

TABLE 1 TO § 165.1191—Continued

Event Description .....	Fireworks Display.
Date .....	Second Saturday in October.
Location .....	Capitola Pier in Capitola, CA.
Regulated Area .....	1,000-foot safety zone around the navigable waters of the Capitola Pier.

\* \* \* \* \*

Dated: September 15, 2016.  
**Anthony J. Ceraolo**,  
*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 49**

[EPA-HQ-OAR-2011-0151; FRL-9952-86-OAR]

RIN 2060-AR98

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

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing general permits for use in Indian country pursuant to the Federal Minor New Source Review (NSR) Program in Indian Country for new or modified minor sources in the following six source categories: concrete batch plants; boilers and emergency engines; stationary spark ignition engines; stationary compression ignition engines; graphic arts and printing operations; and sawmill facilities.

**DATES:** This final rule is effective on November 14, 2016.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2011-0151. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available,

e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

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

**SUPPLEMENTARY INFORMATION:** Throughout this document, “Reviewing Authority,” “we,” “us” and “our” refer to the EPA. The information in this preamble is organized as follows:

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**I. General Information**

*A. Does this action apply to me?*

Entities potentially affected by this final action consist of owners and operators of facilities included in the following source categories that are located, or planning to locate, in an Indian reservation or in another area of Indian country (as defined in 18 U.S.C. 1151) over which an Indian tribe, or the EPA, has demonstrated that the tribe has jurisdiction where there is no EPA-approved program in place and that are subject to the requirements of the Federal Indian Country Minor NSR rule.

TABLE 1—SOURCE CATEGORIES

Industry categories	North American industry classification categories	Examples of regulated industries
Boilers and Emergency Engines .....	11 2211 321	Agriculture, Greenhouses. Electric Power Generation. Wood Product Manufacturing (Except Sawmill Facilities).

TABLE 1—SOURCE CATEGORIES—Continued

Industry categories	North American industry classification categories	Examples of regulated industries
	311 327  424 611110 611210 611310 62 721120 813110 92	Food Manufacturing. Nonmetallic Mineral Product Manufacturing (Except Ready-Mix Concrete). Wholesale Trade, Nondurable Goods. Elementary and Secondary Schools. Junior Colleges. Colleges, Universities and Professional Schools. Health Care and Social Assistance. Casino Hotels. Religious Organizations. Public Administration.
Concrete Batch Plants .....	327320 327320 327320 327320 327320 327331 327332 327390	Concrete Batch Plants (including temporary). Central-Mixed Concrete Manufacturing. Truck-Mixed Concrete Manufacturing. Transit-Mixed Concrete Manufacturing. Ready-Mix Concrete Manufacturing and Distribution. Concrete Manufacturing: All Types of Blocks and Bricks. Concrete Manufacturing: All Types of Pipes and Conduit. Concrete Block and Brick.
Engines .....	622110 2211	Medical and Surgical Hospitals. Electric Power Generation, Transmission and Distribution.
Graphic Arts and Printing .....	323111	Printing: Flexographic, Rotogravure, Gravure, Letterpress, Lithographic, Digital.
Sawmill Facilities .....	323113 323117 321113	Commercial Printing, Newspapers, Print Shops. Printing Books. Sawmill Facilities.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be potentially affected by this action. You should examine the applicability criteria in the Federal Minor NSR Program in Indian Country (40 Code of Federal Regulations (CFR) 49.153) to determine whether your facility could be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, contact the appropriate person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

In addition to being available in the docket, an electronic copy of this final rule is posted on the tribal minor NSR home page at <https://www.epa.gov/tribal-air/tribal-minor-new-source-review>.

**II. Overview of the Final Rule**

In July 2011, the EPA issued the Federal Minor NSR Program in Indian Country rule <sup>1</sup> that established, among

<sup>1</sup> “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>.

other things, the requirements and process for the preconstruction permitting of minor sources in Indian country. Under the rule, on or after 3 years from the effective date of the Federal Indian Country Minor NSR rule (September 2, 2014), an owner or operator must obtain a preconstruction permit from the Reviewing Authority,<sup>2</sup> if the owner or operator intends to construct a new true minor source<sup>3</sup> or modify an existing true minor source in Indian country. The rule also specifies the process and requirements for using general permits as a streamlined permitting approach to authorize construction and modification of true minor sources. General permits

<sup>2</sup> In this document, Reviewing Authority refers to an EPA Regional office. However, tribes can become reviewing authorities if they decide to assist the EPA with implementing the minor NSR program in their area through a delegation agreement.

<sup>3</sup> 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 (PSD) program at 40 CFR 52.21, or the Major NSR program for Nonattainment Areas in Indian Country at 40 CFR 49.166–49.173, but equal to or greater than the minor NSR thresholds in 40 CFR 49.153, without the need to take an enforceable restriction to reduce its Potential to Emit (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 40 CFR 52.21(b)(1)(iii), as applicable.

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 this action, the EPA is finalizing general permits for the following six source categories for the permitting of affected emissions units and emissions-generating activities: concrete batch plants; boilers and emergency engines; stationary spark ignition engines; stationary compression ignition engines; graphic arts and printing operations; and sawmill facilities. We are providing the following implementation documents and tools for all of the permits we are finalizing today: questionnaires; instructions; potential to emit (PTE) calculators; background documents; and Request for Coverage Forms (applications). For all of these permits, the implementation tools and documents are available at either: <https://www.epa.gov/tribal-air/tribal-minor-new-source-review> or Docket ID No. EPA–HQ–OAR–2011–0151.

Five prior actions are also relevant to this action. First, in a final rulemaking signed May 22, 2014, and published June 16, 2014,<sup>4</sup> the EPA amended the

<sup>4</sup> “Review of New Sources and Modifications in Indian Country Amendments to the Registration

Federal Minor New Source Review Program in Indian Country rule by finalizing the following three actions:

1. Extending the minor NSR permitting deadline for true minor sources in the oil and natural gas sector located, or planning to locate, in Indian country (§ 49.151(c)(1)(iii)(B));

2. Adjusting the registration deadline to conform to the extended permitting deadline for true minor sources in the oil and natural gas sector (§§ 49.151(c)(1)(iii)(A) and 49.160(c)(1)(ii) and (iii)); and

3. Eliminating a requirement for all true minor sources that begin construction before September 2, 2014, and are eligible to construct pursuant to a general permit, to obtain a minor NSR permit 6 months after the EPA publishes the relevant general permit. No general permits had been finalized by the date 6 months prior to September 2, 2014, so the provision was moot (§ 49.151(c)(1)(iii)(B)).

Second, on May 1, 2015, the EPA published a final rule, “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,” to simplify the Clean Air Act (CAA) permitting process for certain smaller sources of air pollution commonly found in Indian country.<sup>5</sup> In the action, the EPA finalized general permits for use in Indian country for new or modified minor sources in the following two source categories: hot mix asphalt plants and stone quarrying, crushing and screening facilities. The EPA also finalized permits by rule for use in Indian country for new or modified minor sources in three source categories: auto body repair and miscellaneous surface coating operations; gasoline dispensing facilities; and petroleum dry cleaning facilities. The EPA also took final action authorizing the use of general permits established under the program to create synthetic minor sources.

Third, on September 18, 2015, the EPA proposed a federal implementation plan (FIP)<sup>6</sup> that would apply to new

true minor sources and minor modifications at existing true minor sources in the production segment of the oil and natural gas sector that are locating or expanding in Indian reservations or in other areas of Indian country over which an Indian tribe, or the EPA, has demonstrated the tribe’s jurisdiction. The FIP was proposed to satisfy the minor source permitting requirement under the Federal Indian Country Minor NSR rule.

Fourth, on February 24, 2016, we finalized three amendments to the Federal Indian Country Minor NSR rule that we proposed in our September 18, 2015, proposal, along with the FIP:

1. We revised the deadline under § 49.151(c)(1)(iii)(B) by which new and modified true minor sources in the oil and natural gas sector that are located in (or planning to locate in) reservation areas of Indian country or other areas of Indian country for which tribal jurisdiction has been demonstrated must obtain a minor NSR permit prior to beginning construction. We extended the deadline from March 2, 2016, to October 3, 2016, for all new and modified true minor sources within the oil and natural gas sector located in Indian country.

2. We revised § 49.151(c)(1)(iii)(A) to conform the registration deadline to the extended permitting deadline in § 49.151(c)(1)(iii)(B).

3. We revised § 49.160(c)(1)(ii) to conform the registration deadline to the extended permitting deadline in § 49.151(c)(1)(iii)(B).

Finally, on June 3, 2016, the EPA published the final FIP for true minor sources in the oil and natural gas sector (and associated amendments to the Federal Indian Country Minor NSR rule).<sup>7</sup> The final FIP applies to the true minor sources in Indian country engaged in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector.

### III. Background

#### A. Federal Minor New Source Review Program in Indian Country

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

On August 21, 2006, the EPA proposed the regulation: “Review of New Sources and Modifications in Indian Country” (*i.e.*, Indian Country NSR rule).<sup>8</sup> 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 minor stationary sources consistent with the requirements of section 110(a)(2)(c) of the CAA. (The proposal also included a major source NSR program for areas of Indian country designated as nonattainment.) The minor source part of the program is officially titled Federal Minor New Source Review Program in Indian Country, but we generally refer to it as the Federal Indian Country Minor NSR rule. Under the Federal Indian Country Minor NSR rule, we proposed to fill a regulatory gap and to provide a mechanism for issuing preconstruction permits for the construction of new minor sources and minor modifications at major and minor sources in Indian country. We promulgated final rules on July 1, 2011,<sup>9</sup> and the FIP became effective on August 30, 2011.

The Federal Indian Country Minor NSR rule applies to new and modified minor stationary sources and to minor modifications at existing major stationary sources located in Indian country<sup>10</sup> where there is no EPA-

<sup>8</sup> “Review of New Sources and Modifications in Indian Country,” U.S. Environmental Protection Agency, 71 FR 48696, August 21, 2006, <https://www.gpo.gov/fdsys/pkg/FR-2006-08-21/html/06-6926.htm>.

<sup>9</sup> “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>.

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

and Permitting Deadlines for True Minor Sources,” U.S. Environmental Protection Agency, 79 FR 34231, June 16, 2014, <https://www.gpo.gov/fdsys/pkg/FR-2014-06-16/pdf/2014-14030.pdf>.

<sup>5</sup> “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,” U.S. Environmental Protection Agency, 80 FR 25068, May 1, 2015, <https://www.gpo.gov/fdsys/pkg/FR-2015-05-01/pdf/FR-2015-05-01-FrontMatter.pdf>.

<sup>6</sup> “Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country,” U.S. Environmental Protection Agency, 81 FR 56554, September 18, 2015, <https://www.gpo.gov/fdsys/pkg/FR-2016-09-18/pdf/2016-21025.pdf>.

[www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-21025.pdf](https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-21025.pdf).

<sup>7</sup> “Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector,” U.S. Environmental Protection Agency, 81 FR 35944, June 3, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf>.

approved program in place. Beginning September 2, 2014, any new stationary sources that will emit, or will have the potential to emit, a regulated NSR pollutant in amounts that will be: (1) Equal to or greater than the minor NSR thresholds established in the Federal Indian Country Minor NSR rule; and (2) less than the amount that would qualify the source as a major source or a major modification for purposes of the PSD Program or nonattainment major NSR, must apply for and obtain a minor NSR permit before beginning construction of the new source.

Likewise, any existing stationary source (minor or major) must apply for and obtain a minor NSR permit before beginning construction of a physical or operational change that will increase the allowable emissions of the stationary source by more than the specified minor source threshold amounts, if the change does not otherwise trigger the permitting requirements of the PSD or nonattainment major NSR program(s).<sup>11</sup>

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

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

“True minor source” under the Federal Indian Country Minor NSR rule means a source that emits, or has the PTE, 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 49.166–49.173, but equal to or greater than the minor NSR thresholds in § 49.153, without the need to take an enforceable restriction to reduce its PTE to such levels. A source’s PTE includes fugitive emissions, to the extent that they are quantifiable, only if the source belongs to one of the 28 source categories listed in part 51, appendix S, paragraph II.A.4(iii) or § 52.21(b)(1)(iii) of 40 CFR, as applicable. By contrast, “synthetic minor source” means a source that otherwise has the PTE 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.

3. What is a general permit?

The Federal Indian Country Minor NSR rule specifies 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.<sup>12</sup> “Similar in nature” refers to size, processes, and operating conditions. The purpose of a general permit is to provide for protection of air quality, while simplifying the permitting process for similar minor sources. General permits offer a cost-effective means of issuing permits and provide a quicker and simpler mechanism for permitting minor sources than the source-specific permitting process.

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

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

1. What was in the proposed rule?

On July 17, 2014, the EPA published a proposed rule, “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country,” to simplify the CAA permitting process for certain smaller sources of air pollution commonly found in Indian country.<sup>13</sup> The

proposed action was intended to facilitate the implementation of the Federal Indian Country Minor Source NSR rule issued by the EPA in July 2011 in a manner that minimized the administrative and time burden associated with the permitting process, while at the same time adequately protecting air quality in Indian country.

As its preferred approach, the EPA made available draft general permits for use in Indian country pursuant to the Federal Indian Country Minor NSR rule for new or modified true minor sources in the following six source categories: Concrete batch plants; boilers; stationary spark ignition engines; stationary compression ignition engines; graphic arts and printing operations; and sawmill facilities. In the alternative, the EPA also proposed a permit by rule for use in Indian country for new or modified true minor sources in one of the six source categories: graphic arts and printing operations.

We requested comment on the following areas:

1. All aspects of the permit documents and implementation tools for the six source categories:

- Concrete batch plants;
- Boilers;<sup>14</sup>
- Stationary spark ignition engines;
- Stationary compression ignition

engines;

- Graphic arts and printing operations; and

- Sawmill facilities;

2. The appropriateness of using a streamlined general permit/permit by rule application for one source category: graphic arts and printing operations;

3. Various aspects of the EPA’s conclusion on its control technology review that the measures in the draft/proposed permits are technically and economically feasible and cost effective because they are currently used by similar sources in other areas of the country;

4. Setback requirements, which are provisions related to the location of the emitting activities and the source property boundary and certain nearby structures;

5. The process for sources to address threatened or endangered species and historic properties with respect to the six categories in the proposal;

6. Use of throughput limits and capacity limits as surrogates for tons per

<sup>11</sup> A source may, however, be subject to certain monitoring, recordkeeping and reporting (MRR) requirements under the major NSR programs, if the change has a reasonable possibility of resulting in a major modification. A source may be subject to both the Federal Indian Country Minor NSR Program and the “reasonable possibility” MRR requirements of the major NSR program(s).

