the program, resulting in less burdensome implementation without detriment to air quality in Indian country. Lastly, we are reconsidering the advance notification period for relocation of a true minor source in response to a petition received on the final Tribal NSR rule from the American Petroleum Institute, the Independent Petroleum Association of America and America’s Natural Gas Alliance.

**DATES:** Comments must be received on or before **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

*Public Hearing.* If anyone contacts us requesting to speak at a public hearing by

**[INSERT DATE 21 DAYS AFTER PUBLICATION IN THE FEDERAL**

**REGISTER]**, we will hold a public hearing. Additional information about the hearing will be published in a subsequent *Federal Register* notice.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2003-0076, by one of the following methods:

- *Http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email:* a-and-r-docket@epa.gov. Attention Docket ID No. EPA-HQ-OAR-2003-0076.
- *Fax:* (202) 566-9744.
- *Mail:* Attention Docket ID No. EPA-HQ-OAR-2003-0076, Air and Radiation Docket, Mailcode: 28221T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Please include a total of two copies.
- *Hand Delivery:* Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. 20004, Attention Docket ID No. EPA-HQ-OAR-2003-0076. Such deliveries are only accepted during the Docket Center's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2003-0076.

The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any

personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* website is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. The Public Reading Room is open from

8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** For technical information, contact Greg Nizich, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541-3078; fax number (919) 541-5509; email address: *nizich.greg@epa.gov*.

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541-0641; fax number (919) 541-5509; email address: *long.pam@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

The information in this Supplementary Information section of this preamble is organized as follows:

- I. General Information
  - A. Does this action apply to me?
  - B. What should I consider as I prepare my comments for the EPA?
    - 1. Submitting CBI
    - 2. Tips for Preparing Your Comments
  - C. Where can I get a copy of this document and other related information?
  - D. How can I find information about a possible public hearing?
  - E. What acronyms, abbreviations and units are used in this preamble?
- II. Purpose
- III. Background
  - A. What are the general requirements of the minor NSR program?
  - B. What is the Tribal NSR rule?
  - C. What is the status of the NSR air quality program in Indian Country?
- IV. Proposed Revisions to the Tribal Minor NSR rule

- A. Emissions Units and Activities Exempted from the Tribal Minor NSR Rule
- B. Defining Construction-Related Activities for Permitting Purposes
- C. Advance Notification Time Period for Relocation of True Minor Sources
- V. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
  - I. National Technology Transfer and Advancement Act
  - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  - K. Determination under Section 307(d)
- VI. Statutory Authority

**I. General Information**

*A. Does this action apply to me?*

Entities potentially affected by this proposed rule include owners and operators of emission sources in all industry groups located in Indian country, the EPA and tribal governments that are delegated administrative authority to assist the EPA with the implementation of these federal regulations. Categories and entities potentially affected by this action are expected to include:

Category	NAICS <sup>a</sup>	Examples of regulated entities
Industry .....	21111	Oil and gas production/operations
	211111	Crude Petroleum and Natural Gas Extraction
	211112	Natural Gas Liquid Extraction
	212321	Sand and Gravel Mining
	22111	Electric power generation

	221210	Natural Gas Distribution
	22132	Sewage treatment facilities
	23899	Sand and shot blasting operations
	311119	Animal food manufacturing
	3116	Beef Cattle Complex, Slaughter House and Meat Packing Plant
	321113	Sawmills
	321212	Softwood Veneer and Plywood Manufacturing
	32191	Millwork (wood products manufacturing)
	323110	Printing operations (lithographic)
	324121	Asphalt hot mix
	3251	Chemical preparation
	32711	Clay and ceramics operations (kilns)
	32732	Concrete batching plant
	3279	Fiber glass operations
	331511	Casting Foundry (Iron)
	3323	Fabricated structural metal
	332812	Surface coating operations
	3329	Fabricated metal products
	33311	Machinery manufacturing
	33711	Wood kitchen cabinet manufacturing
	42451	Grain Elevator
	42471	Gasoline bulk plant
	4471	Gasoline station
	54171	Professional, Scientific, and Technical Services
	562212	Solid Waste Landfill
	72112	Other (natural gas-fired boilers) <sup>b</sup>
	811121	Auto body refinishing
Federal government .....	924110	Administration of Air and Water Resources and Solid Waste Management Programs
State/local/tribal government .....	924110	Administration of Air and Water Resources

<sup>a</sup> North American Industry Classification System.

<sup>b</sup> Used NAICS code designated for casino hotels.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be subject to the Tribal minor NSR program, and therefore potentially affected by this action. To determine whether your facility is affected by this action, you should examine the applicability criteria in 40 CFR 49.151 through 49.161 (i.e., the Tribal minor NSR rule). If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. What should I consider as I prepare my comments for the EPA?*

1. Submitting CBI

Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), Environmental Protection Agency, Research Triangle Park, NC 27711, Attention: Docket ID No. EPA-HQ-OAR-2003-0076.

## 2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, *Federal Register* date and page number).
- Follow directions – The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

### C. *Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this proposed rule will be posted in the regulations and standards section of our NSR website, under Regulations & Standards, at



<http://www.epa.gov/nsr>.

*D. How can I find information about a possible public hearing?*

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541-0641; fax number (919) 541-5509; email address: [long.pam@epa.gov](mailto:long.pam@epa.gov).

