6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA-HQ-OAR-2011-0151; FRL-9904-09-OAR]

RIN 2060-AQ95

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing general permits for use in Indian country pursuant to the Indian Country Minor New Source Review (NSR) rule for new or modified minor sources in the following five source categories: hot mix asphalt (HMA) plants; stone quarrying, crushing, and screening (SQCS) facilities; auto body repair and miscellaneous surface coating operations; gasoline dispensing facilities (GDFs); and petroleum dry cleaning facilities. In the alternative, the EPA is also proposing permits by rule for use in Indian country for new or modified minor sources in three of the source categories: auto body repair and miscellaneous surface coating operations; GDFs; and petroleum dry cleaning facilities. The EPA is also proposing certain changes to the Indian Country Minor NSR rule. The proposed changes include: extending the deadline by when true minor sources in the oil and gas sector must receive minor source NSR permits; and allowing general permits and permits by rule for specific categories to create synthetic minor sources.

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-2011-0151, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2011-0151 in the subject line of the message.
- Fax: (202) 566-9744, attention Docket ID No. EPA-HQ-OAR-2011-0151.
- Mail: Attention Docket ID No. EPA-HQ-OAR-2011-0151, EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: The EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2011-0151. Such deliveries are only accepted during the Docket'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-2011-0151. 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.C of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: The EPA has established a docket for this rulemaking under Docket ID Number EPA-HQ-OAR-2011-0151. 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 under Docket ID Number EPA-HQ-OAR-2011-0151, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. 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 Docket is (202) 564-1742.

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

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Carolyn Childers, Outreach and Information Division, Office of Air Quality Planning and Standards (C304-01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541-5604; fax number (919) 541-0072; email address: childers.carolyn@epa.gov.

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

Table of Contents

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 Risks 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

I. General Information

A. Does this action apply to me?

Entities potentially affected by this proposed action include the EPA and tribal governments that are delegated administrative authority to assist the EPA with the implementation of the tribal minor source air permitting program and owners and operators of facilities located in Indian country as defined in 18 U.S.C. 1151 and as provided in the NSR rule from the following source categories:

Table 1: Source Categories

Industry Category	North American Industry Classification System	Examples of Regulated Entities
HMA Facilities	324122	Asphalt Paving, Roofing, and Saturated Materials Manufacturing
	324121	Asphalt Paving Mixture and Block Manufacturing
SQCS Facilities	212311	Dimension Stone Mining and Quarrying
	212312	Crushed and Broken Limestone Mining and Quarrying
	212313	Crushed and Broken Granite Mining and Quarrying
	212319	Other Crushed and Broken Stone Mining and Quarrying

Table 1: Source Categories		
Industry Category	North American Industry Classification System	Examples of Regulated Entities
	212321	Construction Sand and Gravel Mining
Auto Body Repair and Miscellaneous Surface Coating Operations	811121	Automotive Body, Paint, Interior, and Glass Repair
	332812	Metal Coating, Engraving (Except Jewelry and Silverware), and Allied Services to Manufacturers
GDFs	4471	Gasoline stations
	44711	Gasoline Stations with Convenience Stores
	447110	Gasoline Stations with Convenience Stores
	44719	Other Gasoline Stations
	447190	Other Gasoline Stations
Petroleum Dry Cleaning Facilities	812320	Dry Cleaning and Laundry Services (Except Coin-Operated)
	812310	Coin-Operated Laundries and Dry Cleaners

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

B. What should I consider as I prepare my comments to 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), Office of Air Quality Planning and Standards, EPA, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2011-0151.

2. Tips for Preparing 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 proposal will also be available on the World Wide Web. Following signature by the Acting EPA Assistant Administrator, a copy of this notice will be posted in the regulations and standards section of our NSR home page located at http://www.epa.gov/nsr and on the tribal NSR page at http://www.epa.gov/air/tribal/tribalnsr.html.

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

AST	Aboveground storage tank
CAA	Clean Air Act
CO	Carbon monoxide
EPA	Environmental Protection Agency
ESA	Endangered Species Act
FIP	Federal Implementation Plan
GDF	Gasoline dispensing facility
GPM	Gallons per month
GPY	Gallons per year
HAPs	Hazardous Air Pollutants
HMA	Hot mix asphalt
MACT	Maximum Achievable Control Technology
NAAQS	National Ambient Air Quality Standards
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NEI	National Emissions Inventory
NO_x	Nitrogen oxides
NSR	New Source Review

NHPA	National Historic Preservation Act
NTTAA	National Technology Transfer and Advancement Act
OMB	Office of Management and Budget
ORVR	Onboard Refueling Vapor Recovery
PM	Particulate matter
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
PSI	Pounds per square inch
RVP	Reid Vapor Pressure
SLC	Standing loss control
SIP	State Implementation Plan
SQCS	Stone Quarrying, Crushing and Screening
TIP	Tribal Implementation Plan
tpy	Tons Per Year
UMRA	Unfunded Mandates Reform Act
VOC	Volatile organic compounds

II. Purpose

A. Proposed Action

In July 2011, the EPA issued the Indian Country Minor NSR rule that established, among other things, the requirements and process for the preconstruction permitting of minor sources in Indian country. Under the rule, on or after the effective date of the Indian Country NSR rule, that is September 2, 2014, an owner or operator must obtain a preconstruction permit from the reviewing authority[1] if the source will construct a new true minor source,[2] or will modify an existing true minor source in Indian country. The

[1] In this document, reviewing authority refers to an EPA regional office. However, tribes can become reviewing authorities if they decide to assume responsibility for implementing the minor NSR program in their area.

[2] True minor source means a source that emits, or has the potential to emit, regulated NSR pollutants in amounts that are less than the major source thresholds under either the Prevention of Significant Deterioration program at 40 CFR 52.21, or the Major NSR program for Nonattainment Areas in Indian Country at 40 CFR 49.166 through 49.173, but equal to or greater than the minor NSR thresholds in § 49.153, without the need to take an enforceable restriction to reduce its PTE to such levels. The PTE includes fugitive emissions, to the extent that they are quantifiable, only if the source belongs to one of the 28 source categories listed in part 51, Appendix S, paragraph II.A.4(iii) or § 52.21(b)(1)(iii) of 40 CFR, as applicable.

rule also specified the process and requirements for using general permits as a streamlined permitting approach to authorize construction and modifications at true minor sources. General permits streamline the preconstruction permitting of new or modified true minor sources because they involve the issuance of one permit that can apply to multiple stationary sources that have similar emissions units.

In today's proposal, the EPA is proposing the use of two types of minor NSR preconstruction permits to help streamline the EPA's permitting of true minor sources that construct or modify in Indian country and belong to one of five different source categories. The first type of permit is a general permit. The second type is a permit by rule, which is another mechanism for streamlining the issuance of preconstruction permits. Permits by rule use a regulatory-type structure to permit sources by pre-authorizing construction and modification activities carried out in accordance with the permit's requirements. To become covered by a permit by rule, as we are proposing today, a source must notify the EPA that it meets the terms of coverage and is complying with the permit's conditions but does not need to await approval of a request for coverage.

As our preferred approach, we are proposing general permits for HMA plants; SQCS facilities; GDFs; auto body repair and miscellaneous surface coating operations; and petroleum dry cleaning facilities. Specifically, we are proposing general permits for these source categories for permitting affected emissions units and emissions-generating activities in these source categories. As an alternative, for GDFs, auto body repair and miscellaneous surface coating operations, and petroleum dry cleaning facilities, the EPA is also requesting comment on whether, in lieu of establishing general permits for each of

these categories, we should instead adopt permits by rule for one or more of these three source categories. (In addition, as explained in Section XI, we are requesting comment on finalizing both permitting mechanisms for these three source categories by using permits by rule to provide authorization to construct or modify true minor sources and by providing general permits to establish enforceable limitations to create synthetic minor sources.)

We are proposing the regulatory framework that the EPA will use to establish permits by rule, and we are making available various permit implementation documents and tools on which we request public comment. We are proposing to extend the date by when minor sources in the oil and gas sector must receive minor NSR permit (i.e., September 2, 2014). Finally, we are seeking comment on a requested change in policy provided in the Indian Country Minor NSR rule for which we have granted reconsideration.[3] The current policy states that general permits cannot be used to create synthetic minor sources. We seek comment on changing that policy to allow general permits – and permits by rule – to create synthetic minor sources.

B. Areas Where the EPA is Seeking Comment

In this action, we are seeking comment on a number of issues, including, but not limited to:

1) All aspects of the permit documents and implementation tools for the following source categories (Sections VI and IX):
    a. HMA plants;

[3] "Review of New Sources and Modifications in Indian Country: Notice of Action Partially Granting Petition for Reconsideration and Denying Request for Administrative Stay," U.S. Environmental Protection Agency, 78 FR 2210, January 10, 2013, http://www.gpo.gov/fdsys/pkg/FR-2013-01-10/html/2012-31742.htm.

b. SQCS facilities;

c. Auto body repair and miscellaneous surface coating operations;

d. GDFs; and

e. Petroleum dry cleaning facilities;

2) The appropriateness of utilizing streamlined general permit applications for three source categories:

a. Auto body repair and miscellaneous surface coating operations;

b. GDFs; and

c. Petroleum dry cleaning facilities;

3) Several administrative aspects of general permits, including (Section V):

a. Whether the EPA's proposed approach of incorporating by reference each reviewing authority's approval of a request for coverage into the general permit is necessary and appropriate; and

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

4) Different aspects of the EPA's conclusion on its control technology review that, because the control measures in this proposal are currently used by other similar sources in other areas of the country, the measures in the proposed permits are technically and economically feasible, and cost-effective (Section V);

5) Use of throughput limits as a surrogate for ton-per-year allowable emission limitations, or, alternatively, establishment of annual allowable emission limitations for each pollutant, and the use of throughput limits as surrogate

monitoring measures to demonstrate compliance with ton-per-year annual allowable emission limitations (Section V);

6) The regulatory framework that the EPA is proposing as an alternative to use to establish permits by rule and the streamlined review and issuance process that the EPA is proposing whereby a source can become covered by a permit by rule by notifying the EPA that it qualifies for the permit, meets the terms of coverage and is complying with the permit's conditions (but not having to wait for the reviewing authority's approval) (Section VII);
7) Proposal to change the policy in the Indian Country Minor NSR rule to allow the use of both general permits and permits by rule to create synthetic minor sources (Section X);
8) Finalizing both permitting mechanisms for three source categories (i.e., auto body repair and miscellaneous surface coating operations; GDFs; and petroleum dry cleaning facilities) by providing authorization to construct or modify true minor sources via permits by rule and by providing enforceable limitations to create synthetic minor sources via general permits (Section XI);
9) Use of more than one general permit and/or permit by rule for a source at a location (Section XI);
10) Additional source categories for which the EPA is planning to propose general permits and/or permits by rule (Section XII); and
11) Proposed rule changes to the Indian Country Minor NSR rule in five areas in three provisions (Section XIII):

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

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

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

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

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

III. Background

A. Tribal Air Rule

On February 12, 1998,[4] the EPA used its authority under section 301(d) of the Clean Air Act (CAA) to find that we would not treat tribal governments the same as states with respect to specific plan submittal and implementation deadlines under the CAA for National Ambient Air Quality Standards (NAAQS)-related requirements. This finding applied to many section 110 requirements, including requirements under section 110(a)(2)(c) to submit a program to regulate the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. Although we

[4] "Indian Tribes: Air Quality Planning and Management," U.S. Environmental Protection Agency, 63 FR 7254, February 12, 1998, http://www.gpo.gov/fdsys/pkg/FR-1998-02-12/pdf/98-3451.pdf.

determined that Indian tribes were not obligated to implement a permitting program, the EPA also made clear that we continue to have a general obligation under the CAA to ensure the protection of air quality throughout Indian country. To that end, we also used our authority under sections 301(a) and 301(d)(4) to establish a requirement to promulgate such federal implementation plan (FIP) provisions as are necessary or appropriate to protect air quality in Indian country. *See* 40 CFR 49.11(a). For a number of years, the only federal CAA NSR permitting program that applied in Indian country was the major NSR program for areas meeting the NAAQS (‘‘attainment’’ areas) or areas for which there is insufficient information to determine whether they meet the NAAQS (‘‘unclassifiable’’ areas). We call this program the Prevention of Significant Deterioration (PSD) program. No federal NSR permitting program has covered minor sources or major sources in nonattainment areas. Nor was there a way for major sources to take enforceable limits and become synthetic minor sources.

On August 21, 2006, the EPA proposed the regulation: “Review of New Sources and Modifications in Indian Country” (i.e., Indian Country NSR rule).[5] Within this regulation, the EPA proposed to protect air quality in Indian country by establishing a FIP program to regulate the modification and construction of stationary sources consistent with the requirements of section 110(a)(2)(c) of the CAA. We call this part of the Indian Country NSR rule the Indian Country Minor NSR rule. Under the Indian Country Minor NSR rule, we proposed to fill a regulatory gap and provide a mechanism for issuing preconstruction permits for the construction of new minor sources and certain

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

modifications of major and minor sources in Indian country. In developing the rule, the EPA conducted extensive outreach and consultation along with an extensive public comment period that ended on March 20, 2007. The comments provided detailed information specific to Indian country and the final Minor NSR rule incorporated many of the suggestions we received. We promulgated final rules on July 1, 2011,[6] and the FIP became effective on August 30, 2011.

B. Indian Country Minor NSR Rule

1. What is the Indian Country Minor NSR Rule?

The Indian Country Minor NSR rule applies to new and modified minor stationary sources and to minor modifications at existing major stationary sources located in Indian country where there is no EPA-approved program in place. The rule also includes a pre-construction permits program for major sources proposing to construct in areas of Indian country that have not attained one or more NAAQS, i.e., nonattainment areas. After September 2, 2014, any new stationary sources that will emit, or will have the potential to emit (PTE), a regulated NSR pollutant in amounts that will be: (1) equal to or greater than the minor NSR thresholds, established in the Minor NSR rule; and (2) less than the amount that would qualify the source as a major source for purposes of the PSD or nonattainment major NSR programs, must apply for and obtain a minor NSR permit before commencing construction of the new source.[7] Likewise, any existing

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

[7] Under the current Indian Country Minor NSR rule, certain sources may need to apply for a permit earlier than September 2014, if the EPA finalizes a general permit for that category before that date.

stationary source (minor or major) must apply for and obtain a minor NSR permit before commencing construction of a physical or operational change that will increase the allowable emissions of the stationary source by more than the specified threshold amounts, if the change does not otherwise trigger the permitting requirements of the PSD or nonattainment major NSR program(s).[8]

Among other things, the Indian Country Minor NSR rule created a framework for the EPA to streamline the issuance of preconstruction permits to true minor sources by using general permits. We explain this framework further in the sections below.

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

"True minor source" means a source that emits, or has the potential to emit, regulated NSR pollutants in amounts that are less than the major source thresholds under either the PSD program at 40 CFR 52.21, or the Major NSR program for Nonattainment Areas in Indian Country at 40 CFR 49.166 through 49.173, but equal to or greater than the minor NSR thresholds in § 49.153, without the need to take an enforceable restriction to reduce its PTE to such levels. The PTE includes fugitive emissions, to the extent that they are quantifiable, only if the source belongs to one of the 28 source categories listed in part 51, Appendix S, paragraph II.A.4(iii) or § 52.21(b)(1)(iii) of 40 CFR, as applicable. For example, a hot mix facility, located in a sulfur dioxide (SO_2) attainment area, that has a maximum potential to emit of 135 tons per year (tpy) of SO_2, without the

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

need to take an enforceable restriction to reduce its PTE to such levels, would qualify as a true minor source.

By contrast, "synthetic minor source" means a source that otherwise has the potential to emit regulated NSR pollutants in amounts that are at or above those for major sources, but that has taken a restriction so that its PTE is less than such amounts. Such restrictions must be enforceable as a legal and practical matter. For example, a hot mix facility, located in an SO_2 attainment area, that has an unrestricted potential to emit 270 tpy, but that is legally constrained to emit only 135 tpy of SO_2 because the source has taken a throughput limit made enforceable through a permit (i.e., a limit on how much hot mix product it can produce), would qualify as a synthetic minor source. In the preamble to both the proposed and final Indian Country Minor NSR rule, the EPA indicated that it would not use general permits to allow otherwise major sources to create synthetic minor sources.[9] We discuss this issue more fully in Section X and request comment on our proposal to change this policy and also allowing permits by rule to create synthetic minor sources.

3. What are the minor NSR thresholds?

The "minor NSR thresholds" establish cutoff levels for each regulated NSR pollutant. If a source naturally has a potential to emit in amounts lower than the thresholds, then it is exempt from the Indian Country Minor NSR rule (see Table 2 and 40 CFR 49.153) for that pollutant. New or modified sources which naturally have a potential to emit in amounts that are: (1) equal to or greater than the minor NSR thresholds; and (2) less than the major NSR thresholds (generally 100 to 250 tpy) are

[9] Note that the current regulatory language does not restrict the use of general permits in this manner.