<sup>12</sup> “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>.

<sup>13</sup> “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country,” U.S. Environmental Protection

Agency, 79 FR 41846, July 17, 2014, <https://www.gpo.gov/fdsys/pkg/FR-2014-07-17/pdf/2014-16814.pdf>.

<sup>14</sup> In the proposal for this action (79 FR 41846, July 17, 2014), the title for the source category for boilers did not include emergency engines; in this final rule, we are adding emergency engines to the source category title so that it encompasses boilers and emergency engines.

year (tpy) 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 tpy annual allowable emission limitations;

7. Finalizing both permitting mechanisms for graphic arts and printing operations by providing authorization to construct or modify true minor sources in this category via permits by rule and by providing enforceable limitations to create synthetic minor sources in this category via general permits; and

8. A proposed rule change to the Federal Indian Country Minor NSR rule: shortening the general permit application review process from 90 to 45 days for graphic arts and printing operations.

#### IV. Final Rulemaking Action

This section outlines the major areas where we sought comment in the July 17, 2014, proposal, highlights our responses to major comments received and describes our final action. We received 11 comments from industry (or their representatives), 12 comments from tribes (or their representatives), 1 comment from a local air quality agency and 1 comment from a state environmental agency. The Response to Comments (RTC) Document can be found in docket EPA-HQ-OAR-2011-0151 and is available online at: <https://www.epa.gov/tribal-air/tribal-minor-new-source-review>. It contains more detailed descriptions of the comments we received and our responses to them.

##### A. Permitting Documents and Implementation Tools

###### 1. Proposed Rule

As our preferred approach, the EPA made available draft general permits for use in Indian country pursuant to the Federal Indian Country Minor NSR rule for new or modified minor sources in the following six source categories: Concrete batch plants; boilers; stationary spark ignition engines; stationary compression ignition engines; graphic arts and printing operations; and sawmill facilities. In the alternative, we also proposed a permit by rule for use in Indian country for new or modified minor sources in the graphic arts and printing operations source category. Overall, we sought comment on all aspects of the permit documents and implementation tools for these source categories. Specifically, Section VI of the July 17, 2014, proposal provided a summary of the specific

terms and conditions of the general permits and indicated specific areas where we requested comment.

###### 2. Summary of Comments, Responses and Final Action

The following sections provide an abbreviated summary of changes to the implementation tools, as well as significant comments on the draft general permits for the six source categories in this final rule and our responses. Detailed responses to the comments on the permits and related tools and documents are addressed in the RTC Document. In our final action, based on comments, we have made substantive changes to the terms and conditions of all of the draft permits and the related implementation tools in several areas, including the following: setback requirements; throughput limits; various control requirements; and enhancements and clarifications to the implementation tools.

###### a. Overview of Changes to Permits and Implementation Tools

In direct response to public comments (and upon further review), we are revising the draft general permits and implementation tools in many areas, including as follows:

(1) Expanding the scope of the draft boilers general permit to include emergency engines so that the final general permit is titled: “General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country”;

(2) Removing emissions limitations for emergency engines from the general permits for the following three source categories: Sawmill facilities, graphic arts and printing operations and concrete batch plants, as discussed below with respect to the final engines general permits (we did so because we expect that emergency engines that are not located at sources covered by a general permit or permit by rule that we have already developed, and that are not otherwise exempt consistent with § 49.153 of the Federal Indian Country Minor NSR rule,<sup>15</sup> will be located at a source with one or more boilers and, thus, will be covered by the “General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country”);

<sup>15</sup> Under 40 CFR 49.153(c)(9), emergency generator engines at a single source are “exempt” if the combined maximum horsepower (hp) rating of all emergency generator engines is below 1,000 hp in attainment areas or 500 hp in ozone nonattainment areas classified as Serious or lower. If your source consists of only exempt equipment, then you are not required to obtain a minor NSR permit.

(3) Recalculating maximum capacity ratings for certain boilers in the final “General Air Quality Permit for New or Modified Boilers and Emergency Engines in Indian Country” based on non-greenhouse gas (GHG) pollutants (e.g., nitrogen oxides (NO<sub>x</sub>)) to reflect the change in GHG permitting requirements resulting from the U.S. Supreme Court’s June 23, 2014, ruling<sup>16</sup> and to ensure minor source status for eligible sources;

(4) Revising and reconfiguring control options for the following three general permits to accommodate their use by sources seeking synthetic minor status: “General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country,” “General Air Quality Permit for New or Modified Minor Source Compression Ignition Engines in Indian Country” and “General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country”;<sup>17</sup>

(5) Revising the titles of all six general permits in this action, to make it clear that they are all available for true minor and synthetic minor sources (including all of the implementation tools), by removing the words “true minor” (and adding clarifying text to the Request for Coverage Forms to reflect this expanded coverage of source types);

(6) Adjusting the definition of “promptly” for reporting deviations under the final “General Air Quality Permit for New or Modified Boilers and Emergency Engines in Indian Country”

<sup>16</sup> In setting the permitting capacity limits in the draft boilers general permit, the “controlling” regulated pollutant considered in our evaluation was GHGs. This pollutant was regarded as primarily a factor for units emitting higher levels of carbon dioxide (CO<sub>2</sub>), a GHG. Therefore, the draft maximum capacity ratings for certain size boilers were set for GHGs at levels sufficiently low to keep eligible sources below the major source permitting threshold of 100,000 tpy of CO<sub>2</sub> equivalent. On June 23, 2014, the U.S. Supreme Court ruled that sources are no longer required to obtain a PSD permit solely based on their GHG emissions. This means that a source must trigger the major source PSD permitting requirements for non-GHG pollutants, either as a newly constructed source or as a modification at a major source, in order to be subject to NSR Best Available Control Technology (BACT) review for GHGs. Therefore, the minor sources covered under the final “General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country” can be required to obtain a permit based only on their emissions of non-GHG pollutants.

<sup>17</sup> This approach is consistent with the policy we finalized on May 1, 2015, that allows for the use of general permits in Indian country to create synthetic minor sources. “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories.” U.S. Environmental Protection Agency, 80 FR 25068, May 1, 2015, <https://www.gpo.gov/fdsys/pkg/FR-2015-05-01/pdf/FR-2015-05-01-FrontMatter.pdf>.

and the final “General Air Quality Permit for New or Modified Concrete Batch Plants in Indian Country” to conform to the definition of this term in the general permits that the EPA has already completed for hot mix asphalt plants and stone quarrying, crushing and screening facilities;

(7) Adjusting the condition concerning the timing and location for records retention in the final “General Air Quality Permit for New or Modified Concrete Batch Plants in Indian Country” to conform to the corresponding condition in the general permits the EPA has already completed for hot mix asphalt plants and stone quarrying, crushing and screening facilities;

(8) Revising the general permit for sawmill facilities to accommodate sources that may trigger the major source threshold for hazardous air pollutants (HAPs) prior to reaching the 80 ton per year/12-month rolling emission limits in the permit and that, thus, may need to seek synthetic minor status for HAP emissions;

(9) Revising the throughput limits in the final “General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country” to match the revised input data provided in the sawmill facilities PTE calculator (from thousand board-feet (Mbf) to wood log inputs expressed in tons);

(10) Correcting the board-foot throughput limit in the “General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country” to reflect corrections made to the sawmill facilities PTE calculator;

(11) Adding a separate throughput limit to the final “General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country” for Serious PM<sub>10</sub> (particulate matter equal to or less than 10 microns in diameter) nonattainment areas and PM<sub>2.5</sub> (particulate matter equal to or less than 2.5 microns in diameter) nonattainment areas;

(12) Clarifying in the final “General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country” that gaseous and liquid-fueled auxiliary heaters up to 10 million British thermal units per hour (MMBtu/hour) are allowed, separate from the 30 MMBtu/hr boiler limit, which can include solid fuels like biomass;

(13) Revising the boiler and auxiliary heater capacity limits for Severe and Extreme ozone nonattainment areas in the final “General Air Quality Permit for New or Modified Minor Source Sawmill

Facilities in Indian Country” to allow for larger boiler capacity;

(14) Adding a condition to the “General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country” that restricts all emergency engines in Severe and Extreme ozone nonattainment areas to units that are model year 2006 or later to ensure the sources’ emissions stay below major source levels;

(15) Changing the permitting tools (e.g., background documents) for the source categories to reflect changes made to permit requirements in areas such as setbacks and treatment of emergency engines;

(16) Retitling the implementation tools for the boilers and emergency engines source category to match the change in the title of the general permit;

(17) Clarifying each of the implementation tools for the final “General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country” and the final “General Air Quality Permit for New or Modified Minor Source Compression Ignition Engines in Indian Country” to better identify the types of sources likely to be eligible for these permits and to clarify the requirements, including reflecting the removal of the emergency engines provisions from these permits;

(18) Removing the list of eligibility criteria at the front of the questionnaires, to avoid confusion and redundancy with the eligibility criteria provided in the Request for Coverage Forms;

(19) Changing the instructions and questionnaires to reflect changes made to the Request for Coverage Forms;

(20) Revising the Request for Coverage Form for the final “General Air Quality Permit for New or Modified Minor Source Concrete Batch Plants in Indian Country” to:

- Clarify that the source may seek approval for multiple locations and that additional locations may be added in the future; and

- Add a section allowing a source to list multiple source locations in cases where a portable source is planning to relocate and for which it wants Reviewing Authority approval;

(21) Adding to the Request for Coverage Forms for the general permits a request for estimates of PTE and, at existing sources, actual emissions, to satisfy the minor source registration requirement of § 49.160, and clarifying that sources covered by the general permits must also register under § 49.160 (submission of the Request for

Coverage Form satisfies that requirement);

(22) Adding standards for non-engine combustion units to the final “General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country”;

(23) Revising the Request for Coverage Form for the final “General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country” to require more detailed information from the applicant that is appropriate for a general permit that is being made available for both true minor and synthetic minor sources;

(24) Revising the threatened and endangered species and historic properties screening procedures in the Request for Coverage Forms to reflect changes made to those same procedures in response to comments that we received on the January 14, 2014, proposal that we also reflected in the final rule “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,” published on May 1, 2015;<sup>18</sup>

(25) Correcting an error on the “Input” page for the PTE calculator for the final “General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country” that did not properly sum emissions for all of the small, auxiliary heaters and boilers, and adjusting the MMBtu/hr limit for boilers and hp for engines for Extreme ozone nonattainment areas once we corrected the error;<sup>19</sup> and

(26) Adding the following caveat to the PTE calculators for the six source categories in this action: “If you have one or more of the following units that are exempt from the Indian Country Minor NSR Program,<sup>20</sup> please contact

<sup>18</sup> “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,” U.S. Environmental Protection Agency, 80 FR 25068, May 1, 2015, <https://www.gpo.gov/fdsys/pkg/FR-2015-05-01/pdf/FR-2015-05-01-FrontMatter.pdf>.

<sup>19</sup> The draft spreadsheet underestimated emissions for this source category and the correction and adjustment had the greatest effect on emissions estimates for sources in Extreme ozone nonattainment areas.

<sup>20</sup> All units/categories listed under § 49.153(c), including the ones listed below, are exempt from the Federal Minor NSR Program in Indian Country and emissions from such sources are, therefore, not counted in calculating a source’s PTE for the purpose of determining whether the source’s PTE exceeds the minor source permitting thresholds. However, emissions from the units/categories listed under § 49.153(c) shall be included when calculating a source’s PTE for the purpose of determining whether the source is a major source under either PSD or nonattainment NSR programs.

your EPA Regional office before you use this calculator to determine whether you need to obtain a minor NSR permit:

- Internal combustion engines used for landscaping purposes;
- Emergency generators, designed solely for the purpose of providing electrical power during power outages:
  - In nonattainment areas classified as Serious or lower, the total maximum manufacturer's site-rated hp of all units shall be below 500;
  - In attainment areas, the total maximum manufacturer's site-rated hp of all units shall be below 1,000;
- Stationary internal combustion engines with a manufacturer's site-rated hp of less than 5; and
- Furnaces or boilers used for space heating that use only gaseous fuel, with a total maximum heat input (*i.e.*, from all units combined) of:
  - In nonattainment areas classified as Serious or lower, 5 MMBtu/hr or less;
  - In nonattainment areas classified as Severe or Extreme, 2 MMBtu/hr or less; and
  - In attainment areas, 10 MMBtu/hr or less."

In addition, we made some changes in the general provisions that are included in all of the final permits from this final action and the May 1, 2015, final action. One commenter stated that the condition in the draft general permits concerning Notification of Change in Ownership is unclear in establishing whether it is the responsibility of the new permittee or the old permittee to comply with the notification requirements. The same commenter requested that certain conditions of the draft general permit be clarified to cover situations in which there is a change of operator, but the ownership of the equipment is the same. In response to the comments, the EPA has clarified in the permits for the six source categories covered by this action that it is the responsibility of the new permittee to submit a written or electronic notice to the Reviewing Authority within 90 days before or after the change in ownership is effective. For all of the permits, we have also modified the two conditions related to changes in ownership that appear in Sections 5 and 6 to include the word "operator" to clarify that these conditions cover a change in either ownership or operator where the equipment is the same.<sup>21</sup>

One commenter stated that the term "Responsible Official" should be defined to ensure truth, accuracy and completeness of required reports. The

<sup>21</sup> The conditions are: Notification of Change in Ownership or Operator (Section 5) and Change in Ownership or Operator (Section 6).

EPA agrees and, in response to the comment, we have added a definition of "Responsible Official" to each of the final permits.