*E. What acronyms, abbreviations and units are used in this preamble?*

The following acronyms, abbreviations and units are used in this preamble:

BACT	Best Available Control Technology
CAA or Act	Clean Air Act
EPA	U.S. Environmental Protection Agency
FARR	Federal Air Rule for Indian Reservations
FIP	Federal Implementation Plan
FR	Federal Register
GHG	Greenhouse Gas
GP	General Permit
HAPs	Hazardous Air Pollutants
ICR	Information Collection Request
LAER	Lowest Achievable Emission Rate
MACT	Maximum Achievable Control Technology
MMBTU/hr	Million British thermal units per hour
NAAQS	National Ambient Air Quality Standard
NESHAP	National Emission Standards for Hazardous Air Pollutants
NSPS	New Source Performance Standards
NSR	New Source Review
NO <sub>x</sub>	Nitrogen Oxide
NTTAA	National Technology Transfer and Advancement Act
OMB	Office of Management and Budget
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
RFA	Regulatory Flexibility Act
SBA	Small Business Administration
SIP	State Implementation Plan

TIP	Tribal Implementation Plan
TSD	Technical Support Document
tpy	Tons Per Year
UMRA	Unfunded Mandates Reform Act

## **II. Purpose**

The purpose of this rule is to propose and seek comment on three revisions to the Tribal minor NSR rule<sup>1</sup> that will streamline implementation by adding more exempted units/activities, clarifying language related to construction and relocation of true minor sources. Specifically, we are proposing to add seven categories of units/activities that will be listed as exempt from the Tribal minor NSR rule because their emissions are deemed insignificant. Listing these categories explicitly will mean that many applicants and reviewing authorities will not need to calculate potential emissions for activities that can be deemed insignificant. In the preamble to the Tribal minor NSR rule, we committed to considering the addition of exempt units/activities to the list in that final rule, as requested by commenters. This proposed rule fulfills that commitment.

In the Tribal minor NSR rule, the term “commence construction” is used in two different contexts, i.e., the provisions governing construction prohibition, and also the provisions specifying that construction must occur within 18 months of the permit effective date. In this proposal, we are clarifying this distinction by proposing two different terms for those situations - “begin construction” and “commence construction.” Accordingly, we are also proposing to replace “commence construction” with “begin construction,” in certain sections of the regulatory text for consistency. The third

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<sup>1</sup> The Tribal minor NSR rule is a component of “Review of New Sources and Modifications in Indian Country, Final Rule” 76 FR 38747 (July 1, 2011) (the Tribal minor NSR rule).

proposed revision is reconsideration of the 30-day advance notice requirement for a true minor source prior to relocation. This is in response to a request on the final rule from the American Petroleum Institute, the Independent Petroleum Association of America and America's Natural Gas Alliance.

### **III. Background**

#### *A. What are the general requirements of the minor NSR program?*

Section 110(a)(2)(C) of the Clean Air Act (Act) requires that every state implementation plan (SIP) include a program to regulate the construction and modification of stationary sources, including a permit program as required in parts C and D of title I of the Act, to ensure attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The permitting program for minor sources is addressed by section 110(a)(2)(C) of the Act, which we commonly refer to as the minor NSR program. A minor source means a source that has a potential to emit (PTE) lower than the major NSR applicability threshold for a particular pollutant as defined in the applicable nonattainment major NSR program or Prevention of Significant Deterioration (PSD) program.

States must develop minor NSR programs to attain and maintain the NAAQS and the federal requirements for state minor NSR programs are outlined in 40 CFR 51.160 through 51.164. These federal requirements for minor NSR programs are considerably less prescriptive than those for major sources and, as a result, there is a larger variation of requirements across the state minor NSR programs.

Furthermore, sections 301(a) and 301(d)(4) of the Act, as implemented through

the Tribal Authority Rule<sup>2</sup>, provide the EPA with a broad degree of discretion in developing a program to regulate new and modified minor sources in Indian country.

*B. What is the Tribal NSR rule?*

The “Review of New Sources and Modifications in Indian country” (*i.e.*, Tribal NSR rule) final rule was published in the *Federal Register* on July 1, 2011 (76 FR 38748), pursuant to sections 301(a) and (d) of the Act. This rule established a federal implementation plan (FIP) for Indian country that includes two NSR regulations for the protection of air resources in Indian country. These two new NSR regulations work together with the pre-existing PSD program at 40 CFR 52.21<sup>3</sup> and the title V operating permits program at 40 CFR part 71<sup>4</sup> to provide a comprehensive permitting program for Indian country to ensure that air quality in Indian country will be protected in the manner intended by the Act.

One regulation created by the Tribal NSR rule, which we call the “Tribal minor NSR rule,” applies to new and modified minor stationary sources (minor sources) and to minor modifications at existing major stationary sources (major sources) throughout Indian country where there is no EPA-approved plan in place. The second regulation,

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<sup>2</sup> The Tribal Authority Rule is comprised of Subpart A of 40 C.F.R. part 49, which is titled “Indian Country: Air Quality Planning and Management”.

<sup>3</sup> The PSD program is a preconstruction permitting program that applies to new major stationary sources (major sources) and major modifications in areas attaining the NAAQS, including attainment areas in Indian country.

<sup>4</sup> Title V of the Act requires all new and existing major sources in the United States to obtain and comply with an operating permit that brings together all of the source’s applicable requirements under the Act. All states, numerous local areas and one tribe have approved title V permitting programs under the regulations at 40 CFR part 70. The EPA implements the part 71 federal program in Indian country and other areas that are not covered by an approved part 70 program. Currently, one tribe has been delegated authority to assist the EPA with administration of the federal part 71 program.

which we refer to as the “tribal nonattainment major NSR rule,” applies to new and modified major sources in areas of Indian country that are designated as not attaining the NAAQS (nonattainment areas). Through these two regulations, the Tribal NSR rule ensures that Indian country will be protected in the manner intended by the Act by establishing a preconstruction permitting program for new or modified minor sources, minor modifications at major sources, and new major sources and major modifications in nonattainment areas.