"minor sources" of emissions and subject to the Indian Country Minor NSR rule requirements at 40 CFR 49.151 through 161.

Table 2. Minor NSR Thresholds for Sources in Indian Country [10]

Regulated NSR pollutant	Minor NSR thresholds for nonattainment areas (tpy)	Minor NSR thresholds for attainment areas (tpy)
Carbon monoxide (CO)	5	10
Nitrogen oxides (NO_x)	5[11]	10
SO_2	5	10
Volatile Organic Compounds (VOC)	2[4]	5
PM (particulate matter)	5	10
PM_{10}	1	5
$PM_{2.5}$	0.6	3
Lead	0.1	0.1
Fluorides	NA	1
Sulfuric acid mist	NA	2
Hydrogen sulfide (H_2S)	NA	2
Total reduced sulfur (including H_2S)	NA	2
Reduced sulfur compounds (including H_2S)	NA	2
Municipal waste combustor emissions	NA	2
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	NA	10

4. What is a general permit?

[10] If part of a tribe's area of Indian Country is designated as attainment and another part as nonattainment, the applicable threshold for a proposed source or modification is determined based on the designation where the source would be located. If the source straddles the two areas, the more stringent thresholds apply.

[11] In extreme ozone nonattainment areas, section 182(e)(2) of the CAA requires any change at a major source that results in any increase in emissions to be subject to major NSR permitting. In other words, any changes to existing major sources in extreme ozone nonattainment areas are subject to a "0" tpy threshold, but that threshold does not apply to minor sources.

The Indian Country Minor NSR rule specified the process and requirements for using general permits to authorize construction and modifications at true minor sources as a streamlined permitting approach. A general permit, for purposes of this action, is a permit document that contains standardized requirements that multiple stationary sources can use. The EPA may issue a general permit for categories of emissions units or stationary sources that are similar in nature, have substantially similar emissions, and would be subject to the same or substantially similar permit requirements.[12] ‘‘Similar in nature’’ refers to size, processes, and operating conditions. The purpose of a general permit is to provide for protection of air quality while simplifying the permit process for similar minor sources. General permits offer a cost-effective means of issuing permits and provide a quicker and simpler mechanism for permitting minor sources than the site-specific permitting process.

While the final Indian Country Minor NSR rule contemplated issuance of general permits by the EPA regions, we have determined (for the permits on which we are taking comment here) that a nationwide action is appropriate. Through this action, we are proposing to issue general permits to serve as preconstruction permit authorizations that contains emission limitations and other restrictions to govern how a sources may construct, modify and operate. National general permits streamline the permit issuance process by establishing universal requirements through one notice for specific types of emissions activities at multiple sources across the country. The EPA believes that the

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

general permit approach is appropriate for the source categories in today's proposal where the control equipment or techniques are generally similar from region to region.

It also allows a reviewing authority to notify the public through one notice that it intends to apply these requirements to any eligible source that seeks coverage under the permit in the future. This minimizes the burden on reviewing authorities' resources by eliminating the need to issue separate permits for each individual minor source within the source type or category covered by the general permit. Use of a general permit also decreases the time required for an individual minor source to obtain a preconstruction permit because the application process is standardized.

The Indian Country Minor NSR rule describes the process the EPA will use to issue general permits for the minor NSR program. A general permit must be issued in accordance with the requirements in §49.156. Briefly, these requirements address public availability of information, public notification and participation, and public comments. In addition, as discussed in Section IX, we are providing implementation tools to guide sources through a series of questions to determine whether they meet the criteria to be eligible for coverage under a general permit.

C. What is a permit by rule?

Like a general permit, a permit by rule is a standard set of requirements that can apply to multiple stationary sources with similar emissions characteristics. For purposes of this action, a permit by rule would differ from a general permit in that the agency would codify a permit by rule directly into the Indian Country Minor NSR rule. The process for a source to apply for coverage under a permit by rule, and the process for the reviewing authority to grant coverage under a permit by rule, are more streamlined

compared to a standard general permit, or a site-specific permit. Section VII provides a description of the source application for permits by rule.

IV. Description of General Permit Program in Indian Country and the EPA's Use of this Package to Satisfy the General Permit Issuance Process

A. General Permit Program

The EPA codified the framework it would follow to issue general permits for minor sources in the Indian Country Minor NSR rule in 40 CFR 49.156. While it was not necessary for the EPA to codify this framework to issue general permits, the EPA nonetheless created the regulatory framework to better inform the public of the process the EPA will use to issue general permits. Per the framework, to issue a general permit, the reviewing authority must follow the requirements for public participation contained in §49.157. These provisions require the reviewing authority then to provide a notice that a draft permit is available for comment. The regulations list a number of ways in which a reviewing authority can provide notice to the public, and also allow the reviewing authority to use other means of notification as appropriate. *See* 40 CFR 49.157(b)(1)(ii)(E). We have opted to provide notice to the public regarding the present proposal of general permits for five source categories through use of the *Federal Register*. We believe this means is appropriate in this case because we intend to apply these general permits in all areas of Indian country subject to the Indian Country Minor NSR program and the *Federal Register* provides a nationwide circulation of the notice. We will also mail a copy of each permit to the appropriate Indian governing bodies and the tribal, state and local air pollution agencies in adjacent air jurisdictions that may be

impacted by the air pollution sources that use the general permit in accordance with 40 CFR 49.157(b)(1)(i).

The existing regulations also identify the type of information that a reviewing authority must make available to the public, and list a number of elements to be included in the public notice. *See* 40 CFR 49.157(a) and (b)(2). We are satisfying these requirements in this proposal in a wide-ranging manner by providing the public access to the application forms we will require an applicant to complete, and the other implementation tools for each general permit. (We discuss these tools in greater detail in Section IX of this preamble.) Many of these requirements relate to information that is best made available when an individual applicant applies for coverage under a specific general permit. We will make information specific to an individual source's request for coverage under a general permit available at the time we provide notice of the source's request for coverage.

After providing adequate public notice of the availability of the draft permit, the reviewing authority must allow a period of at least 30 days for the public to comment on the permit, and to request a public hearing. See 40 CFR 49.157. We are satisfying these requirements by using this package to propose and take comments on the general permits. Once we finalize a general permit, it will be used by the EPA's regional office reviewing authorities[13] for sources requesting coverage under the permit.

The regulations set forth the provisions for a final permit to undergo administrative and judicial review in accordance with § 49.159. The procedures governing appeals of

[13] The Administrator delegated the authority to each EPA Regional Administrator to carry out all aspects of the Indian Country minor NSR program, including issuing general permits and approving individual coverage under a general permit.

NSR permits to the Environmental Appeals Board will govern administrative review of these general permits. Issuance of a general permit is a final agency action with respect to all aspects of the general permit except its applicability to an individual source. The provisions of 40 CFR 49.159 will continue to govern administrative and judicial review of the EPA's approval of an individual source's request for coverage. After the reviewing authority approves a request for coverage by an individual source, a party may appeal only the applicability of the general permit to that particular source.

Although we are using a *Federal Register* notice to initially establish the general permits, we intend to use other methods also consistent with procedures in 40 CFR 49.159 to reopen or administratively amend the final permits if we determine it is necessary and appropriate. A reviewing authority may reopen and revise a final general permit for cause after providing the opportunity for notice and comment under § 49.157. Revisions to a final general permit may be appropriate, for example, when the reviewing authority decides to issue a new general permit for the same category to account for advances in control technology or for other pertinent reasons. However, when a reviewing authority issues a new general permit, sources operating under the existing general permit will be able to continue to operate under the existing permit unless and until the source subsequently proposes to modify.[14]

B. How do sources apply for general permits?

40 CFR 49.156(e) describes the procedure for sources to obtain coverage under a general permit. At the time a source submits a request for coverage under a general

[14] If EPA revises an existing general permit, then the original permit can no longer be used for new and modified minor sources. The new general permit will be used for new and modified minor sources in the relevant source category. The existing general permit remains in place for existing facilities unless and until they choose to modify.

permit, it must submit a copy of such request to the appropriate Indian governing body for the area of Indian country where the source is locating. The reviewing authority must act on the source's request for coverage under the general permit as expeditiously as possible, but it must notify the source of the final decision within 90 days of its receipt of your coverage request. The source's reviewing authority must comply with a 45-day completeness review period to determine if the request for coverage under a general permit is complete. Therefore, within 30 days after the receipt of the source's coverage request, the reviewing authority must make an initial request for any additional information necessary to process your coverage request and the source must submit such information within 15 days. If the source does not submit the requested information within 15 days from the request for additional information and this results in a delay that is beyond the 45-day completeness review period, the 90-day permit issuance period for the general permit will be extended by the additional days the source takes to submit the requested information beyond the 45-day period. If the reviewing authority fails to notify you within a 30-day period of any additional information necessary to process the source's coverage request, it will still have 15 days to submit such information and the reviewing authority must still grant or deny the request for coverage under a general permit within the 90-day general permit issuance period and without any time extension.

If the reviewing authority determines that the source's request for coverage under a general permit has all the relevant information and is complete, it will notify the source in writing as soon as that determination is made. If the source does not receive from the reviewing authority a request for additional information or a notice

that the request for coverage under a general permit is complete within the 45-day completeness review period, the request will be deemed complete.

After permit coverage is granted, under 40 CFR 49.156 (e), coverage under a general permit becomes invalid if a source does not commence construction within 18 months after the effective date of coverage under a general permit, if the source discontinues construction for a period of 18 months or more, or if the source does not complete construction within a reasonable time. The reviewing authority may extend the 18-month period upon a satisfactory showing that an extension is justified, and the 18-month limit does not apply to the time period between construction of the approved phases of a phased construction project. In those cases, construction of each such phase must commence within 18 months of the projected and approved commencement date.

In Section XIII, the EPA proposes to amend 40 CFR 49.156(e) to shorten the permit application procedure to 45 from 90 days.

In Section IX, we describe the implementation documents and tools that we are making available for comment to assist sources with applying for general permits.

C. What are the required permitting elements?

For general permits, these elements are discussed in the Indian Country Minor NSR rule and promulgated at 40 CFR 49.155(a) and include:

- The effective date of the permit and the date by which a source must commence construction in order for the permit's coverage to remain valid (*i.e.*, 18 months after the permit effective date);

- The emissions units subject to the permit and their associated emission limitations (and other permit conditions);
- Monitoring, recordkeeping, reporting and testing requirements to assure compliance with the emission limitations; and
- A severability clause to ensure the continued validity of the other portions of the permit in the event of a challenge to a portion of the permit.

V. Source Categories for Which Draft General Permits in Indian Country are Available for Public Review

A. Notice of Proposed General Permits

In accordance with 40 CFR 49.171(b)(1)(1)(E), we are providing the public with a copy of five draft general permits covering (1) HMA plants; (2) SQCS facilities; (3) auto body repair and miscellaneous surface coating operations; (4) GDF facilities; and (5) petroleum dry cleaning facilities. Copies of each of these permits and the following four associated permitting documents are available in the docket for this notice (EPA-HQ-OAR-2011-0151) and at http://www.epa.gov/air/tribal/tribalnsr.html:

1) Request for Coverage (Application);
2) Questionnaire;
3) Instructions; and
4) PTE calculator.

The applications for three of the five source categories in today's proposal (i.e., auto body repair and miscellaneous surface coating operations; GDFs; and petroleum dry cleaning facilities) are streamlined and ask for contact and location information and general source-specific information (more detailed source-specific information would be

required from sources seeking coverage under the HMA and SQCS general permits). This is discussed further in Section IX.

The general permits will authorize construction of, or any change to, any of the affected emission units, or pollutant emitting activities named in the permit, at any proposed true minor source that meets the applicability and eligibility statements in the permit, and for which the reviewing authority approves coverage under the permit.

We request comment on all aspects of the general permits and the associated forms and documentation provided to assist the stationary sources specified in the permits in complying with the Indian country minor NSR preconstruction permitting and post-construction operating requirements. In Section VIII, we propose, in the alternative, permits by rule for auto body repair and miscellaneous surface coating operations, GDFs and petroleum dry cleaning facilities. Should we decide to finalize a permit by rule for any of these categories, then we may not finalize the draft general permit for that category. Alternatively, we may opt to finalize both permitting mechanisms for the same source category, and may tailor one of the permitting mechanisms to provide authorization to construct or modify true minor sources (i.e., permits by rule) and another to provide enforceable limitations to create synthetic minor sources (i.e., general permits). (See Section X, for further discussion of the use of general permits and permits by rule to create synthetic minor sources.) We specifically request comment on this "hybrid" approach (see Section XI, for further discussion on the hybrid approach).

For the five source categories in today's action, we are proposing general permits as our preferred approach. We have crafted our proposal to ensure air quality is protected and to provide a streamlined approach where appropriate. Specifically, for HMA plants

and SQCS facilities, the EPA is proposing (1) that we retain the 90-day application review process provided in the Indian Country NSR Rule; and (2) that we provide lengthier, more detailed applications. Lengthier, more detailed applications are appropriate for source operations such as HMA and SQCS facilities that involve multiple pollutants where the reviewing authority needs to conduct a review to evaluate whether an individual source meets the requirements in the permit. However, we also recognize that a more streamlined approach may be appropriate for other source categories with few pollutants of concern and in which the operations are less complex. For those source categories (i.e., auto body repair and miscellaneous surface coating operations; GDFs; and petroleum dry cleaning facilities), the EPA is proposing to change the underlying rule to provide a shorter application review period (see Section XIII) and a shorter application (see Section IX). The permits by rule proposed as an alternative for these same three categories would take that streamlining a step further (see Section VII).

The remainder of this section outlines the general structure of each of the draft general permits, and requests comment on issues that are common among the draft general permits. Specifically, we are requesting comment on:

1) Whether the EPA should allow the use of each general permit to create synthetic minor sources;
2) Whether the EPA's proposed approach of incorporating by reference each reviewing authority's approval of a request for coverage into the general permit is necessary and appropriate; and

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

This section also describes the general process we undertook for each of the control technology reviews required to establish the terms and conditions of each draft general permit, and requests comment on our conclusions on several aspects of the control technology reviews.

Additional information and supporting analyses on each of these draft permits are located in the background documents. These documents are available at Docket ID No. EPA-HQ-OAR-2011-0151 and online at http://www.epa.gov/air/tribal/tribalnsr.html.

B. Structure of General Permits

Each draft general permit contains a similar overall structure. The cover page of each draft permit contains general information on the draft permit. First, it briefly describes the applicability of the permit to a particular source category or emissions activity the general permit regulates in accordance with 40 CFR 49.156(d)(1). This description varies for each of the draft permits, depending on the emissions activity covered by the draft permit.

Second, the cover page limits eligibility for coverage under the permit to true minor sources. We included this limitation to allow permitting authorities the ability to process a permit application for inherently larger sources using the more extended time periods the Indian Country Minor NSR rule provides for case by case, site specific review. We also include this limitation in the draft permits to remain consistent with our

current policy that we will not allow sources to use general permits to create synthetic minor sources.

We recognize, however, that limiting eligibility of these draft permits to only true minor sources could limit the number and types of sources that could take advantage of the streamlined, general permitting process. We also recognize that there is similar emissions potential between true minor sources and properly regulated synthetic minor sources as we discuss in Section X. We request comment on whether there are reasons that the final general permits should retain the true minor limitation on eligibility for one or more of the permits, or whether we should expand the eligibility of these draft general permits to "synthetic minor" sources. After reviewing comments received, we may amend one or more of the final permits to allow any minor source to apply for coverage under that permit.

Third, following the eligibility statement, the draft permit directs applicants to the specific information that an applicant must include in a request for coverage under the permit in accordance with 40 CFR 49.156(d)(2)(ii) and (iii). The request for coverage serves as the permit application and the information in the application will differ for each draft permit. We discuss the application and implementation tools to assist true minor sources in determining whether a source is eligible for coverage under a general permit in Section IX.

Fourth, the draft permit contains a statement that incorporates each reviewing authority's approval of a request for coverage into the general permit. Sections 1 through 6 of the general permit, and the most current approval of the request for coverage, must be posted prominently at the facility, and each affected emissions unit and any

associated air pollution control technology must be labeled with the identification number listed in the Approval of the Request for Coverage for that permitted source. We request comment on the inclusion of this condition in the permits given that the Indian Country Minor NSR rule only requires posting of the approval of coverage.

As we developed the draft permits, we envisioned situations in which the reviewing authority may need to revise information contained in the approval notice some time after issuance. For example, a source covered by a general permit may subsequently change ownership. A reviewing authority may delegate responsibilities for the general permit to a tribal air pollution control agency. A source may subsequently need to revise something in its request for coverage that would alter elements of the approval. For example, a source may misidentify an equipment identification number in its request for coverage, or decide to expand or limit the scope of the modification. A reviewing authority may need to alter its approval of the request for coverage for these situations. The general permit provisions at 40 CFR 51.156(b)(2) broadly reference 40 CFR 49.159, which specifically addresses the reviewing authority's ability to reopen or administratively amend permits. The provisions, however, do not specifically delineate how they apply to an approval of a request for coverage under a general permit. By incorporating the approval into the general permit, we ensure that the revision procedures contained in 40 CFR 49.159 apply to revisions a reviewing authority may make to the approval of the request for coverage. We request comment on this approach for incorporating the approval of the request for coverage into the general permit. Alternatively, we request comment on whether such incorporation is unnecessary and on whether to apply the procedures in 40 CFR 49.159 to the approval of the request for

coverage, or whether the EPA should amend the existing regulations at § 51.156 to address amendments to the request for coverage.