Two commenters supported the proposed rule's approach of requiring each source to post the current Approval of the Request for Coverage and to label each affected emissions unit and associated air pollution control technology with the identification numbers listed in the approval. One commenter recommended that the general permit and the most current approval of the request for coverage for the permitted source "must be made available immediately upon request," as opposed to "must be posted." The commenter stated that it was not necessary to label the air pollution control equipment, as the description and serial numbers are provided in the application. The EPA acknowledges the support of the commenters with respect to posting the Approval of the Request for Coverage. Upon review of comments received related to the posting of the general permit in addition to the Approval of the Request for Coverage, the EPA is revising the permits to exclude the requirement that the general permits must be posted. Posting of the Approval of the Request for Coverage is required under 40 CFR 49.156(e)(6), but general permits themselves are not required under the regulation to be posted and only need to be available on site as needed. Regarding the labeling of emission units and air pollution control equipment, identification and labeling of these units is needed to facilitate identification by inspectors of equipment covered under a general permit without the need to refer to the application. Therefore, the EPA is finalizing the labeling requirements as proposed.

Three commenters supported incorporating the Approval of the Request for Coverage into the general permit, in order to ensure that the revision procedures in 40 CFR 49.159 would apply to revisions a Reviewing Authority may need to make to a previously issued Approval of a Request for Coverage. Two commenters recommended that the EPA consider amending 40 CFR 49.156 to include a provision that specifically allows for revisions to a previously issued Approval of a Request for Coverage under a general permit. Upon review of comments received related to incorporating the Approval of the Request for Coverage into the general permits, the EPA is finalizing each general permit to include the proposed language in the draft general permits related to incorporating the Approval of

the Request for Coverage into each permit.

In addition, we have added a provision to all of the permits to address those circumstances that can cause a permit to become invalid under 40 CFR 49.156(e)(8). In the general permits in this action, the provision can be found in Section 6.

#### b. Comments and Responses Concerning General Permits for Concrete Batch Plants

One commenter objected to the visible emissions 10 percent opacity limit included in the draft concrete batch plants general permit. The commenter argued that the limit would create an unequal playing field with existing concrete batch facilities subject to the Federal Air Rules for Reservations' (FARR) requirements for limiting visible emissions (40 CFR 49.124). The EPA acknowledges that the draft visible emissions opacity limit in the final "General Air Quality Permit for New or Modified Minor Source Concrete Batch Plants" (10 percent) is more stringent than the opacity limit provided for facilities in the FARR.<sup>22</sup> The opacity limit in the FARR is a generally applicable requirement that applies to any person who owns or operates an air pollution source, regardless of whether the equipment is existing, new, or modified. This limit was not specifically developed for concrete batch plants. The EPA's general permit for concrete batch plants applies to new or modified concrete batch plants, for which we have determined a 10 percent opacity limit is achievable. In our Background Document<sup>23</sup> for this permit, our review of state general permits for this source category indicated a range of opacity limits. For all of the states researched, the limits ranged from no visible emissions allowed to 25 percent, with only one state having a 40 percent opacity limit. Furthermore, the opacity limit is consistent with the opacity limits for the "General Air Quality Permit for New or Modified Minor Source Stone Quarrying, Crushing, and Screening Facilities in Indian Country" (7–12 percent) and less than the opacity limit for the "General Air Quality

<sup>22</sup> The FARR is limited in scope to Indian Reservations in EPA Region 10. The opacity limit in the FARR at 40 CFR 49.124(d) is the visible emissions from an air pollution source must not exceed 20% opacity, averaged over any consecutive six-minute period, unless paragraph (d)(2) or (3) of 49 CFR 49.124(d) applies to the air pollution source.

<sup>23</sup> Background Document: General Air Quality Permit for New or Modified Minor Source Concrete Batch Plants in Indian Country, Docket ID No. EPA-HQ-OAR-2011-0151, <https://www.epa.gov/tribal-air/tribal-minor-new-source-review>.

Permit for New or Modified Minor Source Hot Mix Asphalt Plants in Indian Country” (20 percent or greater), both made available in the final rule on April 17, 2015.<sup>24</sup> We continue to believe that a 10 percent opacity limit is achievable for new or modified concrete batch plant sources and, as a result, we are not revising the opacity limit for the final “General Air Quality Permit for New or Modified Minor Source Concrete Batch Plants in Indian Country.”

Another commenter recommended that the EPA consider the requirements in the South Coast Air Quality Management District (SCAQMD) Rule 1155—Particulate Matter from Control Devices (used to establish requirements for permitted PM air pollution control devices) and Rule 1157—PM<sub>10</sub> Emission Reductions From Aggregate and Related Operations (which includes general performance standards and work practice requirements for opacity, unloading, loading and transferring operations, storage piles and related equipment), in establishing provisions in the draft concrete batch general permit. The commenter also requested that the general permit include certain BACT<sup>25</sup> requirements related to controlling PM<sub>10</sub>. One commenter specifically requested that the EPA consider certain control devices for either wet central mix plants or transit mix plants. The EPA considered SCAQMD rules when developing some of the nonattainment area emission requirements and a review of the requirements suggested by the commenter and those in the draft general permit indicate that the draft permit conditions are already at least as stringent as those suggested by the commenter. Therefore, no changes in this regard were made to the final “General Air Quality Permit for New or Modified Concrete Batch Plants in Indian Country.”

One commenter supported the use of the draft general permit for concrete batch plants to authorize relocation of a concrete batch plant to a pre-approved site location. The EPA recognizes that concrete batch plants are portable and may require the flexibility to relocate to

additional areas in the future. We have revised the Request for Coverage Form for the final “General Air Quality Permit for New or Modified Concrete Batch Plants in Indian Country” to clarify that the facility may seek up-front approval of multiple locations and that additional locations may be added in the future.

#### c. Comments and Responses Concerning General Permits for Boilers

One commenter requested that the EPA consider the requirements in three SCAQMD Rules that apply to boilers, including Rule 1146—Emissions of Oxides of Nitrogen from Industrial, Institutional and Commercial Boilers, Steam Generators, and Process Heaters; Rule 1146.1—Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters; and Rule 1146.2—Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers and Process Heaters. The commenter stated that these rules limit emissions of NO<sub>x</sub> and carbon monoxide (CO) and have requirements for initial and periodic testing, monitoring and recordkeeping. The EPA considered SCAQMD rules when developing some of the nonattainment area emission requirements and a review of the requirements suggested by the commenter and those in the draft general permit indicates that the draft permit conditions are generally consistent with those suggested by the commenter for Severe and Extreme ozone nonattainment areas. For example, the emission limits for NO<sub>x</sub> and CO of the final “General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country” are consistent with SCAQMD Rules 1146 and 1146.1. For each boiler rated at or above 2 MMBtu/hr in a Severe or Extreme ozone nonattainment area, the final permit is consistent with SCAQMD Rules 1146 and 1146.1 by containing a limit of nine parts per million (ppm) at 3 percent oxygen for NO<sub>x</sub> and a limit of 400 ppm at 3 percent oxygen for CO. However, for boilers rated below 2.0 MMBtu/hr in Severe or Extreme ozone nonattainment areas, we did not apply the requirement in SCAQMD Rule 1146.2 for owner/operators to purchase SCAQMD “compliant” boilers. As this is a nationally applicable regulation, we did not find it appropriate to require SCAQMD-compliant boilers in applicable areas everywhere due to their uncertain availability outside of the South Coast region of California. Instead, emissions from these small boilers and auxiliary heaters (those rated less than 2.0 MMBtu/hr) are

restricted by limiting the combined rating of all small boilers and auxiliary heaters to a total of 10 MMBtu/hr in Extreme ozone nonattainment areas and 20 MMBtu/hr in all other areas.

We disagree that these boiler requirements should apply in all areas, as suggested by the commenter. The limits suggested by the commenter are not typically associated with attainment areas or Marginal, Moderate, or Serious ozone nonattainment areas. No changes were made to the final “General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country,” as a result of this comment.

#### d. Comments and Responses Concerning General Permits for Stationary Spark Ignition and Compression Ignition Engines

Two commenters expressed confusion regarding the reference to Table 1 of the New Source Performance Standard (NSPS), 40 CFR part 60, subpart JJJJ, in the draft spark ignition engines general permit. One commenter noted that it is unclear whether the EPA is limiting the use of engines ≥100 hp to only those manufactured after the dates incorporated from Table 1 to 40 CFR part 60, subpart JJJJ, in the draft spark ignition engines general permit, or if the specified emission limits from Table 1 must be met regardless of the date of engine manufacture. Another commenter stated that the emission limits only appear to apply to engines manufactured after 2010. One commenter noted that this would exclude other newer engines and would be more restrictive than the NSPS for spark ignition engines (NSPS, 40 CFR part 60, subpart JJJJ). The commenter also stated that the draft emission limits from Table 1 are appropriate for new, modified, or reconstructed engines after July 1, 2010, or January 1, 2011, but are not appropriate for older existing engines not subject to the spark ignition engines NSPS (40 CFR part 60, subpart JJJJ) or those engines subject to the NSPS after 2007, but before the 2010 or 2011 dates listed in Table 1. The commenter asserted that, for NSPS engines, all of the emission limits and dates in Table 1 should apply to engines ≥100 hp, and that, for non-NSPS engines, emission controls should be no more stringent than those required in National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR part 63, subpart ZZZZ, for existing engines. Another commenter stated that the general permits should allow for the use of existing engines in attainment areas. Commenters recommended that the EPA consider the Texas Commission on

<sup>24</sup> “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,” U.S. Environmental Protection Agency, 80 FR 25068, May 1, 2015, <https://www.gpo.gov/fdsys/pkg/FR-2015-05-01/pdf/FR-2015-05-01-FrontMatter.pdf>.

<sup>25</sup> For federal purposes, BACT is a requirement for major sources under the PSD Program. However, here and elsewhere in this document where responses to comments are discussed, the term is being used as it is used by the SCAQMD air program in the context of minor source NSR permitting in nonattainment areas.



Environmental Quality's Permit by Rule for engines found in 30 Texas Air Code section 106.512 as a model.

The EPA acknowledges that our draft general permit did not clearly state our intent with regard to the types of non-emergency spark ignition engines eligible to operate under the draft general permit for spark ignition engines. We are revising the final "General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country" to clarify this issue. As a result, the requirements applicable to existing non-emergency engines in the NESHAP at 40 CFR part 63, subpart ZZZZ, are not needed in the general permit. The EPA disagrees with the commenter's suggestion that the use of engines manufactured prior to these dates should be allowed for attainment areas. Given the types of stationary sources we expect to be eligible for the final spark ignition engines general permit, we continue to determine that pre-2010 or pre-2011 engines should not be eligible for this permit. For this permit, where the covered stationary sources will mainly consist of non-emergency engines, it is necessary to limit the types of engines eligible to operate under the permit to those with the most current technology to be protective of the National Ambient Air Quality Standards (NAAQS), even in attainment areas. We note that we have not taken this approach for all of the general permits. For example, the general permits for hot mix asphalt plants; stone quarrying, crushing, and screening operations; and concrete batch plants allow for the use of existing compression ignition non-emergency engines. However, in those cases the engines covered are smaller and are not the primary equipment (and, thus, emissions) at the source.

The Texas Commission on Environmental Quality's Permit by Rule for engines found in 30 Texas Air Code section 106.512 suggested by the commenter appears to apply to a broader group of stationary sources (*i.e.*, turbines) and is not limited to spark ignition engines. Thus, its limits would not be translatable to a general permit limited to spark ignition engines.

We are clarifying each of the draft documents for the spark ignition and compression ignition engines general permits to better identify the types of sources that are eligible for these permits. Additionally, the EPA did not intend that the draft engines permits would apply to sources where non-exempt emergency engines are present (alone or in combination with other

emissions sources),<sup>26</sup> or to engines in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector for which the EPA has issued a separate, final rulemaking.<sup>27</sup> Therefore, we are revising the title of the draft boiler general permit to "General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country" to clarify that sources with non-exempt emergency engines should apply for that general permit.

One commenter stated that the engines general permits reference certain certification or emission requirements at 40 CFR part 89, 40 CFR part 90, 40 CFR part 1048, and Table 1 to 40 CFR part 60, subpart JJJJ, which contain complex language that may require engine operators to conduct legal analytical work. The commenter requested that the EPA list these requirements more succinctly in order to help tribal operators determine whether their sources are subject to certain requirements and what the requirements are. The commenter also requested that the EPA clarify the applications to make them as easy to understand as possible, noting that tables would be easier to follow than text.

The EPA acknowledges that the language contained in the engine regulations can be complex and potentially difficult for individual owners or operators of engines to understand. This is why the EPA has generally designed the permit requirements for engines to require the owner or operator to simply install certified engines. We are revising the draft general permit for spark ignition engines to specifically list the applicable emission standards from Table 1 to 40 CFR part 60, subpart JJJJ, instead of incorporating them by reference.<sup>28</sup> We have also revised the

<sup>26</sup> Under 40 CFR 49.153(c)(9), emergency generator engines at a single source are "exempt" if the combined maximum hp rating is below 1,000 hp in attainment areas or 500 hp in ozone nonattainment areas classified as Serious or lower. If your source consists of only exempt equipment, then you are not required to obtain a minor NSR permit.

<sup>27</sup> "Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector," U.S. Environmental Protection Agency, 81 FR 35944, June 3, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf>.

<sup>28</sup> The draft general permit for spark ignition engines also contained a typographical error that referenced "40 CFR subpart JJJJ" instead of the correct citation 40 CFR part 60, subpart JJJJ.

permitting documents as suggested to provide more clarity to the applicable requirements.