The Tribal minor NSR rule applies to new and modified minor sources and to minor modifications at major sources. New minor sources with a PTE equal to or greater than the minor NSR thresholds, or modifications at existing minor sources with allowable emissions increases equal to or greater than the minor NSR thresholds, must apply for and obtain a minor NSR permit prior to beginning construction of the new source or modification.

Under the nonattainment major NSR rule, affected sources are required to comply with the provisions of 40 CFR part 51, Appendix S. In recent years, Appendix S has primarily been used as a transitional rule for nonattainment major NSR permitting in nonattainment areas for which state agencies do not have an approved nonattainment major NSR program for a particular pollutant in their SIPs. Sources subject to the nonattainment major NSR rule must meet requirements for Lowest Achievable Emissions Rate (LAER) control technology, emissions offsets and compliance certification.

The effective date of the minor Tribal NSR rule was August 30, 2011. To facilitate the effective implementation of the Tribal minor NSR program, some components of the rule were phased in. Generally, the applicability of the preconstruction

permitting rules to new synthetic minor sources<sup>5</sup> began on the rule's effective date, August 30, 2011; for new or modified true minor sources<sup>6</sup>, the rules apply beginning the earlier of September 2, 2014, or 6 months after the publication of a final general permit for that source category in the Federal Register (40 CFR 49.151(c)(1)(iii)(B)). In addition, existing true minor sources in Indian country were required to register with their reviewing authority by March 1, 2013.

*C. What is the status of the NSR air quality program in Indian Country?*

No tribe is currently administering an EPA-approved PSD program. Therefore, the EPA has been implementing a FIP to issue PSD permits for major sources in attainment areas of Indian country (40 CFR 52.21). There are also no tribes currently administering an EPA-approved nonattainment major NSR program, so EPA is the reviewing authority under a FIP (40 CFR 49.166 through 49.175). Only a few tribes are administering EPA-approved minor NSR programs. Accordingly, EPA administers minor NSR programs in most areas of Indian country under a FIP (40 CFR 49.151 through 49.165).

Sections 301(d) and 110(o) of the Act provide eligible tribes the opportunity to

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<sup>5</sup> 40 CFR 49.152 defines “synthetic minor source” as a source that otherwise has the potential to emit regulated NSR pollutants in amounts that are at or above those for major sources in section 49.167, section 52.21 or section 71.2 of chapter 40, as applicable, but that has taken a restriction so that its PTE is less than such amounts for major sources. Such restrictions must be enforceable as a practical matter.

<sup>6</sup> 40 CFR 49.152 defines “true minor source” as a source, not including the exempt emissions units and activities listed in section 49.153(c), that emits or has the potential to emit regulated NSR pollutants in amounts that are less than the major source thresholds in section 49.167 or section 52.21 of Chapter 40, as applicable, but equal to or greater than the minor NSR thresholds in section 49.153, without the need to take an enforceable restriction to reduce its PTE to such levels.

develop their own tribal programs and we encourage eligible tribes to develop their own minor and nonattainment major NSR programs, as well as a PSD major source program, for incorporation into tribal implementation plans (TIPs). Tribes may use the tribal NSR FIP program as a model if they choose to develop their own TIPs and seek our approval.

#### **IV. Proposed Revisions to the Tribal Minor NSR Rule**

This section discusses the proposed revisions to the Tribal minor NSR rule and our rationale for proposing those changes. We solicit public comment on the changes being proposed and will consider those comments in developing the final rule.

##### ***A. Emissions Units and Activities Exempted from the Tribal Minor NSR Rule***

In the Tribal minor NSR rule promulgated on July 1, 2011 (76 FR 38792), we exempted seven emissions units/activities from the Tribal minor NSR permitting program pursuant to 40 CFR 49.153(c) because their potential emissions are insignificant. Listing units/activities with trivial emissions as exempt saves permitting resources because it eliminates the need for applicants or permitting agencies to calculate the potential emissions to verify they do not exceed minor source permitting thresholds. In the preamble to that rule, we referred to comments received regarding our originally proposed list of exempt units/activities (i.e., the August 21, 2006, proposed rule) and we committed to consider additional units/activities for exemption from minor NSR permitting, and to propose and seek comment on such revisions through a separate rulemaking (76 FR 38759). This proposal fulfills that commitment.