Fifth, the draft permit contains information on the reviewing authority's right to terminate or revise the general permit. The general permit provisions in the Indian Country Minor NSR rule provide the reviewing authority the ability to revise, revoke and reissue, or terminate a general permit. In harmony with those provisions, the draft permits include authority for a reviewing authority to revise or terminate an approval of a request for coverage. We are adding these provisions to the general permit, under the authority of 40 CFR 49.165(d), to clarify how the Indian Country Minor NSR rule intended these provisions to apply to an individual request for coverage. We request comment on inclusion of these provisions in the general permit, or, alternatively, whether the EPA should amend the Indian Country Minor NSR rule to expressly delineate the reviewing authority's right to revise or terminate an individual source's coverage under a general permit.

Finally, the draft permit contains a statement indicating that the definitions contained in the Indian country rule govern use of those terms within the general permit. The statement also refers permittees to a section of the permit that contains definitions that may be specific to the source categories or emissions activities covered by the general permit; and indicates that when a term is not otherwise defined we will interpret that term consistent with normal business use. We, nonetheless, request comment on whether we should include any additional definitions to improve the clarity of the general permits.

Following the general information section, each draft permit contains the enforceable terms and conditions of the general permit. Section 1 of the Terms and Conditions provisions contains general provisions that, with only a few exceptions, are similar for all the general permits. These provisions contain statements that the rules require in each permit pursuant to 40 CFR 49.155.

In each permit, the general provisions are followed by emission limitations and other operational restrictions or specifications, and monitoring, recordkeeping, and reporting requirements that are unique to each of the permits. The notice and reporting requirements are followed by a section outlining the reviewing authority's ability to change the general permit, including the approval of the request for coverage, a section on requesting coverage under the permit, and attachments with abbreviations and acronyms, a list of definitions referenced on the cover page of the permit and a list of reviewing authorities and areas of coverage. Attachments to the HMA plant and rock crushing permits also contain requirements to minimize fugitive dust emissions. An attachment to the GDF permit contains requirements for vapor balance system design criteria, management practices, and performance testing. Attachments to the auto body repair and miscellaneous surface coating operations general permit provide standards for cold cleaner degreasers and training and certification requirements for spray-applied surface coating personnel. An attachment to the petroleum dry cleaning facilities permit contains requirements specific to serious, severe, or extreme ozone nonattainment areas.

C. The EPA's Control Technology Review

With the exception of the GDF general permit, each permit establishes specific numerical limitations on the quantity, rate or concentration of emissions for each

regulated NSR pollutant emitted by each affected emissions unit. (The GDF permit includes equipment requirements.) For each general permit, in a manner similar to what a permitting authority would be expected to do for an individual source, we established these control technology-based requirements by researching both state and local air quality programs to identify control technologies or other emissions reduction measures used by similar sources in surrounding areas, and by reviewing requirements contained in existing 40 CFR parts 60, 61 and 63 emissions standards that apply to these source categories. The draft permits build upon the requirements in the part 60, 61, and 63 emissions standards by including some control technology measures found in state and local agencies' general permits for these source categories.

The background documents for each draft permit explain the state and local programs we reviewed to identify control technology options in each source category. We believe that, because these control measures are currently used by other similar sources in other areas of the country, that they are technically and economically feasible, and cost effective. We request comment on this conclusion, and invite commenters to submit specific information that would indicate that either: (1) the measures in the draft permits are not economically feasible and/or cost-effective; or (2) additional economically feasible and cost-effective measures are available and appropriate to include in the final general permits.

In determining specific emission limitations and control measures for each permit, we considered the general, local air quality conditions in Indian country. Notably, Indian country contains both attainment and nonattainment areas for different regulated NSR

pollutants.[15] In some cases, for areas designated as nonattainment for a given pollutant, the draft permits contain more stringent emission limitations for that pollutant (or precursors of that pollutant). These control requirements will help mitigate any further degradation of air quality in those areas. In other cases, however, the draft permits do not include different emission limitations based on the attainment status of the area. In these situations, we determined that the emission limitations are sufficient to protect air quality in both attainment and nonattainment areas.

For HMA plants and SQCS facilities, we also added additional provisions related to the location of the emitting activities and the source property boundary. We call these provisions, which are designed to minimize the impacts of emissions, setback requirements. Under the setback requirement, sources may not locate within a specific distance from the property boundary and nearest residences. In reviewing state and local air agency general permits, we found that permitting authorities in Alaska and Washington include setback provisions to protect local ambient air quality from potential source impacts. We find that these provisions are both reasonable and prudent measures to protect local air quality, and are economically feasible and cost effective. We, therefore, included similar measures in the draft permits. We discuss the specific setback requirements for each category in Section VI.

We welcome comments identifying other source categories for which a setback requirement should apply. We also welcome comments on the types of buildings from

[15] Maps for those NAAQS for which the EPA has designated nonattainment areas in Indian Country are available online at http://www.epa.gov/air/tribal/tribalnsr.html and Docket ID No. EPA-HQ-OAR-2011-0151. NAAQS for which the EPA has designated nonattainment areas are: ozone (2008 NAAQS), PM_{10} (1987 NAAQS), $PM_{2.5}$ 24-Hour (2006 NAAQS), and $PM_{2.5}$ Annual (1997 NAAQS). There are no tribal lands in nonattainment for SO_2 (2010 NAAQS), NO_2, lead (2008 NAAQS), and CO.

which we should establish setbacks (e.g., schools, nursing homes). We further request comment on whether the setback requirement conflicts with tribal authority over zoning-related matters, and, if so, on how we should resolve that conflict.

To further protect against adverse local air quality impacts, the draft permits assure that no source will cause or contribute to NAAQS or PSD increment violations by prohibiting emissions that would result in such impacts. Thus, reviewing authorities will consider any air quality concerns unique to specific areas that arise after issuance of the general permits in this proposal when determining whether an individual permit applicant is eligible for coverage under the general permit. For example, if a source wants to locate in an area with air quality levels approaching or violating the NAAQS, the reviewing authority may need to request that a source apply for a site-specific permit so that the potential for greater control than that afforded by the general permit can be evaluated.

In conducting the control technology review, we also considered the anticipated growth rate of the source categories. In general, we do not anticipate significant increases in the growth rates for these five source categories for the foreseeable future, as we identified no information indicating that that is the case.[16] Thus, we do not believe that emissions increases from these categories will pose unique or unprecedented impacts on air quality in the near future that might warrant a more stringent approach to controlling emissions than contained in the draft permits. We request comment on our conclusion about anticipated economic growth in these source categories and regions, and the

[16] See the following memo online at http://www.epa.gov/air/tribal/tribalnsr.html and in the docket (ID No. EPA-HQ-OAR-2011-0151): "Projected New Minor Sources in Indian Country," from Lillian Grace Bradley, Environmental Economist, EPA/OAQPS to Chris Stoneman, Policy Advisor, EPA/OAQPS, July 2, 2013.

reasonableness of the emission limitations and control measures specified in the draft permits.

D. Scope of Coverage Under Each General Permit

In the Indian Country Minor NSR rule, the EPA stated that it may use the general permit mechanism to issue permits to "similar" types of emissions units or minor sources. This limitation on the ability to issue general permits is consistent with the EPA's longstanding interpretation of the CAA as it relates to the ability of a permitting agency and source to use standardized protocols to meet CAA permitting requirements. The general permits we are proposing meet the limitation that general permits apply only to similar sources, because each of the permits covers only affected emission units or emissions generating activities that are: (1) specifically identified by name in the permit; (2) generate the same regulated NSR pollutants in the same manner and magnitude; and (3) are associated only with operations within a defined source category.[17] We discuss the specific scope of each draft general permit in more detail in Section VI below and in the background document for each draft general permit.

E. Surrogate Annual Allowable Emission Limitations

The Indian Country Minor NSR rule requires the reviewing authority to establish annual allowable emission limitations for each affected emissions unit and for each NSR regulated pollutant emitted by the unit, if the unit is issued an enforceable limitation lower than the PTE of that unit. *See* 40 CFR 49.155(a)(2). For the five source categories in this proposal, some states (but not all) provide both annual ton per year allowable

[17] These criteria are not the sole manner for demonstrating that a general permit applies only to similar sources, but they serve as examples of the types of characteristics that may be relevant.

emission limitations and throughput limits in their general permits. Other state reviewing authorities provide only overall production limits that limit the amount of throughput a facility can process over a period of time. We believe that production limits serve as a reasonable surrogate for ton per year emission limitations, when there is a direct correlation between the amount of material processed and the amount of pollution emitted. We also believe that monitoring throughput rather than actual emissions may provide a more cost-effective method of demonstrating compliance. For example, HMA facilities regularly track a facility's throughput, but do not necessary analyze specific emissions discharges. Thus, reliance on throughput limits provides a more cost-effective approach to regulate emissions and we believe will enhance the potential for compliance with the draft permit for this and other categories. In Section VI, we request comment on our use of throughput limits as a surrogate for annual ton per year allowable emission limitations. Alternatively, we request comment on whether we should establish annual allowable emission limitations for each pollutant, and use throughput as a surrogate monitoring measure to demonstrate compliance with a ton per year annual allowable emission limitation.

In a related matter, in Section X of this preamble, we indicate that we have granted reconsideration on the issue of allowing reviewing authorities to use general permits to create synthetic minor sources and propose to change the current policy. If the EPA allows otherwise major sources to qualify as synthetic minor sources through use of general permits, we request comment on specific changes that we would need to include in the production limits of each permit to properly regulate synthetic minor sources for these categories. For example, should the EPA establish higher annual tpy allowable

emission limitations or surrogate production limits that are just below the major source thresholds for each regulated NSR pollutant, or should the EPA maintain the limitations in the current draft permits to maintain an adequate compliance margin?

F. Requirements of the Endangered Species Act (ESA) and the National Historic Preservation Act (NHPA)[18]

The ESA requires federal agencies to ensure, in consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (the Services), that any action they authorize, fund, or carry out will not likely jeopardize the continued existence of any listed threatened or endangered species, or destroy or adversely modify the designated critical habitat of such species. Under relevant ESA implementing regulations, federal agencies consult with the Service(s) on actions that may affect listed species or designated critical habitat. The NHPA requires federal agencies to take into account the effects of their undertakings on historic properties – *i.e.*, properties that are either listed on, or eligible for listing on, the National Register of Historic Places – and to provide the Advisory Council on Historic Preservation (the Council) a reasonable opportunity to comment on such undertakings. Under relevant NHPA implementing regulations, NHPA consultations are generally conducted with the appropriate Tribal and/or State Historic Preservation Officers in the first instance, with opportunities for direct Council involvement in appropriate circumstances, including, for example, consultations in connection with undertakings affecting multiple tribes or states. The Indian Country Minor NSR program has increased the number of activities for which the EPA is the permitting authority. To meet ESA and NHPA requirements, we have developed a

[18] These requirements apply to both general permits and permits by rule. Only general permits are mentioned here but the requirements apply identically to both permit types. Section VII. C. is specific to permits by rule and notes that these requirements also apply to permits by rule.

process for compliance with these laws when issuing the general permits. The EPA intends to consult with the Services and the Council on our general permits and the proposed procedures to address potential effects on relevant protected resources.

For purposes of general permits, the EPA intends to adopt a framework that provides appropriate protection for listed species and critical habitat and historic properties. The EPA believes, based on the evaluation of available information, that the sources that are the subject of this proposal are unlikely to present a significant risk to listed species and critical habitat and to historic properties because they are by their nature small, low emitting sources. However, to ensure listed species and critical habitats and historic properties are protected, the EPA has developed a framework in the general permits that requires the source to identify and assess effects before a request for coverage under the general permit is submitted to the EPA. Requiring this assessment should help identify any concerns related to potential impacts on listed species/critical habitat or historic properties early in the process when the greatest opportunities to mitigate or avoid any impacts – including changes to the facility's location or footprint – are available. This framework is similar to procedures established by the Office of Water for the National Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activities.[19] The EPA believes that requiring a similar process in both the general permits, and the general stormwater permits, will streamline the process for all concerned: the applicants, the EPA, the tribes, and the Services.

[19] "Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Construction Activities," U.S. Environmental Protection Agency, 77 FR 12286, February 29, 2012, http://www.gpo.gov/fdsys/granule/FR-2012-02-29/2012-4822/content-detail.html.

The screening processes developed in the permits for both the ESA and NHPA require the applicant to develop information about the possible effects of the proposed new or modified facility, which includes appropriate outreach to relevant expert resource agencies. Such information and a certification regarding the outcome of the applicant's screening procedures are submitted to the EPA as part of the request for coverage under the general permit. This information is included as an appendix to the applications for requests for coverage for each of the general permits. The EPA will review this information as part of determining whether a source is eligible for coverage under the general permit. Because we have limited the applicability of the general permits to categories of sources that have low emissions, we do not expect they are likely to adversely affect listed species/critical habitat, nor should they have potential effects on historic properties. However, if, through the procedures required in the permit, a source is determined to have an adverse effect on listed species/critical habitat or potential effects on a historic property, the EPA retains the authority to deny coverage under the general permit, or permit by rule, and to proceed with source-specific permitting and consultation with the appropriate resource agency(ies).

VI. Summary of Specific Terms and Conditions of the General Permits and Request for Comment

In the following sections, we provide a brief summary of the source category regulated by each general permit and areas of each draft general permit on which we specifically seek public comment. Because the areas upon which we specifically seek comment in the HMA plant and SQCS facility general permits are common among the two permits, we have combined the request for comment section on these permits into

one subsection. In this preamble, we are not delineating every aspect of the requirements of the general permits. Instead, we refer readers to the draft permits and associated background information to review all the detailed requirements we include in each general permit. Although we are soliciting comments on specific aspects of the draft permits, we, nonetheless, invite the public to comment on all relevant aspects of the draft permits.

A. HMA Plants

1. What is an HMA plant?

An HMA plant manufactures hot mix asphalt by heating and drying aggregate material and then mixing it with asphalt cements. An HMA plant consists of an assembly of mechanical and electronic equipment used to prepare hot aggregate and mineral filler for mixing to make hot mix asphalt. The facility includes any combination of the following activities/equipment: dryers, liquid asphalt storage tanks, fuel oil storage tanks, auxiliary heaters (including hot oil heaters), material storage handling and transfer systems, generators, storage bins/silos, storage piles, and haul roads. An HMA plant can be constructed as a permanent plant, a skid-mounted (easily relocated) plant, or a portable plant.

HMA paving materials are a mixture of size-graded, high quality aggregate, which can include reclaimed asphalt pavement (RAP), and liquid asphalt cement. The production process involves sorting and drying the aggregate, heating the asphalt binder, and heating and applying the mixture. Aggregate material can be produced from numerous sources, including natural rock, RAP, reclaimed concrete pavement (RCP), glass, fly ash, bottom ash, steel slag, recycled asphalt shingles, and crumb rubber.

Aggregate and RAP (if used) constitute over 92 percent by weight of the total mixture. Aside from the amount and grade of asphalt cement used, mix characteristics are determined by the relative amounts and types of aggregate and RAP used. A certain percentage of fine aggregate (less than 74 micrometers in physical diameter) is required for the production of good quality HMA.[20]

There are four types of HMA plants based on the type of manufacturing process used: (1) batch mix plants; (2) continuous mix (mix outside dryer drum) plants; (3) parallel flow drum mix plants; and (4) counterflow drum mix plants. Historically, about 85 percent of manufacturing plants have been of the counterflow drum mix design, while batch plants and parallel flow drum mix plants account for 10 percent and 5 percent, respectively.[21]

The emissions associated with HMA plants are generated by: (1) raw materials acquisition and manufacturing processes; and (2) transportation of raw materials during manufacture and transportation to the roadway construction site. The emissions from HMA plants consist of: (1) combustion emissions from mixer/dryers, auxiliary heaters, and generators; (2) PM emissions from the mixing/drying process and the material handling process; and (3) fugitive PM emissions from haul roads. The CO emissions from the batch mix plants are significantly higher than the CO emissions from drum mix plants due to the incomplete combustion process occurring in the batch mixer/dryers.

2. What is in the proposed HMA general permit?

[20] AP 42, Fifth Edition, Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources; Chapter 11.1 – Hot Mix Asphalt Plants; U.S. Environmental Protection Agency; http://www.epa.gov/ttn/chief/ap42/index.html.
[21] Ibid.

This proposed general permit would apply to the construction of new true minor source HMA plants or the modification of existing true minor HMA plants, located in Indian country. This general permit does not apply to HMA plants that perform contaminated soil remediation, and does not apply to cold mix asphalt production facilities. The draft permit contains emission limitations requirements for the following affected emission units:

- Dryers;
- Systems for screening, handling, storing, and weighing hot aggregate;
- Systems for mixing hot mix asphalt;
- Loading transfer, and storage systems associated with emission control equipment;
- Fuel storage tanks; and
- Stationary engines.