Two commenters stated that, in the draft compression ignition engines general permit, the EPA excludes existing compression ignition engines in Condition 19, which requires non-emergency engines to be model year 2014 or later. The commenters argued that requiring sources to install only new engines would be inappropriate and inconsistent with existing engine rules. One commenter further stated that no state prohibits the relocation of existing engines, which would be prohibited under the proposed rule. The EPA notes that the commenters seem to misinterpret the intent of the draft permits for engines. These general permits are intended for a limited set of stationary sources—those consisting primarily of non-emergency engines. We generally expect the final "General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country" and the final "General Air Quality Permit for New or Modified Minor Source Compression Ignition Engines in Indian Country" to be used by sources in Indian country that, for example, provide electricity or pump groundwater in areas where power from the grid is not available. The general permits are not intended to be used by all source categories with non-emergency engines. Each permit is intended for a particular source category. We are clarifying each of the documents for the spark ignition and compression ignition permits to better identify the types of sources likely to be eligible for these permits. Finally, we note that the general permits for engines do not prohibit relocation of engines. While we limit the types of engines that can be used under the permits, engines that meet the permit requirements may be relocated to a new or modified, permitted stationary source.<sup>29</sup>

Three commenters expressed the view that including compliance requirements for emergency spark ignition engines in a compression ignition engine permit and compliance requirements for emergency compression ignition engines in a spark ignition engine permit creates confusion. One commenter remarked that it is unclear

<sup>29</sup> We have provided guidance on the in-kind replacement of units in the preamble to the final rule issued on May 30, 2014, in which we clarified requirements for such units in the Federal Indian Country Minor NSR rule. "Review of New Sources and Modifications in Indian Country—Amendments to the Federal Indian Country Minor New Source Review Rule," U.S. Environmental Protection Agency, 79 FR 31035, May 30, 2014, <https://www.gpo.gov/fdsys/pkg/FR-2014-05-30/pdf/2014-11499.pdf>.

which permit would be appropriate for a source operating an emergency compression ignition engine, and what criteria are used to determine when an emergency compression ignition engine would be covered under one permit or another. The EPA notes that draft permits for compression ignition and spark ignition engines contain limits on the combined hp rating for emergency engines that are at, or below, the exemption thresholds finalized in 40 CFR 49.153(c). Therefore, we are removing the emergency engine provisions from these two general permits, as this equipment is exempt from the program at the thresholds in the permits.<sup>30</sup> We are revising the Request for Coverage Forms and questionnaires for these permits to identify this exemption. During the development of the engines general permits, the EPA finalized exemptions for certain emergency engines at 40 CFR 49.153(c).

Two commenters asserted that stack testing procedures for emergency engines are inappropriate and not required by states. Instead, the commenters recommended that the EPA include maximum non-emergency run time hour limits (e.g., 500 hours/year) in both the spark ignition and compression ignition engines general permits. The EPA disagrees that we should replace the testing requirements with limits on the hours an emergency engine can operate in non-emergency situations. However, as noted above, we are removing the requirements for emergency engines from the final “General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country” and the final “General Air Quality Permit for New or Modified Minor Source Compression Ignition Engines in Indian Country.”

Two commenters questioned the specific testing procedures outlined in the engines general permits. One commenter stated that the outlined procedures for stack testing were contradictory with regard to engine load during testing. In the draft spark ignition engines general permit, another commenter stated that emissions testing requirements should allow portable analyzer testing and test methods other than the EPA reference methods. The commenter stated that allowing portable analyzers is necessary due to the remote

and dispersed nature of many engines. The EPA recognizes that some engines typically do not operate within 10 percent of peak load. However, the “within 10 percent peak load” requirement was included in the permit to be consistent with the testing requirements in the applicable NSPS. This allows testing conducted under the NSPS to be used for the general permit as well. The EPA has generally included a requirement in our general permits to ensure testing is conducted under typical operating conditions to avoid testing being conducted, for example, during startup or malfunction. We do not find the two provisions to be contradictory. Regarding the use of portable analyzers, the draft general permit for spark ignition engines provides for the use of test methods identified in 40 CFR part 60, appendix A, which allow the use of a portable analyzer. In addition, the draft spark ignition engines general permit specifically references the use of portable analyzers. No changes have been made to the final “General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country,” as a result of this comment.

One commenter stated that the requirement to monitor fuel use for each engine on a monthly basis is not practical, given the many remote locations where engines are used for oil and gas production. The commenter further asserted that because the standards are based on an emissions/hp-hour basis, fuel measurement is unnecessary to demonstrate compliance. The EPA notes that these general permits do not apply to engines in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector for which the EPA has issued a separate, final rulemaking in the form of a FIP.<sup>31</sup> <sup>32</sup> We do not anticipate that sources outside of the oil and natural gas production and natural gas processing segments of the

<sup>31</sup> “Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector,” U.S. Environmental Protection Agency, 81 FR 35944, June 3, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf>.

<sup>32</sup> The final oil and natural gas FIP focuses on the oil and natural gas production and natural gas processing segments of the oil and natural gas sector because we believe that these segments include the majority of the true minor sources in the sector that would need to obtain a minor source permit in areas covered by the Federal Indian Country Minor NSR rule.

oil and natural gas sector with stationary spark ignition and compression ignition engines will have difficulty meeting the monthly fuel use requirements. Thus, no changes have been made to the final permits as a result of this comment.

One commenter requested that the EPA provide clear direction for authorization of in-kind replacement engines. The commenter noted that engines are frequently swapped out with an in-kind engine to minimize compressor downtime, and that these replacements have the same or lower emissions than the engine being replaced. Two commenters noted that existing compressors may be moved and installed at another site to meet production needs. One commenter argued that the EPA must allow for relocation of existing engines without requiring them to be retrofitted. Another commenter suggested that the EPA consider the permit by rule and general permitting programs run by the states of Texas, Colorado, and Louisiana as models to address relocation of existing engines.

Because these commenters represent the oil and natural gas industry, the EPA infers that the commenters are referring to engines used in the oil and natural gas sector. The EPA notes that these general permits do not apply to engines in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector for which the EPA has issued a separate, final rulemaking in the form of a FIP.<sup>33</sup> The general permits being finalized for engines in this action do not contain any specific conditions related to in-kind replacements. The commenter has not provided a specific description for what is meant by “in-kind” replacements, only alluding to the fact they have “the same or lower emissions than the engine being replaced.” We cannot provide a more detailed response other than to point the commenter to how we addressed the issue of emissions unit relocation/replacement in the oil and natural gas industry in response to comments on final amendments to add to the list of

<sup>33</sup> “Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector,” U.S. Environmental Protection Agency, 81 FR 35944, June 3, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf>.

<sup>30</sup> Emergency generator engines at a single source are “exempt” if the combined maximum hp rating is less than 1,000 hp in attainment areas or less than 500 hp in ozone nonattainment areas classified as Serious or below. If your source consists of only exempt equipment, then you are not required to obtain a minor NSR permit.

exempted units in the Federal Indian Country Minor NSR rule.<sup>34</sup>

In the Federal Indian Country Minor NSR rule, we indicated our understanding that, in oil and gas sector operations, moving a single piece of equipment from one facility to another, or replacing a piece of equipment with a new one, can occur on a regular basis. For clarification purposes, we believed that it would be beneficial to both sources and reviewing authorities for us to list the different situations involving a piece of equipment (a unit) that we believed would be most common, and to specify the outcome with respect to minor NSR permitting and registration. In the preamble to the final rule, we listed expected outcomes to provide guidance on how we would address certain “relocation” scenarios. We did, however, indicate that the source owner/operator should still verify with its Reviewing Authority that the scenario provided, and its stated outcome, applies to its case.<sup>35</sup> Regardless, each model year engine has to meet its applicable emissions control NSPS requirements.

One commenter stated that the requirement to “maintain onsite all records required to be kept by this permit” is not practical at unmanned oil and natural gas production facilities. The commenter asked that the requirement be modified to recognize that records for unmanned facilities are normally kept at an office having operational control of the unmanned facility where the engines are located. The EPA notes that these general permits do not apply to engines in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector for which the EPA has issued a separate, final rulemaking in the form of a FIP.<sup>36</sup>

We do not anticipate that sources outside of the oil and natural gas production and natural gas processing segments of the oil and natural gas sector with stationary spark ignition and compression ignition engines will have

difficulty meeting the recordkeeping requirements. Therefore, no changes have been made to the final permits as a result of this comment.

Two commenters stated that the reporting requirements in the draft general permits for engines are equivalent to the requirements for major sources subject to Title V. The commenters argued that these requirements are not appropriate for minor or area sources. Specifically, the commenters asserted that deviation reporting, compliance certifications, and requiring signature by a Title V equivalent “responsible official” is overly burdensome to minor sources. The commenters also stated that these requirements would increase the burden on the EPA to review these reports. One commenter asserted that engines that are already affected sources of an NSPS or NESHAP should have no additional requirements (reporting or otherwise).

While the reporting requirements contained in the draft general permits may be similar to reporting requirements of the Title V Program, the EPA disagrees that a change is warranted. In developing the draft general permits, the EPA followed the Federal Indian Country Minor NSR rule, 40 CFR 49.155(a)(5), which identifies reporting requirements that must be included in each permit. The EPA cannot simply rely on assumed existing reporting and other requirements from other rules (e.g., NSPS or NESHAP) to ensure compliance with the emission limitations in our general permits. However, in some instances the reporting requirements in the final permits in this action are similar to or identical to reporting requirements in NESHAP and NSPS standards. Thus, for some requirements reporting under the other standards will also suffice for these permits. (If a permittee has a question about whether a particular reporting requirement under a NESHAP or NSPS will also suffice for these permits, they should work with the Reviewing Authority during the review process.) Further, the requirement to have a responsible official sign reports is common and consistent with state permitting programs. It is unclear why this certification would be costly or overly burdensome for permittees, as the commenter has not provided any specific information demonstrating an actual problem or a particular difficulty.

One commenter stated that the timeframe for submittal of performance test reports in the draft engines permits is too short. The commenter noted that performance test reports are typically required to be submitted within 60 days of completion of the test by NSPS and

NESHAP requirements for engines. The commenter also asked that stack test reporting required for NSPS and NESHAP satisfy the requirements for minor NSR reporting. In response, the EPA is extending the timeframe for submittal of performance test reports to 60 days for both the final “General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country” and the final “General Air Quality Permit for New or Modified Minor Source Compression Ignition Engines in Indian Country.” This timeframe is consistent with the requirements of 40 CFR part 60, subpart JJJJ, and 40 CFR part 63, subpart ZZZZ. Additionally, we are revising the draft engines general permits to clarify that facilities may satisfy the initial and subsequent stack testing requirements in the general permits by using the initial and subsequent performance tests performed to meet NSPS and NESHAP requirements, assuming the required testing requirements in the permits are met.

Two commenters requested that the engines general permits include provisions to establish a source as synthetic minor for criteria pollutants and/or HAPs. Another commenter asserted that the EPA must require more stringent monitoring, recordkeeping and reporting for these sources.

In our final action signed on April 17, 2015,<sup>37</sup> we finalized a policy that allows for the use of general permits in Indian country to create synthetic minor sources. Consistent with the policy, and after considering the concerns raised by commenters, we are finalizing the “General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country” and the “General Air Quality Permit for New or Modified Minor Compression Ignition Engines in Indian Country” to allow for their use by true minor sources and to create synthetic minor sources.<sup>38</sup> For the final “General Air Quality Permit for New or Modified Minor Source Compression Ignition Engines in Indian Country,” we added operational limits so that the permit serves both true minor and synthetic minor sources. For the same purpose, for the final “General Air Quality Permit for New or Modified

<sup>34</sup> “Review of New Sources and Modifications in Indian Country: Amendments to the Federal Indian Country Minor New Source Review Rule,” U.S. Environmental Protection Agency, 79 FR 31035, May 30, 2014, <https://www.gpo.gov/fdsys/pkg/FR-2014-05-30/pdf/2014-11499.pdf>.

<sup>35</sup> *Ibid.*

<sup>36</sup> “Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector,” U.S. Environmental Protection Agency, 81 FR 35944, June 3, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf>.

<sup>37</sup> “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,” U.S. Environmental Protection Agency, 80 FR 25068, May 1, 2015, <https://www.gpo.gov/fdsys/pkg/FR-2015-05-01/pdf/FR-2015-05-01-FrontMatter.pdf>.

<sup>38</sup> The Request for Coverage Forms for these permits list the different control options available to sources seeking coverage under the permits, making it clear which options are for true minor sources and which options are for synthetic minor sources.

Minor Source Spark Ignition Engines in Indian Country,” we created synthetic minor limits for fuel use for only natural gas engines as we believe that is the most likely fuel use scenario. We do not feel that we have sufficient information available to create these limits for other fuel types, as the other fuels can have varying characteristics, which will change engine efficiency and affect emissions. We do not see a need to add any additional monitoring, recordkeeping and reporting requirements for synthetic minor sources as the existing requirements in the general permits are sufficient to ensure sources’ emissions will remain below major source levels.

Two commenters requested clarification on the proposed FIP or permit by rule considered in the Advance Notice of Proposed Rulemaking.<sup>39</sup> The commenters noted that it is not clear whether the draft engines general permits cover engines located at oil and natural gas production facilities. The EPA recognizes that it was unclear at the time of proposal whether the draft permits would apply to engines located at oil and natural gas production facilities. The final engines general permits do not apply to engines in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector for which the EPA has issued a separate, final rulemaking in the form of a FIP following consideration of comments received on the proposed FIP.<sup>40</sup> Only new sources or modifications consisting of one or more non-emergency engines that are not located in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector are eligible to apply for coverage under the spark ignition and/or compression ignition stationary engines general permits. Engines in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector have been addressed in the separate, final rulemaking.<sup>41</sup>

<sup>39</sup> “Managing Emissions From Oil and Natural Gas Production in Indian Country,” U.S. Environmental Protection Agency,” 79 FR 32502, June 5, 2014, <https://www.gpo.gov/fdsys/pkg/FR-2014-06-05/pdf/2014-12951.pdf>.

<sup>40</sup> “Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector,” U.S. Environmental Protection Agency, 81 FR 35944, June 3, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf>.