In the Tribal minor NSR rule proposed on August 21, 2006, we listed ten categories of units/activities for exemption from minor NSR permitting. We received eleven comment letters concerning the list of exempted units/activities. Many

commenters said the list should be more extensive, similar to state source exemption lists from minor NSR permitting. The majority of those commenters stated that a longer list of exemptions would “level the playing field” between sources located in Indian country, and those on adjacent lands subject to EPA-approved state NSR programs, by treating them more equitably regarding the types of minor sources that would be exempt from minor NSR permitting. We considered this information in determining whether to modify the exemptions list in the existing Tribal minor NSR rule and also reviewed unit/activity-exemption lists from many states that also contain Indian country.<sup>7</sup>

We noted several things from our review of state minor source rules that apply outside Indian country. One observation is that some state regulations do not provide any minimum NSR pollutant emission thresholds below which sources are exempt from state minor NSR permitting requirements. In those cases, any new source or activity not specifically exempted by its state rule is potentially subject to its minor NSR permitting program. By contrast, the existing Tribal minor NSR rule already contains minor NSR thresholds, thereby providing a mechanism for sources to avoid being subject to minor source permitting without being specifically listed for exemption. A second observation is that many state minor NSR permitting regulations contain language specifying that a permitting exemption for a specific source-type does not apply if that source is subject to either the requirements of 40 CFR part 60 NSPS, Part 61 National Emission Standards for Hazardous Air Pollutants (NESHAP), or Part 63 MACT (New Source Performance

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<sup>7</sup> This review included minor NSR permitting regulations from the State of Colorado and the South Coast Air Management District since these states/agencies were specifically cited by commenters. *See* Docket ID No. EPA–HQ–OAR–2003-0076 for the listing of state regulations reviewed.



Standards (NSPS), NESHAP and MACT programs). By including such language in their minor source regulations, the states have attempted to address any sources that may have significant emissions and the potential to negatively impact ambient air quality. This approach ensures that sources that might otherwise be exempt from permitting are subject to minor NSR permitting. Since the Tribal minor NSR rule does not contain similar language, we have chosen fewer categories than some states, but more than others, in the number of source-types exempted. We have taken this approach to limit exemptions to fewer source types since, without the “backstop” of the permitting obligation tied to sources subject to NSPS, NESHAP or MACT programs, we might inadvertently exempt non-trivial sources, potentially degrading air quality in Indian country.

As a result, we considered a variety of source types and are proposing to add units/activities to the exemptions list that are expected: (1) to have inherent emissions significantly less than the minor NSR thresholds in 40 CFR 49.153, and (2) are expected to be very common and sited at many sources such that an exemption from needing to calculate PTE to determine applicability would reduce the burden on these sources.. In essence, we are seeking to strike a balance between ensuring that the permitting of minor emission sources is consistent with the requirements of the Act, and exempting source categories where the permitting process adds administrative burden but offers no significant environmental benefit. We believe the sources we propose to add to the exempted list have emissions below the relevant applicability thresholds due to their operational nature. *See* additional discussion below in the section titled, “Information Obtained from Source Registration under Federal Air Rule for Indian Reservations

(FARR).”

We note that for determining applicability, a source’s emissions are based on PTE and are determined on a source-wide basis and not an individual unit basis. For this reason, when considering potential units/activities for addition to the exemptions list, which are excluded from a source’s PTE calculation, we were mindful of the possibility that multiple individual units/activities, while perhaps individually below the Tribal minor NSR permitting thresholds, could collectively exceed those thresholds (e.g., two non-emergency, stationary engines at the same facility). For that reason we limited the number exempt units/activities to minimize inadvertently exempting units/activities that would exceed minor source permitting thresholds based on combined potential emissions with other exempted units/activities at the source.

Several of the units/activities we are proposing to add to the exemptions list are currently exempted under the FARR’s air pollution source registration program under 40 CFR 49.138.<sup>8</sup> We believe that adding these same units/activities to the Tribal minor NSR rule’s exemption list would provide consistency in implementing rules affecting similar sources in Indian country. We also believe it is appropriate to include exemptions contained in the FARR because that list was developed with the intent of exempting both (1) the units/activities with *de minimis* levels of emissions, and (2) those for which a registration requirement would create an unreasonable burden. We are proposing to include most units/activities from the FARR that we believe have *de minimis* emissions.

#### *Additional Units/Activities for Exemption*

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<sup>8</sup> The FARR is a FIP that applies to air pollution sources on Indian reservations in Idaho, Oregon and Washington. The permitting for Indian country in these states is under the oversight of EPA Region 10.

Based on our review of state lists, and anticipation of lower source emissions, we are proposing to add the following units/activities to the exempt units/activities list:

- Emergency generators, designed solely for the purpose of providing electrical power during power outages : in nonattainment areas, the total maximum manufacturer's site-rated horsepower of all units shall be below 500; in attainment areas, the total maximum manufacturer's site-rated horsepower of all units shall be below 1,000. The horsepower thresholds were established to ensure that minor NSR nitrogen oxide (NO<sub>x</sub>) thresholds are not exceeded using the maximum annual run-time of 500 hours per year, based on EPA's PTE guidance.
- Stationary internal combustion engines with a manufacturer's site-rated horsepower of less than 50.
- Furnaces or boilers used for space heating exclusively using gaseous fuel with a total maximum heat input (i.e., from all units combined) of 10 million British thermal units per hour (MMBtu/hr) (5 MMBtu/hr in nonattainment areas) or less..

Based on our review of state regulations, and a determination that the NO<sub>x</sub> emissions threshold of 5 tons/year would not be exceeded, we are proposing a maximum fuel usage rate of 10 MMBtu/hr (5 MMBtu/hr in nonattainment areas) for these units.

We are proposing to add the following units/activities to the list of sources that are exempt from minor NSR permitting:

- Single family residences and residential buildings with four or fewer dwelling units. This would typically include units such as furnaces and hot water heaters.
- Air conditioning units used for human comfort that do not exhaust air pollutants

to the atmosphere from any manufacturing or other industrial processes.

- Forestry and silvicultural activities. The FARR defines these as 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. They do not include milling operations.