The permit requires dryers/mixers to be controlled by a baghouse, fugitive emissions controlled by a fugitive dust control plan, and engines to be controlled to appropriate standards. Fuel used in the dryer/mixer and auxiliary heaters must be limited to natural gas, distillate fuel, and biodiesel. The stationary engines are limited to using diesel and biodiesel as fuels. All liquid fuels are limited to no more than 0.0015 percent sulfur by weight.

The proposed general permit includes monitoring that is sufficient to assure compliance with the emission limitations that apply to the source, including ensuring the baghouse is operating properly, taking weekly opacity observations and fugitive emissions surveys and meeting certain other requirements. The proposed general permit

includes recordkeeping and reporting sufficient to assure compliance with the emission limitations and monitoring requirements.

3. What geographic restrictions are contained in the HMA general permit?

The general provisions of the HMA plant draft permit restrict sources from locating in severe and extreme ozone nonattainment areas or serious CO nonattainment areas.[22] Because the major stationary source thresholds are very low in these types of areas, we do not envision that any minor source HMA plants or SQCS facilities will locate in these areas. Thus, we did not to address this situation in these general permits. We request comment on whether the EPA should limit the geographic scope of eligibility of the general permits in this manner.

B. SQCS Facilities

1. What is a SQCS facility?

A SQCS facility is any non-metallic mineral processing facility which uses rock crushers, grinding mills, screening operations, bucket elevators, belt conveyors, bagging operations, storage bins, storage piles, truck loading stations, or railcar loading stations to process sand, gravel, or mineral aggregate.[23]

The SQCS facilities are part of a larger industrial process where sand, gravel, rock, and minerals are removed from the earth and prepared for industrial, commercial and residential use. In sand and gravel processing,

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[22] Sources can still locate in these areas but would need to obtain a site-specific NSR permit and may face more stringent control requirements.

[23] The operations and equipment at a typical SQCS facility are described in: AP 42, Fifth Edition, Volume I, Chapter 11: Mineral Products Industry, Chapters 11.19.1, Sand and Gravel Processing, and 11.19.2, Crushed Stone Processing and Pulverized Mineral Processing; U.S. Environmental Protection Agency; http://www.epa.gov/ttn/chief/ap42/ch11/index.html.

deposits of sand and gravel are mined and processed with screens, washing, and clarifiers to segregate the material into different particle sizes. Sometimes facilities use crushing equipment to reduce particle sizes. In rock crushing operations, drilling and blasting operations loosen rock, and then a front-end loader or power shovel loads the rock into large haul trucks that transport the material to the processing operations. Processing operations may include: crushing, screening, size classification, material handling and storage operations. Rock is loaded into bins and sent through screens, sorted for size, and conveyed to one or more rock crushers until all of the raw material is reduced to the desired size. Each crusher machine has associated screening and conveying equipment. After crushing, the rock is sorted according to size in screeners and conveyers that move the rock to storage piles. Front end loaders and trucks move finished materials offsite. Rock types processed by the crushed stone industry include: limestone, granite, dolomite, traprock, sandstone, quartz, quartzite, and lesser amounts of calcareous marl, marble, shell, and slate. Electricity for the motors running the crushers, screens, and conveyors is provided either by grid electric power or by diesel generators.

Criteria pollutant emissions of concern are primarily PM from crushing and screening, and PM and NO_x from diesel generators. For sources with available water, water sprays may be used to control PM emissions. In sand processing, water is typically used in clarifiers to sort the sand by size, and the sand is processed wet. Dry PM control methods (baghouses) may also be used to control PM emissions.[24]

[24] Ibid.

2. What is in the proposed SQCS facility general permit?

This proposed general permit would apply to the construction of new true minor source SQCS facilities or the modification of existing true minor SQCS facilities, located in Indian country. The proposed general permit is for a facility that processes non-metallic materials only (i.e., sand, rock or stone). A source that processes any of the following is not eligible for coverage under this proposed permit: metallic materials; radioactive materials; materials that contain asbestos; materials intended to be used as fuel; and minerals for structural clay, clay ceramics, brick, lime manufacturing, phosphate products, Portland cement, or refractory products.

The draft permit covers emissions from the following equipment at HMA facilities:

- Engines;
- Material handling equipment; and
- Fuel storage tanks.

The draft permit requires emissions from all crushers, screens, drop points, and other possible release points to be controlled by wet suppression, requires fugitive emissions to be controlled by a fugitive dust control plan, and engines to be controlled to appropriate standards. Stationary engines are limited to using diesel and biodiesel as fuels. All liquid fuels are limited to no more than 0.0015 percent sulfur by weight.

The proposed general permit includes monitoring that is sufficient to assure compliance with the emission limitations that apply to the source, including ensuring the wet suppression system is operating properly, taking weekly opacity observations and fugitive emissions surveys and meeting certain other requirements. The proposed general

permit includes recordkeeping and reporting requirements sufficient to assure compliance with the emission limitations and monitoring requirements.

C. Request for Comment on the Proposed HMA Plant and SQCS Facility General Permits

We request comment on all aspects of the general permits for HMA plants and SQCS facilities. We specifically request comment in the following four areas:

1. Throughput Production Limits as a Surrogate for Annual Ton Per Year Allowable Emission Limitations

The proposed HMA plant and SQCS facility general permits contain throughput-based production limits that serve as surrogates for annual ton per year allowable emission limitations. We discuss the use of surrogate limits in Section V.E. above. For HMA plants, for production of hot mix asphalt the draft permit contains separate production limits:

- 100,000 tons-per-month based on a 12-month rolling average from a drum mix asphalt plant; or
- 33,000 tons-per-month based on a 12-month rolling average from a batch mix asphalt plant.

For SQCS facilities, the draft permit restricts raw material annual throughput to 10,500,000 tons based on any continuous rolling 12-month period. The background information documents for the draft permits contain the approximate ton per year emission thresholds for which the throughput limits act as surrogates. The draft permit does not establish different throughput limits based on the attainment status of the area. We request comment on our use of throughput limits as a surrogate for tpy emission

limitations for this source category, and on whether there should be different production throughput limits in attainment and nonattainment areas.

In establishing specific limits for HMA plants and SQCS facilities, we considered whether we should compute the production throughput limits on a ton per year basis, or over a shorter period of time to assure continuous compliance. For HMA plants, where NO_X is the limiting pollutant, we elected monthly average production limits to ensure continuous compliance for portable plants that may relocate to ozone nonattainment areas within the same year. For SQCS facilities, where PM is the limiting pollutant, we elected to include an annual limit based on a 12-month rolling total. Nonetheless, we request comment on whether we should instead establish a monthly total emission limitation based on a 30-day rolling total or any other appropriate averaging period.

In addition to the production throughput limits, each of the draft permits contains restrictions on the amount of fuel used. For HMA plants, the combined fuel consumption in all engines and generators, excluding nonroad mobile engines, may not exceed 12,500 gallons-per-calendar month if the source is located in an attainment area for ozone; or 2,500 gallons-per-calendar month if the source is located in an ozone nonattainment area. (In the HMA permit, fuel combustion is limited to natural gas, propane, distillate fuel, and biodiesel in the dryer/mixer and auxiliary heaters and diesel and biodiesel in the stationary engines and generators.) We are proposing monthly limits on production and fuel use at HMA plants because NO_x emissions from the dryer and engines are the limiting factor in determining whether a source qualifies for a general permit. The monthly limits allow a source to relocate to an area with a different attainment status and still ensure they are operating as a minor source consistent with their application. We

determined that it would be unnecessarily complicated for sources to show compliance with two different annual fuel limits within the same 12-month period (assuming the HMA plant is co-located with a SQCS facility), since during the previous 11 months they could have been at different locations. (Below, we discuss how multiple locations can be handled for the SQCS general permit.) The monthly limit on fuel use makes demonstrating compliance straightforward and maintains operational flexibility (since the same annual production limit applies to attainment and nonattainment areas).

For SQCS facilities, the combined fuel consumption of all engines and generators, excluding nonroad mobile engines, may not exceed a range of between 33,000 gallons and 162,000 gallons annually based on a 12-month rolling total for each month, depending on the ozone attainment status of the area. (In the SQCS permit, fuel combustion in stationary internal combustion engines is limited to diesel and biodiesel.) In the case of SQCS facilities, PM emissions from engines are not a limiting factor in determining whether a facility qualifies for a general permit so we did not find monthly limits necessary. We request comment on whether to distinguish the amount of fuel use based on ozone attainment status, or whether we should set one usage limit within the stated range for both attainment and nonattainment areas. The simplicity of a single usage limit may outweigh the benefits of the flexibility of offering varying limits.

2. Setback Requirement

The draft general permits require HMA and SQCS facilities to locate at least 150 feet from the nearest property boundary and 1,000 feet from the nearest residence. These requirements are beyond the requirements in the EPA’s 40 CFR parts 60, 61, and 63

regulations affecting these source categories. Nonetheless, the states of Washington[25] and Alaska[26] include setback provisions in their general permits for this source category. We believe that these requirements will minimize the impact of emissions from these sources on localized air quality. We request comment on whether we should include these setback requirements in the final permits to provide additional protection against adverse impacts to local air quality. In addition, we request comment on whether there are other neighboring types of buildings from which the setback should apply (e.g., schools, nursing homes) and whether to require these facilities to use physical markers on their property to show compliance with the setback requirements.

3. Authorizing Multiple Locations

HMA facilities and SQCS facilities often operate as portable stationary sources. A facility will locate in a single area for a specified period of time and then disassemble and relocate to another area. We structured both draft general permits to accommodate relocation of a facility. A source may identify multiple sites of operation in its request for coverage. The reviewing authority will consider the request for each location, and will specify approval of one or more of these locations in the approval of the request for coverage. If the reviewing authority does not approve a specific location, then the source will need to reapply for coverage under the general permit or for a site specific permit before relocating to this site. The general permits also require a source to submit a

[25] The setback requirement in the Washington's general permit is based on dispersion modeling for rock crushing facilities with a high rock throughput rate. For more information, go to: https://fortress.wa.gov/ecy/publications/summarypages/ecy070237.html.

[26] For information on Alaska's setback requirements, go to: http://dec.alaska.gov/air/ap/docs/General%20Permit%20Application%20for%20Asphalt%20Plants%2004-12-12.pdf.

notification to the reviewing authority each time it relocates to a pre-approved site. We request comment on the use of these general permits to authorize relocation of a facility to pre-approved site locations. In addition, because these two types of facilities can co-locate at the same site, we seek comment on whether we should issue general permits that cover both source categories within one permit, in lieu of two separate permits, or in addition to two separate permits. If we finalize such an approach, we propose to include all the requirements proposed for the separate permits in a single permit, but we seek comment on whether the combined permit should include any additional or different requirements.

4. Spark-ignition Engines

The draft general permits for both HMA and SQCS facilities include control measures for a number of different engine types. We did not include spark-ignition engine control measures in either general permit, because we do not believe that HMA or SQCS facilities commonly use these types of engines, and, as we discuss above, we precluded use of any fuel other than diesel or biodiesel in stationary internal combustion engines. We request comment on this conclusion. If commenters indicate that spark ignition engines should be regulated under the general permits, then we may include emission limitations comparable to the levels established for other type of engines in the final general permits.

D. Auto Body Repair and Miscellaneous Surface Coating Operations

1. What is an auto body repair and miscellaneous surface coating operation?

An auto body shop repairs, repaints, and/or customizes passenger cars, trucks, vans, motorcycles, and other mobile equipment capable of being driven or drawn on the

highway. Auto body refinishing shops involve cleaning the auto body surface to ensure proper adhesion of the coating, priming and sealing the surface, applying a topcoat, and cleaning of the spray equipment. Coating application equipment includes preparation stations, spray booths, spray guns, and spray gun cleaning equipment. Some facilities are equipped with heating units to heat the air in the drying booth or to maintain a constant shop temperature during cold months. The majority of these operations occur at small body shops that repair and refinish automobiles. The activities include sanding, cleaning, spray-applying coating, and cleaning spray equipment, all of which may release pollutants into the air.

Miscellaneous surface coating operations are those that involve the spray application of coatings to miscellaneous parts and/or products made of metal or plastic, or combinations of metal and plastic. These activities include:

- Paint stripping for the removal of dried paint (including, but not limited to, paint, enamel, varnish, shellac, and lacquer) from wood, metal, plastic, and other substrates;
- Spray application of coatings to motor vehicles and mobile equipment including operations that are located in stationary structures at fixed locations, and mobile repair and refinishing operations that travel to the customer's location; and
- Spray application of coatings to a plastic and/or metal substrate on a part or product, except spray coating applications that meet the definition of facility maintenance or space vehicle.

The coating application operations include washes, primers, primer surfacers, primer sealers, and topcoats. Coatings are applied using a hand-held device that creates

an atomized mist of coating and deposits the coating on assembled motor vehicles and mobile equipment.

The pollutants of concern for auto body repair and surface coating operations are VOCs and hazardous air pollutants (HAP) from the use of solvents and coatings. Particulate matter emissions are also emitted from spray coating operations. Paints, coatings, and the solvents used for paint gun clean-up are the main sources of VOCs in auto body shops. Emissions are typically controlled through use of lower-VOC coatings, increased transfer efficiency of spray guns, minimizing solvent evaporation during clean-up and other best practices, such as closing all containers of painting materials immediately after use. Particulate matter emissions are also emitted from spray coating operations. Because spray coating operations are normally performed in enclosed spray booths and controlled by dry filters or other equivalent control devices, PM emissions from spray coating operations are not significant if the spray booths and the associated control devices are operated properly. If a facility contains fuel combustion heating units, there are associated combustion emissions from those units.

Coatings processes also include degreasing. Solvent degreasing (or solvent cleaning) is the physical process of using organic solvents to remove grease, fats, oils, wax or soil from various metal, glass, or plastic items. The types of equipment used in this method are categorized as cold cleaners, open top vapor degreasers, or conveyorized degreasers. The general permit only allows for the use of cold cleaners that are batch loaded and non-boiling solvent degreasers. These processes usually provide the simplest and least expensive method of metal cleaning. Maintenance cold cleaners are smaller, more numerous, and generally use petroleum solvents such as mineral spirits (petroleum

distillates and Stoddard solvents). Manufacturing cold cleaners use a wide variety of solvents, which perform more specialized and higher quality cleaning with about twice the average emission rate of maintenance cold cleaners. Some cold cleaners can serve both purposes.

Cold cleaner operations include spraying, brushing, flushing, and immersion. In a typical maintenance cleaner, dirty parts are cleaned manually by spraying and then soaking in the tank. After cleaning, the parts are either suspended over the tank to drain or are placed on an external rack that routes the drained solvent back into the cleaner. The cover is intended to be closed whenever parts are not being processed in the cleaner. Typical manufacturing cold cleaner operations vary widely in design, but there are two basic tank designs: the simple spray sink and the dip tank. Of these, the dip tank provides more thorough cleaning through immersion, and often is made to improve cleaning efficiency by agitation. Small cold cleaning operations may be numerous in urban areas.

2. What is in the proposed auto body repair and miscellaneous surface coating operations general permit?

This proposed general permit would apply to the construction of new, true minor source auto body repair and miscellaneous surface coating facilities or the modification of existing, true minor source facilities, located in Indian country. Surface coating facilities that are major sources under 40 CFR part 63, and are subject to the requirements of certain National Emission Standards for Hazardous Air Pollutants (NESHAP),[27] are

[27] The relevant NESHAPs are: Subpart II—National Emission Standards for Hazardous Air Pollutants: Shipbuilding and Ship Repair; Subpart IIII—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks; Subpart KKKK—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans; Subpart MMMM—National Emission Standards for Hazardous

not eligible for coverage under this general permit.[28] The Maximum Achievable Control Technology (MACT) standards in these regulations cover a wide array of surface coating operations, each with a different set of emission standards for the various coatings typically used by the particular source category, some of which may require add-on controls. Creating a general permit that covers all of these surface coating operations - as required by 40 CFR 49.154(c)(4) - would be cumbersome and likely create a general permit that would be confusing to the permittee. We believe auto body repair and miscellaneous surface coating operations are a typical type of true minor surface coating operation such that it is a good candidate for a general permit.

We request comment on limiting eligibility of the general permit to true minor sources that are not major sources of HAP, or whether there are any terms or conditions we could add to the final permit that would ensure both compliance with the general permit and with the MACT standards.

The draft permit requires that all spray applications of coatings must be performed using high efficiency spray guns in a spray booth controlled by exhaust filters. We assumed that only batch-loaded cold cleaning degreasers were used at these types of

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Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products; Subpart NNNN—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances; Subpart OOOO—National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles
Subpart PPPP—National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products; Subpart QQQQ—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products; Subpart RRRR—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture; and Subpart SSSS—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil.

