

Environmental Protection Agency

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whether within or without the limits of a state and

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

Indian governing body means the governing body of any Tribe, band or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

Reviewing authority means the Administrator or an Indian Tribe in cases where a Tribal agency is assisting EPA with administration of the program through a delegation under § 49.173.

Synthetic minor HAP source means a source that otherwise has the potential to emit HAPs in amounts that are at or above those for major sources of HAP in § 63.2 of this chapter, but that has taken a restriction such that its potential to emit is less than such amounts for major sources. Such restrictions must be enforceable as a practical matter.

Synthetic minor source means a source that otherwise has the potential to emit regulated NSR pollutants in amounts that are at or above those for major sources in Appendix S, but that has taken a restriction such that its potential to emit is less than such amounts for major sources. Such restrictions must be enforceable as a practical matter.

§ 49.168 Does this program apply to me?

(a) In a nonattainment area for a pollutant in Indian country, the requirements of this program apply to you under either of the following circumstances:

(1) If you propose to construct a new major source (as defined in part 51, Appendix S, paragraph II.A.4 of this chapter) of the nonattainment pollutant.

(2) If you propose to construct a major modification at your existing major source (as defined in part 51, Appendix S, paragraph II.A.5 of this chapter), where your source is a major source of the nonattainment pollutant and the proposed modification is a major modification for the nonattainment pollutant.

(b) If you own or operate a major source with a state-issued nonattainment major NSR permit, you must apply to convert such permit to a Federal permit under this program by September 4, 2012.

(c) If you propose to establish a synthetic minor source or synthetic minor HAP source or to construct a minor modification at your major source, you will have to comply with the requirements of the Federal minor NSR program in Indian country at §§ 49.151 through 49.165 or other EPA-approved minor NSR program, as applicable.

§ 49.169 Permit approval criteria.

(a) *What are the general criteria for permit approval?* The general review criteria for permits are provided in part 51, Appendix S, paragraph II.B of this chapter. In summary, that paragraph basically requires the reviewing authority to ensure that the proposed new major source or major modification would meet all applicable emission requirements in the EPA-approved implementation plan or FIP, any applicable new source performance standard in part 60 of this chapter and any applicable national emission standards for hazardous air pollutants in part 61 or part 63 of this chapter, before a permit can be issued.

(b) *What are the program-specific criteria for permit approval?* The approval criteria or conditions for obtaining a major NSR permit for major sources and major modifications located in nonattainment areas are given in part 51, Appendix S, paragraph IV.A of this chapter. In summary, these are the following:

(1) The lowest achievable emission rate (LAER) requirement for any NSR pollutant subject to this program.

(2) Certification that all existing major sources owned or operated by you in the same state as the state including the Tribal land where the proposed source or modification is located are in compliance or under a compliance schedule.

(3) Emissions reductions (offsets) requirement for any source or modification subject to this program.

(4) A demonstration that the emission offsets will provide a net air quality benefit in the affected area.

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(5) An analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

§49.170 Emission offset requirement exemption.

An Indian governing body may seek an exemption from the emission offset requirement (see §49.169(b)(3)) for major sources and major modifications subject to this program that are located within the Tribe's Indian country pursuant to section 173(a)(1)(B) of the Act, under which major sources and major modifications subject to this program may be exempted from the offset requirement if they are located in a zone targeted for economic development by the Administrator, in consultation with the Department of Housing and Urban Development (HUD). Under this Economic Development Zone (EDZ) approach, the Administrator would waive the offset requirement for such sources and modifications, provided that:

(a) The new major source or major modification is located in a geographical area which meets the criteria for an EDZ and the Administrator has approved a request from a Tribe and declared the area an EDZ and

(b) The state/Tribe demonstrates that the new permitted emissions are consistent with the achievement of reasonable further progress pursuant to section 172(c)(4) of the Act and will not interfere with attainment of the applicable NAAQS by the applicable attainment date.

§49.171 Public participation requirements.

(a) *What permit information will be publicly available?* With the exception of any confidential information as defined in part 2, subpart B of this chapter, the reviewing authority must make available for public inspection the documents listed in paragraphs (a)(1) through (4) of this section. The reviewing authority must make such information available for public inspection at the appropriate EPA Regional Office

and in at least one location in the area affected by the source, such as the Tribal environmental office or a local library.

(1) All information submitted as part of your application for a permit.

(2) Any additional information requested by the reviewing authority.

(3) The reviewing authority's analysis of the application and any additional information submitted by you, including the LAER analysis and, where applicable, the analysis of your emissions reductions (offsets), your demonstration of a net air quality benefit in the affected area and your analysis of alternative sites, sizes, production processes and environmental control techniques.

(4) A copy of the draft permit or the decision to deny the permit with the justification for denial.

(b) *How will the public be notified and participate?*

(1) Before issuing a permit under this program, the reviewing authority must prepare a draft permit and must provide adequate public notice to ensure that the affected community and the general public have reasonable access to the application and draft permit information, as set out in paragraphs (b)(1)(i) and (ii) of this section. The public notice must provide an opportunity for public comment and notice of a public hearing, if any, on the draft permit.

(i) The reviewing authority must mail a copy of the notice to you, the appropriate Indian governing body and the Tribal, state and local air pollution authorities having jurisdiction adjacent to the area of Indian country potentially impacted by the air pollution source.

(ii) Depending on such factors as the nature and size of your source, local air quality considerations and the characteristics of the population in the affected area (e.g., subsistence hunting and fishing or other seasonal cultural practices), the reviewing authority must use appropriate means of notification, such as those listed in paragraphs (b)(1)(ii)(A) through (E) of this section.

(A) The reviewing authority may mail or e-mail a copy of the notice to persons on a mailing list developed by