Exemptions for air conditioning units and heating units for comfort were originally proposed in the August 21, 2006, Tribal minor NSR proposed rule. We did not finalize those exemptions, however, because we were uncertain at that time how the upcoming greenhouse gas (GHG) regulations, then under development, would affect GHG permitting thresholds and thus how the outcome of that process might impact those activities. We have now completed the GHG Tailoring Rule Step 3 rulemaking and not lowered GHG permitting applicability thresholds. Therefore, we believe these units will not trigger GHG permitting requirements and we are proposing to add the exemption for air conditioning units (the non-manufacturing/industrial process type) and certain units used for space heating to the list of exempted units and activities in the Tribal minor NSR rule. If the EPA lowers GHG permitting thresholds in the future, we will reevaluate whether these exemptions continue to be appropriate.

#### *Revision to the Existing Exempted Units/Activities List*

Lastly, in addition to the proposed additions to the exempted units/activities listed above, we are proposing to revise the existing exemption criteria for food preparation

activities currently specified in 40 CFR 49.153(c)(3) such that the current exemption, limited to noncommercial cooking of food, will be expanded to include certain types of commercial operations. We are proposing the same definition that is used in the FARR, i.e., an exemption for the cooking of food other than wholesale businesses that both cook and sell cooked food. This proposed revision will broaden the current exemption to fast food vendors and stand alone restaurants and is being added because we believe these sources have *de minimis* emissions.

#### *Information Obtained from Source Registration under FARR*

The FARR, under 40 CFR 49.138, requires sources on the covered Indian reservations, unless otherwise exempt, to register their facility with EPA Region 10 (i.e., the reviewing authority) each year. As part of that registration process, the source must submit an estimate of its actual emissions (for criteria and other specified pollutants).

There are 39 Indian reservations located in Idaho, Oregon and Washington covered under the FARR. While these 39 reservations represent only a portion of Indian country nationwide, we believe the source-registration information collected by EPA Region 10 is useful to help inform us regarding the source-types potentially subject to minor source permitting (note: the FARR requires both minor and major sources of NSR pollutants to register).

For 2011, the most recent registration year completed under the FARR, a total of 153 sources located within applicable Indian reservations have registered. Nearly all of the registered sources perform activities that are potentially covered under one or more EPA air rules (i.e., a MACT or NSPS rule) when relevant emissions, or other thresholds, are met (i.e., they are industrial sources). This information suggests that the list of

exemptions in the FARR is effective at screening out and reducing unnecessary administrative burden on the types of small emission sources we intend to exempt from permitting through the proposed revisions to the list in the Tribal minor NSR rule and indicates that a relatively short list of exempt units/activities can fulfill our objective. . Similarly, under the Tribal minor NSR rule, units/activities that are not exempt from minor NSR permitting based on the exemptions list can still qualify for an exemption if their estimated potential emissions are below the thresholds contained in 40 CFR 49.153.

*B. Defining Construction-Related Activities for Permitting Purposes*

Under the Tribal minor NSR permitting program, the point at which construction begins is critical in two instances: 1) For new or modified sources that have not obtained a minor NSR permit, construction is prohibited until a permit is issued; and 2) For new or modified sources that have received a minor NSR permit, construction must begin within 18 months of permit issuance for the permit to remain valid.

In the existing Tribal minor NSR rule, the term “commence construction” is used for both situations described above, i.e., where construction is prohibited and also where construction must occur within 18 months. In this proposal, we are intend to clarify two different terms that are relevant for these two different situations as follows:

1. Construction Prohibited Prior to Permit Issuance - Definition of “Begin Construction.”

The term “commence construction” is used in certain sections of the existing Tribal minor NSR rule to indicate that construction is prohibited prior to obtaining a permit. To make this provision of the rule consistent with a similar provision of the major NSR rule, we are proposing to replace the term “commence construction” with “begin

construction” in those cases where the rule specifies that a permit is required before constructing or modifying a source.

One section of the rule where we are proposing to change “commence construction” to “begin construction” is 40 CFR 49.151(c)(1)(iii)(B). In addition to this proposed change, we believe the regulatory text in this section could be clearer in stating our intent to delay the implementation date of the minor NSR permitting program for true minor sources, due to resource constraints, until September 2, 2014<sup>9</sup>. Therefore, we are proposing to revise this section. We believe that by moving the date at which applicability is triggered to the beginning of this section it is clearer that true minor sources are not required to obtain a permit unless they begin construction on or after the date that is the earlier of: six months after a final general permit for that specific source category is published in the *Federal Register*, or September 2, 2014.

We are also proposing to provide a specific definition for “begin construction.” The proposed definition for “begin construction” is based on the definition of “begin actual construction” in 40 CFR 52.21 with some modifications. One proposed modification is a provision clarifying that certain preparatory activities are not considered to be construction activities, and therefore can be performed prior to receiving a permit. The following proposed list of activities is generally consistent with what we have historically allowed in our site-specific determinations, related to construction activities, under the major NSR program: engineering and design planning, geotechnical investigation (surface and subsurface explorations), clearing, surveying, ordering of equipment and materials, storing of equipment or setting up temporary trailers to house

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<sup>9</sup> July 1, 2011 *Federal Register*, 76 FR 38783.

construction management or staff and contractor personnel. We believe this listing of activities will reduce the uncertainty of whether an activity constitutes “begin construction” under the Tribal minor NSR program.