[28] Due to the surface coating-related requirements in a NESHAP, it is possible that a source could be a major source for HAPs but a minor source for regulated NSR pollutants. However, for simplicity, we are proposing to exclude major HAP sources.

facilities. The requirements for cold solvent degreasing include several work practice standards to ensure VOC emissions are minimized, including: keeping the degreaser cover closed at all times, except during parts entry and removal; the degreaser should be free of cracks, holes and other defects; all waste solvents must be properly stored and identified in sealed containers; and solvent flow must be directed downward.

The proposed permit includes monitoring that is sufficient to assure compliance with the emission limitations that apply to the source, including requiring monitoring for overspray, assuring that pressure drop across the exhaust filters does not exceed manufacturers' recommendations and inspecting solvent degreasers for leaks and cracks prior to use. The proposed permit includes recordkeeping and reporting sufficient to assure compliance with the emission limitations and monitoring requirements.

3. Request for Comment on the Proposed Auto Body Repair and Miscellaneous Surface Coating Operations General Permit

We request comment on all aspects of the general permit for auto body repair and miscellaneous surface coating operations. We specifically request comment in the following two areas:

a) Surrogate Annual Allowable Emission Limitations

The EPA is also proposing to include an annual allowable emission limitation for auto body repair and miscellaneous surface coating operations source category. This general permit would apply to the construction of new facilities proposing to locate in Indian country or the modification of existing auto body repair and miscellaneous surface coating operations located in Indian country. In attainment areas of Indian country, the draft general permit includes an upper throughput limit for VOC containing materials

(e.g., coatings, thinners, and clean-up solvents) not to exceed 5,000 gallons per year (gpy) based on a 12-month rolling total. This surrogate emission limitation equates to approximately 25 tpy or less of VOCs.[29] In ozone nonattainment areas of Indian country, the draft general permit includes an upper throughput limit for VOC containing materials (e.g., coatings, thinners, and clean-up solvents) not to exceed 900 gpy based on a 12-month rolling total. This surrogate emission limitation equates to 7 tpy or less of VOCs.[30] Finally, we request comment on the appropriateness of establishing different limitations based on the attainment status of the area and whether the specified limitations should be slightly higher or slightly lower.

b) Covering Both Auto Body Repair and Miscellaneous Surface Coating Operations

As currently structured, both auto body repair shops and miscellaneous surface coating operations are eligible to apply for coverage under the general permit. We think these types of emissions activities qualify as similar sources because (1) they both use the same type of equipment (such as spray guns) and materials (such as paint) that have similar forms of emissions with a similar overall emissions potential and (2) they use similar approaches to minimizing emissions. We request comment on treating these emissions activities as similar sources and on regulating both activities within the same general permit.

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[29] Information on the source of these thresholds is available at: Background Document, Minor Source Auto Body Repair and Refinishing Shops General Permit and Permit by Rule, Docket ID No. EPA-HQ-OAR-2011-0151, http://www.epa.gov/air/tribal/tribalnsr.html.

[30] Information on the source of these thresholds is available at: Background Document, Minor Source Auto Body Repair and Refinishing Shops General Permit and Permit by Rule, Docket ID No. EPA-HQ-OAR-2011-0151, http://www.epa.gov/air/tribal/tribalnsr.html.

E. GDFs

1. What is a GDF?

A GDF is any stationary facility that dispenses gasoline into the fuel tank of a motor vehicle, nonroad vehicle or equipment, including a nonroad vehicle or nonroad engine used solely for competition.[31] It should also be noted that a GDF could also include equipment that dispenses diesel fuel (diesel is discussed further below). Furthermore, a GDF could be an operation supporting other activities at a facility that otherwise requires a permit.[32]

Gasoline is delivered by tank trucks to GDFs and then transferred to highway motor vehicles and nonroad equipment and engines. GDFs include all retail outlets such as traditional gasoline service stations, convenience stores, truck stops, and hypermarkets (e.g., warehouse clubs and big box stores), marinas, as well as private and commercial outlets, such as centrally-fueled fleets, government operations, and private businesses such as farms and landscaping operations. This does not include airports offering aviation gasoline or mobile fueling capabilities.

Gasoline vapors are released during the transfer of gasoline from tank trucks to stationary gasoline storage tanks and during the refueling of vehicles and equipment.[33] Gasoline vapors are the major air pollution concern associated with gasoline dispensing

[31] A more formal regulatory definition of GDF can be found at 40 CFR 63.11132.
[32] Under the general permit and permit by rule programs, such a source would be considered a minor source and potentially eligible for the permit provided the PTE of all existing, new and modified emission units at the stationary source were below the major source thresholds for all regulated NSR pollutants.
[33] Some vapors can also be released due to spillage by vehicle operators as vehicles are fueled.

and handling facilities because they contain VOCs and HAPs such as aromatic compounds and isooctane.[34]

The EPA's emissions factor document, AP-42, has traditionally divided VOC emissions from GDFs into two basic segments of operation: Stage I and Stage II.[35] Stage I generally refers to the transfer of gasoline from the delivery truck to the aboveground storage tank (AST) or underground storage tank (UST). Fuel storage tanks are generally, but not always, cylindrical in shape, and vary in volume from 250 gallons (approximately 1,000 liters) to 30,000 gallons. Volumes of 250 to 1,000 gallons are most common for ASTs and 6,000 to 12,000 gallons are most common USTs. Stage II refers to gasoline in storage in these tanks and/or its transfer to a vehicle or equipment fuel tank through a pump and dispenser.

VOC emissions control technology exists and is required for Stage I and Stage II operations. Stage I vapor recovery is a control method to capture gasoline vapors that are released when gasoline is delivered by a tank truck to a storage tank located at a GDF. Instead of being released to the air, the gasoline vapors from filling the tank are captured and returned to the tank truck as the storage tank is being filled with fuel. From there, the vapors are transported back to the gasoline terminal vapor processor for recovery or destruction. Because of the GDF NESHAP requirements (found at 40 CFR part 63, Subpart CCCCCC), all GDFs dispensing more than 1,200,000 gpy were required to have Stage I controls in place in January 2011, with lesser requirements in the same timeframe

[34] For more information, go to: http://www.epa.gov/ttn/chief/eiip/techreport/volume03/iii11_apr2001.pdf.
[35] For more information, go to: AP 42, Fifth Edition, Volume I, Chapter 5: Petroleum Industry; U.S. Environmental Protection Agency; http://www.epa.gov/ttn/chief/ap42/ch05/index.html.

for GDFs with gasoline throughputs between 120,000 gpy and 1,200,000 gpy.[36] Stage I controls were commonly in place at many larger throughput GDFs prior to 2000. There are no such requirements for diesel fuel.

Stage II vapor recovery captures gasoline vapor that would otherwise escape into the air when motorists refuel their vehicles. Section 182(b)(3) of the CAA, 42 U.S.C. 7511a(b)(3), required pump-based Stage II vapor recovery for some GDFs located in "moderate" or above ozone nonattainment areas. Section 202(a)(6) of the CAA, 42 U.S.C. 7521(a)(6), required the EPA to develop standards for vehicle-based onboard vapor recovery (ORVR) controls on light-duty vehicles to capture these emissions. Section 202(a)(6) of the CAA also states that the section 182(b)(3) pump-based Stage II requirement shall not apply in moderate nonattainment areas after ORVR standards are promulgated, but would be required for serious, severe, or extreme ozone nonattainment areas.[37] On April 16, 1994, the EPA published regulations requiring the phase-in of ORVR controls on new passenger cars and light trucks.[38] These controls were required on all new gasoline-powered motor vehicles, not just those in ozone nonattainment areas.

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[36] Certified vapor recovery systems include hoses, nozzles, processors, and other equipment that create a closed system which returns gasoline vapor back to the underground storage tank and then back to the truck that delivers the gasoline to your station. The system and equipment are designed to capture vapor before it is released to the air.

[37] For more information, see: "Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver," U.S. Environmental Protection Agency, 77 FR 28772, May 16, 2012, http://www.gpo.gov/fdsys/pkg/FR-2011-07-15/html/2011-17888.htm. The rulemaking documents and supporting analyses are available at EPA public docket EPA-HQ-OAR-2010-1076.

[38] These requirements were ultimately extended to all complete heavy-duty gasoline-powered vehicles (HDGVs) with a gross vehicle weight rating (GVWR) less than 10,000 pounds and have recently been proposed to extend to all complete HDGVs with a GVWR up to 14,000 pounds.

In addition, the CAA provides that the EPA may revise or waive the pump-based Stage II control requirements of section 182(b)(3) for serious or above ozone nonattainment areas after the EPA determines that ORVR control systems are in "widespread use" throughout the motor vehicle fleet. The EPA has determined that vehicle-based ORVR refueling emission control systems were in widespread use in the motor vehicle fleet as of May 9, 2012.[39] This determination triggered the provision of section 202(a)(6) of the CAA, which waives the section 182(b)(3) Stage II requirement for serious or above ozone nonattainment areas. Under this waiver, states are no longer required to have pump-based Stage II vapor recovery systems for control of vehicle refueling emissions under section 182 (b)(3).[40]

2. What impact will the GDF National Emissions Standard for Hazardous Air Pollutants and onboard refueling vapor recovery control systems have on emissions from GDFs?

The GDF NESHAP and ORVR controls have a significant impact on lowering the VOC emissions levels from GDFs. GDF NESHAP requirements address Stage I emissions for all but the lowest throughput GDFs. ORVR controls and the gasoline dispensing rate limits which the EPA put in place in 1996 have significantly reduced the VOC emission rates. When fully phased-in, ORVR will reduce Stage II vapor displacement emissions by about 98 percent and fuel spillage by 50 percent.[41]

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[39] "Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver," U.S. Environmental Protection Agency, 77 FR 28772, May 16, 2012, http://www.gpo.gov/fdsys/pkg/FR-2012-05-16/html/2012-11846.htm.

[40] If a state submits a State Implementation Plan (SIP) revision to remove Stage II requirements from a previously approved SIP, it would need to demonstrate that the revision meets the requirements of sections 110(l) of the CAA as well as sections 193 and 184(b)(2), if applicable.

[41] These values are discussed more fully in EPA memoranda, "Updated Data for ORVR Widespread Use Assessment," February 29, 2012 and "Onboard Refueling Vapor

Using this information, Table 3 illustrates how the minor source NSR VOC emission permitting thresholds of 2 and 5 tpy translates into the equivalent volumes of gasoline dispensed by a GDF on both a monthly and yearly basis based on the control efficiencies for the GDF NESHAP and ORVR regulations. The 2 tpy value applies to any area classified as ozone nonattainment (marginal, moderate, serious, severe, or extreme) at the time the permit is being submitted and the 5 tpy applies to areas meeting the ozone NAAQS at that time. It includes the basic Stage I and Stage II emission sources plus the impacts that the GDF NESHAP and the increasing percentage of vehicles with ORVR controls will have on refueling emissions from GDFs (assuming pump-based Stage II vapor recovery is not in place). In this table, the displacement VOC emission rate in pounds/1,000 gallons depends on the gasoline Reid Vapor Pressure (RVP), the dispensed fuel temperature, and the difference between the temperature of the fuel in the tank and the dispensed fuel. For these purposes, the EPA has used 7 pounds per square inch (psi) RVP and temperatures representative of the summertime western U.S. for ozone non-attainment areas and 10 psi RVP and national average summertime temperatures for all other areas in calculating the uncontrolled displacement VOC emission rate in pounds/1,000 gallons. This yields values of about 7.5 and 10.8 pounds/1,000 gallons, respectively.[42]

Table 3. Emissions from GDFs with ORVR Consideration

Recovery Widespread Use Assessment," June 9, 2011. Both are available in: Docket EPA-HQ-OAR-2010-1076.

[42] For information on how these values were determined, see "Calculation of Emissions from GDFs," Memorandum from Glenn W. Passavant to Public Docket EPA-HQ-OAR-2011-0151, September 24, 2012, http://www.epa.gov/air/tribal/tribalnsr.html.

NSR CATEGORY			End of Calendar Year	% ORVR	Disp. 10^3 lb/10 gallons	Breathing Losses 10^3 lb/10 gallons	Stage I 10^3 lb/10 gallons	Total 10^3 lb/10 gallons	Gpy Equivalent	Gallons per Month (gpm) Equivalent
1a	2 tpy	Ozone NA	2011	72 %	2.1	0.25	0.3	2.65	1,509,434	125,786
1b	2 tpy	Ozone NA	2014	82 %	1.35	0.25	0.3	1.9	2,105,263	175,439
1c	2 tpy	Ozone NA	2020	92 %	0.6	0.25	0.3	1.15	3,478,261	289,855
1d	2 tpy	Ozone NA	2025	96 %	0.3	0.25	0.3	0.85	4,705,882	392,157
2a	5 tpy	Ozone attain	2011	72 %	3.02	0.25	0.3	3.57	2,801,112	233,427
2b	5 tpy	Ozone attain	2014	82 %	1.94	0.25	0.3	2.49	4.016,064	334,673
2c	5 tpy	Ozone attain	2020	92 %	0.86	0.25	0.3	1.41	7,142,857	595,238
2d	5 tpy	Ozone attain	2025	96 %	0.43	0.25	0.3	0.98	10,204,082	850,340

As shown in row 1b, the EPA estimates that ORVR will control 82 percent of motor vehicle gasoline refueling emissions in 2014. A GDF in an ozone nonattainment area could dispense approximately 2.1 million gpy before reaching the 2 tpy emissions threshold. As seen in row 1c, however, that same GDF could dispense approximately 3.5 million gpy in 2020 because 92 percent of refueling emissions will be controlled by vehicles equipped with ORVR.

In row 2b, the EPA estimates that a GDF in an ozone attainment area could dispense approximately 4 million gpy in 2014 before reaching the 5 tpy emissions threshold for ozone in a PSD area. As seen in row 2c, however, a GDF in an attainment area could dispense about 7.1 million gpy in 2020 because 92 percent of gasoline refueling emissions are expected to be controlled by ORVR. The calculations in Table 3 are snapshots for the various calendar years. Based on the PTE calculator, the gpy or gpm values for any given permit depend on the geographic location (attainment or non-attainment area) and the year in which coverage under the permit is requested.

The average GDF has a throughput of 1.5 million gpy; thus, many GDFs have throughputs below the 2014 gpy values listed in Table 3. If a GDF has projected emissions below the 2 tpy and 5 tpy minor NSR emissions thresholds for ozone nonattainment and attainment areas specified in the Indian Country Minor NSR rule, it does not need to obtain a pre-construction permit but may still be required to meet the GDF NESHAP requirements of 40 CFR part 63, Subpart CCCCCC and those proposed below for ASTs. While it is possible that a large and very active GDF could exceed the minor NSR emissions thresholds for ozone nonattainment and attainment areas (2 and 5 tpy, respectively) and, thus, be subject to the Minor NSR rule permit requirements, it is very unlikely that a single GDF could dispense enough fuel to exceed a 10 tpy level, which is the strictest VOC emissions threshold for a major source in a nonattainment area. The average refueling event is 10 to 11 gallons. If, for example, one simply multiplies the gpy entries in the Table 3 rows (1b) by a value of 5 tpy and divides by 11 gallons per minute, the result is over approximately 950,000 refueling events per year at one GDF. There are practical limitations on GDF acreage, as well as vehicle transit and tanker truck deliveries, which serve as a practical cap on the number of refueling events per year. Exceeding the 10 tpy limit in ozone nonattainment areas in 2014 would require over 2,600 gasoline refueling events per day, which is practically unlikely at even the largest and busiest GDFs.

Thus, considering the physical limitations on GDFs and the emissions impact of ORVR, we propose that for most areas there is no need for numerical limits on the quantity (throughput) or rate (tpy) of emissions for GDFs as it is practically not possible to become a major source. However, to provide extra air quality protection, we are

proposing to have a surrogate emission limitation for serious, severe or extreme ozone nonattainment areas. For these areas, the draft permit requires the source to limit annual gasoline surrogate throughput to 10 million gallons or less based on a 12-month rolling total for each month. This surrogate throughput limit is set at a level intended to ensure that GDFs under this general permit and permit by rule remain minor sources and below the lowest major source threshold for extreme ozone nonattainment areas of 10 tpy.

3. Treatment of Diesel Fuel

It is common for facilities with gasoline dispensing operations to also dispense diesel fuel to autos, light trucks, heavy-trucks, and nonroad equipment. However, the true vapor pressure of diesel fuel is only about 0.2 percent of the 7 psi RVP gasoline at 70°F. Thus, while Stage I and Stage II type emissions occur with diesel fuel dispensing operations, they are very low in comparison and no Stage I or Stage II controls are required. For completeness, the PTE calculator provided as part of this NPRM includes diesel emissions but these in total would be very small in comparison to gasoline vapor emissions. This PTE could also help to inform calculations of total VOC emissions from a facility where a GDF is only part of the overall VOC emissions from the source used in assessing the permit application.

4. What are the requirements for the proposed general permit for GDFs in serious, severe, and extreme ozone nonattainment areas?