<sup>41</sup> *Ibid.*

One commenter representing oil and natural gas sector interests expressed a preference for a permit by rule mechanism for compression ignition and spark ignition engines in lieu of a general permit, and recommended that the EPA consider, as an example, the permit by rule in the Texas Administrative Code, Title 30, Part 1, Chapter 106, Subchapter A, Rule section 106.4, coupled with the engine-specific Permits by Rule 106.511 and 106.512. The commenter stated that a permit by rule allows sources the flexibility to install and operate engines without delays arising from review and approval by permitting authorities. The commenter also pointed out that a primary advantage of implementing a permit by rule or FIP would be that a new federal decision triggering the Endangered Species Act (ESA) and National Historic Preservation Act (NHPA) would not be made each time a source avails itself of the permit by rule or FIP. Regarding the use of a permit by rule or FIP for compression ignition and spark ignition engines, the EPA did not propose the use of these permitting mechanisms in the proposed rule and does not consider their use appropriate at this time. Thus, we did not seek comment on their use at the time of proposal. Furthermore, the draft permits do not apply to engines in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector. The EPA has issued a separate, final rulemaking addressing oil and natural gas production sources, including non-emergency engines located at such sources.<sup>42</sup>

#### e. Comments and Responses Concerning General Permits for Graphic Arts and Printing Operations

One commenter noted that the preamble description of “graphic arts” does not match the description in the draft general permit and that the draft general permit does not include screen printing and manual and sheet-fed techniques. The EPA has corrected the discrepancy and modified the final questionnaire and Request for Coverage Form to clarify that the final “General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country” applies to sheet-fed printing operations.

One commenter recommended that all solvent cleaning operations (except batch loaded cold cleaners) comply with emission standards similar to SCAQMD Rule 1171. The EPA considered SCAQMD rules when developing some

<sup>42</sup> *Ibid.*

of the nonattainment area emission requirements. We have determined that the additional limits and work practice standards not already included in the draft permit should only be added to the requirements for Serious and above ozone nonattainment areas. As a result, we are revising requirements in the final “General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country” to include additional emission limits and work practice standards consistent with SCAQMD Rule 1171 that apply only in Serious and above ozone nonattainment areas.

One commenter noted that the term “reasonable time” in Condition 9 of the draft permit is subjective and not easily enforceable, and requested a specific timeframe. The EPA agrees with the commenter and replaced “reasonable time” with “30 days unless another timeframe is specified by the EPA” in the final “General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country.” We have made this change in all of the final permits included in this action.

One commenter recommended that the volatile organic compound (VOC) limits in Condition 17 of the draft general permit for graphic arts and printing operations be changed to grams per liter (g/L) of ink/coating/adhesive less water and exempt compounds. The EPA agrees with the recommendation that the coating content limits in Condition 17 should also be provided in g/L and has added VOC content limits measured in g/L. We also agree with the recommendation that the coating content limits be on an “as applied” basis, excluding water, and have modified the final “General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country,” accordingly. In response to the same comment, we have also added a definition for VOC to the final “General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country” to clarify the compounds not included when considering VOC.

One commenter stated that Serious and above ozone nonattainment area VOC limits for inks, coatings and adhesives should be limited, measured and reported in g/L or pounds/gallon (lbs/gal), excluding water and any other compounds exempted by the permitting authority or the local/neighborhood air district. The same commenter recommended for all areas that the proposed percent alcohol or percent alcohol substitute limits in Condition 18

of the draft general permit be converted to an equivalent VOC content limit in g/L, as applied, including water and exempt compounds. The same commenter requested that if the standards for fountain solution are changed to VOC content rather than percent alcohol or alcohol substitute, then the log required in Condition 31 of the draft general permit should reflect:

- (1) The units (*e.g.*, g/L or lbs/gal, as applied, including water and exempt compounds) of the fountain solution standards;
- (2) the units (*e.g.*, g/L or lbs/gal, as applied, less water and exempt compounds) of the VOC limits for the coating, ink or adhesive; and
- (3) the units (*e.g.*, g/L or lbs/gal, as applied, less water and exempt compounds) of the VOC limits.

The commenter also recommended that the VOC limits in Attachment C for all materials except fountain solution should be g/L or lbs/gal, less water and less exempt compounds, and that the VOC limits for fountain solution should be converted to an equivalent VOC content limit in g/L, as applied, including water and exempt compounds.

The EPA generally agrees with the commenters and has made corresponding changes to the final permit conditions. The EPA agrees with the recommendation that the nonattainment area VOC ink, coating, and adhesive content limits should also be provided in g/L and lbs/gal, which is how we presented the draft VOC content limits for nonattainment areas in the draft permit. We have retained the VOC limits provided in g/L and lbs/gal in the final "General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country." We also agree with the recommendation that the coating content limits should be on an "as applied" basis, excluding water and other compounds. We have added a definition for VOC to the final permit to clarify the compounds not included when considering VOC. We have also made corresponding changes to the recordkeeping requirements, as appropriate.

One commenter requested that the EPA clarify Condition 21 of the draft general permit to apply only to flexible packaging printing operations. In the final "General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country," the EPA agrees with the commenter and we have revised the heading for the draft condition that reads "Exemption for Non-compliant Materials" to a new heading, "Exemption for Flexible Packaging Printing Operations," to clarify that the

non-compliant materials exemption is only applicable for flexible packaging printing.

One commenter requested that the frequency of monitoring of the usage of all VOC-containing material (Condition 27 of the draft general permit) be changed from a weekly basis to a daily basis. The EPA agrees with this recommendation as it relates to certain nonattainment areas and we are, accordingly, revising the final "General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country" to include a requirement for daily monitoring of VOC usage for Serious and above ozone nonattainment areas. The EPA has concluded that a greater level of monitoring is necessary: (1) To protect air quality in areas that are designated as Serious and above ozone nonattainment; and (2) to ensure a consistent set of requirements across state and tribal areas in common airsheds.

One commenter requested that the EPA add requirements for performance testing at facilities with air pollution control equipment to verify the overall VOC control efficiency and to quantify the NO<sub>x</sub> emissions from any air pollution control equipment (*e.g.*, oxidizers). The EPA agrees with the commenter and has added testing requirements for potential add-on control equipment. (The option for owners or operators to rely on add-on control devices for compliance was added to the permit in response to another comment.) For each add-on control system used at a graphic arts and printing operation source, the source must conduct an initial performance test within certain timeframes to verify compliance with the add-on control standards according to a test plan submitted to the Reviewing Authority. The testing is to determine the capture/control efficiency of the emission control system. The source must also conduct subsequent performance tests every five years.

One commenter requested that the monthly record requirements in Conditions 31 through 33 of the draft general permit be clarified to specify calendar-monthly records. Although the EPA intended that records be kept on a calendar-monthly basis, we recognize that the draft permit was unclear. We are, therefore, revising the final "General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country" to clarify that the recordkeeping requirements are to be kept on a calendar-monthly basis. This means under the final permit each

source must update a log of their usage of VOC-containing material and report that usage on a calendar-monthly basis.

One commenter requested that if requirements to conduct additional performance tests are added to the general permit, the EPA should include a requirement for recording the results of each performance test. The EPA agrees that the results of all performance tests should be recorded and the records maintained. As a result, in authorizing the use of add-on controls, we included recordkeeping and reporting requirements for specified performance testing for add-on control equipment.

One commenter recommended that the definition of "coldset" be modified to clarify that coldset printing operations include presses with infrared or other energy curing devices such as ultraviolet dryers. The same commenter recommended that the definition of "heatset" be modified to clarify that coldset printing operations do not include presses with infrared or other energy curing devices such as ultraviolet dryers. The EPA has reviewed these definitions and agrees that the language suggested by the commenter provides additional clarifications that can help facilitate a better understanding of the permit's requirements. We have revised the definitions, accordingly, to add the commenter's suggested language.

One commenter recommended that the definition of "offset lithographic and letterpress printing operation" be modified to be consistent with SCAQMD Rule 1130. The EPA has reviewed this definition and agrees with the language suggested by the commenter because the change provides additional clarification that can help facilitate understanding of the permit's requirements. We have revised the definition accordingly.

One commenter recommended that the EPA add a definition for "exempt compounds," including compounds in the jurisdiction of neighboring air districts to Indian country (SCAQMD Rule 102). The EPA agrees that the definition of VOCs provided in the final "General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country" (that was not provided in the draft permit) should identify "exempt compounds." We have revised the ink/coating content limits to regulate on an "as applied" basis, excluding water. We have also added a definition for VOC to the final "General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country" to clarify which compounds are not included when considering

VOC. However, in lieu of referencing the exempt compounds in SCAQMD Rule 102, the definition references the list of exempt compounds in 40 CFR 51.100(s)(1), which we have determined to be more generally applicable to sources in Indian country.

One commenter recommended that the EPA include a definition for "fountain solution" and provided a suggestion. The EPA agrees that including such a definition will improve the rule's efficacy and enforceability and agrees that the commenter's proposed definition is appropriate. As a result, we have added the suggested definition for "fountain solution" to the final "General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country."

One commenter recommended that the EPA include a definition for "grams of VOC per liter of coating (or ink or adhesive), less water and less exempt compounds." The commenter provided the EPA with a calculation method for VOC content per liter of coating used. The EPA agrees that the information suggested by the commenter will improve the permit's efficacy. We have, therefore, added the information to the Sample Calculations section of the final "General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country."

One commenter recommended that the sample calculations in Attachment D of the general permit should include more representative values for heatset lithographic ink. The commenter also noted a typographical error for the VOC retention factor for heatset lithographic ink, which should be listed as 20 percent instead of 30 percent. In addition, the EPA acknowledges that the sample calculations in Attachment D of the permit should reflect more representative values for heatset lithographic inks because it is intended to provide "real world" values. We have modified Attachment D to include more representative values and to correct the erroneous VOC retention factor.

One commenter requested that the EPA add language to clarify that these are uncontrolled VOC emissions. The commenter referenced language in the preamble which indicates that printing presses "would need to be able to demonstrate compliance with the permit (25 tpy VOC) without the consideration of controls." The same commenter requested that the EPA add language to clarify what equipment "all printing lines" includes (*i.e.*, combustion emissions from gas-fired equipment, air pollution control

equipment, internal combustion engines, pre-press operations, or other non-printing related VOC-emitting operations performed). The EPA agrees with the commenter's suggestion of clarifying the permit language. We have done so by clarifying that compliance with the following condition must not consider the reduction in emissions from any add-on control technology: "The permittee shall not allow volatile organic compound (VOC) emissions from an individual printing press (printing line) to exceed 25 tons per year." The EPA also agrees with the commenter that the equipment included in all printing lines should be identified in the permit. The permit has been revised accordingly.

Two commenters supported the proposal to increase the stringency of the overall tpy emission limitations for all printing lines at a facility based on the increasing classification of the ozone nonattainment area designation. Another commenter asserted that, for nonattainment areas, the EPA should require the most stringent emissions limitation or installation of BACT based on requirements of the neighboring air district, regardless of the facility's PTE or throughput. The commenter argued that emissions generated in these areas would have an effect on the neighboring district's air quality.

The EPA has determined that the VOC content limits in the draft general permit for graphic arts and printing operations effectively limit VOC emissions in nonattainment areas and are consistent with the BACT requirements suggested by the commenter. However, we are also adding add-on control requirements for this source category as an option for complying with the VOC content limits contained in the draft permit. This option provides owners and operators the flexibility to use non-compliant materials, while also protecting air quality. Finally, we note that the EPA has the authority to determine that a particular general permit is no longer sufficient to protect air quality for new or modified sources in a geographic area and, therefore, does not meet the requirements of the Federal Indian Country Minor NSR rule. Such a determination would, for example, consider local air quality conditions, typical control technology and other emission reduction measures used by similar sources in surrounding areas, anticipated economic growth of the area, and/or cost-effective emission reduction alternatives.

One commenter argued that facilities utilizing fuel combustion heating units (*e.g.*, ovens, dryers, oxidizers) in Serious

and above ozone nonattainment areas should use only natural gas as their primary fuel for heatset printing presses (non-electric heated), and that the NO<sub>x</sub> emissions from heatset printing presses should not exceed 30 parts per million, volumetric dry, corrected to 3 percent oxygen. The same commenter requested that if NO<sub>x</sub> concentration limits are added to the emissions limits and standards for gas-fired dryers/ovens on heatset printing presses, the EPA should consider adding requirements for performance tests to be conducted on heatset printing press ovens with gas-fired burners to demonstrate compliance. The EPA has considered the commenter's recommendations and has included the requirements proposed by the commenter into the requirements for ozone nonattainment areas in the final "General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country." The EPA has concluded that in ozone nonattainment areas a greater level of control is required to protect air quality. Thus, the requirements, which would reduce levels of NO<sub>x</sub> from combustion sources, are appropriate for these areas. Therefore, we have added an overall capacity limit for combustion units, excluding engines, that applies to all areas, attainment and nonattainment. The more stringent provisions recommended by the commenter will apply only to Severe and Extreme ozone nonattainment areas because they are necessary to ensure that the permit provides adequate air quality protection. We have not required the more stringent provisions in Serious ozone nonattainment areas because we do not believe that in those areas the extra control is necessary to protect air quality. We have also revised the permit to reflect associated monitoring and recordkeeping requirements.

One commenter stated that in nonattainment areas, all facilities should vent ovens to air pollution control equipment with a minimum 95 percent overall VOC control efficiency. The commenter requested that the EPA clarify that in an Extreme ozone nonattainment area (the South Coast and San Joaquin Valley Air Basins), the major source threshold for VOC is 10 tpy. The commenter referenced the SCAQMD BACT for PM and VOC emissions from a heatset lithographic printing press, which requires venting the press oven to air pollution control equipment with a minimum 95 percent overall VOC control efficiency. The commenter noted that the facility VOC emission threshold for a general permit can be as low as 7 tpy from all printing

lines combined; however, all heatset lithographic printing press ovens should be vented to air pollution control equipment with a minimum 95 percent overall VOC control efficiency. The EPA has included the requirements proposed by the commenter in the requirements of the final “General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country” to allow sources the flexibility to use add-on control requirements as an alternative to the VOC content limits in the permit. In addition, we are making the add-on control requirement mandatory in Extreme ozone nonattainment areas. Furthermore, we have determined that provisions similar to those in the SCAQMD requirements identified by the commenter are appropriate to include because the only Extreme ozone nonattainment areas in Indian country are located in California. In addition, we are also clarifying that in ozone nonattainment areas, new or modified sources must obtain a permit for VOC emissions increases of 2 tpy or more. Sources in Extreme ozone nonattainment areas emitting above 7 tpy are not eligible for the final “General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country” and must obtain a source-specific permit prior to beginning construction.