## 2. Construction Necessary after Permit Issuance - Definition of “Commence Construction.”

The existing Tribal minor NSR rule does not define the term “commence construction.” Currently, because that term is not defined in the Tribal minor NSR rule, the definition(s) under 40 CFR 52.21 (i.e., the PSD program) applies. However, while 40 CFR 52.21(b) defines “construction”<sup>10</sup> and “commence” it does not expressly define the term “commence construction.” Therefore, we are proposing a distinct definition under the Tribal minor NSR rule for “commence construction” that will assist in implementing the minor NSR provisions.

The definition being proposed for “commence construction” for purposes of Tribal minor NSR primarily uses terminology from the definition of “commence” under 40 CFR 52.21 that applies to major source NSR. However, similar to the proposed definition of “begin construction,” this proposed definition also includes the following language to clarify the preparatory activities that are not considered to be within the scope of commencing construction: engineering and design planning, geotechnical investigation (surface and subsurface explorations), clearing, surveying, ordering of

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<sup>10</sup> The definition of “construction” under 40 CFR 52.21(b) for major sources carries with it a lengthy history of implementing that term under the major source program. The types of sources regulated under the major source program are predominantly much more complex in nature than those regulated under the Tribal minor NSR rule. Therefore, it would be inconsistent with our intent to simplify implementation for minor sources or minor modifications, to refer to the term used in the major source program.



equipment and materials, storing of equipment or setting up temporary trailers to house construction management or staff and contractor personnel. The list of activities considered to be preparatory, and therefore not considered to be commencing construction, is included to clarify that these activities do not count when determining whether the source has commenced construction by a specified date. In contrast, the activities that are substantial, and therefore do count toward determining that a source has commenced construction, are activities such as: installation of building supports and foundations, paving, laying of underground pipe work, construction of permanent storage structures, and activities of a similar nature.

*C. Advance Notification Time Period for Relocation of True Minor Sources*

The Tribal minor NSR rule includes a registration program for true minor sources. This program was developed to improve our understanding of the types, and number, of minor sources located in Indian country. This program requires, under 40 CFR 49.160(c), the owner/operator of true minor sources to register their source with their reviewing authority. The information submitted as part of that registration includes the source's location. If an owner/operator plans to move the source to another location, that owner/operator is required under 40 CFR 49.160(d)(1) to submit a notice of relocation no later than 30 days prior to relocating. Among other reasons, this requirement allows us to maintain the accuracy of our minor source inventory in Indian country.

We received a letter on November 4, 2011, from the American Petroleum Institute, the Independent Petroleum Association of America and America's Natural Gas Alliance (collectively, the Petitioners) requesting that we reconsider the 30-day advance notice provision for registered sources prior to relocation. The EPA responded to that

request in a letter dated December 19, 2012, from then EPA Administrator Lisa Jackson to the Petitioners, where we agreed to reconsider the 30-day notice requirement. We stated in that December 19, 2012, letter that we would publish a *Federal Register* notice to address the specific issues for which we granted reconsideration and we are addressing the 30-day notice issue in this proposed rule.

The Petitioners claim that the 30-day period is too long a timeframe for those sources where facility operations may necessitate a need to relocate unexpectedly. The Petitioners also stated their understanding that the requirement to provide the notice of relocation is for informational purposes and does not require any approval from the reviewing authority. Both of these issues are discussed below.

In response to the 30 day notification issue, we looked at both State and Federal rules pertaining to source relocation. Our review of state rules showed a range between 10 and 30 days advance notice specified for sources prior to relocation. In our major source PSD provisions at 52.21(i)(1)(viii)(d), addressing portable sources that relocate, we require that notice be provided to the Administrator no later than 10 days prior to the relocation. Based on this information we are seeking comment on what advance notification period between 10 and 30 days is appropriate under the provisions of 40 CFR 49.160(d)(1).

While we agree with the Petitioners statement that there is no requirement for advance approval or a permit for relocation of a registered source prior to September 2, 2014, we are further clarifying and requesting comment on the permit requirements discussed below for sources relocating on or after September 2, 2014.

*Source Obligation/Permit Requirements for Relocation*

We believe that the types of true minor sources that typically relocate are "portable sources" such as: hot-mix asphalt plants, rock crushing operations and concrete batch plants. These source-types are designed to move the entire source from location to location, and, as a result, they are normally issued permits containing conditions that specify the owner/operator obligations prior to relocating. These portable sources can be permitted with either a site-specific permit or, if appropriate, through coverage under a general permit. In either case, multiple locations can be, and often are, pre-authorized in the permit. We also note that any general permits we may develop for such portable sources may contain provisions that would address source relocation. If the existing permit for a portable source does not contain authorization to relocate to a particular location, then the source must apply to the appropriate reviewing authority for a permit revision or new permits, as appropriate, to provide coverage for that additional location(s) and receive that permit before relocating.

For the relatively infrequent situation where a non-portable source is relocated, the owner must apply to the appropriate reviewing authority for a permit that covers the new location.

It's important to note that the above discussion pertains to relocation of the entire minor source. If an owner/operator chooses to relocate one or more pieces of equipment or emission units associated with a source from one source to another, the owner/operator would need to work with its reviewing authority (at the new location) to determine if such a relocation constitutes a modification under the Tribal minor NSR rule and requires a permit.

#### *Timing of Relocation*

A relocating source can be subject to permit requirements depending on the date of relocation<sup>11</sup>. The three main scenarios are as follows:

- A registered true minor source constructed before September 2, 2014, that relocates before September 2, 2014, is not required to obtain any approval or permit prior to the relocation. Such a source is, however, required to provide advance notification of any planned relocation to the reviewing authority in accordance with 40 CR 49.160(d)(1).
- A true minor source constructed before September 2, 2014, that relocates on or after September 2, 2014, must obtain a permit from the appropriate reviewing authority prior to relocation if the source is subject to the Tribal minor NSR rule.
- A true minor source constructed on or after September 2, 2014, must obtain a permit for the original location and also for any subsequent relocation not specifically pre-authorized in the original permit.