We are proposing the following additional requirements, as discussed below, for GDFs in Indian country that are located in serious, severe, and extreme ozone nonattainment areas. Currently, all of the areas of Indian country located in serious, severe, and extreme ozone nonattainment areas are located in California, but that

situation could change in the future.[43] We examined the GDF requirements of the California Air Resources Board (ARB) and the six California air quality management and air pollution control districts (collectively AQMDs) that are designated serious, severe, or extreme for ozone nonattainment and have areas of Indian country within their boundaries.[44]

California ARB adopted regulations for control of standing loss control (SLC) VOC emissions from ASTs.[45] Emissions of this type are not included in the GDF NESHAP requirements. The test procedures and SLC emission standard (0.57 lbs /1,000 gallons ullage/day) for these requirements potentially cover all ASTs regardless of volume.[46] Systems can be certified to the SLC emission standards either by design or performance as discussed in ARB CP-206.[47] Responding to these requirements generally involves the use of one of several techniques to treat the tank in such a way as to reduce the diurnal temperature changes in the fuel in the AST and to add a pressure vacuum (p/v) valve to address AST venting. These requirements became applicable to existing

[43] For more information, see: "Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards," 77 FR 30088, May 21, 2012, http://www.epa.gov/airquality/ozonepollution/designations/2008standards/final/tribalf.htm.

[44] These include El Dorado County AQMD, San Joaquin Valley Unified APCD, Placer County APCD, South Coast AQMD, Mojave Desert AQMD, and Yolo-Solano AQMD.

[45] Standing losses are gasoline vapor emissions that occur whenever the gasoline evaporates during periods of no gasoline transfer. These evaporative emissions escape through open vent pipes and leaks in the AST. They occur when internal tank pressure increases as a result of diurnal temperature changes. Standing losses from ASTs vary based on the different tank configurations, fill levels, and volumes.

[46] For more information on test procedures and standards, see: http://www.arb.ca.gov/regact/2007/ast07/ast07.htm. Most notably, refer to the ISOR and TP-206.1, TP- 206.2, and CP-206.

[47] See http://www.arb.ca.gov/testmeth/vol2/cp-206.pdf, Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks, CP – 206, California Air Resources Board, Adopted: May 2, 2008.

ASTs in California in April 2009, and to new ASTs (including major modifications) in April 2013. They apply to ASTs in the individual air districts in California if the ARB rule is adopted by that air district.[48] All of the AQMDs in serious, severe, and extreme ozone nonattainment areas in California have adopted the SLC requirements, but have granted exemptions for tanks of 250 gallons capacity or less. Thus, to address ozone air quality and as a matter of equity, the EPA is requesting comment on whether the final permits should include these SLC requirements. If we include these requirements, then we would delay the effective date of compliance until January 1, 2014.

We would, though, propose to exempt any AST with a volume equal to or less than 250 gallons. This is consistent with the current NESHAP and California air district rules. Tanks not qualifying for this exemption would need to meet the proposed applicable NESHAP requirements, as well as the SLC requirements as discussed above, including the reporting requirements.

Since these ASTs are all expected to be in California, we seek comment as to whether the EPA should simply adopt the SLC and ARB Phase I requirements for ASTs for new or reconstructed ASTs with a volume greater than 250 gallons[49] in lieu of SLC and the EPA Stage I requirements as prescribed in 40 CFR part 63, subpart CCCCCC. This approach could be more efficient and offer wider availability of ASTs that meet

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[48] The EPA has approved requirements for aboveground storage tanks with capacity greater than 250 gallons for Sacramento Metropolitan AQMD (Revisions to the California State Implementation Plan, San Diego APCD,
Northern Sierra AQMD, and Sacramento Metropolitan AQMD; January 7, 2013; 78 FR 897) and San Joaquin Valley Unified APCD (Revisions to the California State Implementation Plan, Northern Sierra Air Quality Management District and San Joaquin Valley Unified Air Pollution Control District; October 30, 2009; 74 FR 56120).

[49] See California ARB certification requirement (CP-206) and test procedures (TP-206.1. TP-206.2. and TP-206.3) for more detail on these requirements. These are available at http://www.arb.ca.gov/vapor/vapor.htm.

California emissions requirements. Furthermore, the EPA is asking for comment on whether the exemption threshold should be set at 250 gallons or less or at 1,000 liters or less. An AST with 1,000 liter volume is the equivalent of about 265 gallons. An uncontrolled 250 gallon AST which is splash refilled monthly would emit about 62 pounds per year. A 265 gallon AST would emit 6 percent more.

Finally, we note that many of the California Air Districts allow exemptions for ASTs when 50 percent or more of the throughput is involved in supporting husbandry activities (e.g., ranching and farming). Since we are not proposing such a provision, this creates a question as to whether new SLC controlled tanks would be available in some tank sizes such as 250 gallons and what would be the control costs if they are required only in areas of Indian country. We request comment on these two points.

5. What type of source may apply for coverage under the proposed GDF general permit?

This proposed general permit covers construction of new true minor source GDFs to be located in Indian country, or the modification of existing true minor source GDFs in Indian country. The general permit is available to any facility that qualifies as a GDF. There are no limitations on the eligibility of GDFs to apply for this general permit. The permit contains requirements for proper design, construction, installation and operation of vapor balance systems for the loading of gasoline into storage tanks and daily storage therein. It applies to GDFs with USTs and/or ASTs. It potentially includes facilities dispensing gasoline, gasoline and diesel fuel, or diesel fuel only.

6. Request for Comment on the Proposed GDF General Permit

We request comment on all aspects of the general permit for GDFs. We specifically request comment in the following two areas:

a. Should the EPA establish an annual allowable emission limitation?

The draft permit does not contain an annual ton per year allowable emission limitation or a surrogate emission limitation, unless a source locates in a serious, severe or extreme ozone nonattainment area. Because of the effectiveness of ORVR and other practical constraints on emissions from GDF operations, for most areas we do not believe that it is necessary to establish an annual allowable emission limitation to properly regulate the construction or modification and then operation of true minor GDF sources. We request comment on this conclusion. If the EPA were to include a throughput emission limitation, we would establish this limit just below the major source threshold for VOC. The throughput emission limitation would be calculated as the product of emissions factors and the volume of annual gasoline throughput that corresponds to the ton per year of the major source threshold. As the implementation of ORVR continues, in the future there would be little need to adjust throughput emission limitation because of the practical limitations on how much gasoline a GDF can process.

However, if a source locates in an extreme ozone nonattainment area, then the draft permit requires the source to limit annual gasoline throughput to 8 million gallons or less based on a 12-month rolling total for each month. This throughput limit is set at a level intended to ensure that GDFs under this general permit or permit by rule remain minor sources and below the major source threshold for extreme ozone nonattainment areas of 10 tpy. We request comment on the need for this additional requirement in serious and above ozone nonattainment areas.

b. Should proposed standing loss control requirements apply to GDFs in Indian country in potential future serious, severe, and extreme ozone nonattainment areas outside of California?

The EPA is proposing that new and modified ASTs greater than 250 gallons to be located in Indian country in California meet proposed SLC emission control requirements. This is consistent with air quality needs and is the same as required for ASTs outside of Indian country in California. As discussed above, compliant ASTs are expected to be readily available in California. This may not necessarily be the case outside of California, however, as no other state has adopted SLC requirements. Given this potential disparity in technology availability, the EPA asks for comment on applying SLC requirements in areas outside of California. The EPA also asks if this requirement should be linked to whether the GDF would exceed the minor NSR thresholds (2 and 5 tpy) for ozone attainment and nonattainment areas, respectively, if SLC emissions were not included.[50]

F. Petroleum Dry Cleaning Facilities

1. What is a petroleum dry cleaning facility?

A petroleum dry cleaning facility can consist of dry cleaning dryers, washers, filters, stills, settling tanks, and boilers. The dry cleaning industry is a service industry involved in the cleaning of articles ranging from personal clothing to mops and mats. Dry cleaning involves the cleaning of fabrics with nonaqueous organic solvents. The dry cleaning process includes three steps: (1) washing the fabric in solvent; (2)

[50] Uncontrolled SLC emissions = 5.7 pounds/1,000 gallons of ullage per day. Normally, an AST would have ullage of 45 percent of capacity on average, assuming it is filled to capacity each time it drops to 10 percent of capacity.

spinning to extract excess solvent; and (3) drying by tumbling in a hot air stream. There are two general types of cleaning fluids used in the industry: petroleum solvents and synthetic solvents. Petroleum solvents, such as Stoddard or 140-F, are combustible hydrocarbon mixtures similar to kerosene. Synthetic solvents or halogenated hydrocarbons, such as perchloroethylene ("perc" or PCE), are nonflammable.

Petroleum dry cleaning operations are similar to detergent and water wash operations. There are two basic types of dry cleaning machines, transfer and dry-to-dry machines. Transfer machines accomplish washing and drying in separate machines. Dry cleaning as a batch process in transfer machines can result in a large amount of VOC or HAP emissions due to vaporization of solvent during the transfer process. Dry-to-dry machines are single units that perform all of the washing, extraction, and drying operations. Since cleaning and drying take place in the same compartment of dry-to-dry machines, significant amounts of VOC and HAP emissions are eliminated from dry-to-dry machines.[51] Most petroleum dry cleaning machines in operation today are dry-to-dry machines.[52] Dryers, solvent filtration and distillation systems, and miscellaneous (fugitive) sources are the major contributors of VOC emissions in a dry cleaning plant. Most petroleum dry cleaning facilities have one or two small natural gas fired steam boilers. VOC emissions from combustion are typically not a significant concern at petroleum dry cleaning facilities. The EPA has

[51] AP 42, Fifth Edition, Volume I, Chapter 4.1: Dry Cleaning; U.S. Environmental Protection Agency; http://www.epa.gov/ttn/chief/ap42/ch04/index.html.
[52] U.S. Environmental Protection Agency, DRAFT, "Petroleum Solvent Dry Cleaning Industry Profile," Graham Gibson and Colin Hayes, ERG; August 4, 2010.

issued a New Source Performance Standard (NSPS) for petroleum dry cleaning facilities[53] and a NESHAP for perc.[54,55]

2. What is in the proposed petroleum dry cleaning facilities general permit?

This proposed general permit would apply to the construction of new (or modification of existing) true minor source petroleum dry cleaning facilities located in Indian country. The sources in question only use petroleum solvent in dry cleaning dryers, washers, filters, stills and settling tanks. The draft permit requires that all petroleum dry cleaning dryers must be solvent recovery dryers and that care must be taken to ensure equipment is operated properly and solvents are properly stored. Facilities that use synthetic solvents are not eligible for coverage under this general permit. The permit contains requirements for:

- Material use;
- Dryers;
- Solvent storage;
- Solvent recovery;

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[53] 40 CFR part 60, subpart JJJ - Standards of Performance for Petroleum Dry Cleaners, http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=a4ffb0a8d823382f497b95a61ef26817&rgn=div6&view=text&node=40:6.0.1.1.1.75&idno=40.

[54] 40 CFR part 63, subpart M - National Emission Standards for Perchloroethylene Dry Cleaning Facilities, http://www.epa.gov/ttn/atw/dryperc/dryclpg.html.

[55] The petroleum dry cleaner NSPS requires each solvent dry cleaning dryer to be a solvent recovery dryer, petroleum solvent filters to be drained for 8 hours prior to removal, and the manufacturer to put a specific label on dryers requiring leak inspections and repairs. The general permit includes the requirement to use a solvent recovery dry. The general permit does not include the work practice standard for petroleum solvent filters as it is EPA's more recent experience that solvent filters are an antiquated practice and no longer is use. The general permit also does not include the labeling requirement for manufacturers, but does include the same monitoring requirements that must be included on the label.

- Button, washer and line traps;
- Access doors and other equipment; and
- Used material storage.

The proposed permit includes monitoring that is sufficient to assure compliance with the emission limitations that apply to the source, including requiring each petroleum solvent dry cleaning dryer to be inspected every 15 calendar days for evidence of leaks and all vapor or liquid leaks to be repaired within the subsequent 15 calendar day period. The proposed permit includes recordkeeping and reporting sufficient to assure compliance with the emission limitations and monitoring requirements.

For sources located in severe or extreme ozone nonattainment areas, the permit also requires that, no less frequently than monthly, the owner or operator shall inspect the dry cleaning system for liquid and vapor leaks, including, but not limited to, the following:

- Hose connections, unions, couplings, valves, and flanges;
- Machine door gasket and seating of the machine cylinder;
- Filter head gasket and seating;
- Pumps;
- Base tanks and storage containers;
- Water separators;
- Filter sludge recovery;
- Seals and gaskets of distillation unit(s);
- Diverter valves;
- Saturated lint from lint trap basket;
- Button trap lid;

- Seals, gaskets and the diverter valve of the refrigerated condenser;
- Exhaust stream ducts;
- Lint trap ducts; and
- Gaskets and ducts of the carbon adsorber.

3. Request for Comment on the Proposed Petroleum Dry Cleaning Facilities General Permit

We request comment on all aspects of the general permit for petroleum dry cleaning facilities. We specifically request comment in the following two areas:

a. Surrogate Annual Allowable Emission Limitations

The petroleum dry cleaning general permit contains material use limits that serve as surrogate annual ton per year allowable emission limitations. We discuss the use of surrogate limits in Section V.E. above. If a source locates in an ozone attainment or unclassifiable area of Indian country, the draft permit requires the source to limit material use to 5,600 gallons or less of cleaning solvent per year. This is roughly equivalent to 25 tpy of VOCs. If a source locates in an ozone nonattainment area, the draft permit requires the source to limit material use to 1,300 gallons or less of cleaning solvent per year. This is roughly equivalent to 7 tpy of VOC. Both annual material use limits are based on a 12-month rolling total calculated each month. We request comment on the use of these surrogate limits. In lieu of establishing surrogate limits, we request comment on whether the final permits should contain ton per year emission limitations and the use of monitoring of material use as a compliance method. Finally, we request comment on the appropriateness of establishing different limitations based on the attainment status of the area and whether the specified limitations should be slightly higher or slightly lower.

b. Should we establish additional requirements for serious, severe, and/or extreme ozone nonattainment areas?

The draft permits contain additional requirements for sources that locate in serious, severe, and extreme ozone nonattainment areas. These requirements include requirements for changing paper or carbon cartridge filters; wastewater evaporators; additional specifications for closed-loop machines (e.g., proper exhausting and locking); leak check and repair requirements; and enhanced recordkeeping and reporting requirements. We adopted these practices from the South Coast Air Quality Management District's rule for Dry Cleaners Using Solvent Other Than Perchloroethylene[56] for facilities located in ozone nonattainment areas. We request comment on the need for these enhanced requirements in serious, severe and/or extreme nonattainment areas.

VII. Description of the EPA's Proposed Permit by Rule Program in Indian Country

A. What is a permit by rule?

For purposes of this proposal, a permit by rule is a standard set of requirements that can apply to multiple sources with similar emissions and other characteristics. This is similar to a general permit. Unlike a general permit, however, we codify the permit by rule requirements into regulation using a rulemaking process, rather than establish the requirements through a general permit document that undergoes notice and comment.

For purposes of this proposal, the permit by rule mechanism is a permit streamlining approach that reduces the time permitting authorities must devote to reviewing permit applications and issuing permits for source categories or emissions generating activities that pose a lower environmental concern. We believe that permits by

[56] South Coast Air Quality Rule 1102- Dry Cleaners Using Solvent Other Than Perchloroethylene; http://www.aqmd.gov/rules/reg/reg11/r1102.pdf.

rule offer another cost-effective means of issuing permits, and provide a quicker and simpler alternative mechanism for permitting true minor sources than the site-specific permit or standard general permit process.

State and local reviewing authorities use the permit by rule mechanism to authorize construction of less complex sources, and sources that emit at specified levels below the major stationary source thresholds. The EPA has approved several state or local permits by rule programs into SIPs.[57] By this proposal, we would provide similar

[57] The EPA has approved the following permits by rule: (1) Connecticut for automotive refinishing ("Approval and Promulgation of Air Quality Implementation Plans; Connecticut; VOC Regulations and One-Hour Ozone Attainment Demonstration Shortfall;" U.S. Environmental Protection Agency; 71 FR 51761; August 31, 2006; http://www.gpo.gov/fdsys/granule/FR-2006-08-31/06-7314/content-detail.html); (2) Iowa for spray booths ("Approval and Promulgation of Implementation Plans; State of Iowa;" U.S. Environmental Protection Agency; 75 FR 10182; March 5, 2010; https://www.federalregister.gov/articles/2013/08/27/2013-20750/approval-and-promulgation-of-implementation-plans-state-of-iowa); (3) Operating PBR for small sources ("Approval and Promulgation of State Implementation Plans and Operating Permits Program; State of Iowa;" U.S. Environmental Protection Agency; 72 *Federal Register* 58535; March 5, 2010); (4) Kansas Class II operating permits for reciprocating engines, evaporative sources, and hot mix asphalt facilities ("Approval and Promulgation of Implementation Plans and Section 112(l) Program for the Issuance of Federally Enforceable State Operating Permits; State of Kansas;" U.S. Environmental Protection Agency; 60 FR 36361; July 17, 1995; http://www.gpo.gov/fdsys/pkg/FR-1995-07-17/html/95-17214.htm); (5) Massachusetts for paint spray booths ("Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Volatile Organic Compound Regulations;" U.S. Environmental Protection Agency; 64 FR 48297; September 3, 1999); (6) Missouri for construction ("Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri;" U.S. Environmental Protection Agency; 71 FR 38997; July 11, 2006; http://www.gpo.gov/fdsys/pkg/FR-2006-07-11/html/06-6092.htm); (7) Nebraska for HMA facilities and small animal incinerators ("Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Nebraska;" U.S. Environmental Protection Agency; 71 FR 38776; July 10, 2006; http://www.gpo.gov/fdsys/granule/FR-2006-07-10/E6-10730/content-detail.html); (8) Auto body refinishing facilities; gasoline dispensing facilities; boilers and heaters; small printing facilities; and mid-size printing facilities ("Approval and Promulgation of Air Quality Implementation Plans; Ohio; PBR and PTIO;" U.S. Environmental Protection Agency; 78 FR 11748; February 20, 2013; http://www.gpo.gov/fdsys/pkg/FR-2013-02-

opportunities for permitting efficiency in Indian country, while also providing a comparable level of protection of air quality.