One commenter recommended, for nonattainment areas, that all solvent cleaning operations (excluding batch loaded cold cleaners) should comply with lower emission standards. The commenter requested that the EPA consider the standards in SCAQMD Rule 1171. The EPA considered SCAQMD rules when developing some of the nonattainment area emission requirements for Serious and above ozone nonattainment areas and concluded that the requirements in SCAQMD Rule 1171 are appropriate for inclusion in the final permit generally because they are necessary to ensure consistency (and, thus, a more level playing field) with requirements in neighboring areas under local requirements. The EPA has, therefore, included the emission standards and specific work practice standards in Rule 1171 referenced by the commenter as requirements in the final permit for sources in nonattainment areas.

One commenter recommended that, at graphic arts and printing operations in nonattainment areas, compression ignition emergency engines should comply with NSPS 40 CFR part 60, subpart III, and NESHAP 40 CFR part 63, subpart ZZZZ. The commenter also recommended additional limits on

operating hours of up to 50 hours per year for maintenance and testing and 200 hours per year total operation for nonattainment areas. The EPA disagrees with the commenter that compression ignition emergency engines at graphic arts and printing operations in nonattainment areas should meet limits on operating hours in addition to complying with 40 CFR part 60, subpart III, and 40 CFR part 63, subpart ZZZZ. Additional operating limits are unnecessary and would conflict with the requirements of the NSPS and NESHAP, which would create an additional, unjustified reporting burden for sources. However, we do agree that in nonattainment areas, emergency engines that are not otherwise exempt from the Federal Indian Country Minor NSR Program should be certified to the EPA’s standards in 40 CFR part 60, subpart III. The final “General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country” has been revised, accordingly.

#### f. Comments and Responses Concerning General Permits for Sawmill Facilities

One commenter stated that prohibiting open burning (Condition 16 in the draft sawmill facilities general permit) conflicts with the FARR open burning rule (40 CFR 49.131). The EPA notes that the condition in the draft general permit only bans open burning at sawmills. It is not intended to prohibit open burning of all kinds, but was included to prevent operators of sawmill facilities from burning waste or other disposed materials on the property of the mill. It does not prohibit open burning at locations other than sawmill facilities and, thus, is consistent with the FARR in that regard. The EPA does not believe that there is a conflict. However, disposal of any waste from sawmill facility activity must be handled in accordance with applicable requirements in all tribal, local and federal regulations and statutes.

One commenter objected to Condition 11 in the draft sawmill facilities general permit, stating that it is not necessary to label emission units and air pollution control equipment with identification numbers, and that serial numbers or the location of the unit should suffice. The EPA believes that the identification and labeling of emission units and air pollution equipment is needed to facilitate identification of equipment covered under the general permit by inspectors. Therefore, we are finalizing the labeling requirements included in the draft permit. It is worth noting that this requirement is consistent with all of the other permits in this final action and

in the final action that we finalized in May 2015.<sup>43</sup>

One commenter stated that the pollution control requirements in Conditions 24 to 26 of the draft sawmill facilities general permit are too specific. The EPA disagrees. Specific permit conditions are necessary in order to ensure that the conditions in the general permit are enforceable. No changes have been made to the permit conditions in the final “General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country,” as a result of this comment.

One commenter noted that if a planar mill does not have a baghouse or fabric filter, per Condition 24 of the draft sawmill facilities general permit, they would be required to obtain a source-specific permit. The same commenter stated that, per Condition 25 of the draft general permit, sawmill facilities with uncovered outdoor operations, or with covered operations that do not have a baghouse or fabric filter, would need to obtain a source-specific permit. The same commenter also stated that, per Condition 26 of the draft general permit, sawmill facility operations that are indoors without a baghouse or fabric filter would be required to get a source-specific permit. In all three cases, the EPA agrees and has determined that the use of a baghouse or fabric filter is a reasonable and readily available technology for new or modified sources indoors and covered facilities outdoors. Sources that cannot, or do not wish to, install a baghouse or fabric filter must seek a source-specific permit.

One commenter objected to weekly visible emissions surveys (Conditions 33 and 34 of the draft sawmill facilities general permit). The commenter argued that weekly surveys would be burdensome, especially compared to Title V sawmill facilities that have a quarterly survey frequency. The EPA disagrees with the commenter that weekly visible emission surveys are overly burdensome. They are not resource-intensive to accomplish using Method 22,<sup>44</sup> as specified in the draft permit (versus the Method 9<sup>45</sup> opacity

<sup>43</sup> “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,” U.S. Environmental Protection Agency, 80 FR 25068, May 1, 2015, <https://www.gpo.gov/fdsys/pkg/FR-2015-05-01/pdf/FR-2015-05-01-FrontMatter.pdf>.

<sup>44</sup> Appendix A-4 to 40 CFR part 60—Test Methods 6 through 10B, Method 9—Visual determination of the opacity of emissions from stationary sources, [https://www.ecfr.gov/cgi-bin/text-idx?SID=ff80e78b603d3f6e25595510b35f885&mc=true&node=pt40.8.60&rgn=div5#ap40.8.60.a\\_67](https://www.ecfr.gov/cgi-bin/text-idx?SID=ff80e78b603d3f6e25595510b35f885&mc=true&node=pt40.8.60&rgn=div5#ap40.8.60.a_67).

<sup>45</sup> Appendix A-7 to 40 CFR part 60—Test Methods 19 through 25E, Method 22—Visual

test, which requires certified observers). The fact that there may be some Title V permits for sawmills that only require quarterly surveys does not mean that quarterly monitoring is appropriate for sources wishing to operate pursuant to the general permit. The general permits developed by the EPA have consistently used weekly surveys for monitoring opacity and fugitive emissions. Frequent monitoring of equipment is necessary to ensure a source is in compliance at all times. No changes have been made to the conditions of the final "General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country," as a result of this comment.

One commenter pointed out that Condition 35 of the draft sawmill facilities general permit, which requires an initial performance test for fugitive emissions, references Condition 17 of the draft sawmill facilities general permit, which applies to emissions units and not sources of fugitive emissions. The EPA has corrected the final "General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country," which inadvertently applied only to affected emission units. We have modified the final permit to also require that sources of fugitive emissions not discharge into the atmosphere any gases that exhibit 20 percent opacity or greater averaged over any consecutive 6-minute period. These changes correct the final "General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country," which requires an initial performance test to verify compliance with its opacity limitations.

One commenter stated that the testing requirements in Condition 37 of the draft sawmill facilities general permit for emergency engines are excessive, especially for older engines. The EPA disagrees with the commenter that the testing requirements for emergency engines are excessive. The requirements in the permit only apply to engines that have not been certified to the applicable standards in the permit. The testing requirements are necessary to ensure that uncertified engines under the permit comply with applicable limits in the permit.

One commenter recommended revising Condition 40.b. of the draft sawmill facilities general permit to read: "For each kiln, monthly throughput 'by species' in Mbf." The EPA agrees with the commenter's recommendation,

which clarifies that records must be kept that reflect the monthly throughput of the individual tree species because different species release differing amounts of VOC. We have modified the final "General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country," accordingly.

One commenter pointed out a circular reference in Condition 50.c. of the draft sawmill facilities general permit. The commenter is correct that Condition 50.c. in the draft general permit inadvertently contained a circular reference. We have modified the "Annual Reports" Condition in the final "General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country" to refer correctly to the "Deviation Reports" Condition.

One commenter noted that, in the request for coverage for the draft sawmill facilities general permit, when the answer to a question would invalidate the use of a general permit, the instructions sometimes direct the applicant to contact the permitting authority for a source-specific permit. However, in other instances the instructions do not tell the applicant that they do not qualify for the general permit. The EPA acknowledges that not all of the questions on the Request for Coverage Form include a directive to contact the permitting authority for a source-specific permit based on a particular answer. This directive was only included for questions for which a specific "yes" or "no" answer would result in permittees not qualifying for the sawmill facilities general permit. In the case of Question 19 in the draft Request for Coverage Form, which was identified by the commenter as an example, the question requests the distance of the facility from the nearest property boundary or nearest residence. Because we are not finalizing setback requirements for sawmill facilities, this question has been removed from the Request for Coverage Form; therefore, the commenter's concern regarding this particular question is moot.

#### *B. Issues Concerning Aspects of Finalizing a General Permit/Permit by Rule for Graphic Arts and Printing Operations*

##### 1. Proposed Rule

In the July 17, 2014, proposed rule, we proposed two types of minor NSR preconstruction permits to help streamline permitting of true minor sources that construct or modify in Indian country and that belong to one of six additional source categories. The

first type of permit is a general permit and the second type is a permit by rule. As our preferred approach, we made available draft general permits for the six source categories. As an alternative, for graphic arts and printing operations, we requested comment on whether, in lieu of establishing a general permit for the source category, we should instead adopt a permit by rule.

We requested comment on all aspects of a draft general permit or proposed permit by rule for graphic arts and printing operations. We noted that we might not finalize the draft general permit for graphic arts and printing operations, if we finalized a permit by rule for the source category. Alternatively, we indicated that we might opt to finalize both permitting mechanisms for the source category, and might tailor one of the permitting mechanisms to provide authorization to construct or modify true minor sources (*i.e.*, permit by rule) and another to provide enforceable limitations to create synthetic minor sources (*i.e.*, general permit). We specifically requested comment on this "hybrid" approach.

In the proposal, we sought comments on all aspects of the draft implementation tools we provided (*e.g.*, general permit Request for Coverage Form). The draft general permit application for graphic arts and printing operations is more streamlined because sources in the category represent more straightforward operations, largely involve one air pollutant (*i.e.*, VOCs) and, therefore, could necessitate less intensive review for approval. The draft general permit application form for the category asks for basic solvent usage information and whether the source has complied or will comply with relevant requirements. By contrast, the draft general permit applications for concrete batch plants, engines, boilers and sawmill facilities request more detailed technical information about the proposed facility in question because these facilities are more complex and can involve multiple operations and pollutants. The draft form was also intended to serve as a Notification of Coverage Form for sources seeking coverage under a permit by rule, should we have decided to issue one for this category.

##### 2. Summary of Comments, Responses and Final Action

With respect to comments on the appropriateness of utilizing a permit by rule for graphic arts and printing operations, responses are addressed here and in Section 2.0 of the RTC Document. Overall, as a result of the comments received on the proposal and

determination of fugitive emissions from material sources and smoke emissions from flares, <https://www.ecfr.gov/cgi-bin/text-idx?SID=ff80e78b603d3fe6e25595510b35f885&mc=true&node=pt40.8.60&rgn=div5#ap40.8.60.a.67>.



our continued evaluation of the circumstances, we are issuing only a general permit for graphic arts and printing operations. Three commenters provided comments regarding the EPA's proposal to establish a permit by rule for graphic arts and printing operations. One commenter agreed that the approach could provide significant time savings due to its streamlined approach. However, two commenters were concerned that a permit by rule approach does not provide the public, including Indian tribes, the opportunity to comment on a minor source's use of the permit. Another commenter disagreed that a permit by rule is consistent with the Federal Indian Country Minor NSR rule, which requires preconstruction permits. The commenter asserted that use of a permit by rule would effectively mean that sources exceeding the minor source permit threshold are effectively exempt from permitting. One commenter argued that the use of a permit by rule on tribal lands is not appropriate for either true minor or synthetic minor sources. Two commenters requested that the EPA provide either a notice and comment period or a consultation process for tribes for the permit by rule approach, citing that tribes must be given an opportunity to comment to recognize their sovereignty. For these reasons, the commenters supported only a general permit approach.

The EPA is not finalizing a permit by rule, either in lieu of or in conjunction with a general permit, for the graphic arts and printing operations source category for two reasons. First, many sources in this source category are major sources and require synthetic minor source permits in order to gain minor source status. While some of these sources may be true minor sources, the potential variation in size of individual sources warrants including a mechanism for creating synthetic minor sources. The permit by rule is not a mechanism that can be used to create synthetic minor sources; the general permit is a mechanism that can create synthetic minor sources, as it affords the opportunity for the Reviewing Authority to perform a review. The EPA established this approach when we finalized the first set of general permits and permits by rule in May 2015.<sup>46</sup> Thus, a general permit is more appropriate for this source category. Second, we agree with commenters that

the permit by rule approach does not provide the public, including Indian tribes, the opportunity to comment about a minor source's use of the permit. We are, therefore, finalizing a general permit for this source category, which is an approach that affords the public an opportunity to object to a source gaining coverage under the permit pursuant to 40 CFR 49.157(a)(5).

The EPA disagrees with the commenter that the use of permits by rule effectively means that sources exceeding the minor source permit threshold are exempt from a permit. We also disagree that the permits by rule are not consistent with the concept of preconstruction permits in the Federal Indian Country Minor NSR rule. A permit by rule establishes a standard set of requirements that must be met by any source commencing construction in reliance on that permit and, thus, serves the same purpose as any other preconstruction permit. The primary difference between a permit by rule and a general permit is procedural, not substantive. As to consistency with the concept of preconstruction permits in the Federal Indian Country Minor NSR rule, the rule specifically authorizes the issuance of the general permits and the permits by rule we have issued thus far.<sup>47</sup>

With respect to comments on finalizing both permitting mechanisms for graphic arts and printing operations, we include responses here and in Section 7.0 of the RTC Document. As noted, we have decided to finalize only a general permit for graphic arts and printing operations, rather than to make both permit types available for the graphic arts and printing operations source category. We are not finalizing the proposed "hybrid" approach for graphic arts and printing operations because the EPA does not believe that sources in the source category are appropriate candidates for permits by rule, particularly since some of them may be major sources seeking synthetic minor status. Furthermore, we believe that having two permit types would add additional complication to administration of the rule with little, if any, apparent benefit. We are not adopting such a hybrid approach.

Finally, the EPA did not receive any comments on the issue of using a streamlined general permit/permit by rule application for graphic arts and printing operations. However, because this permit will serve as a general permit for true minor and synthetic minor sources, we are enhancing the application to request additional details

about equipment present at the site. Since applicant sources could potentially be major sources seeking minor source status, we need to ensure that we have sufficient information to be able to make an approval review decision.