To clarify the notification of relocation requirements further, we are proposing revisions to 40 CFR 49.160(d)(1). We propose to replace the last two sentences of the existing regulatory text, addressing NSR permitting obligations, with more specific language concerning relocation situations. The proposed changes specify that a source moving from the jurisdiction of one reviewing authority to another on or after September 2, 2014, is required to notify the reviewing authority at the existing location and submit a permit application to the reviewing authority at the new

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<sup>11</sup> The discussion below applies to true minor sources only. Synthetic minor sources are less likely to relocate, but if they do, we expect their permit conditions will address relocation.

location. In the case where the existing and new locations both fall within the jurisdiction of the same reviewing authority, the permit application for the new location will fulfill the relocation notification requirement.

As discussed above, we believe certain sources will hold permits that will contain specific conditions addressing requirements for relocation. In those cases, the provisions of the existing permit shall indicate the necessary notification of relocation requirements instead of those contained in 40 CFR 49.160(d)(1).

## **V. Statutory and Executive Order Reviews**

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

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) because it does not result in an impact greater than \$100 million in any one year or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden. The proposed rule would not create any new requirements under the Tribal minor NSR program, but rather would simplify minor source registrations and permit applications for some sources, potentially reducing burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations for the Tribal minor NSR program (40 CFR 49.151 through 49.161) under the

provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060-0003. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 this proposed action on small entities, small entity is defined as: (1) a small business as defined in the U.S. Small Business Administration size standards at 13 CFR 121.201; (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; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” 5 U.S.C. 603

and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect, on all of the small entities subject to the rule.

The proposed rule would not create any new requirements under the Tribal minor NSR program, and therefore would not impose any additional burden on any sources (including small entities). The proposed rule would simplify minor source registrations and reduce the number of permit applications for some sources required under the existing rule, potentially reducing burden for all entities, including small entities. We have therefore concluded that this proposed rule will be neutral or relieve the regulatory burden for all affected small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

This rule does not contain a federal mandate that may result in expenditures of \$100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any 1 year. The proposed rule would not create any new requirements under the Tribal minor NSR program, but rather would simplify minor source registrations and reduce the number of permit applications for some sources, potentially reducing burden. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As noted previously, the effect of the proposed rule would be neutral or

relieve regulatory burden.

*E. Executive Order 13132: Federalism*

This proposed 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. This proposed rule would revise the Tribal minor NSR program, which applies only in Indian country, and would not, therefore, affect the relationship between the national government and the states or the distribution of power and responsibilities among the various levels of government.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from state and local officials.

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

The EPA has concluded that this proposed rule will have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. The proposed rule will have tribal implications since it would revise the Tribal minor NSR program, which applies to both tribally-owned and privately-owned sources in Indian country. As with the existing rule, the revised rule would be implemented by the EPA, or a delegate tribal agency assisting the EPA with administration of the rules, until replaced by an EPA-approved tribal implementation plan. The effect of the proposed rule would be to simplify compliance



with, and administration of, the Tribal minor NSR program, so any impact on tribes would be in the form of reduced burden and cost.

The EPA conducted substantial outreach and consultation with tribal officials and other tribal representatives during the development of the Tribal minor NSR program, and incorporated tribal views throughout the course of developing the program. These outreach efforts were summarized in section III.D of the preamble to the final rule (76 FR 38753). Regarding this proposal, we have presented highlights of the proposed changes to tribal environmental staff during a conference call with the National Tribal Air Association on February 28, 2013, and asked for comments. Regarding the list of exempted units/activities, we received a comment letter from one tribe during the comment period following proposal of the initial Tribal minor NSR rule and we considered those comments again in developing this proposed rule. We plan to offer consultation to the tribal governments during the proposed rule comment period.

The EPA specifically solicits additional comment on this proposed action from tribal officials.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply,*

### *Distribution or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs the 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 and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through the OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed rule would simplify minor source registrations and permit applications for some sources under the Tribal minor NSR program, but would not relax control requirements or result in greater emissions under the program. In fact, to the extent that the proposed rule might result in improved compliance with the program, it could result in emissions reductions in Indian country, which are often home to both minority and low-income populations.

*K. Determination under Section 307(d)*

Pursuant to section 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to “such other actions as the Administrator may determine.”

**VI. Statutory Authority**

The statutory authority for this action is provided by sections 101, 110, 112, 114, 116 and 301 of the CAA as amended (42 U.S.C. 7401, 7410, 7412, 7414, 7416 and 7601).

**List of Subjects in 40 CFR Part 49**

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

Dated: May 23, 2013

Bob Perciasepe,  
Acting Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

**PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND  
MANAGEMENT**

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

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

**Subpart C - [Amended]**

2. Section 49.151 is amended by:

- a. Revising paragraph (c)(1)(i)(A);
- b. Revising paragraphs (c)(1)(ii)(A) and (B);
- c. Revising paragraph (c)(1)(iii)(B); and
- d. Revising paragraph (d)(1).

The revisions read as follows:

**§ 49.151 Program Overview.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) If you wish to begin construction of a minor modification at an existing major source on or after August 30, 2011, you must obtain a permit pursuant to §§ 49.154 and 49.155 (or a general permit pursuant to § 49.156, if applicable) prior to beginning construction.