B. How would a permit by rule program operate in Indian Country?

As proposed in this notice, once the EPA identifies a source category or emissions generating activity for which the permit by rule mechanism would offer permit streamlining benefits, while at the same time protecting air quality, the EPA will codify a nationally applicable permit by rule for those similar sources into a new section of the Indian Country Minor NSR FIP. If the permit by rule will apply only at a regional level, then the EPA regional reviewing authority will conduct the rulemaking process, and appropriately limit the applicability of the permit by rule to a specified geographic area.

As proposed, permits by rule would be used to address source categories of true minor sources, where the reviewing authority does not need to conduct an in-depth review to evaluate whether an individual source meets requirements in the permit. A source category would be covered by a permit by rule if the reviewing authority needs to take no further action other than receiving confirmation from an individual source that it meets all appropriate criteria to be eligible for coverage under the permit by rule. Under a permit by rule, an individual source would be subject to the operational, monitoring and recordkeeping requirements specified in this rule.

20/html/2013-03761.htm); and (9) multiple source categories, such as: batch mixers; comfort heating; rock crushers; saw mills; vacuum cleaning systems (47 FR 35194; August 13, 1982) and ("Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Permits by Rule, Control of Air Pollution by Permits for New Construction or Modification, and Federal Operating Permits;" U.S. Environmental Protection Agency; 68 FR 64543; November 14, 2003; http://www.gpo.gov/fdsys/pkg/FR-2003-11-14/pdf/03-28416.pdf).
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In this action, we propose to amend the Indian Country Minor NSR rule general permit provisions at 40 CFR 49.156 to set forth the unique elements of the permits by rule process discussed below. We also propose permits by rule for several specific source categories. The proposed permits by rule program would follow a more streamlined application process that would allow an individual applicant to notify the reviewing authority that it meets the eligibility criteria for the permit and the permit conditions. The applicant would need to complete an application, but would keep it on file to be available upon request. The source would simply need to send a notification letter signed by an authorized official representing the source who certifies that the source is eligible for the permit and is complying or will comply with all of the permit's conditions. This streamlined application process would serve as a "notification" and would streamline permitting for eligible sources, and make it easier for the reviewing authority to implement the permit by rule program compared to traditional site-specific permits and standard general permits.

We request comment on this streamlined permit by rule approach. Specifically, while it would streamline the permitting process for the applicant, it would not allow the public the opportunity (as that available under the general permit program) to object, except by judicial challenge, to a particular source receiving coverage under a specific permit by rule. We specifically request comment on whether this tradeoff of allowing more streamlining while reducing the public's ability to object to the granting of permit coverage in specific instances represents sound policy and is appropriately protective of air quality.

Like general permits, the EPA is proposing that true minor sources may use the permit by rule mechanism to gain authorization to construct or modify, and then operate a source. We are also proposing to allow the use of the permits by rule mechanism to create synthetic minor sources. We are proposing this approach to remain consistent with our current policies on the use of general permits in Indian country. As discussed in Section X, we propose to change this policy (and request comment) to allow general permits to create synthetic minor sources both to regulate construction, modification and then operation, and to obtain minor source status. Similarly, we propose to allow reviewing authorities to use the permit by rule mechanism for these same purposes and request comment on the proposed change.

Like general permits, a reviewing authority's receipt of a source notification requesting coverage under a permit by rule qualifies as a final action for purposes of judicial review (see 40 CFR 49.159). Any such review is limited to the issue of whether a source meets the eligibility requirements for coverage under the permit by rule. If a reviewing authority accepts a source's notification of coverage under a permit by rule, the source must post, prominently, a copy of the written confirmation granting such request at the location of the source. Also, like general permits, any source subject to a permit by rule is subject to enforcement action for failure to obtain a permit to construct and then operate if the source constructs the affected emissions unit(s) under coverage of a permit by rule, and we later determine that the source was not eligible for coverage under the permit by rule.

C. Requirements of the ESA and NHPA

Similar to general permits, prior to seeking coverage under a permit by rule, a source must satisfactorily address the permit requirements related to the ESA and the NHPA. Attached to the notification the source sends to the reviewing authority, the EPA provides guidance to assist sources in complying with these requirements. Section V.F. above describes the process for complying with a permit by rule in more detail.

VIII. Proposed Permits by Rule

As an alternative to general permits, we are proposing to establish permits by rule, for three source categories: GDFs, auto body repair and miscellaneous surface coating operations, and petroleum dry cleaning facilities. We are proposing these source categories for permits by rule because they are the most straightforward, have the least variation in pieces of equipment and the simplest compliance requirements.

We are not providing specific regulatory language for any of the proposed permits by rule but rather are proposing to codify the requirements of the proposal general permits of the specified source category. If we decide to finalize a permit by rule for any of the three source categories, then we will codify the requirements as contained in the proposed draft general permit for that source category, with consideration of any changes that may be appropriate after we review public comments on the general permits. In other words, whether we use the permits by rule or the standard general permit mechanism, we propose to apply identical requirements to regulate construction and modification activities of affected emission units in the specified source category. We believe that the proposed general permits provide the public with a sufficient understanding of the contents of any final rule, and, therefore, satisfy our obligations under section 301(a) of the CAA.

The EPA welcomes comments on all aspects of the proposed general permits and permits by rule approaches, mechanisms, and categories covered by this proposed notice. In particular, we request that commenters focus on the differences between notification procedures for general permits and permits by rule. Commenters should inform the EPA if the process laid out for permits by rule is appropriate. We request comments on whether the permit by rule terms and conditions should be identical to the general permits terms and conditions, or whether they should differ.

IX. Implementation Documents and Tools

We are providing several tools and documents to assist sources with obtaining coverage under the general permits and permits by rule for the five source categories that are the subject of today's proposal. The tools are drafted based on our preferred approach of general permits. If we decide to issue permits by rule for one or more of the three categories we are proposing in the alternative today, then we will need to adjust the wording in the documents to reflect that tool being made available for a permit by rule and not a general permit. The background documents support both our general permit proposal (and permit by rule proposal, in the alternative); therefore, those documents cite both general permits and permits by rule as the permit types they support.

The tools consist of the following six types of documents:

Request for Coverage: This form is for sources seeking to use general permits and is essentially an application to request coverage under a general permit. The application asks for contact and location information, as well as more in-depth operational and source-specific information. The application will also guide sources through processes to comply with permit requirements related to the ESA and the NHPA.

The general permit applications for certain source categories in today's proposal (i.e., auto body repair and miscellaneous surface coating operations; GDFs; and petroleum dry cleaning facilities) are more streamlined because sources in those categories represent more straightforward operations, largely involve one air pollutant (i.e., VOCs) and, therefore, necessitate less intensive review for approval. The general permit application forms for the three categories primarily ask whether you have or will comply with relevant requirements. For example, for the auto body repair and miscellaneous surface coating operations permits, the general permit application asks questions concerning whether you have or comply with certain requirements such as throughput limits, but does not require details on affected units. By contrast, the general permit applications for HMA and SQCS facilities request more detailed technical information about the proposed facility in question because these facilities are more complex and involve multiple operations and pollutants.

For auto body repair and miscellaneous surface coating operations; GDFs; and petroleum dry cleaning facilities, this form also serves as an application for sources seeking coverage under a permit by rule should the EPA decide to issue one or more for these categories. The source would need to complete the shortened applications and keep a record on file. Successfully completing the application will enable the source to determine if it can certify to the reviewing that it meets the permit's eligibility terms and conditions, which the source would need to do via a letter in order to begin its construction or modification.

Questionnaire: This tool is tailored to each source category and guides sources through a series of questions to determine whether or not it is eligible for coverage under

a general permit. It is not required to be completed or submitted. First, the source needs to determine whether it is a true minor source and, therefore, subject to the requirements of the minor NSR rule for Indian country. To do this, a source needs to perform a PTE analysis (see PTE calculator below). If the source determines that it is a true minor, the questionnaire asks the source to consider a series of questions to determine if it qualifies for the general permit or permit by rule. If the source does not qualify for coverage, then it must seek a site-specific permit under the minor source program (or a major source permit, if appropriate).

Instructions: The document assists sources with information that may be useful in completing the request for coverage application.

Permit Terms and Conditions: The permit is a specific document for each source category that lays out the general and specific terms and conditions of the permit, including the specific emission limitations and standards and monitoring, recordkeeping, reporting and notification requirements.

PTE Calculator: This spreadsheet-based tool helps sources in specific source categories calculate the PTE of its affected emissions units, using data the source is expected to have on hand, such as equipment specifications.

Background Document: These documents are provided as a reference and contain important information:

- Source category definition and characterization;
- State minor source permit programs for that category used for comparison;
- Requirements for general permits and permits by rule for that category; and
- Threshold (emission limitations) development and rationale for that category.

All of these documents are available online at http://www.epa.gov/air/tribal/tribalnsr.html and Docket ID No. EPA-HQ-OAR-2011-0151.

X. Reconsideration of the Use of General Permits to Create Synthetic Minor Sources

On August 30, 2011, and November 4, 2011, the American Petroleum Institute, the American Natural Gas Alliance and the Independent Petroleum Association of America submitted a petition (and supplemental petition) for reconsideration on the Indian Country Minor NSR rule to the Administrator, under section 307(d)(7) of the CAA. Among other issues, the petition asks the Administrator to reconsider our position of not allowing reviewing authorities to issue general permits to create synthetic minor sources.[58]

Section 49.158 of the Indian Country Minor NSR rule provides a reviewing agency with the authority to issue synthetic minor permits. Under the Indian Country Minor NSR rule, a synthetic minor permit creates federally enforceable emission limitations that restrict a source's ability to emit regulated NSR pollutants in an amount that exceeds major source threshold(s). The Indian Country minor NSR regulatory provisions, however, do not expressly address whether a reviewing authority could use the general permit issuance process in 40 CFR 49.156 to satisfy the requirements for

[58] "Request for Reconsideration of Effective Date of Tribal New Source Review Rule as it Relates to Synthetic Minor Sources and Request for Administrative Stay of Effective Date of the Rule as it Relates to Synthetic Minor Sources," Letter from Matt Todd, Senior Policy Advisor, American Petroleum Institute et al to Lisa Jackson, EPA Administrator, August 30, 2011 and "Supplemental Request for Reconsideration of the Tribal NSR Rule," Letter from Matt Todd, Senior Policy Advisor, American Petroleum Institute et al to Lisa Jackson, EPA Administrator, November 4, 2011. Docket ID No. EPA–HQ–OAR–2003–0076.

issuing synthetic minor permits allowed by 40 CFR 49.158. Nonetheless, we received a comment on the proposed rule requesting that we clarify that a reviewing authority could issue general permits to create synthetic minor permits.

In response to this comment, we indicated that the final rule would not allow a reviewing authority to use a general permit to create a synthetic minor source, because we believed that the size and amount of emissions from these sources warranted a case-by-case review of the source and its proposed emission limitations.[59] We did not, however, add specific regulatory language to the final rule to restrict the use of general permits in this manner.

The petitioners believe that a reviewing authority can establish effective limits on PTE through general permits, and that there is no need for case-by-case determinations for source types where equipment and operations do not significantly vary from source to source (e.g., oil and gas facilities). The petitioners request that reviewing authorities not preclude sources from obtaining synthetic minor limitations through use of a general permit. In a letter to the petitioners, dated December 19, 2012, the Administrator expressed her intent to grant reconsideration of several aspects of the Indian Country Minor NSR rule, including the use of general permits to create synthetic minor sources.[60]

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

[60] "Review of New Sources and Modifications in Indian Country: Notice of Action Partially Granting Petition for Reconsideration and Denying Request for Administrative Stay," U.S. Environmental Protection Agency, 78 FR 2210, January 10, 2013, http://www.gpo.gov/fdsys/pkg/FR-2013-01-10/html/2012-31742.htm.

In this proposal, in response to the Administrator's decision to grant reconsideration on this issue, we propose to allow a reviewing authority to use general permits, including the permits by rule mechanism, to create federally enforceable emission limitations that can restrict operations of an otherwise major source, such that the source qualifies as a synthetic minor source. The fact that a source's PTE is above the major source threshold does not mean that standardized permit conditions are necessarily inappropriate. Nor does it necessarily mean that compliance determinations are more complex than can be handled through a general permit. State and local permitting agencies often successfully use these mechanisms to reduce permit workload and to provide sources with regulatory certainty, and, a number of streamlining and environmental benefits can result for reviewing authorities, sources and the environment if we allow these mechanisms. Accordingly, we believe we should reconsider our position in light of the benefits of these approaches. While we continue to have some concerns about the potential emissions impacts from sources that otherwise would qualify as major sources, we believe that we can address these concerns in the process of developing the synthetic minor general permit or permit by rule for a given category.

While sources that would qualify as synthetic minor sources would have the potential to emit pollutants above the major source thresholds in the absence of enforceable restrictions, in many cases, the sources' actual emissions remain well below these thresholds even without the restrictions. This may arise, for example, when the source only operates a limited number of shifts in a day, when the source operates seasonally, or when the source sporadically uses a raw material with higher emissions

potential. Thus, these sources do not have, in actual operation, the same potential for environmental impacts as facilities operating at consistently higher emissions levels.

For example, we analyzed actual emissions from the 2008 National Emissions Inventory (NEI)[61] for HMA plants and SQCS facilities. In that database, average emissions for several regulated NSR pollutants for HMA plants are well below major source levels.[62] This is consistent with our understanding of how such facilities operate. Typically, they operate seasonally and not each day of the year. The average actual emissions for several regulated NSR pollutants for SQCS facilities also were well below major source levels.[63]

For sources that currently emit above major source threshold(s), the availability of a pre-defined synthetic minor permit may provide such facilities with a degree of regulatory certainty and create an incentive to voluntarily reduce emissions to qualify for minor source status. Such reductions in emissions benefit the environment and provide another reason for us to reconsider our previous position on this matter.

Moreover, irrespective of a source's emissions before qualifying for a synthetic minor permit, that source must operate at levels below the major source thresholds after qualifying for the permit, which is also the case for true minor sources. If the synthetic minor permit contains sufficient monitoring, recordkeeping and reporting provisions to

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[61] The results of the NEI analysis are available to consult at Docket ID No. EPA-HQ-OAR-2011-0151 and online at http://www.epa.gov/air/tribal/tribalnsr.html.

[62] The EPA analyzed emissions for multiple pollutants emitted from point sources. The pollutants are: PM_{10}, $PM_{2.5}$, NO_x, SO_2, CO and VOC. See Background Document, Minor Source Hot Mix Asphalt Plants General Permit, Docket ID No. EPA-HQ-OAR-2011-0151, http://www.epa.gov/air/tribal/tribalnsr.html.

[63] See Background Document, Minor Source Stone Quarrying, Crushing and Screening General Permit and Permit by Rule, available online at http://www.epa.gov/air/tribal/tribalnsr.html and in the Docket ID No. EPA-HQ-OAR-2011-0151, http://www.epa.gov/air/tribal/tribalnsr.html.

assure continuous compliance, then there may be little reason to distinguish these sources for purposes of further regulation, because their emissions potential is now essentially equivalent to that of a true minor source. We request comment on this conclusion.

Finally, a synthetic minor permit being sought by a facility that is also undergoing a modification that triggers NSR may provide the public with more information and greater certainty as to the emissions potential of the source. Absent the permit, for the part of the source not being permitted as part of the modification, the source would be under no obligation to report emissions on a continuous basis, and the source could also, without a modification, increase emissions. A synthetic minor permit would provide a limit on the total emissions the facility would generate, and provide advance notice to the public of the expected level of emissions from the facility. Synthetic minor permitting also saves reviewing authority resources by potentially: (1) reducing the number of sources that need to obtain permits under the title V and PSD/nonattainment NSR permitting programs; and (2) avoiding a repetitive administrative process for each source that seeks a synthetic minor permit with the same terms and conditions.