### *C. Proposed Rule Change to the Federal Indian Country Minor New Source Review Rule in One Area: Shortening the General Permit Application Review Process From 90 to 45 Days for Graphic Arts and Printing Operations*

#### 1. Proposed Rule

In the July 17, 2014, proposed rule, we proposed to change the Federal Indian Country Minor NSR rule at 40 CFR 49.156(e)(4) to shorten the general permit application review process from 90 to 45 days for one source category: Graphic arts and printing operations.

#### 2. Summary of Comments, Responses and Final Action

This section provides a brief summary of other significant comments received and our responses. A full summary of the comments received on this subject and our responses are presented in Section 8.0 of the RTC Document.

Two commenters supported the proposal to amend 40 CFR 49.156(e)(4) to shorten the review period to 45 days for the graphic arts and printing operations permit. Conversely, one commenter recommended not reducing the review period since the EPA requires time to: (1) Review the material safety data sheets of graphic arts materials used; (2) review the specifications on gas-fired burners on heatset printing presses and oxidizers; and (3) evaluate internal combustion engines for compliance with NSPS and NESHAP requirements. We agree with the commenter that this source category requires a 90-day review period, particularly since the general permit is also serving as a permit to create synthetic minor sources. Consequently, the EPA is not finalizing revisions to § 49.156(e)(4) to shorten the general permit application review process from 90 to 45 days for the graphic arts and printing operations source category.

### *D. Control Technology Review*

#### 1. Proposed Rule

In the proposal, we requested comment on various aspects of the EPA's conclusion following its control technology review that, because the control measures in the draft general permits are currently used by other similar sources in other areas of the country, the measures in the draft

<sup>46</sup> "General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories," U.S. Environmental Protection Agency, 80 FR 25068, May 1, 2015, <https://www.gpo.gov/fdsys/pkg/FR-2015-05-01/pdf/2015-09739.pdf>.

<sup>47</sup> Ibid.

permits are technically and economically feasible and cost effective.

## 2. Summary of Comments, Responses and Final Action

This section provides a brief summary of significant comments received and our responses. A full summary of the comments received on this subject and our responses are presented in Section 3.0 of the RTC Document. The EPA is largely retaining the basic approach to the control technology review outlined in the July 17, 2014, proposal.

One commenter expressed confusion over the term “control technology.” The commenter requested the EPA clarify if this refers to add-on controls or if it includes controls that may be part of the equipment itself. In response, we note that the term “control technology” refers to integrated controls, add-on controls and other emissions reduction techniques (*e.g.*, work practice standards and the use of compliant materials).

One commenter stated that because the EPA intends to issue general permits at the national level instead of through Regional Administrators, the Agency should require the most stringent requirements applicable in adjacent areas of Indian country. The commenter recommended that the general permits require the use of BACT and the most current version of adjacent area rules and regulations to avoid a competitive disadvantage. The commenter also noted that the EPA may wish to consider making general permits applicable only within one of the EPA Regions, in order to avoid making sources in Indian country subject to more stringent requirements than those in adjacent states.

Regarding the level at which the EPA issues general permits, the commenter is correct that all of the general permits that the EPA has established to date (including this set) have been at the national level. However, we may in the future issue general permits (or permits by rule) on a smaller geographic scale for a particular state or region of the country. In fact, in the first batch of streamlined permits we issued, we indicated that EPA Region 9 will be developing a general permit or permit by rule for areas within California for gasoline dispensing facilities.<sup>48</sup> In addition, once the EPA issues a general permit at the national level, Regional offices serving as the Reviewing Authority are responsible for processing the Request for Coverage and issuing the Approval of Request for Coverage under nationally-issued general permits (as

well as any general permits issued by that Region for a smaller geographic area), Alternatively, a tribe may serve as the Reviewing Authority for its area of Indian country by taking delegation of responsibility for implementing the permit program.

Regarding other points made by the commenter, the EPA crafted the minor source general permits to ensure air quality is properly protected and to provide a streamlined approach, where appropriate. We undertook a survey of existing national and state requirements, and reviewed, weighed and compared these requirements to develop general permits that would help provide a level playing field for minor sources in Indian country. The EPA has not necessarily adopted the most stringent of these observed standards, but, rather, has evaluated relevant rules and regulations to determine the most appropriate and commonly employed standards for each source and unit type covered under the Federal Indian Country Minor NSR rule. The EPA has the authority to determine that a particular general permit or permit by rule is no longer sufficient to protect air quality for new or modified sources in a particular geographic area and, thus, does not meet the requirements of the Federal Indian Country Minor NSR rule. Such a determination would consider, for example, local air quality conditions, typical control technology of other emission reduction measures used by similar sources in surrounding areas, anticipated economic growth in the area and/or cost-effective emission reduction alternatives. If the EPA were to make such a determination, it could either issue a revised general permit for use in that area or require sources in that area to obtain source-specific permits. In addition, the EPA Regional Administrators may adopt general permits or permits by rule that apply within those areas.

### E. Setback Requirements

#### 1. Proposed Rule

For the draft general permits for boilers, concrete batch plants, engines, and sawmill facilities, we included permit provisions related to the location of emitting activities relative to the source property boundary. We call these provisions, which are designed to minimize the impacts of emissions, setback requirements. Under a setback requirement, sources may not locate or expand within a specific distance from the property boundary and nearest residences. We proposed that these provisions seemed both reasonable and prudent measures to protect local air

quality, and are economically feasible and cost effective.

## 2. Summary of Comments, Responses and Final Action

This section provides a brief summary of significant comments received and our responses. A full summary of the comments received on this subject and our responses are presented in Section 4.0 of the RTC Document.

Two commenters supported the inclusion of setback requirements for boilers, concrete batch plants, spark and compression ignition engines, and sawmill facilities. These commenters requested that the EPA not only apply the setback requirements to schools and nursing homes, but also to other physical locations such as community centers, health care facilities, hospitals, agricultural fields, ball fields, parks, locations designated for cultural and subsistence activities, and waterways. The same commenters requested that the EPA carefully consider each tribe’s sovereign right to manage and oversee land use within its own boundaries. The commenters noted that some tribes may not provide for setback requirements where others may already have setback requirements that are less restrictive than those in the draft permits. The commenters recommended that the EPA consult and communicate with tribes on the application of setback requirements and that the EPA insert a provision in the general permits allowing a tribe to obtain a partial or full waiver from the requirements (*e.g.*, from the types of buildings to which the requirements apply).

Two commenters objected to the inclusion of setback requirements in the stationary compression ignition and spark ignition engines general permits. The commenters argued that the EPA has not demonstrated the need for or provided any data to support setback requirements and that no current NSPS or NESHAP for engines includes similar requirements. The commenters further argued that setting distances to property boundaries is counter to, and conflicts with, federal and state agency requirements for land management and parks and wildlife preserves created to minimize surface disturbance and encroachment on endangered species areas. One commenter noted that specific setback requirements are already included in Indian mineral leases. Another commenter urged that setback regulations have historically been considered “land use” regulation relegated to state and local jurisdictions. The commenters stated that establishing a setback requirement that applies to all of Indian country would create

<sup>48</sup> Ibid.

jurisdictional conflicts. The commenter further warned that the EPA would be setting precedent that could cause other regulatory agencies to follow suit.

One commenter did not support the use of physical markers on a property to show compliance with the setback requirements.

Due to the lack of an EPA analysis demonstrating the air quality benefits of requiring setbacks, we lack sufficient information to incorporate them in the final general permits for boilers and emergency engines, concrete batch plants, spark and compression ignition engines, and sawmill facilities. Therefore, the final general permits for these source categories do not contain setback provisions. Nonetheless, the Reviewing Authority retains the discretion to deny the granting of source coverage under the general permits for any source category based on local air quality concerns.

#### *F. Requirements Relating to Threatened or Endangered Species and Historic Properties*

##### 1. Proposed Rule

The ESA requires federal agencies to ensure, in consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (the Services), that any action they authorize, fund, or carry out will not likely jeopardize the continued existence of any listed threatened or endangered species, or destroy or adversely modify the designated critical habitat of such species. 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. We provided draft screening processes in Appendices to the draft Request for Coverage Forms for the draft general permits that we made available for comment to ensure appropriate consideration of listed species and historic properties.

##### 2. Summary of Comments, Responses and Final Action

This section provides a brief summary of significant comments received and our responses. A full summary of the comments received on this subject and our responses are presented in Section 5.0 of the RTC Document. Overall, as a result of the comments we received, we are largely retaining the processes we

presented in the proposal with some adjustment in this final action.

Two commenters expressed concerns regarding provisions for listed species and historic properties. One commenter contended that the Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA) currently develop a resource management plan for oil and gas activities on Indian lands that triggers ESA and NHPA review. The commenter argued that it is unnecessary to repeat an ESA or NHPA review during the general permit process given that it may rely on this existing review. The commenter further asserted that the proposed provisions would require minor source permit applicants to interface with various federal agencies in the absence of any procedures governing that interaction, and that the legal consequences of certifying compliance with the ESA and NHPA are undefined.

The EPA is aware that new sources locating in Indian country may also need approvals or other authorizations from other federal agencies such as the BIA or the BLM, which may trigger a review under the ESA and/or the NHPA. Such approvals or authorizations by other agencies are, however, separate from the authorization provided in the EPA's minor NSR general permits. However, to avoid duplication of effort, we believe it is appropriate for facilities seeking to be covered under the general permits to use listed species and historic property assessments, analyses, and outcomes obtained through BIA/BLM's separate compliance with the ESA and NHPA in connection with their own actions to satisfy the relevant screening procedures for coverage under the minor NSR general permits. We anticipate that where a separate ESA or NHPA compliance process is undertaken by BIA/BLM in connection with a new source, that process will satisfy the EPA's permit screening procedures.

Therefore, we have modified the listed species procedures in appendix A for endangered and threatened species that are attached to the Request for Coverage Forms to clarify that this approach is the first consideration in the screening process. We believe that this option as a first choice is already clear in the historic property screening procedures and, therefore, we have not revised appendix B in that regard in the historic properties procedures included with the Request for Coverage Forms.

One commenter expressed concerns about the ability of permit applicants to meet the compliance requirements of the ESA and NHPA, citing limitations in time and availability of in-house

expertise. The commenter asserted that the process could be costly and requested whether the EPA has assessed the time and cost impacts to comply with the ESA and NHPA. The EPA understands that satisfactorily addressing the screening procedures for threatened and endangered species and historic properties will impose some burden on sources seeking coverage under general permits. However, we have attempted to streamline the screening processes in order to minimize the effort needed to complete them. For example, both sets of procedures have been clarified to make more explicit that sources can, as appropriate, rely on prior assessments performed by other federal agencies to satisfy the procedures.

#### *G. Use of Throughput Limits and Capacity Limits*

##### 1. Proposed Rule

The Federal Indian Country Minor NSR rule requires the Reviewing Authority to establish annual allowable emission limitations for each affected emissions unit and for each NSR-regulated pollutant emitted by the unit, if the unit is issued an enforceable limitation lower than the PTE of that unit (see 40 CFR 49.155(a)(2)). The EPA included throughput, fuel usage, and materials usage limitations and compliance monitoring requirements in the draft general permits and proposed permit by rule as a means for limiting emissions and demonstrating compliance with those limits.

For the six source categories in this action, some states (but not all) provide both annual tpy allowable emission limitations and throughput limits in their general permits. Other states provide only overall production limits that limit the amount of throughput a facility can process over a period of time. We requested comment on the use of throughput limits as a surrogate for tpy 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 tpy annual allowable emission limitations.

##### 2. Summary of Comments, Responses and Final Action

This section provides a brief summary of significant comments received and our responses. A full summary of the comments received on this subject and our responses are presented in Section 6.0 of the RTC Document. In the final general permits, the EPA has retained the throughput limits contained in the

draft general permits, except that we have revised the limits in the final general permits for boilers and emergency engines, spark ignition engines, compression ignition engines and sawmill facilities. This has included adding control options and fuel-based limits to accommodate synthetic minor sources.

Two commenters supported the use of throughput production limits as a surrogate for annual tpy emission limits in the draft concrete batch plants general permit. The commenters declared that facilities currently track information about the material they process, and that complying with a throughput limitation would be less costly. One commenter stated that the proposed rule does not provide for different production limits for facilities located in attainment and nonattainment areas for PM, and requested that the EPA consider this issue more closely.

The EPA appreciates the commenters' support for the use of throughput limits. The EPA also appreciates the commenters' concern regarding separate production limits for PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment areas. We set the throughput limit in the draft concrete batch plants general permit to ensure that a source in any area (attainment or nonattainment) would not be a major source.

For the draft boilers general permit, two commenters supported the use of varying capacity limits as a surrogate for annual tpy emission limits based on boiler and process heater size. The commenters supported the use of different capacity limits for process heaters and process heaters and boilers combined located in ozone nonattainment areas. The commenters also supported finalizing two boilers general permits—one intended for smaller, simpler sources using capacity limits, and one for larger, more complex sources using tpy emission limitations and additional monitoring and recordkeeping. The EPA has decided to issue only one final "General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country," which also covers emergency engines. We do not agree that two are needed. We believe that one permit for boilers can accommodate boilers of varying sizes.

Two commenters expressed concerns with the capacity limits included in the draft spark ignition engines general permit. The commenters noted an inconsistency between the engine site capacity limit of 1,750 hp and the emission limits set by reference to Table 1 of 40 CFR part 60, subpart JJJJ. One

commenter provided the example that, using the EPA's PTE spreadsheet and a single 1,000 hp 4-stroke lean burn engine, the CO limit of 2.0 grams per hp-hour in Table 1 yields a total annual CO emission PTE of just under 20 tpy, which would allow for up to 5,000 hp site capacity based on a 100 tpy limit. The commenters stated that these issues bring into question whether the draft spark ignition and compression ignition engines permits should include capacity-based limits or emissions-based limits. Both commenters reasoned that emission limits are preferable to capacity limits, because an emission limit approach would allow flexibility for operators to determine how to configure engines. One commenter argued that if the EPA uses capacity limits, then it would seem pointless to also include emission limits or monitoring. The commenter stated that capacity limits are most appropriate for small engines to simplify exclusion from minor source NSR, stating that neither the draft spark ignition engines general permit nor the draft compression ignition engines general permit addressed excluding low emitting small engines. The commenter further argued that the upper limit used should actually be 250 tpy to avoid the PSD Program in attainment areas.