\* \* \* \* \*

(ii) \* \* \*

(A) If you wish to begin construction of a new synthetic minor source and/or a new synthetic minor HAP source or a modification at an existing synthetic minor source and/or synthetic minor HAP source on or after August 30, 2011, you must obtain a permit pursuant to § 49.158 prior to beginning construction.

(B) If your existing synthetic minor source and/or synthetic minor HAP source was established pursuant to the FIPs applicable to the Indian reservations in Idaho, Oregon and Washington or was established under an EPA-approved rule or permit program limiting potential to emit, you do not need to take any action under this program unless you propose a modification for this existing synthetic minor source and/or synthetic minor HAP source, on or after August 30, 2011. For these modifications, you need to obtain a permit pursuant to § 49.158 prior to beginning construction.

\* \* \* \* \*

(iii) \* \* \*

(B) If you wish to begin construction of a new true minor source or a modification at an existing true minor source on or after 6 months from the date of publication in the *Federal Register* of a final general permit for that source category , or September 2, 2014, whichever is earlier, you must first obtain a permit pursuant to §§ 49.154 and 49.155 (or a general permit pursuant to § 49.156, if applicable). The proposed new source or modification will also be subject to the registration requirements of § 49.160, except for sources that are subject to § 49.138.

\* \* \* \* \*

(d) \* \* \*

(1) If you begin construction of a new source or modification that is subject to this program after the applicable date specified in paragraph (c) of this section without applying for and receiving a permit pursuant to this program, you will be subject to appropriate enforcement action.

\* \* \* \* \*

3. Amend § 49.152 in paragraph (d) by adding in alphabetical order the definitions for the terms “Begin construction,” “Commence construction,” and “Forestry or silvicultural activities” to read as follows:

**§ 49.152 Definitions.**

\* \* \* \* \*

(d) \* \* \*

*Begin construction* means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change. The following preparatory activities are excluded: engineering and design planning, geotechnical investigation (surface and subsurface explorations), clearing, surveying, ordering of equipment and materials, storing of equipment or setting up temporary trailers to house construction management or staff and contractor personnel.

*Commence construction* means, as applied to a new minor stationary source or minor modification at an existing stationary source subject to this subpart, that the owner

or operator has all necessary preconstruction approvals or permits and either has:

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

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

\* \* \* \* \*

*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.

\* \* \* \* \*

4. Section 49.153 is amended by:

a. Revising paragraphs (a)(3)(ii) and (iii);



- b. Revising paragraphs (c) introductory text and (c)(3); and
- c. Adding paragraphs (c)(8) through (13).

The revisions and additions read as follows:

**§ 49.153 Applicability.**

(a) \* \* \*

(3) \* \* \*

(ii) If you wish to begin construction of a new synthetic minor source and/or a new synthetic minor HAP source or a modification at an existing synthetic minor source and/or synthetic minor HAP source, on or after August 30, 2011, you must obtain a permit pursuant to § 49.158 prior to beginning construction.

(iii) If you own or operate a synthetic minor source or synthetic minor HAP source that was established prior to the effective date of this rule (that is, prior to August 30, 2011) pursuant to the FIPs applicable to the Indian reservations in Idaho, Oregon and Washington or under an EPA-approved rule or permit program limiting potential to emit, you do not need to take any action under this program unless you propose a modification for this existing synthetic minor source and/or synthetic minor HAP source on or after August 30, 2011. For these modifications, you need to obtain a permit pursuant to § 49.158 prior to beginning construction.

\* \* \* \* \*

(c) *What emissions units and activities are exempt from this program?* At a source that is otherwise subject to this program, this program does not apply to the following emissions units and activities that are listed in paragraphs (c)(1) through (13) of this section:

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

(13) Forestry and silvicultural activities.

\* \* \* \* \*

5. Section 49.158 is amended by revising paragraph (c)(1) to read as follows:

**§ 49.158 Synthetic minor source permits.**

\* \* \* \* \*

(c) \* \* \*

(1) If your existing synthetic minor source and/or synthetic minor HAP source was established pursuant to the FIPs applicable to the Indian reservations in Idaho, Oregon and Washington or was established under an EPA-approved rule or permit program limiting potential to emit, you do not need to take any action under this program unless you propose a modification for this existing synthetic minor source and/or synthetic minor HAP source on or after August 30, 2011. For these modifications, you need to obtain a permit pursuant to § 49.158 before you begin construction.

\* \* \* \* \*

6. Section 49.160 is amended by revising paragraph (d)(1) to read as follows:

**§ 49.160 Registration program for minor sources in Indian country.**

\* \* \* \* \*

(d)\* \* \*

(1) *Report of relocation.* After your source has been registered, you must report any relocation of your source to the reviewing authority in writing no later than 30 days prior to the relocation of the source. Unless otherwise specified in an existing permit, a report of relocation shall be provided as specified in paragraph (d)(1)(i) or (ii) of this section, as applicable. In either case, the permit application for the new location satisfies the report of relocation requirement.

(i) Where the relocation results in a change in the reviewing authority for your

source, you must submit a report of relocation to the current reviewing authority and a permit application to the new reviewing authority.

(ii) Where the reviewing authority remains the same, a report of relocation is fulfilled through the permit application for the new location.

\* \* \* \* \*

[FR Doc. 2013-13057 Filed 06/03/2013 at 8:45 am; Publication Date: 06/04/2013]