We request comment on all aspects of using general permits and permits by rule to create synthetic minor sources generally and with respect to the five source categories in this proposal. We request specific comment on whether any regulatory changes in the permits being proposed are necessary to implement this change in policy, given that the current regulations do not expressly preclude the EPA from issuing general permits to create synthetic minor sources. We also request comment on whether, as a policy matter, the EPA should use general permits and permits by rule to separate construction and modification requirements from requirements for qualifying as a synthetic minor source,

even if the general permits/permits by rule would regulate the same source category; or, whether the EPA can effectively achieve both regulatory purposes in a single general permit/permit by rule. In addition, we request comment on whether permits by rule as proposed in this action are an appropriate type of permit for creating synthetic minor sources, given that the permit notification does not provide an opportunity for public input on the coverage of a particular source by a permit by rule.

If the EPA allows otherwise major sources to qualify as synthetic minor sources through use of general permits (or permits by rule), we request comment on any specific changes we should make to the general permits to include provisions for creating synthetic minor permits for these source categories. For example, would the EPA need to require more stringent monitoring, recordkeeping and reporting for synthetic minor sources than currently contained in the draft general permits for true minor sources? Should the EPA scale up the surrogate annual allowable emission limitations to reflect a value closer to the major source threshold, or should the EPA only issue synthetic minor permits to sources with actual emissions at some margin below the major source thresholds (e.g., 25-50 percent below the major source threshold)? If the EPA includes synthetic minor limits in the final general permits, these limits would be proportional to the limits currently contained in the draft permit, as revised to reflect public comments.

We also request comment on whether, irrespective of our proposed policy of not allowing a facility to qualify for more than one general permit, which is discussed later in this document, we should, nonetheless, allow a source to qualify to use a general permit or permit by rule to become a synthetic minor source, and then subsequently use a general permit or permit by rule to authorize construction or modification activities. As

stated in Section XI.B., we are concerned that allowing a source to qualify for more than one general permit or permit by rule may allow incremental increases in emissions that could adversely impact air quality, or allow a source to evade major source requirements. The use of multiple general permit mechanisms for the purposes described here might not lead to incremental emissions increases. Accordingly, we request comment on allowing multiple general permits for these distinct purposes.

XI. Additional Areas Where Comment is Being Sought

A. Should general permits and permits by rule be made available for sources in the same source category?

The EPA requests comments on whether, for certain source categories, the EPA should structure the permits so that eligible true minor sources can receive coverage under permits by rule and synthetic minor sources receive coverage under general permits. In addition, just as we are proposing that general permits are more appropriate for more complex source categories, we request comments on whether general permits (and not permits by rule) are more appropriate for major sources that seek to become "synthetic" minor sources. And, as we are proposing that permits by rule are more appropriate for less complex source categories, we request comments on whether permits by rule (and not general permits) are more appropriate for true minor sources. We request comment on whether this concept should be applied differently or the same for different source categories.

For example, in some cases actual emissions for HMA plants and for SQCS facilities for some regulated NSR pollutants may be above major source levels. Perhaps these sources could be candidates for coverage under synthetic minor general permits,

while the smaller, true minor sources could be candidates for coverage under permits by rule. We request comments on this issue. In the docket, a background document is provided for each of the categories in this proposal, which includes a summary of NEI data for that category.

B. Can sources have more than one general permit or permit by rule at a single location?

We request comment on whether we should allow a single stationary source to gain coverage under more than one general permit and/or permit by rule. In the questionnaires provided to assist applicants with completing the applications and notifications of coverage, the EPA asks applicants to provide PTE emissions for existing, new and modified emission units to determine whether or not it qualifies for a true minor source permit. The intent is to ensure that a single stationary source does not gain coverage under a general permit or permit by rule if its PTE emissions are above major source levels. If multiple general permits or permits by rule are an effective and efficient approach, what provisions are needed to ensure sources do not become major and to ensure that the public has adequate information about the source?

The need for multiple preconstruction permits could arise if the stationary source proposes to modify equipment that could be regulated by more than one general permit. For example, this could occur if a new SQCS facility co-locates with a new HMA plant. This could also occur if a source has some equipment covered by an existing general permit, and then proposes to modify different equipment at a later date after we have updated the general permit with new requirements. The source would need to apply for coverage under and meet the requirements of the updated permit for the proposed modification but would remain regulated by the old general permit for the previous

modifications. We are concerned that if a single stationary source may construct or modify through the use of multiple general permits, then that source may inadvertently circumvent the major source NSR construction requirements by failing to properly compute or track the stationary-source-wide PTE. The EPA seeks comment on whether there are special recordkeeping conditions that could be added to the general permits and/or permits by rule to address this concern.

On the other hand, we also recognize that unless there are unique air quality concerns, the site-specific permit terms and conditions for each emission generating activity may not vary from those already in the relevant general permits. As such, there may be little benefit from engaging in a site-specific permitting action, other than to verify the continued minor source eligibility of the stationary source. We request comment on whether we should decline to issue more than one general permit or permit by rule for stationary sources, or whether the application/notification materials offer the EPA an adequate opportunity to verify that source-wide PTE for a stationary source is below major source levels.

XII. Additional Source Categories for Which the EPA is Planning to Propose General Permits and/or Permits by Rule

The EPA solicited input from tribal governments and the EPA Regional Offices on which source categories should be covered by streamlined permitting in Indian country. The tribes and the EPA Regional Offices identified the source categories covered in this proposal because they are thought to be common in Indian country and good potential candidates for streamlined permitting. The input included the following source categories that are also under consideration for future action:

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

As a first step, we are requesting comment on whether these source categories should receive coverage by general permits or permits by rule, including comments as to what categories are appropriate for each type of rule. We are not, however, proposing general permits or permits by rule for these categories at this time. Rather, some or all of these categories will be addressed in a subsequent action.

We have also consulted the best available (but incomplete) data we have available to confirm the presence of these source categories in Indian country. The number of sources in Indian country was determined as part of the process to assess if general permits and/or permits by rule are warranted for each sector. The NEI is the EPA's default database on the location and type of emission sources in the U.S. The NEI, however, is not complete with regards to sources in Indian country. The EPA Regions 5 and 10 have also compiled lists of existing sources in Indian country. We have culled the lists for Regions 5 and 10 and the NEI for the other eight regions (Regions 1 to 4 and 6 to

9) to compile a source count by source type for sources located in Indian country that fall into the categories listed above.[64]

With respect to landfill operations, the EPA specifically requests comment on whether enough landfill activity is occurring in Indian country to warrant the development of a general permit or permit by rule. In connection with the EPA's Municipal Solid Waste Landfills New Source Performance Standard (40 CFR 60.750, Subpart WWW), the EPA created a database of active landfills across the U.S. from EPA's Greenhouse Gas Reporting Program, Landfill Methane Outreach Program, and Information Collection Request Center. The database indicates a very small number of landfills in Indian country. These results were compared to the source culling that we did with the NEI and the lists of sources from Regions 5 and 10, which also showed few landfills in Indian country. Based on this information, we are not convinced that the resources necessary to develop a general permit and/or permit by rule would be justified and welcome comment on the issue.[65]

For the remaining sectors under consideration for the use of a general permit and/or permit by rule, we evaluated the number of facilities by sector using the culled source lists. For all but two of these other sectors, the results of our analysis found sufficient facilities in each sector listed above to warrant the development of general permits and/or permits by rule for these categories.[66] Two source categories – engines and oil and gas sources – did not appear in significant numbers in the NEI because, as

[64] The lists are available to consult at Docket ID No. EPA-HQ-OAR-2011-0151 and online at http://www.epa.gov/air/tribal/tribalnsr.html.
[65] The results of this analysis can be found in Docket ID No. EPA-HQ-OAR-2011-0151 and online at http://www.epa.gov/air/tribal/tribalnsr.html.
[66] The lists can be found in Docket ID No. EPA-HQ-OAR-2011-0151 and online at http://www.epa.gov/air/tribal/tribalnsr.html.

mentioned, it is an incomplete data source in Indian country. However, discussions with tribes have confirmed that both of these source types are prevalent enough in Indian country to more than justify the resources necessary to develop general permits. In addition, registrations of oil and gas sources to the EPA's registration data base (required pursuant to the Indian Country NSR rule) have been significant, further confirming the presence of this source category in Indian country.

XIII. Rule Changes to the Indian Country Minor NSR Rule, Including Extension of Deadline for the Indian Country Minor NSR Rule

We are proposing five changes to three separate provisions in the existing Indian country minor NSR rule to ensure the smooth functioning of the general permit program.

A. Amending §49.151(c)(1)(iii)(B)

The first provision we propose to amend is §49.151(c)(1)(iii)(B) addressing the timing for when a true minor source must obtain a preconstruction permit. The provision currently requires the owner/operator of a new true minor source, or an existing true minor source undertaking a minor modification, to obtain a permit prior to commencing construction by the earlier of 6 months after the general permit for a source category is published in the *Federal Register* or September 2, 2014.

We are proposing to amend this provision in two ways. First, we propose to eliminate the requirement to obtain a permit beginning 6 months after the general permit for a source category is published in the *Federal Register* if that date is before September 2, 2014. The original intent of this provision was to ensure that sources in a particular source category obtain preconstruction permits as soon as practicable after we issue a general permit, rather than wait until September 2, 2014. Because we currently do not

anticipate that we will complete the rulemakings to establish general permits to carry out the minor NSR program in Indian country any earlier than 6 months prior to September 2, 2014, we do not believe the clause is necessary. Moreover, we received informal feedback that this clause is confusing. Therefore, we propose to remove the clause to provide a clear date by which true minor sources must obtain preconstruction permits. Except as explained below, all true minor sources must obtain a preconstruction permit, using the general permit mechanism or an alternative mechanism, before constructing or modifying a true minor source on or after September 2, 2014.

Second, we propose to extend the permitting deadline for true minor sources within the oil and gas source category by adding language to provide an exception for true minor sources included in certain NAICS codes related to the oil and gas operations and production source category.[67] For true minor sources within these NAICS codes, we propose that sources must obtain a permit pursuant to §§ 49.154 and 49.155 prior to commencing construction beginning on a fixed date after September 2, 2014. We have begun work on a general permit for true minor sources in the oil and gas production industry, which we intend to discuss in a separate rulemaking action. We believe that an extension of the permitting deadline for this industry is necessary because of the additional time required to appropriately address issues associated with this sector. We are requesting comment on extending the September 2, 2014 deadline to a date within a range between September 2, 2015 to March 2, 2016.

B. Amending §49.156(e)

[67] 21111 oil and gas production/operations; 211111 Crude petroleum and natural gas extraction; 211112 natural gas liquid extraction; and 221210 Natural gas distribution.

We propose to amend § 49.156(e)(1) addressing the timing for when a source that qualifies for a general permit may request coverage under that permit. The provision currently specifies that a source qualifying for a particular general permit may request coverage under that general permit beginning 4 months after the effective date of the general permit. We propose to remove this provision to make clear that sources may seek coverage under a general permit as soon as it is effective and need not wait an additional 4 months.

In addition, we propose to amend § 49.156(e)(4) to shorten the application review process for general permits from 90 to 45 days for three source categories in today's proposal:

- Auto body repair and miscellaneous surface coating operations;
- GDFs; and
- Petroleum dry cleaning facilities.

Allowing this streamlining (combined with shorter applications for these same three categories) will allow for reduced processing time for general permits coverage requests for these categories and a reduction in information required to be included in requests for coverage. Specifically, a reviewing authority must either determine whether a request for coverage is complete within 15-days from receiving a source's request for coverage under the permit by rule or request any additional information necessary to process the request. If a reviewing authority requests additional information, an applicant must submit the requested information within 15 days from the date of the reviewing authority's request, or the reviewing authority may automatically deny a source's request for coverage under the permit by rule. If the reviewing authority receives all the

requested information, then the reviewing authority will grant or deny coverage under a permit by rule no later than 45 days after the date the reviewing authority received the request. We propose the shortened timeframe for a reviewing authority's completeness review of a permit by rule, compared to general permits, because the abbreviated and standardized request for coverage[68] process should allow the reviewing authority to readily determine whether the source submitted all of the necessary information.

We propose to provide the reviewing authority the option of automatically denying a source's request for coverage if the source fails to submit any additional requested information within 15 days to remain consistent with our intent to provide a streamlined notification and review process. The streamlined nature of the general permits for these three source categories is inconsistent with lengthy and potentially open-ended ongoing exchanges with applicants to obtain necessary information and not the best use of limited resources. If a reviewing authority denies a request for coverage because a source fails to submit requested information by the deadline, then the source may re-apply at a later date to re-initiate the request for coverage.

C. Amending §49.160(c)(1)(ii) and (iii)

We propose to amend § 49.160(c)(1)(ii) and (iii) that addresses the timeframes for when true minor sources must register. The provisions indicate that, if a true minor source commences construction in the time period between the effective date of the rule and September 2, 2014, then the source must register with its reviewing authority within

[68] 40 CFR 49.156 of the Indian Country NSR rule sets forth the requirements for general permits, suggesting that the EPA may develop standard application forms for general permits. In this proposal, we have developed applications for general permits. We have also developed the "notification" forms for permits by rule, which satisfy all of the requirements applicants need to address but do so in a more streamlined manner.

90 days after the source begins operation. If construction or modification of a source commenced any time on or after September 2, 2014 and the source is subject to this rule, the source must report its actual emissions (if available) as part of its permit application and its permit application information will be used to fulfill the registration requirements.

The EPA is proposing to amend these two provisions to reflect the proposed extension for oil and gas sources discussed above in this section. We are requesting comment on changing the September 2, 2014 deadline in these two paragraphs to a date within a range between September 2, 2015 to March 2, 2016. For § 49.160(c)(1)(ii), this proposed change is necessary to ensure that oil and gas sources continue to register past the September 2, 2014 date. For § 49.160(c)(1)(iii), this proposed change is necessary to reflect that the EPA is proposing to move the minor source permitting deadline for oil and gas sources. If the EPA does take final action to do so, then minor oil and gas sources will not be in a position to report their actual emissions as part of a permit application and permit application information because it will not be required at that point to obtain a minor source permit. Hence, the need to propose to change the September 2, 2014 date to reflect the oil and gas minor source permitting deadline extension.

XIV. 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 EO 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under EOs 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action merely proposes to establish general permits and/or permits by rule to satisfy the requirements of the Minor NSR rule. Such permits are already available in many states. It does not impose any new obligations or enforceable duties on any state, local or tribal government or the private sector. Therefore, this action does not impose an information collection burden.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations 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; 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.

The EPA analyzed the impact of streamlined permitting on small entities in the Review of New Sources and Modifications in Indian Country (76 FR 38748, July 1,

2011). The EPA determined that that action would not have a significant economic impact on a substantial number of small entities. Today's action merely implements a particular aspect of the Review of New Sources and Modifications in Indian country. As such, this proposed action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531– 1538 for state, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state, local or tribal government or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA. This action 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. This rule has no requirements applicable to small governments and, as such, does not impose obligations upon them.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. This action merely proposes to provide sources in Indian country with streamlined permitting opportunities that are generally available in states outside of Indian country. It does not impose any new obligations or enforceable

duties on any state, local or tribal government or the private sector. Thus, EO 13132 does not apply to this rule.

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

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

Pursuant to the EO 13175 (65 FR 67249, November 9, 2000), the 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 the EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

The EPA has concluded that this action will not impose duties or responsibilities on tribes, although it will have tribal implications. The EPA has conducted outreach via on-going monthly meetings with tribal environmental professionals in the development of this proposed action. This proposal reflects priorities for developing permits, comments on the general permits and suggestions for developing permits by rules developed as a result of that outreach. The EPA will offer consultation to elected tribal officials immediately after proposal to provide an opportunity for meaningful and timely input into the development of this regulation.

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

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

The EPA interprets EO 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 EO has the potential to influence the regulation. This action is not subject to EO 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 EO 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under EO 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 OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

The proposed rulemaking involves technical standards. The EPA proposes to use EPA Methods 5, 7E and 10. While the Agency identified 13 voluntary consensus

standards (ASME B133.9-1994 (2001), ISO 9096:1992 (2003), ANSI/ASME PTC-38-1980 (1985), ASTM D3685/D3685M-98 (2005), CAN/CSA Z223.1-M1977, ANSI/ASME PTC 19-10-1981- Part 10, ISO 10396:1993 (2007), ISO 12039:2001, ASTM D5835-95 (2007), ASTM D6522-00 (2005), CAN/CSA Z223.2-M86 (1999), CAN/CSA Z223.21-M1978, ASTM D3162-94 (2005)) as being potentially applicable, we do not propose to use these in this rulemaking. The use of these voluntary consensus standards would not be practical with applicable law due to a lack of equivalency, documentation, validation data and other important technical and policy considerations.

The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

EO 12898 (59 FR 7629 (Feb. 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 its programs, policies, and activities on minorities 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. This proposed rule merely implements certain aspects of the Review of

New Sources and Modifications in Indian Country. As such, this proposed action will not have a disproportionately high and adverse human health or environmental effects on minorities and low-income populations in the United States.

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

List of Subjects in 40 CFR Part 49

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

Dated: December 12, 2013.

Gina McCarthy,
Administrator.

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