The EPA acknowledges that, in setting the capacity limits in the draft spark ignition engines general permit, the limit was based on the highest emission factor under the NSPS for the various engines types. We also acknowledge that there is significant variability in the emission factors for the different types of engines. Given the differences, we are revising the capacity limits to add a fuel-based capacity limit option for natural gas-fired spark ignition engines. In addition, the draft spark ignition engines general permit does not apply to engines in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector. The EPA has issued a separate, final rulemaking addressing oil and natural gas activities that includes requirements for non-emergency engines.<sup>49</sup> Non-emergency spark ignition engines (and any additional emergency engines) located at sources that are not in the oil and natural gas

<sup>49</sup> "Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector," U.S. Environmental Protection Agency, 81 FR 35944, June 3, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf>.

production and natural gas processing segments of the oil and natural gas sector are eligible for coverage under the final "General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country."

Regarding excluding small engines, we note that the Federal Indian Country Minor NSR rule exempts stationary internal combustion engines with a manufacturer's site-rated hp of less than 50. The EPA finalized this exemption during the development of the general permits.<sup>50</sup> We have revised the permitting documents to reflect this exemption.

Regarding the use of emission limits versus capacity limits, we have retained the capacity limits but we have also added additional flexibility by allowing for the use of synthetic minor fuel limits in lieu of the engine capacity limits. This flexibility is close to the approach suggested by the commenter, as it allows for engines of greater capacity as long as overall fuel use remains below the specified threshold. We consider this approach the best option for the types of owners and operators that we expect to be subject to the permits—striking a balance between flexibility and ease of compliance. Sources needing even greater operational flexibility should consider applying for a source-specific permit. The general permits are intended for common, straightforward permitting actions.

Regarding the upper tpy emission limit used for setting the limits in the permit, we disagree with the commenter's suggestion of using 250 tpy. While the EPA will still determine when sources applying for a general permit need a source-specific permit due to air quality concerns, we do not believe that will occur as often as would be required if we used the upper threshold in attainment areas proposed by the commenter.

Two commenters supported the proposed approach for establishing capacity limits for compression ignition emergency and non-emergency engine sources that differentiate among locations in ozone attainment, unclassifiable, or Marginal/Moderate ozone nonattainment areas. The commenters requested that the EPA explain why the draft general permit for stationary spark ignition engines does not use a similar approach. One commenter stated that nonattainment minor source permitting should be

<sup>50</sup> "Review of New Sources and Modifications in Indian Country—Amendments to the Federal Indian Country Minor New Source Review Rule," U.S. Environmental Protection Agency, 79 FR 31035, May 30, 2014, <https://www.gpo.gov/fdsys/pkg/FR-2014-05-30/pdf/2014-11499.pdf>.

regionally specific and based on emissions inventory evaluation and modeling to determine the requirements after a designation is made. The commenter declared that because no nonattainment designation has been made in any tribal land areas, it is premature to specify minor source permitting requirements. The EPA notes that the draft general permit for spark ignition engines does not need separate limits for sources in different types of ozone areas. The limiting pollutant—the pollutant with the highest emissions in setting the capacity limits—is CO. The established limits in the draft general permit are set low enough to ensure sources in ozone nonattainment areas will be below the major source thresholds, regardless of the area's classification. The final “General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country” is not available in Serious CO nonattainment areas. Currently, there are no CO nonattainment areas.

Regarding the comment that nonattainment minor source permitting should be based on an emissions inventory evaluation and modeling, in this instance it is not necessary to develop an emissions inventory or perform ambient air modeling in order to establish minor source permits in attainment or nonattainment areas that are protective of air quality. The general permits in this action are intended to prevent the construction of sources that would interfere with attainment or maintenance of the NAAQS in attainment and nonattainment areas. However, some of the general permits in this action do not cover all potential nonattainment areas because, in order to protect air quality in such areas, we would have had to construct an overly stringent, potentially unworkable permit for such sources in such areas. A better alternative is to direct such sources to work with the Reviewing Authority to develop a more workable, source-specific permit. Moreover, the Reviewing Authority has the discretion under the Federal Indian Country Minor NSR rule to not grant coverage under a general permit to a particular source or in a particular area if there is a concern that the general permit will not be protective of air quality in the area.

Three commenters supported the EPA's draft emission limitations for sawmill facilities, including a limitation of 25 million board feet on a 12-month rolling basis and a total tpy VOC emission limitation that becomes more stringent based on the increasing classification of the ozone nonattainment area in which the facility

is located. However, one commenter asserted that it was unlikely a sawmill facility would be a true minor NSR facility and approach 80 tpy VOC without triggering the major source threshold for HAPs (Condition 23 of the draft sawmill facilities general permit). Regarding the comment that a source may trigger the major source threshold for HAPs prior to reaching the 80 ton per year/12-month rolling emission limits, the EPA has determined that such a scenario could arise and has added a synthetic minor limit for HAP emissions in the final “General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country.”

One commenter requested that the EPA use a 12-month rolling total limit for the production limits and emissions limitations in Conditions 19, 23 and 41 of the draft sawmill facilities general permit. The commenter also expressed concern that new sources in operation for less than 12 months would not be able to determine compliance with the draft conditions for the first 11 months. The commenter provided draft language for consideration.

The EPA notes that the draft sawmill facilities permit uses a 12-month rolling total for the production limits and emissions limitations in Conditions 19, 23, and 41 of the draft general permit. Regarding the concern that new sources would have difficulty determining compliance with the draft conditions in the first 11 months, the general permit requires that sources maintain records of monthly production and monthly VOC emissions and submit an annual report that evaluates the source's compliance status with the emission limitations and standards. This will allow a source to evaluate its eventual compliance with the 12-month rolling total well before the 12th month. We have not modified the final “General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country,” as suggested by the commenter.

## V. Statutory and Executive Order Reviews

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

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

### B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the

PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB Control Number 2060-0003. The general permits finalized in this action do not impose any new obligations or enforceable duties on any state, local or tribal government or the private sector. This action merely establishes general permits to aid sources in satisfying the requirements of the Federal Indian Country Minor NSR rule.

### C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The EPA analyzed the impact of streamlined permitting on small entities in the Federal Indian Country Minor NSR rule.<sup>51</sup> The EPA determined that that action would not have a significant economic impact on a substantial number of small entities. This action merely implements a particular aspect of the Federal Indian Country Minor NSR rule. As a result, this action will not have a significant economic impact on a substantial number of small entities. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities. And, by establishing general permits that simplify and shorten the permitting process, this rule will lessen the burden on small business in the affected source categories that are seeking to construct in Indian country.

### D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate, as described in the UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Sources that choose to use one or more of the general permits finalized in this action must comply with the requirements contained therein; however, no source is required

<sup>51</sup> “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>.

to use the general permits. As a result, the action imposes no enforceable duty on any state, local or tribal government or the private sector.

#### *E. Executive Order 13132: Federalism*

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

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

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The EPA conducted outreach on the July 17, 2014, proposal via on-going monthly meetings with tribal environmental professionals in the development of this final action. The EPA offered consultation to elected tribal officials immediately after proposal on June 14, 2014, via letter to 566 tribes to provide an opportunity for meaningful and timely input into the development of this regulation. No tribal officials requested consultation on this action.

Two commenters took exception to the EPA's claim that the proposed rule would "not impose duties or responsibilities on tribes." The commenters noted that several Indian tribes own and operate facilities covered under source categories identified in the draft rule, and, thus, the draft rule will impose duties or responsibilities on some tribes. The commenters requested that the EPA review the number of tribes that own and operate facilities represented by the source categories listed in the proposed rule and determine the extent of the duties and responsibilities imposed on the tribes. The EPA disagrees with the assertion that the rule "imposes duties or responsibilities on tribes." As noted in the preamble to the proposed rule, the EPA concluded that the rule would not impose duties or responsibilities on tribes, although it will have tribal implications. Some tribes may own affected facilities in the source categories for which we are issuing general permits via this action.

However, this action merely provides general permits to aid interested minor sources in Indian country in satisfying the already existing requirement under the Federal Indian Country Minor NSR rule that they obtain a minor source permit. This action does not impose any

requirements on sources in these source categories that may need to obtain a minor source permit to construct in Indian country. The use of the general permits in this final action is optional; they do not impose any compliance requirements on any source unless and until the EPA grants coverage under one of the permits to a source.

This action reflects tribal comments on and priorities for developing general permits and permits by rule in Indian country. The RTC document details all of the comments we received on the July 17, 2014, proposal from tribal and other entities. We received comments from 5 tribal commenters. We have responded favorably to tribal comments in the several areas, including:

- General support for the establishment of general permits for the six categories;
- Structure and general requirements of the draft general permits;
- Authorizing multiple locations for the use of certain general permits;
- Specific provisions of the draft spark ignition and compression ignition engines general permits;
- Specific provisions of the draft sawmill facilities general permit;
- Utilizing a permit by rule for graphic arts and printing operations; and
- Use of throughput limits and capacity limits.

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

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

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

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

#### *I. National Technology Transfer and Advancement Act (NTTAA)*

The final action involves technical standards. The EPA has decided to use the EPA Methods 5, 7, 9, 10, 18, 22 and

25A of 40 CFR part 60, appendix A.<sup>52</sup> Three voluntary consensus standards were identified as applicable for purposes of the proposal:

1. ANSI/ASME PTC 19.10-1981 part 10 "Flue and Exhaust Gas Analyses" (alternative to the EPA Method 7);
2. ASTM D7520-09 "Standard Test Method for Determining Opacity of a Plume in the Outdoor Ambient Atmosphere" (alternative to the EPA Method 9); and
3. ASTM D6420-99 (2010) "Test method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry" (alternative to the EPA Method 18).

We are not finalizing these in this rulemaking. The use of these voluntary consensus standards would not be practical with applicable law due to a lack of equivalency, documentation, validation data and other important technical and policy considerations. The EPA did not receive comments that have caused us to alter the standards and methods in the final permits.

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

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

Our primary goal in developing this program is to ensure that air resources in Indian country will be protected in the manner intended by the CAA. We believe that when sources have permits

<sup>52</sup> Information on any available voluntary consensus standards that we indicated could be used as alternatives to the emissions measurement standards in the draft general permits can be found in: "Voluntary Consensus Standard Results for General Permits and Permits by Rule for the Indian Country Minor New Source Review Program; 40 CFR part 49, subparts 156(c) and 162," from Robin Segall, Acting Group Leader, Measurement Technology Group, to Laura McKelvey, Group Leader, Community and Tribal Programs Group, February 7, 2014, Docket ID No. EPA-HQ-OAR-2011-0151, <https://www.epa.gov/tribal-air/tribal-minor-new-source-review>.

and compliance reporting requirements, that means that there will be reduced emissions and greater responsibility on the part of sources. This final action 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 final action will reduce an existing disparity by filling the regulatory gap.

#### K. Congressional Review Act (CRA)

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

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

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

Dated: September 16, 2016.

**Gina McCarthy,**  
Administrator.

[FR Doc. 2016-23178 Filed 10-13-16; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2016-0312; FRL-9954-08-Region 4]

#### Air Plan Approval; KY; Removal of Stage II Gasoline Vapor Recovery Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving changes to the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky, through the Kentucky Energy and Environmental Cabinet, on May 3, 2016. This SIP revision removes Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State and allows for the decommissioning of existing Stage II equipment in Boone, Campbell and Kenton Counties in Kentucky

(hereinafter referred to as the "Northern Kentucky Area" or "Area"). EPA determined that Kentucky's May 3, 2016, SIP revision is approvable because it is consistent with the Clean Air Act (CAA or Act).

**DATES:** This rule will be effective November 14, 2016.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2016-0312. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Ms. Sheckler's telephone number is (404) 562-9222. She can also be reached via electronic mail at [sheckler.kelly@epa.gov](mailto:sheckler.kelly@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 3, 1998, the Commonwealth of Kentucky submitted a SIP revision to address the Stage II requirements<sup>1</sup> for the Northern Kentucky Area.<sup>2</sup> EPA approved that SIP

<sup>1</sup> Stage II is a system designed to capture displaced vapors that emerge from inside a vehicle's fuel tank, when gasoline is dispensed into the tank. There are two basic types of Stage II systems, the balance type and the vacuum assist type.

<sup>2</sup> On November 6, 1991, EPA designated and classified Boone, Campbell and Kenton Counties in Kentucky as part of the seven-county area in and around the Cincinnati-Hamilton, OH-KY, area as a moderate nonattainment area for the 1-hour ozone

revision, containing Kentucky regulation 401 KAR 59:174—*Stage II controls at gasoline dispensing facilities*, in a notice published on February 8, 1999 (63 FR 67586). On May 3, 2016, the Commonwealth of Kentucky submitted a SIP revision to EPA seeking modifications of the Stage II requirements in the Northern Kentucky Area. Specifically, it sought the removal of the Stage II requirements in Kentucky regulation 401 KAR 59:174—*Stage II Controls at gasoline dispensing facilities*. EPA published a proposed rulemaking on August 17, 2016, to approve that SIP revision. The details of Kentucky's submittal and the rationale for EPA's action are explained in the proposed rulemaking. See 81 FR 54780. The comment period for this proposed rulemaking closed on September 16, 2016. EPA did not receive any comments, adverse or otherwise, during the public comment period.

##### II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Kentucky regulation 401 KAR 59:174—*Stage II Controls at gasoline dispensing facilities*, effective May 3, 2016, which removes Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>3</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information)

NAAQS. See 56 FR 56694. The "moderate" classification triggered various statutory requirements for the Area, including the requirement pursuant to section 182(b)(3) of the CAA to require all owners and operators of gasoline dispensing systems to install and operate Stage II. EPA redesignated the Northern Kentucky portion of the Area to attainment for the 1-hour ozone NAAQS, effective July 31, 2002. See 67 FR 49600.

<sup>3</sup> 62 FR 27968 (May 22, 1997).